



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.07.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P. (MD)No.4975 of 2019

and

W.M.P (MD)Nos.3947 & 3948 of 2019 & 4359 of 2021

WEB COPY

A.L.Vijayakumar

... Petitioner

Vs.

The Secretary,
Ramanathan Chettiar Higher Secondary School,
Nachandupatti and post,
Thirumayam Taluk,
Pudukkottai District.

... Respondent

PRAYER : Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order in Na.Ka.No.1/2019, dated 20.02.2019 passed by the respondent herein and quash the same as illegal and consequently direct the respondent to grant all monetary benefits from the date of the petitioner's appointment of the respondent School with all attendant benefits.

For Petitioner : Mr.V.Kannan

For Respondent : Mr.Henri Thethathri
for Mr. R.Karunanidhi

ORDER

This writ petition is filed to quash the impugned order of the respondent, dated 20.02.2019 made in Na.Ka.No.1/2019, dated 20.02.2019 and consequently direct the respondent to grant all monetary benefits from the date of the petitioner's appointment by the respondent School with all attendant benefits.

2. According to the petitioner, he was appointed as P.G.Assistant in the year 1988 in the respondent School. Subsequently, he was promoted as Headmaster. While he was working as Headmaster, he applied for Medical Leave from 29.10.2012 to 13.11.2012. While he was on Medical Leave, the respondent issued a



chargememo, dated 29.10.2012 with an intention to promote one Tmt.Neelayathatchi, Assistant Headmistress as Headmistress. The petitioner joined duty on 14.11.2012 and produced the Medical Certificate on the said date and he signed the attendance register. Subsequently, the respondent did not permit the petitioner to sign the attendance register on the ground that he was on Medical Leave on 15.11.2012, 16.11.2012 and 17.11.2012. Infact, the petitioner did not apply for any Medical Leave for the said three days. The petitioner submitted his explanation to the said chargememo. The respondent did not conduct any enquiry as per the procedure and hence, the petitioner filed a writ petition in W.P(MD) No.3267 of 2013 before this Court. At the time of hearing, the respondent submitted that they are inclined to withdraw the order impugned in the writ petition and sought liberty to conduct enquiry afresh.

3. The respondent issued chargememo on 19.09.2017 with some additional charges. The respondent appointed a practicing Advocate as an enquiry officer. The petitioner participated in the enquiry with assistance of Junior Assistant. After enquiry, the petitioner sought for certain documents and prayed for assistance of Advocate and filed a writ petition in W.P(MD)No.673 of 2018 to quash the order of the second respondent, dated 23.12.2017 and for a further direction to the second respondent to permit the petitioner to engage a lawyer in the domestic enquiry proceedings. The said writ petition filed by the petitioner was dismissed on 11.01.2018. Against the said order of dismissal, the petitioner filed a writ appeal in W.A(MD)No.337 of 2018 and the same is pending. While so, the enquiry officer filed a report, dated 05.03.2018. The respondent issued second showcause notice to the petitioner along with enquiry officer's report and sought for explanation. The petitioner submitted his explanation. On the same day, the respondent passed resolution dismissing the petitioner from service, vide the impugned order.

4. The learned counsel appearing for the petitioner submitted that the respondent acted in a biased manner with an intention to promote one Tmt.Neelayathatchi. The respondent illegally passed the impugned order and without giving opportunity to the petitioner and prayed for allowing the writ petition by setting aside the order of the respondent.

5. The respondent filed counter affidavit. Mr.Henri Thethathri, learned counsel appearing for the respondent submitted that the petitioner has misappropriated a scholarship amount of Rs.1,33,996/-. The petitioner deposited the amount in the Bank accounts, after same is being credited, he issued a cheque to one Ramesh, who had nothing to do with the functioning of the school. On a complaint given by the students, the petitioner was enquired and after being questioned, the petitioner deposited the said amount on 18.06.2012 in the Union Bank of India by cash. The students did not



6. Earlier, when this Court granted interim order in the writ petition filed challenging the enquiry proceedings, the petitioner used to come to school and signed the attendance register and leave the school, by that action, he did not discharge his duties, he did not take any work and responsibility of the school. He simply received the monthly salary. Enquiry was conducted in a fair and proper manner and the petitioner has fully participated in the enquiry with the assistance of Junior Assistant, without any objection. The enquiry report was furnished to the petitioner after considering the explanation given by the petitioner to the second show cause notice, the resolution was passed as per law by the School Committee and after approval of the School Committee, dismissal order was passed against the petitioner. The allegation of the petitioner is chargememo was issued with a view to promote one Tmt.Neelayathatchi, Assistant Headmistress as Headmistress, is not correct. In any event, the petitioner has an alternative remedy for filing an appeal before the Joint Director of School Education and prayed for dismissal of the writ petition.

7. Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondent and perused the entire materials available on record.

8. From the rival submissions, it is seen that the respondent issued chargememo, dated 29.10.2012 containing the following charges:-

"i) Mr.AL.Vijayakumar, Head Master of Ramanathan Chettiar Higher Secondary School, Nachandupatti Pudukottai had credited the scholarship amount of 64 students amounting to a sum of Rs.1,33,996/- into the account of Indian Bank on 22.12.11 not approved by the Secretary. Thereafter without sanctioning the said amount to the students he used the same for his personal purpose by crediting the said amount to one Mr.Ramesh by cheque No.753214. Thereafter, after at the instructions of the secretary, the said amount of Rs.1,33,996 was deposited in the Union Bank by the Head Master on the same date in the Union Bank, Nachandupatti and sanctioned to the students on the same day. The Government cheque was encashed on 22.12.11 and the same was distributed on 18.06.2012 and thereby temporarily misappropriated the money.

ii) Mr.AL.Vijayakumar, Head Master of Ramanathan Chettiar Higher Secondary School, Nachandupatti Pudukottai who should be the role model and lead the teachers and students affront had misappropriated the Government money and thereby brought disrepute to the management and school and conducted himself against the discipline and conduct rules."



After certain writ proceedings and orders passed by this Court, the respondent issued another chargememo containing the following charges:-

"i) You Mr.AL.Vijayakumar, have absented yourself from duty without obtaining permission society from the Secretary from 01.01.2013 to 30.04.2013 which thereby affected the student and the entire administration of the school and you have violated the code 2 of Annexure-II vide Rule 16(1) of the Tamil Nadu Private School (Regulation) Rules, 1974.

ii) You Mr.AL.Vijayakumar have failed to discharge the official duties of teaching and Head Master of the school since 01.05.2013 and more particularly you have failed to teach students and evaluate the students academic ability in academic level as well as other activities and thus you have violated code 1 of Annexure-II vide Rule 16(1) of the Tamil Nadu Private School (Regulation) Rules, 1974."

9. Domestic enquiry was conducted in respect of both charges. The Enquiry Officer gave a report that the charges levelled against the petitioner in chargememo, dated 29.10.2012, are proved and charges levelled against the petitioner in chargememo, dated 19.09.2017, are partly proved. After giving opportunity to the petitioner to submit his explanation to the enquiry report, and considering the explanation submitted by the petitioner, the respondent's School Committee passed a resolution to dismiss the petitioner from service and the same was approved by the competent authority. The petitioner is challenging the order of dismissal on the ground that only with a view to give promotion to Tmt.Neelayathatchi, Assistant Headmistress as Headmistress, charges were levelled against the petitioner. The respondent in the counter affidavit stated that the said Tmt.Neelayathatchi, Assistant Headmistress retired on 31.05.2015, on attaining the age of superannuation. Hence, the said allegation of the petitioner is without merits.

10. The next contention of the learned counsel appearing for the petitioner is that without giving proper opportunity to the petitioner, the impugned order of dismissal was passed. From the materials on record, it is seen that the petitioner participated in the enquiry and took assistance of Junior Assistant during the domestic enquiry. Before the enquiry officer, he did not file any objection with regard to procedure adopted in the domestic enquiry. On the other hand, he fully participated in the enquiry. He also submitted his explanation to the second show cause notice. Therefore, it is not open to the petitioner now to contend that he was not given any opportunity in the enquiry.



11. The resolution passed by the Managing Committee of the respondent School to dismiss the petitioner from service was approved by the competent authority. It is pertinent to note that the first charge in the chargememo, dated 29.10.2012, is that he misappropriated the amount of Rs.1,33,996/- being the scholarship funds of the students. Due to this misappropriation, the scholarship amount was not paid to the students for six months. The said misconduct committed by the petitioner is a serious in nature. He must be a role model for every teachers and students in the school, to hold the responsible post of Headmaster of the School and if he commits misconduct, it will affect the entire students.

12. For the above reasons, the writ petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS II)

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Sub Assistant Registrar(CS)

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+1 CC to M/s.R.KARUNANIDHI, Advocate (SR-23439[F] dated 22/07/2021)

W.P. (MD)No.4975 of 2019
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MGJ(30.07.2021) 5P 2C