

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.08.2020

CORAM

THE HONOURABLE THIRU JUSTICE V.PARTHIBAN

W.P.NO.11279 OF 2020

AND

W.M.P.NOS.13750 & 13751 OF 2020

S.Suganthi

... Petitioner

Vs.

1. The State of Tamil Nadu,
rep.by the Secretary to Government,
Department of School Education,
St.George Fort, Chennai.

2. The District Educational Officer,
Perambalur.

3. The District Elementary Educational
Officer, Perambalur

...Respondents

Prayer:-

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of certiorarified Mandamus, calling for the records on the file of the 2nd respondent in proceedings Na.Ka.No.058/A2/2010 dated 18.01.2011 and to quash the same as illegal, incompetent and without jurisdiction and further to direct the respondents to reinstate the petitioner and to disburse the salary for the entire period.

For Petitioner : Mr.V.Raghavachari

For Respondents : Mr.P.Raja
Government Advocate

ORDER

The matter is taken up through web hearing.

2.The petitioner was a teaching staff and was working at the relevant point of time as Headmistress at Government Elementary School, Perambalur Union, Esanai Panchayat. According to her, she was terminated from service under Fundamental Rule 18(1) and

(2) by the second respondent on 18.01.2011. According to the petitioner, she had been originally appointed on 06.02.1989. Nothing is disclosed in the affidavit as to what was the nature of appointment and under which post the petitioner was appointed. However, it transpired that the petitioner's husband was also a Headmaster in Elementary School by name Chandrasekar. A criminal complaint was registered in Crime No.55 of 2010, dated 29.10.2010, alleging that the petitioner's husband had forged the signature of the Village Head between August 2008 and April 2009 and had misappropriated a sum of Rs.3,50,000/-. An FIR was registered under Sections 406, 409, 420 and 477(A) IPC. It appeared that the petitioner was also implicated as second accused in the above said complaint.

3.The petitioner was therefore issued with a show cause notice dated 18.01.2011 calling her to submit explanation for her unauthorized absence and also in regard to the criminal complaint registered against her. According to the petitioner, she was wrongly implicated in the criminal case and subsequently, in 2005 her name was also removed from the complaint. Subsequently when the charge-sheet was filed, the petitioner's name was not shown.

4.In the above circumstances, the petitioner claims to have made representations on 16.3.2020 and 15.04.2020 to the respondents and on the basis of these representations, the District Education Officer, Veppur, Perali District, who is not a party in this writ proceedings, appeared to have forwarded the representations of the petitioner for due action and reply by the respondents. Since there was no reply forthcoming from the respondents, the petitioner is before this Court challenging the show cause notice dated 18.01.2011, as if the notice is a termination order.

5.This Court is at a loss to understand as to the manner in which the present writ petition has been filed with incorrect facts and bald statements in the affidavit. The show cause notice dated 18.01.2011 is termed as Termination Order contrary to the records revealed as under. The entire affidavit as it was presented to this Court in support of the writ petition contains disjointed averments, which are hardly coherent to comprehend the sequence of events from 2011, when the show cause notice was issued to the petitioner and the subsequent action taken thereafter. However, from the documents filed by the petitioner herself it could be seen that subsequent to the issuance of show cause notice dated 18.01.2011, by the proceedings of the 3rd respondent dated 31.03.2011, she was terminated from service for the reason that she had remained unauthorisedly absent for more than three years and during the period she had in fact disappeared in view of the criminal case

registered against her. Moreover, in the said proceedings it is also stated that when a show cause was sent to her address, it was returned as 'no such person available' and consequently, as no explanation was forthcoming, the third respondent was constrained to terminate her services.

6. In the termination order, it is clearly mentioned that the petitioner had disappeared from the scene from 03.03.2008 onwards and not reported for work. It is very strange that the termination order is not put to challenge in this writ petition. Ludicrously, after lapse of so many years, the petitioner appeared to have submitted two representations in 2020 seeking permission of the authority to join duty. In the representation, the petitioner has stated that her name was not included in the charge-sheet filed on 04.12.2015. More strangely what happened between 2015 and 2020, nothing is explained in the affidavit.

7. The petitioner admittedly was working as a Headmistress of an Elementary school at the relevant point of time and her service stood terminated for her disappearance for more than three years. Having disappeared and remained absent unauthorisedly for years together, in order to save her skin from the clutches of law, the petitioner has chosen her own time, according to her convenience and pleasure and submitted representations in 2020, reclaiming her position which she had held nine years before.

8. This Court is unable to appreciate as to how the petitioner could be unabashedly audacious to approach this Court seeking issuance of writ of mandamus for reappointing her as Headmistress, as if she could exercise her lien over the post any time of her choice, notwithstanding the order of termination passed against her way back in the year 2011. As a headmistress of a school, having remained absent unauthorisedly for more than three years and having not reported for work even after the show cause notice dated 18.01.2011 and having not responded to the consequent action of Termination passed against her by the school authorities, the petitioner has chosen to remain deceitfully inactive all these years and suddenly woken up and submitted representations in 2020, claiming reinstatement brazenly oblivious to her past misconduct.

That apart, what is more surprising are the grounds of challenge as found in the affidavit, which are extracted hereunder.

"A. That the impugned order is contrary to law, manifestly erroneous, arbitrary, unjust and inequitable.

B. That the respondents ought to have reinstated

the petitioner after her name was removed from the complaint. The inaction on the part of the respondent offends all canons of natural justice, equity and fairness.

C. That terminating the petitioner from service for an act that was never committed by the petitioner and further, not reinstating offends the dignity of the petitioner and thereby, violates Article 21 of the Constitution.

D. That the petitioner is deprived of her right to livelihood, which is a fundamental right guaranteed under the Constitution."

9. The grounds are too generic in nature, which do not merit any worthy consideration by this Court. Moreover, without any reference to her misconduct in the affidavit, how could the petitioner lay a claim on the post, as if public service is like a public choultry and she can walk-in and walk-out at any time according to her own whimsical convenience. What made her think that she could come back after many years and reclaim the post of Headmistress and such idea to enter the mind of the petitioner, in the first place defies any rationality or objective sense of any prudent person. Probably, the petitioner is too self absorbed to realize the events that preceded her termination. She appeared to be suffering from selective and wanton amnesia of her past misdeeds of abandoning her service for years together. If the claim of the petitioner is to be entertained and to be reinstated, it would be a mockery of justice to the school education system, reducing the same to a farcical law.

10. This conclusion is necessitated as the petitioner is seeking to reclaim the post of Headmistress and she is claiming it as a matter of right after committing a grave misconduct, as illustrated above and in the face of such misconduct, she is deliberately being unmindful of her conduct and invokes the jurisdiction of this Court for quashing the show cause notice. Here again, as stated earlier, the termination order as such issued on 31.03.2011 is not put to challenge, for reasons unknown.

11. In the light of the above and in consideration of the affidavit being bereft of any essential and material details, read with the shallow grounds, the challenge of the petitioner, to say the least, is awfully misplaced and misconceived, which ought not to be entertained under any circumstance. Though, this Court was initially inclined to impose cost on the petitioner, as she being imprudently emboldened to challenge the show cause notice dated 18.01.2011 and not in fact the

termination order dated 31.03.2011, after so many years for serving her own ends, but considering the fact that the petitioner having suffered injury of non-employment, rightly so, imposition of costs would be adding salt to the injury and in that perspective, this Court is refrained from doing so.

12. In view of the above narrative, the writ petition stands dismissed as not maintainable and also as devoid of merits and substance. No costs. Connected miscellaneous petitions are dismissed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

msh/mrm

To

1. The Secretary to Government,
The State of Tamil Nadu,
Department of School Education,
St.George Fort, Chennai.
2. The District Educational Officer,
Perambalur.
3. The District Elementary Educational
Officer, Perambalur

+lcc to Mr.V.Raghavachari, Advocate, S.R.No.28271
+lcc to the Government Pleader, S.R.No.28670

W.P.No.11279 of 2020

BS (CO)
CS/03/02/2021