



WP(MD)No.22257 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 09.12.2022

CORAM:

THE HONOURABLE MR.JUSTICE **B.PUGALENDHI**

W.P. (MD)No.22257 of 2021

and

W.M.P. (MD)No.18796 of 2021

Paripoorana Mariya Nesan

: Petitioner

Vs.

1.The Principal Secretary to Government,
Adi Dravidar Welfare Department,
Secretariat,
Chennai - 600 009.

2.The Commissioner,
Adi Dravidar Welfare Department,
Chepauk,
Chennai - 600 005.

3.The District Adi Dravidar & Tribal Welfare Officer,
Pudukottai District. : Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India seeking issuance of Writ of Certiorari calling for the records of the impugned charge memo in Na.Ka.No.02/17870/2020 dated 04.09.2021 issued by the second respondent and quash the same.

For Petitioner : Mr.R.Gowrishankar

For Respondents : Mr.A.Kannan,
Additional Government Pleader



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ORDER

This writ petition is filed by the petitioner as against the charge memo issued by the second respondent in Na.Ka.No.02/17870/2020, dated 04.09.2021, in and by which, five charges were framed as against the petitioner, as follows:

Charge No.1:-

The petitioner, while working as Graduate Teacher (English) at Adi Dravidar Welfare Higher Secondary School, Mullanguruchi, Pudukottai District, has indulged in certain activities by bringing certain persons to the institution and has caused disrespect to the institution. Therefore, he was transferred from the post on 27.07.2020, however, on receipt of the order on 30.07.2020, he went on medical leave from 31.07.2020, disregarding the orders of the Department.

Charge No.2:-

Having received the transfer order and relieving order on 30.07.2020 at 07.00 pm, suppressing the same, the



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petitioner obtained an order from the Court that he was not relieved from the post.

Charge No.3:-

After the order of transfer on 31.07.2020, the petitioner has periodically taken medical leave. Though he was referred to the medical board on 23.10.2020, 27.11.2020 and 18.11.2020, he failed to appear before the medical board with an intention to defy the transfer order and thereby, disrespected the orders of the superiors.

Charge No.4:-

Having received the relieving order, he has not joined duty in the transferred place as ordered, knowing fully that other Teacher cannot be appointed in that place and that it would affect the studies of the students, availed leave for 218 days, disobeying the orders of the superiors.

Charge No.5:-

The petitioner has committed misconduct in terms of Rule 20(i)(2) of Tamil Nadu Government Servant Conduct Rules, 1973.



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2.The case of the petitioner, in brief, is as follows:-

2.1.The petitioner was posted to Adi Dravidar Welfare Higher Secondary School, Mullanguruchi, in the year 2013. Due to his dedicated service, the School, for the first time in the past 32 years, showed 100% pass in the public examination for the Academic Year 2017-18 & 2018-19.

2.2.The Headmaster of the School, one Nagarajan, has misappropriated a sum of Rs.88,656/-, that was collected for paying the LIC premium for the Teachers working in the School. The said amount was not deposited with the concerned LIC branch, even after lapse of two years. Therefore, the petitioner and others have lodged a complaint before the third respondent and thereafter, on the instructions of the third respondent, the amount has been deposited before the concerned LIC branch. Aggrieved over that action, the Headmaster started issuing memos to the petitioner on flimsy reasons and also sent complaints to the respondents making baseless allegations. Based on the complaints of the Headmaster, the second respondent initiated the disciplinary proceedings against him and also



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transferred him from the Adi Dravidar Welfare Higher Secondary School, Mullanguruchi, by the proceedings dated 08.07.2020.

2.3.This transfer order dated 08.07.2020 was challenged by the petitioner before this Court in WP(MD)No.9154 of 2020 and this Court, by order dated 09.02.2021, quashed the transfer order holding that it is punitive in nature. Even then, the petitioner was not accommodated and therefore, he filed a contempt petition as against the second respondent in Cont.P(MD)No.542 of 2021. Only then, the second respondent has complied with the orders of this Court.

2.4.In view of the proceedings initiated by the petitioner, including the contempt proceedings and at the instance of the Headmaster, the second respondent has issued the impugned charge memo.

3.Learned Counsel for the petitioner, with regard to the charge memo, has made his submissions as follows:-

3.1.Having allowed the petitioner to avail medical leave, he cannot be found fault with for his action.



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3.2.Insofar as the charge no.2, ie., suppression of facts before this Court is concerned, the petitioner did not know what has been transpired in between his Counsel and the Court during the hearing. In fact, the transfer order dated 08.07.2020 was quashed by this Court following the decision of the Hon'ble Supreme Court in ***Somesh Tiwari v. Union of India.***

3.3.With regard to the third charge, ie., the petitioner failed to appear before the medical board, the petitioner has not received any summons. In fact, the petitioner has received summons dated 05.03.2021 asking him to appear before the medical board on 10.03.2021, only on 10.03.2021 at about 05.00 pm. Therefore, the petitioner was not in a position to appear before the medical board on 10.03.2021. On the very next day, ie., on 11.03.2021, when the petitioner appeared before the medical board, he was directed to appear on 17.03.2021. Accordingly, the petitioner appeared before the medical board on 17.03.2021.



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3.4.As regards the fourth charge, the petitioner was transferred to a far away place, during the Covid-19 pandemic. The pandemic situation was at its peak and at that time, no students were permitted to attend the class. Therefore, the respondents cannot accuse the petitioner that the studies of the students was affected by not joining in the transferred school. That apart, the petitioner and his four years old son were affected by Covid-19 and were taking treatment at that point of time.

4.Learned Additional Government Pleader, on the other hand, reiterated the contents raised in the charge memo and submitted that the charge memo cannot be interfered with by this Court.

5.He further submitted that the second charge was issued based on the observations made by this Court in WP(MD)No.9154 of 2020, dated 09.02.2021 and after verifying the averments of the writ petition and the affidavit filed therein, they came to know that it was inadvertently framed and as such, they have decided to drop the second charge.



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6.This Court paid it's anxious consideration to the rival submissions and also to the materials placed on record.

7.The petitioner claims that the Headmaster of the School, aggrieved over the complaint lodged by him for misappropriating a sum of Rs.88,656/- which was collected from the Teachers for the purpose of LIC premium, has started lodging baseless complaints as against him. Based on these complaints, the petitioner was also transferred on 08.07.2020. When it was challenged before this Court in WP(MD)No.9154 of 2020, the same was quashed by this Court by order dated 09.02.2021.

8.It is a settled position that the Courts should refrain from interfering with a charge memo, unless it suffers from lack of jurisdiction or *mala fides*.

9.After issuing the impugned charge memo dated 04.09.2021, the second respondent has now come forward to withdraw second charge, stating that it has been



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inadvertently framed. Admittedly, the petitioner in his affidavit filed in WP(MD)No.9154 of 2020, has not averred that he was not relieved. However, during the course of arguments, the Court has observed so in the order. The order of transfer dated 08.07.2020 was challenged by the petitioner in WP(MD)No.9154 of 2020 and the same was allowed by this Court by order dated 09.02.2021. The respondents have not preferred any appeal as against this order. However, they have also not permitted the petitioner to join duty. Therefore, the petitioner was constrained to file a contempt petition and only thereafter, he was accommodated in the School. But, immediately thereafter, the impugned charge memo dated 04.09.2021 came to be issued.

10.From the sequence of events and the manner in which the second charge was initially framed and now chosen to be withdrawn, it appears that the impugned charge memo came to be issued with a *mala fide* intention and therefore, this Court is inclined to proceed further with the issue.



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11.The first charge is that after the receipt of the transfer order, the petitioner availed medical leave with effect from 31.07.2020. As rightly pointed out by the petitioner's Counsel, having allowed the medical leave, the Department cannot now frame a charge for the same. It is not the case of the respondents that the petitioner was on unauthorized leave, nor it is their case that the petitioner was not suffering with any ailment during that period. Therefore, the first charge is not maintainable.

12.The respondents themselves have now come forward to withdraw the second charge.

13.The third charge is that the petitioner has availed medical leave for 218 days, but, has failed to appear before the medical board on 23.10.2020, 27.11.2020 & 18.11.2020, despite summons. However, the petitioner claims that he has not received any summons and that he has received a summon dated 05.03.2021, asking him to appear before the medical board on 10.03.2021, only on 10.03.2021 at about 05.00 pm. Therefore, he appeared before the

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medical board on 11.03.2021 and the board has asked him to appear on 17.03.2021. Accordingly, he appeared before the board on 17.03.2021. The petitioner also claims that he and his four year old son were suffering with Covid-19 at that relevant period. These averments made by the petitioner were not specifically denied by the respondents by way of filing any counter affidavit and as such, the charge on this count could not be maintained.

14.The fourth charge is that in view of the leave availed by the petitioner, the studies of the students were affected. This Court is not in a position to accede this charge, inasmuch as during the relevant period, the Covid-19 pandemic was at its peak and almost all the schools and colleges were either closed or functioned virtually or functioned on alternative days.

15.Since this Court has held that the charges 1 to 4 could not be maintained, the fifth charge, namely misconduct in terms of Rule 20(i)(2) of Tamil Nadu Government Servant Conduct Rules, 1973, could not be maintained as well.



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In the result, this writ petition stands allowed and the impugned charge memo dated 04.09.2021 stands quashed. No costs. Consequently, connected miscellaneous petition stands closed.

Index : Yes / No
Internet : Yes
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09.12.2022

To

- 1.The Principal Secretary to Government,
Adi Dravidar Welfare Department,
Secretariat,
Chennai - 600 009.
- 2.The Commissioner,
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