



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **21.12.2020**

CORAM:

THE HONOURABLE MR.JUSTICE **KRISHNAN RAMASAMY**

W.P. (MD)No.18881 of 2020

and

W.M.P. (MD)Nos.15814 and 18515 of 2020

WEB COPY

R.Sarasubathi

... Petitioner

Vs.

1.The Chief Educational Officer,
Ramanathapuram District,
Ramanathapuram.

2.The Headmaster,
Government Higher Secondary School,
Anandur,
Ramanathapuram District.

... Respondents

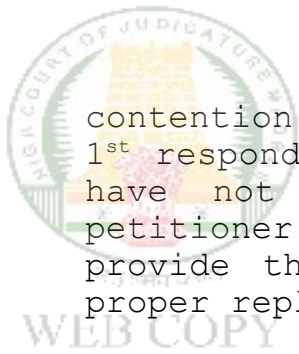
Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned Enquiry Notice issued by the 1st respondent in Na.Ka.No.5600/A3/2020 dated 03.12.2020 and to quash the same and consequently direct the respondents to furnish the documents and details in respect of the charge memo issued by the 1st respondent dated 11.11.2020 based on the representation submitted by the petitioner dated 23.11.2020.

For Petitioner : Mr.G.Sankaran
For Respondents : Mr.N.Shanmuga Selvam,
Additional Govt. Pleader

ORDER

This writ petition has been filed challenging the impugned Enquiry Notice issued by the 1st respondent in Na.Ka.No.5600/A3/2020, dated 03.12.2020 and to direct the respondents to furnish the documents and details in respect of the charge memo issued by the 1st respondent, dated 11.11.2020, based on the petitioner's representation dated 23.11.2020.

2.The learned counsel appearing for the petitioner submitted that the first respondent issued the charge memo under Rule 17(a) of Tamil Nadu Civil Service (Discipline and Appeal) Rules to conduct enquiry against the petitioner. When the charge memo is issued under Rule 17(a), the question of enquiry does not arise. In the case of 17(a) charges, representation will be received from the delinquent persons and thereafter, they have to pass an order. When the charge memo under Rule 17(a) is issued, they have to furnish the documents, which were referred in the charge memo. The sole



contention of the petitioner is that though the 1st respondent issued the charge memo based on two documents, which have not been furnished to the petitioner. Therefore, the petitioner approached this Court to issue appropriate directions to provide those two documents to enable to the petitioner to give proper reply/representation.

3.The learned counsel appearing for the respondents fairly submitted that they are ready to provide those documents, which were referred in the charge memo.

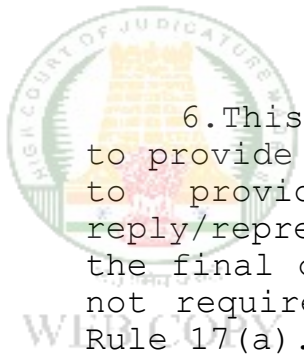
4.Rule 17(a) of Tamil Nadu Civil Service (Discipline and Appeal) Rules, reads as under:-

"17. (a) In every case where it is proposed to impose on a member of a service or a person holding a civil post under the State any of the penalties specified in items (i), (ii), (iii), (v) and (ix) in rule 8 or in rule 9, he shall be given a reasonable opportunity of making any representation that he may desire to make and such representation, if any, shall be taken into consideration before the order imposing the penalty is passed ;

Provided that the requirements of this sub-rule shall not apply where it is proposed to impose on a member of a service any of the penalties aforesaid on the basis of facts which have led to his conviction by a court martial or where the officer concerned has absconded or where it is for other reason impracticable to communicate with him:

Provided further that, in every case where it is proposed, after considering the representation, if any, made by the Government servant, to withhold increments of pay and such withholding of increments is likely to affect adversely the amount of pension payable to the Government servant or to withhold increments of pay without cumulative effect for a period exceeding 3 years or to withhold increment of pay with cumulative effect for any period, the procedure laid down in sub-rule (b) shall be followed before making any order imposing on the Government servant any such penalty."

5.On a perusal of the Rule 17(a), it appears that when the charge memo under Rule 17(a) is issued, it is the duty of the respondents to furnish the documents, which all are referred in the charge memo and thereafter, the petitioner should be given opportunity to give his reply/representation. Based on the said reply/representation, the respondents are required to pass orders. In such event, the enquiry does not arise. Only in the case of 17 (b), the enquiry is required.



6.This Court is of the view that it is duty of the respondents to provide the documents, which were referred in the charge memo and to provide opportunity to the petitioner to give his reply/representation and thereafter, the respondents have to pass the final order. No doubt, in the present case, the respondents do not require to conduct enquiry, which has not been mandated under Rule 17(a).

7.Therefore, this Court directs the respondents to furnish the documents, referred in the charge memo within a period of two weeks from the date of receipt of a copy of this order. The petitioner is directed to give his reply/representation within a period of four weeks thereafter. The respondents are directed to pass final orders subsequent to the receipt of reply/representation from the petitioner in terms of Rule 17(a) of Tamil Nadu Civil Service (Discipline and Appeal) Rules within a period of four weeks thereafter.

8.The writ petition is disposed of accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (AD-II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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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 Chief Educational Officer,
Ramanathapuram District,
Ramanathapuram.

2.The Headmaster,
Government Higher Secondary School,
Anandur, Ramanathapuram District.

+1cc to Mr.G.Sankaran, Advocate Sr.No.26778

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