



WEB COPY

W.P.(MD)No.11563 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.09.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P. (MD)No.11563 of 2020

and W.M.P. (MD) Nos.10074 & 10076 of 2020

(Through Video Conferencing)

M.Kannan

... Petitioner

Vs.

1.The District Educational Officer,
Karur, Karur District.

2.The Block Educational Officer,
Karur, Karur District.

3.The Enquiry Officer,
The Block Educational Officer,
K.Paramathi, Karur District.

4.The Revenue Divisional Officer,
Karur

... Respondents

(4th respondent has been impleaded
as per the order of this Court dated 14.09.2020)

PRAYER : Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records relating to the impugned enquiry report dated 17.02.2020 of the 3rd respondent herein and the consequential impugned proceedings of 1st respondent in Na.Ka.No.1173/A3/2019 dated 12.08.2020 and quash the same and consequently direct the 3rd respondent herein to conduct a fresh enquiry by furnishing all documents and opportunity to the petitioner to place both oral and documentary evidence.

For Petitioner : Mr.T.Ponramkumar
For Respondents : Mrs.S.Srimathy
Special Government Pleader

ORDER

The challenge made in this writ petition is to the impugned enquiry report dated 17.02.2020 of the 3rd respondent herein and the consequential impugned proceedings of 1st respondent in Na.Ka.No.1173/A3/2019 dated 12.08.2020 and for a consequential direction to the 3rd respondent herein to conduct a fresh enquiry by furnishing all documents and opportunity to the petitioner to place both oral and documentary evidence.



2. Heard the learned counsel for the petitioner and the learned Special Government Pleader for the respondents.

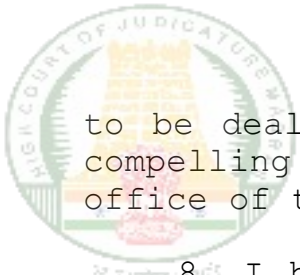
3. The petitioner is a Teacher working under the respondent Department, against whom, disciplinary proceedings have been initiated, where, enquiry said to have been conducted and pursuant to the enquiry, further enquiry notices had been issued by the first respondent vide proceedings dated 24.07.2020 and 12.08.2020. Challenging the same, the present writ petition has been filed.

4. The case of the respondents is that, the petitioner joined in service as a Teacher under the quota of Scheduled Caste by showing the community certificate issued by the competent authority dated 29.06.1989 stating that, the petitioner belongs to Hindu Scheduled Caste Pallan community.

5. However, on enquiry, it was found that, the said community certificate was obtained by the petitioner by projecting the community of the petitioner as if he belongs to Scheduled Caste, whereas, he belongs to only Most Backward Class and based on which, the matter has been referred to the Revenue Department, who is the competent authority to issue the Community Certificate, pursuant to which, an enquiry was conducted by the District Level Vigilance Committee, where, they have taken a decision to cancel the community certificate. Accordingly, the Revenue Divisional Officer, Karur, by order dated 10.09.2019 cancelled the Community Certificate, thereby, the status of the petitioner as Scheduled Caste ceased of by the cancellation of the community certificate by the order of the Revenue Divisional Officer, Karur dated 10.09.2019.

6. Only in that context, on 17.10.2019, a charge memo had been issued against the petitioner, where, an Enquiry Officer was appointed, enquiry was conducted and after enquiry, before issuing second show cause notice to get the views of the petitioner, since the present impugned communication has been issued by the first respondent requiring the petitioner to appear for further enquiry, challenging the same, the petitioner has filed the present writ petition on the ground that, as per 17(b) charges, proper enquiry was not conducted, the enquiry officer's report does not reflect anything that the charges framed against the petitioner was proved and also the copy of the Enquiry Officer was not furnished to the petitioner and moreover, after the Enquiry Officer's report, opportunity to give second reply alone was to be given. However, further enquiry was directed to be made, for which, since the petitioner was directed to appear on 06.08.2020 and 14.08.2020, the petitioner has challenged those proceedings.

7. Therefore, the learned counsel for the petitioner would submit that, the said procedure being adopted by the respondents is not in consonance with the relevant rules, where 17(b) charges have



to be dealt with and enquired and therefore, the said proceedings compelling the petitioner to come forward for further enquiry to the office of the respondents may be interfered with.

8. I have heard the learned Special Government Pleader for the respondents, who would submit that, since the community certificate issued to the petitioner, which was the basis for him to get the job of Teacher under the quota of Scheduled Caste, since has been cancelled as on 10.09.2019 and the same has been reflected in the orders of the District Collector, dated 17.09.2019, the petitioner cannot take any further defence, despite the same, enquiry was conducted on the charges framed against him under 17(b) of the Rules, and accordingly, now, by way of second chance, the present notices have been given, which cannot be found fault with, she contended.

9. I have considered the said submissions made by the learned counsel for both sides and I have also perused the materials placed before this Court.

10. The issue triggered for taking disciplinary action against the petitioner is that, the petitioner obtained a wrong community certificate by depicting himself as a Scheduled Caste person. However, he belongs to Most Backward Class, according to the revenue department as well as the respondents herein.

11. In this context, the community certificate obtained by the petitioner from the Tahsildar concerned dated 29.06.1989 is the disputed certificate, which had been properly referred to the District Level Vigilance Committee, who, conducted an enquiry on 10.09.2019, where the petitioner appeared and produced certain certificates in original as well as some community certificates. However, according to the petitioner, without considering the certificates given by the petitioner and supporting documents relied upon by him, on the very same day of enquiry, ie., on 10.09.2019, since the community certificate of the petitioner has been cancelled by the proceedings of the RDO, Karur and based on which, without even supplying the copies of the cancellation order dated 10.09.2019, if the disciplinary proceedings is initiated by the respondents, by issuance of charge memo dated 17.10.2019, where also proper enquiry to deal with 17(b) charges have not been conducted, without giving second show cause notice, since further enquiry has been ordered through the impugned communication dated 12.08.2020, all those communications are unsustainable. Therefore, the petitioner's counsel contended that, the said orders have to be interfered with.

12. However, the fact remains that on 10.09.2019, the community certificate of the petitioner has been cancelled by the competent authority, namely, the Revenue Divisional Officer, Karur.



13. Though it is maintained by the learned counsel for the petitioner that, the said cancellation has not been furnished so far to the petitioner, the learned Special Government Pleader for the respondents relied upon the annexure supplied to the petitioner along with the charge memo, where, the Revenue Divisional Officer's, order of August 2019 as well as the District Collector, Karur order dated 17.09.2019 alone have been marked.

14. Whereas the cancellation order passed by the Revenue Divisional Officer Karur, dated 10.09.2019 has not been furnished and proof to that effect has been filed by the respondents. Therefore, it can only be ascertained that the 10.09.2019 cancellation order of the community certificate of the petitioner, so far, has not been furnished to the petitioner and unless the said order is furnished to the petitioner, the petitioner cannot work out his remedy including, challenging the same in the manner known to law, if he has got any grievance over such cancellation.

15. It is a settled proposition of law insofar as community certificate issue is concerned, that the same has to be cancelled only after following the procedure under law by the competent authority. In this case, though it was the stand of the respondents that, the community certificate was cancelled, the stand of the petitioner is that, no opportunity was given by the competent authority before cancelling the same.

16. Be that as it may, that issue can be gone into only if the petitioner come forward to challenge the order dated 10.09.2019.

17. Only in that context, the respondents seem to have proceeded that, since the very community certificate of the petitioner itself is cancelled by the competent authority, then, conducting the enquiry, even to deal with 17(b) charges would be an empty formality, as the petitioner cannot improve the case as to what basis he got the appointment from the respondent as a Teacher by citing the said community certificate, which is no more available in the eye of law.

18. Any how, now, the issue is clear, where the community certificate in question of the petitioner, since has been cancelled by the orders of the Revenue Divisional Officer, Karur dated 10.09.2019, the effect of the said order is yet to be testified by the petitioner. Therefore, in order to give a chance to the petitioner to testify the said order in the manner known to law, the copy of the same can be furnished to the petitioner and on receipt of the same, it shall be to the liberty of the petitioner or it is open to him to challenge the same in the manner known to law. In order to have such an exercise on the part of the petitioner, a reasonable time can be given. Till such time, the impugned



proceedings, pursuant to which, the impugned disciplinary proceedings is taken, need not be concluded.

19. In that view of the matter, this Court is inclined to dispose of this writ petition with the following orders:

(i) That the Revenue Divisional Officer, Karur is hereby impleaded as one of the party respondent and he is directed to furnish a copy of the proceedings/order in ml/2730/2019 dated 10.09.2019, by or under which, the community certificate obtained by the petitioner from the Tahsildar, Karur, dated 29.06.1989 seems to have been cancelled, within a period of two weeks from the date of receipt of a copy of this order, along with the same, the petitioner shall make a request to that effect to the newly impleaded respondent / Revenue Divisional Officer, Karur.

(ii) On receipt of such copy of the order dated 10.09.2019, it is open to the petitioner to agitate the same in the manner known to law, if he is so aggrieved against the said order, within a period of 15 days thereafter.

(iii) Enabling the petitioner to do the aforesaid exercise, the respondents shall wait for six weeks period from the date of receipt of copy of this order and not to conclude the departmental proceedings already taken against the petitioner, which is in the stage of passing final order as of now. After six weeks period, if nothing has come from the petitioner contra to the disciplinary proceedings already initiated against the petitioner, there is no impediment for the respondents to conclude the disciplinary proceedings in the manner known to law by passing a final order.

20. With these observations and directions, this writ petition is disposed of. No costs. Consequently connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (P&A)

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/ /2021

Sub Assistant Registrar(CS)

RR

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.



To

1.The Revenue Divisional Officer,
Karur.

2.The District Educational Officer,
Karur, Karur District.

3.The Block Educational Officer,
Karur, Karur District.

4.The Enquiry Officer,
The Block Educational Officer,
K.Paramathi
Karur District.

+1 CC to M/s T.Pon Ramkumar, Advocate, in SR.No.16782.

+1 CC to Special Government Pleader SR.No.17073.

W.P. (MD) No.11563 of 2020

14.09.2020

(PU) CO

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