



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.09.2021

CORAM

THE HON'BLE MR. JUSTICE D.KRISHNAKUMAR

W.P. (MD) . No. 13974 of 2021

and

W.M.P. (MD) . Nos.13013, 10923 & 10924 of 2021

WEB COPY

G.Tamilarasu

... Petitioner

Vs.

1.The Disciplinary Authority,
The Chief Educational Officer,
Office of the Chief Educational Officer,
Ramanathapuram.

2.The Enquiry Officer,
The District Educational Officer,
Paramakudi,
Ramanathapuram District.

... Respondents

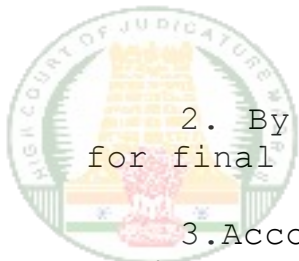
PRAYER: Petition filed under Article 226 of the Constitution of India, praying for issuance of a **Writ of Certiorarified Mandamus**, to call for the records relating to the proceedings of 1st respondent in his Proceeding in Na.Ka.No.8900/Aa5/2019 dated 12.12.2019 and subsequent proceedings in Na.Ka.No.8900/Aa5/2019 dated 02.07.2020 and his subsequent proceedings No. Na.Ka.No.8900/Aa5/2019 dated 27.07.2021 and quash the same and consequently direct the respondents to drop the entire disciplinary proceedings against the petitioner.

For Petitioner : Mr.Manivasagam for
Mrs.D.Deepamathi

For Respondents : Mr.A.K.Manikkam,
Standing Counsel for State.

O R D E R

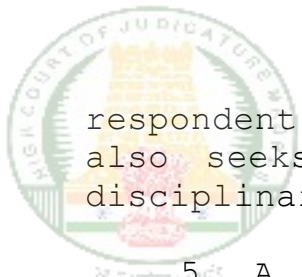
This writ petition has been filed seeking for issuance of a **Writ of Certiorarified Mandamus**, to call for the records relating to the proceedings of 1st respondent in his Proceeding in Na.Ka.No.8900/Aa5/2019 dated 12.12.2019 and subsequent proceedings in Na.Ka.No.8900/Aa5/2019 dated 02.07.2020 and his subsequent proceedings in Na.Ka.No.8900/Aa5/2019 dated 27.07.2021 and quash the same and consequently direct the respondents to drop the entire disciplinary proceedings against the petitioner.



2. By consent of both parties, the Writ Petition is taken up for final disposal at the admission stage itself.

3. According to the petitioner, he was working as a B.T. Assistant in the Government High School, Kalkinatravalasai, Ramanathapuram. The Inspector of Police, Uchipuli Police Station, Ramanathapuram District registered a case against him alleging that on 04.09.2019 at 11.30 am, the Class Teacher and the Headmaster of the school had directed an 8th Class student namely Master Kartheeswaran to switch on the motor and when he tried to switch on the same, unfortunately he died on the spot due to electric shock. Based on the complaint given by the father of the student, a case in crime no.319 of 2019 was registered against the petitioner under Section 304(ii) IPC and he was arrested and remanded to judicial custody on 05.09.2019. According to the petitioner, he was not involved in the crime since on the said day he got permission from the teacher who was in-charge and after marking in the movement register, he went out for depositing the money in the Bank. Later, the petitioner was placed under suspension by order dated 04.09.2019 by the Chief Educational Officer, Ramanathapuram and again by proceedings dated 09.10.2019, he revoked the suspension order. By proceedings dated 12.12.2019, the first respondent herein issued a charge memo and initiated departmental proceedings against the petitioner. By proceedings dated 02.07.2020, the first respondent appointed one Mr.Karunanidhi as enquiry officer but he died on 05.04.2021 without completing the enquiry proceedings. While so, in his place, one Mr.Sethuraman, who is the Headmaster is appointed as enquiry officer. According to the petitioner, the enquiry officer who is the second respondent herein, being the Headmaster(District Educational Officer in-charge) does not have any authority or jurisdiction to proceed with the enquiry. However, without adopting due process of law and without following the principles of natural justice, the second respondent has concluded the enquiry wherein, he gave his findings that all charges were proved against the petitioner. Based on the enquiry report, the petitioner was called for to submit his explanation and he has also submitted his explanation on 02.08.2021.

4. The grievance of the petitioner is that the disciplinary authority, namely the first respondent herein has not furnished him the enquiry report and he was not given any opportunity to defend his case before the enquiry officer by providing all relevant materials pertaining to the enquiry. Hence, the petitioner claimed that the domestic enquiry was not conducted in accordance with law and the principles of natural justice were not followed and hence, the same cannot be sustained. In the said circumstances, the petitioner has come forward with the present writ petition seeking to quash the proceedings of the first



respondent dated 12.12.2019, 02.07.2020 and also 27.07.2021 and also seeks a direction to the respondents to drop the entire disciplinary proceedings against the petitioner.

5. A counter affidavit has been filed on behalf of the 2nd respondent, wherein, it is stated that there is no legal impediment for pursuing departmental action against the petitioner who was involved in criminal case. As such, the petitioner was initiated disciplinary proceedings under Rule 17(b) and the 1st respondent herein, appointed District Educational Officer, Paramakudi as Enquiry Officer and the petitioner cannot question the competency of the Enquiry Officer. The petitioner has made a request to furnish him a copy of the enquiry report vide letter dated 02.08.2021 and immediately, he filed the present Writ Petition on 04.08.2021. It is further stated that the disciplinary proceedings are going on, while so, the petitioner has come forward to drop the proceedings and also questioned the competency of the Enquiry Officer to conduct the enquiry, which cannot be entered in writ proceedings. Hence, the 2nd respondent prayed for dismissal of the writ petition.

6. Heard, the learned counsel for the petitioner and the learned Standing counsel for the Government and perused the entire records.

7. Admittedly, as against the petitioner, both criminal and departmental proceedings were initiated. In the disciplinary proceedings, the 1st respondent vide proceedings dated 02.07.2020, appointed one S.Karunanidhi, who was working as District Educational Officer, Paramakudi as Enquiry Officer, who also conducted the enquiry and submitted his enquiry report. At this stage, the petitioner has come forward with the present Writ Petition, questioning the entire proceedings including competency of the Enquiry Officer and sought for quashing the enquiry proceedings. In fact, it is well settled that a charge memo cannot be quashed prior to the conclusion of the enquiry on the ground that the facts stated in the charge are erroneous for the reason that correctness or truth of the charge is the function of the disciplinary authority. In the case of "**Secretary, Ministry of Defence and Ors. Vs. Prabhash Chandra Mirdha**" reported in 2012 (11) SCC 565, the Hon'ble Supreme Court has held by referring to various earlier judgments as under in Paras 10 to 12:

"10. Ordinarily a writ application does not lie against a charge sheet or show cause notice for the reason that it does not give rise to any cause of action. It does not amount to an adverse order which affects the right of any party unless the same has been issued by a person having no jurisdiction/competence to do so. A writ lies when



some right of a party is infringed. In fact, charge sheet does not infringe the right of a party. It is only when a final order imposing the punishment or otherwise adversely affecting a party is passed, it may have a grievance and cause of action. Thus, a charge sheet or show cause notice in disciplinary proceedings should not ordinarily be quashed by the Court."

8. In the present case on hand, the 1st respondent appointed Enquiry Officer who was District Education Officer, Paramakudi and this Court does not find any irregularity therein. The petitioner cannot seek to quash the enquiry proceedings prior to the conclusion of the same. The main grievance of the petitioner is that he was not furnished the enquiry report as well as the list of witnesses and materials relied on by the department to proceed against him. In the counter affidavit filed by the 2nd respondent, it has been stated that the petitioner made request to furnish the copy of the enquiry report vide his letter dated 02.08.2021 and simultaneously without awaiting any reply from the respondent, filed the present Writ Petition.

9. In view of the above, the prayer sought for by the petitioner cannot be granted. However, it is incumbent upon the respondents to furnish the copy of the enquiry report and the list of documents and witnesses to the petitioner to enable him to defend his case. Therefore, this Court is of the view, in the interest of justice, the 1st respondent is directed to furnish the enquiry report as well as list of documents to the petitioner within a period of two weeks from the date of receipt of a copy of this order. On furnishing the enquiry report, thereafter, the petitioner shall submit his explanation within a period of three weeks. The 1st respondent shall consider the said explanation submitted by the petitioner and to take appropriate decision in accordance with law as expeditiously as possible.

10. With the above direction, the Writ Petition is disposed of. No costs. Consequently, the connected WMPs are closed.

Sd/-

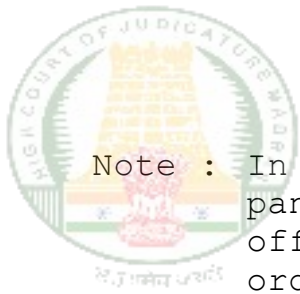
Assistant Registrar (P&A)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

dn



WEB COPY

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 Disciplinary Authority,
The Chief Educational Officer,
Office of the Chief Educational Officer,
Ramanathapuram.
- 2.The Enquiry Officer,
The District Educational Officer,
Paramakudi,
Ramanathapuram District.

+1 CC to M/s.SPL. GP (SR-29786[F] dated 21/09/2021)

+1CC to M/s.D.DEEPAMATHI, Advocate (SR-29604[F]dated 20/09/2021)

W.P. (MD) .No.13974 of 2021
17.09.2021

RK(30/11/2021) 5P 5C