

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 09.12.2020

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. No.20783 OF 2014

C.Babu

...Petitioner

- Vs -

- 1.Director of School Education,
College Road, DPT Campus,
Chennai-600006
- 2.The Joint Director of Secondary Education,
College Road, DPI Campus,
Chennai-600006.
- 3.The Chief Educational Officer,
Panagal Building,
Saidapet, Chennai-600015
- 4.The District Educational Officer,
Chennai East,
Choolaimedu High Road,
Chennai 600094.
- 5.The Secretary
School Committee,
Rao Bahadur Allathure Nathamoony Chetty
Higher Secondary School
No.26, Samy Street,
Chennai-600002

...Respondents

Writ petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of Certiorarified Mandamus, calling for the records relating to the Charge Memo Letter No.Se/94/2014 dated 12.03.2014 and consequential order of suspension letter No.Se./129/2014 dated 23.06.2014 issued on the file of the fifth respondent and quash the same consequently direct the fifth respondent to stop harassing the petitioner.

For Petitioner : Mr.U.Karunakaran

For Respondents: Mr. S.Sureshkumar, G.A., for RR-1 to 4
Mr.Ilamvaludhi for R5

ORDER

The petitioner in the above writ petition prays, to call for the records relating to the Charge Memo Letter No.Se/94/2014 dated 12.03.2014 and consequential order of suspension letter No.Se./129/2014 dated 23.06.2014 issued on the file of the fifth respondent and quash the same consequently direct the fifth respondent to stop harassing the petitioner.

2. According to the petitioner, he joined as office assistant on 11.02.2002 and the post was sanctioned by the Director of School Education in the 4th respondent school, which is a Government Aided Non Minority School. Thereafter the petitioner has completed his SSLC in the year 2006 and in the mean time, there was a dispute between the Management and the School Secretary, which resulted in this Court appointing an Interim Committee for maintaining the affairs of the school and the Trust in the year 2002 by judgement made in C.S.No.438/2000. Based upon the order of this Court, from 2000 onwards, the interim committee has maintained the affairs of the school including appointment and promotion. On 01.10.2006, there was a vacancy in the post of Junior Assistant which arose due the voluntary retirement given by one Selvi.Beula Devi and as on 01.10.2006, the eligible persons to be considered for the said post were one N.Chandra Babu and the petitioner. Since there was a charge pending against the said Chandra Babu, he was not considered for the said post by the 5th respondent/Interim School Committee. However, one Kannan, who is a temporary employee has been appointed temporarily in the said post, without taking steps to fill up the vacancy permanently. Aggrieved by the same, the said Chandra Babu has filed WP.No.46165 of 2006 and sought for direction to appoint him as Junior Assistant in the 5th respondent school. But the same was dismissed vide order dated 04.08.2010. It is the case of the petitioner that he is the next eligible person to be promoted to the post of Junior Assistant for which he had already submitted his requisition letter dated 06.08.2010. Pursuant to his request, the court appointed Interim Committee passed a resolution dated 02.09.2010 to consider his name for promotion. Thereafter, due to certain allegations, the said Kannan, who was temporarily appointed, was terminated from service vide resolution dated 27.10.2010 and the petitioner was appointed as Junior Assistant vide order of appointment dated 28.10.2010 issued by the Court appointed Interim Committee with effect from 1.11.2010 and he has joined duty as Junior Assistant on 11.11.2010. Due to the above, certain animosity arose between the petitioner and the school, resulting in issuance of charge memo against the petitioner by the 5th respondent on 24.10.2013 calling for explanation, to which the petitioner has given his explanation. However not

satisfied with the same, further memos were served on the petitioner by the 5th respondent on various dates on frivolous allegations to which also the petitioner has given his reply. Once again the 5th respondent has issued another charge memo on 12.03.2014 consisting of 11 charges and called upon the petitioner for his explanation and, thereafter, the petitioner was suspended on 23.06.2014, without approval of the school committee, but subsequently he was reinstated. Challenging the said impugned charge memo and suspension order this present writ petition is filed.

3. Though very many grounds have been raised in support of the petition, the learned counsel appearing for the petitioner submitted that the charge memo and suspension order were issued by the 5th respondent with mala fide intention and he further submitted that the 5th respondent has no jurisdiction for issuing charge memo as per section 18(1)(c) of the Tamil Nadu Private School Regulations. According to the said rule, the competent person to issue the charge memo is only the School committee, which alone can take disciplinary action against the petitioner. Further, the suspension order has also been passed by the 5th respondent, who is an incompetent person, without getting approval from the competent authority, i.e., the 4th respondent as per Act 22 of the Private School Regulation Act. On the sole ground, the impugned charge memo is liable to be dismissed. In support of his contention, he relied upon the unreported decision of this Court in WP.(MD) Nos.13796 & 13797 of 2010 and 3824 and 13242 of 2011.

4. Learned counsel appearing for the 5th respondent did not dispute the legal position pressed into service by the learned counsel for the petitioner, but, however submits that this Court while setting aside the charge memo, may grant liberty to the 5th respondent to proceed in the matter in accordance with the provisions prescribed in the Private School Regulation Act.

5. Heard the arguments of the learned counsel on either side and the perused the materials available on record.

6. In view of the well accepted position in law and also the fact that the learned counsel for the 5th respondent has conceded to the said order being passed by an authority, who is incompetent to pass the said order, this Court is of the considered view that the order impugned herein deserves to be set aside, as the same has been passed by an authority, who is incompetent to pass the said order and the same has also been passed with the approval of the school committee. Therefore, the charge memo, culminating in the suspension order passed against the petitioner deserves to be set aside.

7. For the reason aforesaid, the impugned order is set aside and this writ petition is allowed. However, the order passed by this Court above will not stand on any way of the competent authority to proceed in the matter in accordance with the provisions of the Private School Regulation Act. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

Sd/-

Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

Jrs

To

1. Director of School Education,
College Road, DPT Campus,
Chennai-600006
2. The Joint Director of Secondary Education,
College Road, DPI Campus,
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3. The Chief Educational Officer,
Panagal Building,
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4. The District Educational Officer,
Chennai East,
Choolaimedu High Road,
Chennai 600094.

+1cc to Mr.S.Ilamvaludhi, Advocate, S.R.No.39939
+1cc to Government Pleader, S.R.No.40371
+1cc to Mr.V.Karunakaran, Advocate, S.R.No.40283

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SR(CO)
KKV/25/02/2021