

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.02.2020

CORAM

THE HONOURABLE Mr.JUSTICE N.ANAND VENKATESH

WP.No.35168 of 2019
and WMP.No.36441 of 2019

P.N.Arumugam

..Petitioner

- Vs -

1. The Joint Director of School Education (Personnel),
Directorate of School Education,
Chennai-600 006.
2. The Chief Educational Officer,
Dharmapuri.
3. The Headmaster,
Government Higher Secondary School,
Perumbalai, Pennagaram Taluk,
Dharmapuri District.

..Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorarified Mandamus, calling for the records relating to the impugned orders in (1) Pro.Na.Ka.No.03831/C2/E3/2014 dated 02.08.2018 of the 1st respondent and the consequential orders in Pro.Na.Ka.No.6736/E1/2013 dated 01.12.2018 of the 2nd respondent and order in Pro.Na.Ka.60/2017 dated 03.12.2018 of the 3rd respondent, quash the same and issue consequential direction to the respondents herein to restore the increment withheld, regularise the period of suspension from 04.01.2014 to 11.09.2016 as duty for all purposes and disburse full pay and allowances to the petitioner and also empanel him for promotion as PG Assistant (Science) in the appropriate place in the panel as on 01.01.2017 and promote him as such.

For Petitioner : Mr.R.Thamaraiselvan

For Respondents : Mrs.V.Annalakshmi

Government Advocate

O R D E R

On the consent given by both sides, the main writ petition itself has been taken up for final hearing.

2. The present writ petition has been filed challenging the impugned order passed by the first respondent in his proceedings dated 02.08.2018 and the consequential orders passed by the respondents 2 and 3 and for a direction to the respondents to restore the increment that was withheld and also to regularize the period of suspension and to pay all the other attendant benefits to the petitioner.

3. The case of the petitioner is that he was appointed as a Junior Graduate Teacher in the year 2006 by the second respondent. The petitioner was recruited by the Teachers Recruitment Board. The petitioner was placed under suspension by the third respondent by his order dated 04.01.2014 on the ground that the petitioner had married a minor girl, who was studying in the school and the same was violative of Government Servants Conduct Rules. Disciplinary proceedings were initiated against the petitioner under Rule 17(b) of Tamil Nadu Civil Services (D&A Rules) in respect of alleged violation of Rule 20(1) of Tamil Nadu Government Servants Conduct Rules. A Criminal case also came to be registered against the petitioner in Crime No.2 of 2014.

4. An Enquiry Officer was appointed and the petitioner also submitted his explanation. In the meantime, the petitioner underwent the criminal trial before the Sessions Court, Dharmapuri in Spl.SC.No.52 of 2015. The case ended in acquittal by judgment dated 29.01.2016.

5. After the petitioner was acquitted in the criminal case, the suspension order that was passed against the petitioner was revoked by the first respondent, by his order dated 29.08.2016 and the petitioner was posted to the Government Higher Secondary School, Perumbalai. The disciplinary proceedings were pending without any progress.

6. The petitioner, therefore, moved this Court by filing WP.No.26426 of 2017 for a direction to the first respondent to pass final orders in the disciplinary proceedings. This Court, by order dated 10.10.2017 directed the first respondent to pass final orders within a period of four months.

7. The first respondent, thereafter, has passed the final orders in the disciplinary proceedings and has imposed a punishment of "Postponement of increment for six months without cumulative effect". As a consequence of this order, the second respondent has regularised the period of suspension from 04.01.2014 to 11.09.2016 as eligible leave and the third respondent has implemented the order of stoppage of increment.

Aggrieved by the same, the present writ petition has been filed before this Court.

8. Mr.R.Thamaraiselvan, learned counsel appearing on behalf of the petitioner submitted that the Enquiry Officer had given a very categorical finding that a false complaint has been given against the petitioner and the charge against the petitioner has not been proved. In spite of this finding, the Disciplinary Authority had proceeded to punish the petitioner and there is not even a discussion in the order as to why he is differing from the views of the Enquiry Officer. The learned counsel further submitted that the petitioner was acquitted in the criminal case and this was also not taken note by the first respondent while passing the impugned order. The learned counsel further submitted that the impugned order passed by the first respondent and the consequential orders passed by the respondents 2 and 3 requires interference of this Court.

9. Per contra, the learned Government Advocate appearing on behalf of the respondents submitted that merely because of the petitioner was acquitted in the criminal case, the same cannot automatically result in dropping the disciplinary proceedings against the petitioner. The learned counsel further submitted that the Disciplinary Authority can always come to his own conclusion based on the materials on record. The learned counsel further submitted that considering the nature of charge against the petitioner and also of the fact that the criminal case against the petitioner ended in acquittal, the first respondent has imposed a very minor penalty against the petitioner and the same is in proportion to the charge that has been made against the petitioner. The learned counsel further submitted that there is absolutely no reason to interfere with the order passed by the respondents.

10. This Court has carefully considered the submissions made on either side and the materials available on record.

11. It is clear from the records that the criminal case came to be registered against the petitioner for an offence under Section 5(L) r/w Section 6 of Protection of Children from Sexual Harassment Act, 2012 and Section 9 of the Prevention of Child Marriage Act, 2006. The charge against the petitioner was that he had married a minor girl. The Sessions Court, upon considering the entire facts and circumstances of the case and also the evidence that was placed before the Court, came to a very categorical conclusion that the prosecution has failed to prove the charges against the petitioner and went to the extent of giving a finding to the effect that the incident that was

projected by the prosecution itself is highly imaginary. The petitioner was also acquitted from all charges, by judgment dated 29.01.2016.

12. Pursuant to the above orders, the suspension that was imposed against the petitioner was revoked. There was absolutely no progress to the disciplinary proceedings and therefore, the petitioner had to approach this Court. The first respondent has proceeded to pass the impugned order after directions were given by this Court.

13. A careful reading of the impugned order of the first respondent shows that the first respondent has relied upon the report of the Enquiry Officer and the explanation given by the petitioner. The report of the Enquiry Officer shows that a false complaint has been given against the petitioner and the same is attended with mala fides and he has given a finding that the charge against the petitioner has not been proved. The Enquiry Officer had also taken into consideration the acquittal of the petitioner in the criminal case.

14. It is true that the Disciplinary Authority can come to his own conclusion and is not bound by report of an Enquiry Officer. However, while coming to such a conclusion, the Disciplinary Authority is bound to explain in his order as to why he is disagreeing the finding of the Enquiry Officer. That apart, the Disciplinary Authority must also state on what materials the charges against the petitioner has been proved. In the present case, the Disciplinary Authority has not given any reason and he merely says that the action of the petitioner has brought a very bad name to the School and other Teachers and Students and therefore, the petitioner deserves to be punished. Accordingly, he imposed punishment of postponement of increment for six months without cumulative effect.

15. In the considered view of this Court, the order passed by the first respondent suffers from an apparent illegality. The first respondent has come to the conclusion without any supporting materials and without even explaining as to why he is not concurring with the finding of the Enquiry Officer. Eventhough, a minor punishment has been imposed against the petitioner, that will not justify the finding that has been given by the first respondent against the petitioner.

16. In the considered view of this Court, the impugned order passed by the first respondent, dated 02.08.2018 requires interference and accordingly, the same is quashed. The consequential orders passed by the respondents 2 and 3 are also

quashed. There shall a direction to the respondents to take note of the orders passed by this Court and consequential orders granting regularization of the period of suspension, increments, etc., and all other attendant benefits to which the petitioner is entitled, shall be given to the petitioner. Appropriate orders shall be passed in this regard, within a period of four (4) weeks from the date of receipt of a copy of this order.

17. This writ petition is accordingly allowed. No costs. Consequently, connected miscellaneous petition is also closed.

Sd/-

Assistant Registrar

/True Copy/

Sub Assistant Registrar

To

1. The Joint Director of School Education (Personnel),
Directorate of School Education,
Chennai-600 006.
2. The Chief Educational Officer,
Dharmapuri.
3. The Headmaster,
Government Higher Secondary School,
Perumbalai, Pennagaram Taluk,
Dharmapuri District.

+1 cc to M/s.R.Thamarai Selvan, Advocate Sr.No. 8328

+1 cc to The Government Pleader Sr.No.8585

AKM/12.03.2020/5P-6C /

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WP.No.35168 of 2019

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