



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.03.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P(MD)No.20660 of 2014

and

M.P.(MD)Nos.1 and 2 of 2014

R.Umavathi

...Petitioner

Vs.

1.The Director of School Education,
D.P.I.Campus, College Road,
Nungambakkam,
Chennai-600 006.

2.The Chief Educational Officer,
Thoothukudi District.

3.The District Educational Officer,
District Educational Office,
Kovilpatti-628 501.

4.The Secretary,
St.Mary's High School,
Therku Konarkottai,
Chettikurichi Post,
Thoothukudi District.

5.T.Augustine Appasamy ...Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus to call for the records pertaining to the impugned proceedings issued by the fourth respondent in Na.Ka.No. 133/2012, dated 09.10.2012, quash the same and restore the petitioner to the post of B.T Assistant (Tamil).

For Petitioner
For Respondents

:Mr.T.Lajapathi Roy
:Mr.C.M.Marichelliah Prabhu
Additional Government Pleader
for R.1 to R.3
:Mr.M.Saravanan
for R.4
:No Appearance for R.5

* * * * *



ORDER

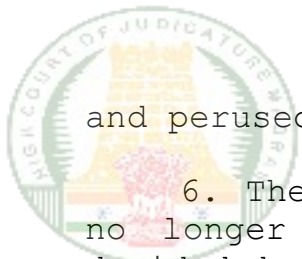
This Writ Petition is filed seeking for issuance of a writ of Certiorarified Mandamus to call for the records pertaining to the impugned proceedings issued by the fourth respondent in Na.Ka.No. 133/2012, dated 09.10.2012, quash the same and restore the petitioner to the post of B.T Assistant (Tamil).

2. The case of the petitioner is that the petitioner was appointed as Secondary Grade Teacher in the year 1998 by the erstwhile Management of St.Mary's High School / fourth respondent and the fourth respondent school is a private school receiving aid from the Government of Tamil Nadu and while the petitioner was in employment, she pursued and completed her B.Lit., (Tamil) degree in May 2007 and at the relevant time, when the petitioner underwent her B.Lit., course, she was unaware that prior permission had to be obtained from the office of the third respondent for undergoing higher education during the course of employment. The petitioner completed B.Lit., course through distance education at Annamalai University. But for the subsequent courses which petitioner underwent viz., M.A., and B.Ed., the petitioner had obtained proper prior permission from the third respondent.

3. Subsequently, a charge memo dated 09.10.2012 was issued by the fourth respondent against the petitioner by levelling charges that the petitioner, without permission of the fourth respondent, had visited the office of the third respondent and obtained her S.R. book from the custody of the concerned office of the third respondent and made entries in the S.R., book pertaining to her B.Lit qualification and thereafter, the petitioner had induced the concerned officer to obtain endorsement from the fourth respondent against the said entries and further, the petitioner without pursuing the appropriate authorities for seeking post approval in respect of her B.Lit., degree, she applied under R.T.I., through her father, seeking details and thereby brought disrepute to the fourth respondent. Challenging the said charge memo, the present writ petition is filed.

4. Learned Counsel appearing for the petitioner would submit that the charge memo was issued only the Secretary, who is not a competent person for taking disciplinary action and under Sections 17 and 18 of the Tamil Nadu Recognized Private Schools (Regulation) Act, 1973 and Rules 16, Form VII-A of the Tamil Nadu Recognized Private Schools (Regulation) Rules, 1974, a charge memo has to be issued only by the School Committee and in the present case, without jurisdiction, the Secretary has issued the charge memo and on that sole ground, the present writ petition is filed.

5. Heard the learned Counsel appearing for the petitioner, the learned Additional Government Pleader appearing for the respondents and the learned Counsel appearing for the fourth respondent



and perused the materials placed on record.

6. The issue arises for consideration in this writ petition is no longer *res integra* and the jurisdictional issue was already decided by the Honourable Supreme Court in the case of ***Inspector General Of Police and another vs Thavasiappan*** reported in **1996 SCC (2) 145** and it is relevant to extract hereunder paragraph 9 of the said judgement:

"9. As to who shall initiate and conduct a disciplinary proceeding, the Rules are silent. Rule 2 A which provides that the Governor or any other authority empowered by him may institute disciplinary proceedings is an enabling provision. From the way it is worded it is not possible to infer that the rule making authority intended to take away the power of otherwise competent authorities, like the appointing authority, disciplinary authority or controlling, authority and confine it to the authorities mentioned in Rule 2 A only. Moreover, it is difficult to appreciate how this provision can be helpful in deciding whether the charge should be framed and the enquiry should be held by that authority only which is competent to impose the penalties mentioned in Rule 3(b)(i). An act of instituting a disciplinary proceeding is quite different from conducting an enquiry. Rule 3(b)(i) provides how an enquiry should be held in a case where it is proposed to impose on a member of the service any of the penalties specified in clauses (d), (h), and (i) and (j) of Rule 2. It lays down the different steps that have to be taken in the course of the enquiry proceedings. This Rule is completely silent as regards the person who should perform those acts except that the report of the enquiry has to be prepared by the authority holding the enquiry. Rule 3(b)(i) itself contemplates that the enquiry officer may not be the authority competent to impose the penalties referred to therein and that becomes apparent from the second paragraph of that sub-rule. If it was intended by the rule-making authority that the disciplinary authority should itself frame the charge and hold the enquiry then it would not have provided that a report of the enquiry shall be prepared by the authority holding the enquiry whether or not such authority is competent to impose the penalty. Generally speaking, it is not necessary that the charges should be framed by the authority competent to award the proposed penalty or that the enquiry should be conducted by such authority. We do not find anything in the rules which would induce us to read in Rule 3(b)(i) such a requirement. In our opinion, the view taken by the Tribunal that in a case falling



under Rule 3(b) the charge memo should be issued by the disciplinary authority empowered to impose the penalties referred to therein and if the charge memo is issued by any lower authority then only that penalty can be imposed which that lower authority is competent to award, is clearly erroneous. We, therefore, allow this appeal. The order passed by the Tribunal is set aside and the case is remitted back to the Tribunal to consider the other contentions which were raised before it and to dispose of the case in accordance with law."

7. The facts in the present case are not in dispute. The writ petition is filed only on the sole ground that the charge memo was issued by the incompetent authority and without jurisdiction. However, on a perusal of the above decision, it makes it clear that it is not necessary that the charges should be framed by the competent authority who award the proposed penalty. The charges can be issued by any lower authority, however, the penalty can be imposed only by the competent authority. Therefore, in view of the above decision, the ground raised in this writ petition is misconceived and accordingly, the writ petition is dismissed. No costs. Consequently, the connected Miscellaneous Petitions are also dismissed.

8. However, considering the pendency of the charges for a long time, this Court is inclined to issue a direction to the fourth respondent or the School committee to conclude the proceedings. Accordingly, the fourth respondent or the school committee is directed to conclude the disciplinary proceedings within a period of six months from the date of receipt of a copy of this order.

Sd/-

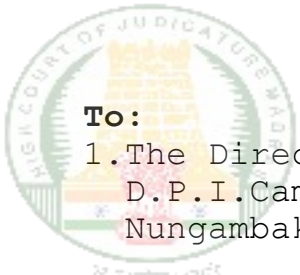
Assistant Registrar (W)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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 Director of School Education,
D.P.I.Campus, College Road,
Nungambakkam, Chennai-600 006.
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- 3.The District Educational Officer,
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- 4.The Secretary, St.Mary's High School,
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Thoothukudi District.

+1 CC to M/s.R.SUBRAMANIAN, Advocate (SR-9841[F] dated
10/03/2021)

+1 CC to M/s.T.LAJAPATHI ROY, Advocate (SR-9904[F] dated
10/03/2021)

+1 CC to M/s.SPL GP (SR-10118[F] dated 10/03/2021)

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RP (26.05.2021) P 7C