



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.02.2020

CORAM:

WEB COPY

THE HONOURABLE MRS. JUSTICE J.NISHA BANU

W.P.(MD) No.5620 of 2012

G.Murali Mohan

Petitioner

Vs

1. The Joint Director,
Directorate of Elementary Education,
Chennai -6.
2. The District Elementary Educational Officer,
Ramanathapuram,
Ramanathapuram District.
3. The Assistant Elementary Educational Officer,
Thiruppullani,
Ramanathapuram District.

Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, calling for the records pertaining to the impugned order in Na.Ka.No.033797/E1/2011 dated 29.02.2012 on the file of the Respondent No.1 and the order of punishment in Na.Ka.No.4381/Aa2/2009 dated 06.06.2011, on the file of the respondent No.2 and quash the same as illegal.

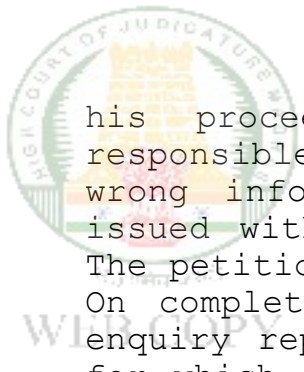
For Petitioner : Mr. T.Lajapathi Roy

For Respondents : Mr.N.Shanmugaselvan
Special Government Pleader

O R D E R

This writ petition is filed to call for the records pertaining to the impugned order in Na.Ka.No.033797/E1/2011 dated 29.02.2012 on the file of the Respondent No.1 and the order of punishment in Na.Ka.No.4381/Aa2/2009 dated 06.06.2011, on the file of the respondent No.2 and quash the same as illegal.

2. The case of the petitioner is that while he was working as a Secondary Grade Teacher, Panchayat Union Elementary School, Periyapattinam, Ramanathapuram District, he was placed under suspension on 14.10.2009, by an order of the second respondent in

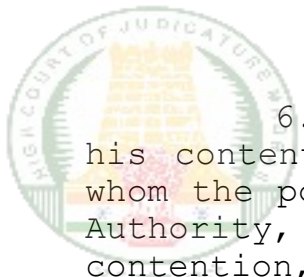


his proceedings in R.C.No.4381/B2/2009, stating that he was responsible for affixing wall posters in public places containing wrong informations about the second respondent and he has been issued with a charge memo in Na.Ka.No.4381/N2/2009 on 06.11.2009. The petitioner has submitted his detailed explanation on 09.04.2010. On completion of an enquiry, the petitioner was served with the enquiry report and sought for necessary explanation on 25.04.2011, for which the petitioner had submitted his explanation on the same day. On 06.06.2011, the second respondent had imposed punishment of stoppage of increment with cumulative effect, against which, the petitioner has preferred an appeal. On account of the long pendency of appeal, the petitioner has preferred a Writ Petition in W.P.(MD). No.11052 of 2011 seeking for a direction to the second respondent to dispose of the appeal. Though this Court directed the concerned authority to dispose of the appeal, no steps have been taken by them. Hence, the petitioner was constrained to file a Contempt Petition in Cont.P.No.108 of 2012 and in pursuance to the contempt notice, the first respondent has issued the present impugned order, confirming the punishment imposed by the second respondent. The petitioner has left with no other alternate, filed this present Writ Petition.

3. The specific contention of the learned counsel for the petitioner is that the order of punishment imposed by the second respondent is an alleged charges framed against the petitioner was for affixing wall posters containing the wrong information about the second respondent. When that being the charge, the second respondent himself has passed the impugned order, which is not at all sustainable as no man can be a Judge for his case. The learned counsel further submitted that one Ganesh Kumar, who was also charged under the same set of facts and imposed punishment of stoppage of one increment with cumulative effect by the respondent No.2, by preferring an appeal, he got modified punishment from "stoppage of one increment with cumulative effect" to "stoppage of one increment without cumulative effect". Hence, the learned counsel for the petitioner submitted that the petitioner alone was discriminated as he has filed the Writ petition and Contempt petition against the respondents.

4. Per contra, the learned Special Government pleader submitted that the Writ petitioner was affixing wall poster against the second respondent not only at the premises of District Elementary Educational Office of Ramanathapuram, but also throughout the town of Ramanathapuram, during working hours on 14.10.2009. After conducting the enquiry by the third respondent herein and on receipt of report from the enquiry officer only, the second respondent has passed the impugned order, which needs no interference by this Court.

5. Heard both sides and perused the records.



6.The learned counsel for the petitioner has mainly raised his contention that the complainant, the second respondent against whom the posters were said to have been affixed is the Disciplinary Authority, therefore, there would be a bias. In support of his contention, he relied on the Judgment reported in **(2013) 16 SCC 116 (Union of India and others Vs.Sanjay Jethi and another)** wherein, paragraph No.46 reads as follows:

" 46.In *State of Gujarat v.R.A.Mehta*, a two Judge Bench dealing with "bias" has observed thus: (SCC P.37, Para 58)

58.....Bias is one of the limbs of natural justice. The doctrine of bias emerges from the legal maxim *memorandum esse judex in propria causa*. It applies only when the interest attributed to an individual is such so as to tempt him to make a decision in favour of, or to further his own cause. There may not be a case of actual bias, or an apprehension to the effect that the matter most certainly will not be decided or dealt with impartially but where the circumstances are such so as to create a reasonable apprehension in the minds of others that there is a likelihood of bias affecting the decision, the same is sufficient to invoke the doctrine of bias".

7.The above Judgment is squarely applicable to the facts of the present case. The authority against whom the posters are said to have been affixed is the authority to pass order in the capacity of Disciplinary Authority. In view of the foregoing reasons, without advert to the merits of the case, this Court is inclined to set aside the orders. Accordingly, the impugned order of the first respondent in Na.Ka.No.033797/E1/2011 dated 29.02.2012 and the order of punishment in Na.Ka.No.4381/Aa2/2009 dated 06.06.2011, are hereby quashed and the matter is remitted back to the original authority for fresh consideration. The original authority is directed to pass fresh orders in this case, after giving due opportunity to the petitioner, within a period of eight weeks from the date of receipt of copy of this order.

8.With the above directions, the writ petition is disposed of. No costs.

Sd/-

Assistant Registrar (AD-II)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

msa



To

1. The Joint Director,
Directorate of Elementary Education,
Chennai -6.
2. The District Elementary Educational Officer,
Ramanathapuram,
Ramanathapuram District.
3. The Assistant Elementary Educational Officer,
Thiruppullani,
Ramanathapuram District.

+1 CC to M/s.T.LAJAPATHI ROY, Advocate (SR-5808[F] dated 12/02/2020

+1 CC to M/s.SPL.GP (SR-6109[F] dated 13/02/2020)

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