



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON:	22.02.2021
DELIVERED ON:	29.03.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.(MD)Nos.2016, 2019 & 2021 of 2020

and W.M.P.(MD) Nos.1679, 1680, 1682 & 1684 of 2020

(Through Video Conference)

Smt.T.Amirtha

... Petitioner in all W.P's

Vs

1) The Chief Educational Officer,
Chief Educational Office,
Tallakulam, Madurai District.

2) The District Educational Officer,
District Educational Office,
Thirumangalam, Madurai District.

3) The Secretary,
P.K.N. Higher Secondary School,
104, Madurai Road,
Thirumangalam 625 706
Madurai District.

... RR 1 to 3 in all W.P's

4) T.Rajagopal

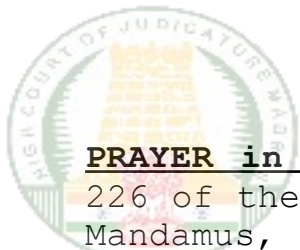
5) P.A.Sakthivelu

6) Selvi A.Jeyasanthini

... RR 4 to 6 in W.P.(MD)
No.2016 of 2020

PRAYER in W.P.(MD) No.2016 of 2020: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the impugned order dated 23.01.2020 on the file of the 3rd respondent extending the suspension of the petitioner, beyond two months and quash the same as illegal, incompetent and without jurisdiction.

PRAYER in W.P.(MD) No.2019 of 2020: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records of the impugned charge memo dated 25.01.2020 issued by the 3rd respondent and quash the same as illegal, incompetent and arbitrary.



PRAYER in W.P. (MD) No.2021 of 2020: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records of the impugned enquiry notice dated 24.01.2020 issued by the enquiry committee consisting of the third respondent and quash the same as illegal, arbitrary and violative of the principles of natural justice and consequently direct the respondents to conduct separate enquiries for charges dated 17.08.2019 and 21.12.2019 by constituting enquiry committee with independent members.

For Petitioners : Mr.H.Lakshmi Shankar
(in all WPs)

For RR 1 & 2 : Mr.A.Thiyagarajan,
(in all WPs) Government Advocate.

For RR 3 to 6 : No Appearance
in WP(MD).2016/20
and R3 in
WP(MD).2019 & 2021/20

COMMON ORDER

1. The petitioner herein, was originally appointed by the third respondent School Management on 25.05.2020 as a Management staff and thereafter to the sanctioned post as Junior Assistant on 22.06.2018. The third respondent School is an aided, non-minority School and is governed by the provisions of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 (hereinafter referred as the 'Act').

1.1. On 17.08.2019, a charge memo was issued to the petitioner alleging that the hostel fees paid by a student was belatedly deposited in the Bank. Consequently on 27.11.2019, the petitioner was suspended from her services. Though there was no further proceedings after the charge memo dated 17.09.2018, the second charge memo dated 21.12.2019 was issued for belated remittance of the fees collected. In the meantime, since the original order of suspension dated 27.11.2019 was only for a period of two months, the Secretary of the School Management had extended the period of suspension by a further period of two months through an order dated 23.01.2020 and this order of extension of the suspension period is challenged in W.P.(MD) No.2016/2020.

1.2. While that being so, the Enquiry Committee had served a notice of enquiry dated 24.01.2020, contemplating for an enquiry into the charge memos dated 17.08.2019 and 21.12.2019, which notice is put under challenge in W.P.(MD) No.2021 of 2020.



1.3. In this background, the third charge memo dated 25.01.2020 was issued with allegations that the petitioner had misappropriated Rs.250/- which is the tuition fees collected by the petitioner on 19.10.2019. The third charge memo dated 25.01.2020 is challenged in W.P.(MD) No.2019 of 2020.

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1.4. Since the grounds raised in these writ petitions are precisely one and the same, a common order is hereby passed.

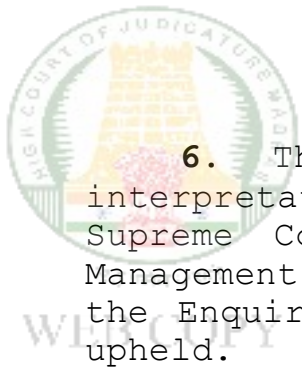
1.5. Heard the learned counsels appearing for both the petitioner as well as the respondents and perused the materials placed before this Court.

2. Insofar as the validity of the suspension order dated 27.11.2019, which was extended through the impugned order dated 23.01.2020 for a further period of two months is concerned, the order of suspension and the subsequent extension, is contrary to section 22(3) (B) of the Act.

3. As per section 22(3) (B) of the Act, the School Management is empowered to place a Teacher under suspension for a period of two months only and further extension of the suspension can be done only by the Competent Authority, authorised by the Government of Tamil Nadu, for a further period of two months, on condition that, such an extension order should contain reasons necessitating the extension and the circumstances under which, the enquiry cannot be completed, which reasoning for non-completion of enquiry should be directly attributable to the Teacher.

4. While that being so, the unilateral decision by the School Management to extend the suspension period beyond two months, is in violation of Section 22(3) (B) of the Act and therefore illegal. When the extension of the suspension period itself is illegal, the original suspension would automatically become redundant and is deemed to have lapsed. Accordingly, the extension order dated 23.01.2020 cannot be sustained.

5. Insofar as the Authority of the School Management to proceed with the inquiry against the petitioner is concerned, the learned counsel for the petitioner had raised a ground that the Secretary of the School, who had issued charge memos dated 17.08.2019, 21.12.2019 and 25.01.2020, is also one of the members of the Enquiry Committee. It is also stated that the Headmaster of the School, who is a member of the Enquiry Committee, is also one of the witnesses in the inquiry. Such a ground raised by the petitioner, is not only logical but also legally sustainable.



6. This proposition has time and again come up for interpretation before the High Courts as well as the Hon'ble Supreme Courts and the ratio that the member of the School Management, who had issued the charge memo, cannot be a member of the Enquiry committee nor as a witness in the inquiry, has been upheld.

7. The Hon'ble Full Bench of this Court in the case of **K.M.Valliyapan vs. Joint Director of School Education and another**, in **W.P.No.8335 of 2003**, dated 04-09-2006 while answering the conflicting views relating to holding of disciplinary proceedings by the School Committee under the Tamil Nadu Private School Regulations Act, had upheld the aforesaid ratio in the following manner:-

"21. In normal course, we would have requested the learned single Judge to decide such aspect by scanning the materials on record. However, we find that the impugned order of dismissal of the petitioner is bound to be quashed on another ground. It is apparent that initially an enquiry was held by the School Committee as a whole, but subsequently before finalisation it was decided to entrust the enquiry to a sub-committee. Some of the members belonging to the School Committee deposed at such enquiry held by the sub-committee and ultimately some of those members also sat in the School Committee while deciding about the guilt of the concerned employee and while considering the question of punishment. It is thus obvious that such proceedings of the School Committee became vitiated because some of the witnesses sat as members of the School Committee and took the decision and participated in the ultimate decision whereunder it was decided to punish the concerned employee. Therefore, the principles of natural justice stood violated and the order passed cannot be upheld.

22. In AIR 1958 SC 86 (STATE OF U.P. v. MOHAMMAD NOOH), a departmental enquiry was held against an employee. One of the witnesses against the employee turned hostile and the officer holding the enquiry left the enquiry and gave evidence against the employee and resumed to complete the enquiry and passed the order of dismissal. Such action was quashed by the Supreme Court by holding that the rules of natural justice were grievously violated.



Such principle was followed in (1993) 4 SCC 10
(RATTAN LAL SHARMA v. MANAGING COMMITTEE. Dr. HARIRAM
(CO-EDUCATION) HIGHER SECONDARY SCHOOL AND OTHERS)."

8. In the instant case, the impugned charge memo was issued by the Secretary of the School Committee, who happens to be a member of the Enquiry Committee and the Headmaster of the Enquiry Committee is also one of the witnesses of the alleged delinquency. By applying the ratio laid down by the aforesaid decision of the Hon'ble Full Bench, in which, the views of the Hon'ble Apex Court was also followed, the Departmental Enquiry contemplated against the petitioner, cannot be legally sustained.

9. For all the foregoing reasons, all the impugned orders challenged in the aforesaid writ petitions are *per se* illegal and hence, stands quashed. All the writ petitions are allowed and in view of the same, the petitioner's original order of suspension is deemed to have been revoked. No further proceedings in the Departmental Enquiry is permissible, in view of the lack of Authority on the part of the respondents to proceed any further. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(RTI Act)

// 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,
Chief Educational Office,
Tallakulam, Madurai District.
- 2) The District Educational Officer,
District Educational Office,
Thirumangalam, Madurai District.



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W.P.(MD)Nos.2016, 2019 & 2021 of 2020

+1 CC to M/s.SPL GP (SR-6703[F] dated 23/02/2021)

+3 CC to M/s.H.LAKSHMI SHANKAR, Advocate (SR-14296, 14297 & 14298[F] dated 30/03/2021)

Common Order made in
W.P. (MD) Nos.2016, 2019
& 2021 of 2020

Dated: 29.03.2021

TR(03.05.2021) 6P 7C