



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.11.2021

CORAM:

THE HON'BLE MR.JUSTICE B.PUGALENDHI

W.P.(MD).No.1335 of 2021

W.M.P.(MD).Nos.3965 & 1110 of 2021

Kalaivani

... Petitioner

Vs.

1. The District Educational Officer,
Sankarankovil,
Tenkasi District.

2.The Block Level Educational Officer-1,
Vasudevanallur Range,
Tenkasi District.

3.The Secretary,
School Committee,
Bharathi Elementary School,
Keelakaraisal Kulam Village,
Royagiri, Sivagiri Taluk,Tenkasi District. ... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India, praying for the issuance of Writ of Certiorari, to call for the records of the third respondent in his proceedings No.NIL dated 06.01.2021 and quash the same as illegal.

For Petitioner : Mr.M.Jothibasur

For Respondents : Mr.G.V.Vairam Santhosh
Additional Government Pleader
for RR1 & 2
Mr.Mayilvahana Rajendran for R3

O R D E R

This writ petition has been filed by the petitioner as against the order of suspension dated 06.01.2021 passed by the third respondent.

2. The learned counsel for the petitioner submits that as per the provision under Sub-clause (3) to Section 22 of the Tamil Nadu Recognized Private Schools (Regulation) Act, 1973, a suspension



order can survive only for a period of two months and can be extended on approval from the appropriate Authority for a further period of two months. In this case, the suspension order has been passed on 06.01.2021 and therefore, the suspension order cannot be sustained.

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3. Mr. Mayilvahan Rajendran, the learned counsel for the third respondent submits that since an interim stay has been granted by this Court against the impugned order, further process cannot be proceeded and the charge memo could not be issued to the petitioner. According to him, the petitioner, who is working as Head Master in the Institution, is indulging in selling Amway products in the school and he is compelling the students to buy the Amway products. Hence, the strength of the students in the school was reduced from 64 to 13. Pending this writ petition also, the strength of the students reduced to 8.

4. However, the learned counsel for the petitioner submits that these allegations have not been mentioned in the counter affidavit and for the purpose of defeating the claim of the petitioner, these allegations have been falsely levelled against this petitioner.

5. It appears that the petitioner has been placed under suspension by order dated 06.01.2021 and the impugned order has been stayed by this Court. Therefore, the respondents claim that they could not issue charge memo and proceed with the enquiry. However, it is seen that the interim stay granted by this Court is till 11.03.2021 and therefore, there is no impediment for the respondents to issue the charge memo thereafter.

6. The law relating to the authority of the respondents to keep an employee under prolonged suspension has been laid down by the Hon'ble Supreme Court in the case of **Ajay Kumar Choudhary Vs Union of India** reported in **(2015) 7 SCC 291** and the relevant paragraph reads as follows:

"21. We, therefore, direct that the currency of a suspension order should not extend beyond three months if within this period the memorandum of charges/charge-sheet is not served on the delinquent officer/employee; if the memorandum of charges/charge-sheet is served, a reasoned order must be passed for the extension of the suspension. As in the case in hand, the Government is free to transfer the person concerned to any department in any of its offices within or outside the State so as to server any local or personal investigation against him. The Government may also prohibit him from contacting any person, or holding records and documents till the stage of his universally recognised principle of human dignity and the right to a speedy trial and shall also preserve the interest of the Government in the prosecution. We



recognise that the previous Constitution Benches have been reluctant to quash proceedings on the grounds of delay, and to set time-limits to their duration. However, the imposition of a limit on the period of suspension has not been discussed in prior case law, and would not be contrary to the interests of justice. Furthermore, the direction of the Central Vigilance Commission that pending a criminal investigation, departmental proceedings are to be held in abeyance stands superseded in view of the stand adopted by us".

7. From the above, it is clear that the suspension order should not normally be extended beyond three months, when charge memo is not served on the delinquent officer. That apart, as per the provision under Sub-clause (3) to Section 22 of the Tamil Nadu Recognized Private Schools (Regulation) Act, 1973, a suspension order can survive only for a period of two months and can be extended on approval from the appropriate Authority for a further period of two months. In this case, the petitioner has not been served with any charge memo, since the issuance of suspension order on 06.01.2021. The respondents are, therefore, not justified in extending the petitioner's suspension as against the ratio laid down by the Hon'ble Supreme Court in **Ajay Kumar Choudhary's** case cited supra and as against the provisions of the Tamil Nadu Recognized Private Schools (Regulation) Act, 1973.

8. In view of the above position, this Court is inclined to set aside the suspension order passed by the third respondent dated 06.01.2021. Accordingly, this writ petition is allowed and the impugned proceedings of the third respondent dated 06.01.2021 is hereby set aside. However, liberty is granted to the respondents to issue charge memo, if so advised, within a period of one week from the date of receipt of a copy of this order and conclude the enquiry within a period of six months from the date of receipt of a copy of this Order. The petitioner shall co-operate with the enquiry, if any contemplated. No costs. Consequently, connected miscellaneous petitions are also closed.

Sd/-

Assistant Registrar (AE)

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Sub Assistant Registrar(CS)

ssb



To

1. The District Educational Officer,
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Tenkasi District.

+1 CC to M/s.M.JOTHI BASU, Advocate (SR-34920[F] dated 18/11/2021)

+1 CC to M/s.SPL GP (SR-34978[F] dated 18/11/2021)

W.P. (MD) .No.1335 of 2021

17.11.2021

MGJ(29.12.2021) 4P 6C