



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.03.2021

CORAM:

THE HONOURABLE MR. JUSTICE M. S. RAMESH

W.P. (MD) Nos.5288 & 5306 of 2020

and W.M.P. (MD) .Nos.4599 & 4612 of 2020

WEB COPY

E.Vasanthakumar Samuel ...Petitioner in both writ petitions

Vs.

1.The State of Tamil Nadu

Rep. by its Principal Secretary to Government (FAC)

Higher Education (F1) Department,

Fort St. George,

Chennai - 600 009.

2.The Director of Collegiate Education (FAC),

Chennai - 600 006.

... Respondents in both writ petitions

PRAYER in W.P. (MD) .No.5288 of 2020: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records on the file of the 1st respondent in connection with the impugned order of suspension issued in G.O.Ms.No.25, Higher Education (F1) Department, dated 24.01.2017, with effect from 09.11.2016 and quash the same and consequently, direct the respondents to treat the suspension period as duty period for all purpose including monetary benefits.

PRAYER in W.P. (MD) .No.5306 of 2020: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, to call for the records on the file of the 2nd respondent in connection with the impugned charge memo issued in Memorandum NO.47298/T.4/2016-1, dated 07.03.2017 and quash the same as ultravires and unconstitutional.

For Petitioner : Mr.K.Gurunathan

For Respondents : Mr.A.Muthu Karuppan

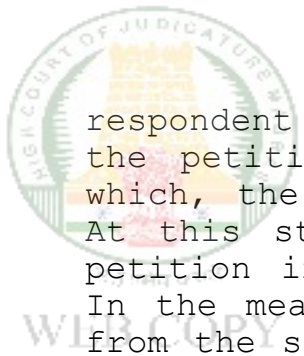
Additional Government Pleader

(In both petitions)

COMMON ORDER

Heard the learned counsel appearing for the petitioner and the learned Additional Government Pleader, appearing for the respondents.

2.The petitioner herein was levelled with certain charges by the students of Alagappa Government Arts College, Karaikudi, through the charge memo dated 07.03.2017. Not being satisfied with the petitioner's explanation, an enquiry was conducted and the Enquiry Officer had also submitted his report on 20.12.2017. The first



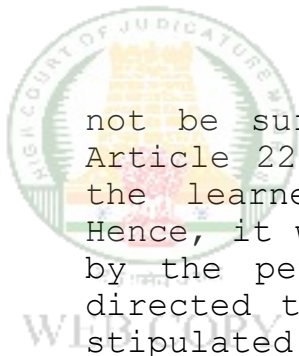
respondent herein had thereafter sought for further explanation from the petitioner through a show cause notice dated 02.03.2018, to which, the petitioner had submitted his explanation on 02.04.2018. At this stage, the petitioner herein had filed the present writ petition in W.P.(MD)No.5306 of 2020, challenging the charge memo. In the meanwhile, the petitioner had been placed under suspension from the service on 21.12.2016 and the petitioner was subjected to face a criminal action in S.C.No.39 of 2018, before the Mahila Court, Sivagangai, which was ended in acquittal on 09.12.2019. In view of the acquittal order, the petitioner had given a representation on 10.01.2020, seeking for revocation of suspension order. Challenging the suspension order, the writ petition in W.P.(MD).No.5288 of 2020 has been filed.

3.The learned counsel for the petitioner would draw the attention of this Court to the various factual aspects as reflected in the first information report, judgment of acquittal and the Enquiry Officer's report and submit that the entire episode culminating into the charges has been fabricated against the petitioner. On the other hand, the learned Additional Government Pleader would submit that the charges against the petitioner are serious in nature and since the petitioner had subjected himself to enquiry proceedings, he should await for its logical conclusion.

4.The scope of this Court under Article 226 of the Constitution of India, insofar as it relates to interference with the charge memo has come up time and again for interpretation before the Honourable Supreme Court as well as other High Courts and it has been categorically held that such a powers are limited, bearing a very few exceptions, like incompetency of the authority, malafides, delay, etc. One among such decision is that the case of ***the Secretary, Ministry of Defence and others Vs. Prabhas Chandra Mirdha*** reported in ***(2012) 11 SCC 564***, wherein, it was held that the High Court exercising its power under Article 226 of the Constitution of India, will not normally interfere with the challenge to a charge sheet, but for the very few exceptions.

5.Likewise, insofar as interference in suspension orders are concerned, the High Court is not required to look into the gravity of the charges. In the instant case, the charges, for which the petitioner was subjected to in the departmental action were also the overt acts attributed to the petitioner in the criminal proceedings. However, the criminal procedure after full fledged trial had ended in favour of the petitioner and thereby, he was acquitted all the charges. The learned counsel for the petitioner would submit that the acquittal was a Honourable acquittal and therefore, the order of suspension requires to be revoked.

6.Insofar as the challenge to the charge is concerned, this Court is of the view that the grounds raised by the petitioner may



not be sufficient enough to invoke its extraordinary power under Article 226 of the Constitution of India and the grounds raised by the learned counsel for the petitioner are factual in nature. Hence, it would be appropriate that the further explanation rendered by the petitioner, pursuant to the Enquiry Officer's Report, be directed to be considered by the Disciplinary Authority, within a stipulated time and liberty be granted to the petitioner to challenge any adverse orders that may be passed on his further explanation.

7. When this Court intends to direct the Disciplinary Authority to conclude the departmental action, within a stipulated time, they can also be simultaneously directed to reconsider the petitioner's suspension order in the light of the order of acquittal passed by the criminal Court.

8. For all the foregoing reasons, this Court is of the view that no interference is required to the orders impugned in the aforesaid writ petitions. However, this Court is inclined to issue the following directions.

a) The Disciplinary Authority namely the first respondent herein shall consider the petitioner's explanation dated 02.04.2018, within a period of four weeks from the date of receipt of a copy of this order and take further course of proceedings, if any.

b) The first respondent shall consider the petitioner's representation, dated 10.01.2020, wherein, he seeks for revocation of suspension order, within a period of four weeks from the date of receipt of a copy of this order.

9. These writ petitions stand disposed of with the above directions. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (Records)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

TM

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 Principal Secretary to Government (FAC)
State of Tamil Nadu
Higher Education (F1) Department,
Fort St. George,
Chennai - 600 009.

2.The Director of Collegiate Education (FAC),
Chennai - 600 006.

+1 CC to M/s.SPL GP (SR-12962[F],12993 dated 23/03/2021)

+2 CC to M/s.K.GURUNATHAN, Advocate (SR-13055[F] dated 23/03/2021)

W.P.(MD) Nos.5288 & 5306 of 2020
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SRK(CO)

KB(23.04.2021) 4P 6C