



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.10.2021

CORAM

THE HON'BLE MR.JUSTICE S.S.SUNDAR

W.P. (MD) No. 2562 of 2016 and W.P(MD).No. 22215 of 2017 and
WMP(MD).Nos. 2265 of 2016 and 18514 of 2017 in
W.P. (MD) No. 2562 of 2016 and W.P(MD).No. 22215 of 2017

W.P. (MD) No. 2562 of 2016

The Secretary,
Buddhar Middle School,
Periyakulam.

... Petitioner

-Vs-

1.The District Elementary Educational Officer,
Government Higher Secondary School Campus,
Allinagram, Theni.

2.The Director of Elementary Education,
DPI Campus, Nungambakkam,
Chennai.

3.M.Vanideswari

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari calling for the records of the 1st respondent relating to Na.Ka.No.2480 / A2 / 2011 and quash the proceedings dated 18.12.2015, declare that due to laxity of time and failure to adopt right procedure and on merits, the approval sought for by the petitioner has been granted.

W.P. (MD) No. 22215 of 2017

The Secretary,
Buddhar Middle School,
Periyakulam,
Theni District.

... Petitioner

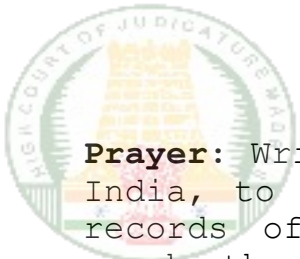
-Vs-

1.The District Elementary Educational Officer,
Government Higher Secondary School Campus,
Allinagram, Theni.

2.The Assistant Elementary Education Officer,
Periyakulam, Theni District.

3.R. Ramadhilagam

... Respondents



Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of the first respondent relating to O.Mu.No.466/A2/2017, quash the order dated 26.04.2017 passed therein, direct the 1st respondent to dispose the approval petition of the petitioner dated 27.01.2017 presented under Section 22(2) of the Tamil Nadu Recognized Private Schools (Regulation) Act, to dismiss the third respondent from service, within a time frame.

For petitioner : Mr. Ajmalkhan
in both W.Ps. Senior Counsel for M/s. Ajmal Associates

For respondents 1 and 2 : Mr. Lingadurai, Government Advocate
For 3rd respondent : Mr. H. Velavandass
in both W.Ps.

COMMON ORDER

The Writ Petition in W.P(MD).No. 2562 of 2016 is filed to quash the impugned order passed by the 1st respondent, dated 18.12.2015 relating to Na.Ka.No.2480 / A2 / 2011 or to declare that due to laxity of time and failure to adopt right procedure and on merits, the approval sought for by the petitioner has been granted.

2. The Writ Petition in W.P(MD).No. 22215 of 2017 is filed to quash the impugned order of first respondent viz., the District Elementary Educational Officer, Government Higher Secondary School Campus, Allinagram, Theni, dated 26.04.2017 and to direct the 1st respondent to dispose the approval petition of the petitioner, dated 27.01.2017 presented under Section 22(2) of the Tamil Nadu Recognized Private Schools (Regulation) Act, to dismiss the third respondent from service, within a time frame.

3. Heard Mr. Ajmalkhan, learned Senior Counsel appearing for the petitioner and Mr. M. Linga Durai, learned Government Advocate appearing for the respondents 1 and 2 and Mr.H. Velava Dhas, learned counsel appearing for the third respondent.

4. In both the cases, the Writ Petitions are filed by the same petitioner viz., the Secretary of Buddhar Middle School, Periyakulam, a recognized private aided School governed by Tamil Nadu Recognized Private Schools (Regulation) Act, 1973. The third respondent in both Writ Petitions are teachers working in the petitioner's school.

5. In both the cases, the petitioner's school submitted an application under Section 22 (1) of the Tamil Nadu Recognized Private Schools (Regulation) Act, 1973 (hereinafter referred as



"Act") for grant of prior approval of the first respondent / competent authority for the punishment awarded to the third respondent in the respective Writ Petitions dismissing her / him from service.

6. The order impugned in the Writ Petition in W.P(MD).No. 2562 of 2016 is merely a notice issued by the first respondent therein inviting the petitioner and the third respondent to participate in the enquiry in connection with the proceeding under Section 22 of the 'Act'. However, the questionnaire, which was served on them as an Annexure to the notice gives an indication that a fresh enquiry has been commenced by the first respondent on the charges levelled against the third respondent by the petitioner. Therefore, the notice for enquiry is challenged in the first Writ Petition on the ground of procedural irregularities which may ultimately lead to injustice or an order unsustainable in law.

7. The impugned order challenged in WP(MD).No.22215 of 2017 is an order again passed in the course of enquiry pertaining to the third respondent therein under Section 22(2) of the 'Act'. By the impugned order, dated 26.04.2017, the first respondent directed the 2nd respondent / Assistant Elementary Educational Officer to visit the charges levelled against the third respondent, after holding departmental enquiry and to submit a report with his recommendations. The issues to be considered by this Court in both these writ petitions are similar and hence, both the Writ Petitions are taken up together and disposed of by this common order.

8. In WP(MD).No.2562 of 2016 what is challenged is only a notice calling an enquiry to be conducted by the first respondent in exercise of his power under Section 22 of the 'Act'. Section 22 of the 'Act' reads as follows:

"22. Dismissal, removal or reduction in rank or suspension of Teachers or other persons employed in private schools:- (1) Subject to any Rule that may be made in this behalf, no teacher or other person employed in any private school shall be dismissed, removed or reduced in rank nor shall his appointment be otherwise terminated except with the prior approval of the competent authority.

(2) Where the proposal to dismiss, remove or reduce in rank or otherwise terminate the appointment of any teacher or other person employed in any private school is communicated to the competent authority, that authority shall, if it is satisfied that there are adequate and reasonable grounds for such proposal, approve such dismissal, removal, reduction in rank or termination of appointment.

(3) (a) No teacher or other person employed in any private school shall be placed under suspension, except when an enquiry into the gross misconduct within



the meaning of the Code of Conduct prescribed under sub-section (1) of Section 21, or such teacher or other person is contemplated.

(b) No such suspension shall remain in force for more than a period of two months from the date of suspension and if such inquiry is not completed within that period, such teacher or other person shall, without prejudice to the inquiry, be deemed to have been restored as teacher or other employee;

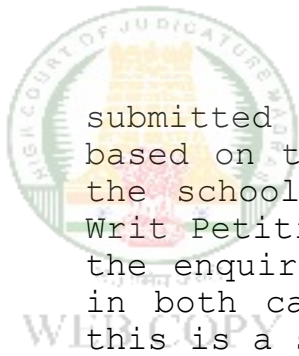
Provided that the competent authority may, for reasons to be recorded in writing, extend the said period of two months, for a further period not exceeding two months, if, in the opinion of such competent authority, the inquiry could not be completed within the said period of two months for reasons directly attributable to such teacher or other person."

9. From the reading of the provision, the scope of the enquiry under Section 22(2) of the 'Act' is whether the first respondent is satisfied that there are adequate and reasonable grounds for the proposed punishment. A prior approval of the competent authority contemplated under Section 22 of the 'Act' is supposed to protect the interest of teachers and to prevent the teachers from facing orders of punishment at the whims and fancies of the private management.

10. It is admitted that under Rule 17 of the 'Act', the first respondent is the competent authority to accord prior approval for any major punishments in case of primary and middle school. Since the petitioner is being a middle school, the authority of first respondent to pass order under Section 22 of the 'Act' is not in dispute.

11. The learned Senior counsel appearing for the petitioner further submitted that the contents of impugned notice and the form of the notice, challenged in W.P(MD).No.2562 of 2016 gives an indication that the scope of enquiry under Section 22 of the 'Act' has been expanded to be one to find out whether the misconduct or the charges alleged against the teachers are made out. Though one of the question raised by the first respondent was whether sufficient opportunity was given to the teacher during the enquiry and whether the enquiry was conducted in a fair and independent manner, all other question gives an indication that the petitioner has to satisfy with the materials that the third respondent in the Writ Petition is guilty of charges.

12. The learned Senior Counsel for the petitioner submitted that the competent authority to initiate the disciplinary proceedings is the School Committee. In the present case, it is



submitted by the learned Senior Counsel for the petitioner that based on the resolution of the school committee, the Secretary of the school issued a charge memo to the third respondent in both Writ Petitions. He further submitted that enquiry was conducted by the enquiry officer appointed by the school in accordance with law in both cases. The learned Senior Counsel further submitted that this is a second round of litigation insofar as the third respondent in W.P(MD).No.2562 of 2016. It is admitted that originally the petitioner submitted a proposal for approval of punishment, after taking a decision to remove the third respondent from service. However, the first respondent passed an order, rejecting the application filed by the petitioner under Section 22 of the 'Act'. The petitioner submitted an appeal before the Joint Director of School Education and the said appeal was disposed of with a direction to the first respondent to pass fresh orders after giving adequate opportunity to the petitioner management.

13. The grievance of the petitioner before the Joint Director was that the proposal submitted by the petitioner for approval of punishment was rejected without hearing the petitioner. After the order passed by the appellate authority, a fresh representation was also submitted by the petitioner on 01.03.2014. Thereafter, by proceeding, dated 22.07.2015 the first respondent issued the enquiry notice to the petitioner and the third respondent. Very strangely, the first respondent by order dated 19.07.2012 directed the Assistant Elementary Educational Officer, Periyakulam to conduct the enquiry and submit a report. The said order was challenged by the petitioner in WP(MD).No.13515 of 2012 filed before this Court. This Court allowed the said Writ Petition vide order, dated 17.10.2012 and directed the respondent to take a final decision on the proposal sent by the petitioner under Section 22(2) of the 'Act' with regard to the dismissal of the third respondent in W.P(MD).No.2562 of 2016 from service, in accordance with law. The operative portion of the order passed by this Court reads as follows:

"5. The challenge to the order is, that under the statute, the jurisdiction to grant approval or refusal of the action of the management is with the District Elementary Educational Officer, with no power of delegation. The respondent / District Elementary Educational Officer vide the impugned order has directed the Assistant Elementary Educational Officer to hear the concerned teacher on the proposal for dismissal and then sent it for consideration for approval.

6. The impugned order on the face of it is unsustainable in law, as quasi - judicial function cannot be delegated to the subordinate officer. It is for the District Elementary Educational officer to consider and decide the question on merits and in



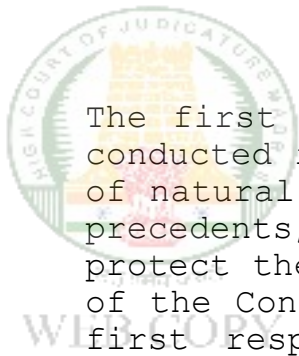
accordance with law, as being a statutory authority has to apply the mind independently, as his decision cannot be based on the recommendation of lower officer.

7. This Writ Petition is accordingly allowed. The impugned order is set aside. A writ in the nature of Mandamus is issued directing the respondent to take a final decision on the proposal sent by the petitioner with regard to the dismissal of the employee in accordance with law within in one month of the date of receipt of a certified copy of this order."

14. However, in the case of the other teacher, who is third respondent in W.P(MD).No.22215 of 2017 similar order that was quashed by this Court in W.P(MD).No.13515 of 2012 is challenged. The first respondent directed to hold enquiry and submit a report. The impugned order in W.P(MD).No.22215 of 2017 is liable to be quashed based on the earlier order of this Court in W.P(MD).No. 13515 of 2012. What is challenged in W.P(MD).No.2562 of 2016 is a subsequent notice for enquiry ignoring the scope of enquiry. The Annexure to the notice shows that the first respondent has given a form, by which, the petitioner and the third respondent were expected to give answers. The headings under which explanations were sought for gives an indication that the first respondent's enquiry is not confined to the enquiry as contemplated under Section 22(2) of the Act.

15. The first respondent wants to hold an enquiry regarding the complaint that was submitted by the third respondent to the first respondent. Remarks regarding complaints received from the parents of the students explanation were sought for. The first respondent assumed that he has to conduct a fresh enquiry before taking a decision whether the proposal submitted for the approval of punishment can be given or not.

16. The learned counsel appearing on either side have no issues regarding the provisions of the 'Act'. The prior approval as contemplated under Section 22 of the 'Act' can be granted by the first respondent if he is satisfied that there are adequate and reasonable grounds for granting approval to the order of dismissal. Within the four corners of Section 22 of the 'Act', this Court is unable to find out any authority or jurisdiction being conferred on the first respondent to go into the charges once again and to render finding whether the charges are proved or not. Though the language employed in Section 22 of the 'Act' can be interpreted to enable the first respondent to give a finding as to the proportionality of punishment, the first respondent cannot act as an appellate authority to adjudicate whether the management proved the charges before the first respondent against the delinquent. As indicated above, Section 22 of the 'Act' may authorise the first respondent to interfere if the punishment imposed on the teacher is arbitrary.



The first respondent can go into the issue whether the enquiry was conducted in a fair and reasonable manner in adherence to principles of natural justice. As it has been pointed out by various judicial precedents, provision under Section 22 of the 'Act' is intended to protect the valuable rights of the teachers under Article 19 and 21 of the Constitution of India. However, that does not mean that the first respondent can pass any order by expanding the scope of enquiry or act as an appellate authority.

17. In this case, the first respondent has ultimately to pass an order which is in tune with the power conferred on him under Section 22 of the 'Act'. As indicated above, the first respondent can go into the questions relating to the proportionality of punishment, fairness in the conduct of enquiry, about the observance of principles of natural justice and so on.

18. In the circumstances, above referred, this Court is unable to sustain the Annexure to the notice impugned in WP(MD). No.2562 of 2016. The first respondent is directed to commence the enquiry proceedings and pass appropriate orders under Section 22 of the 'Act' after giving an opportunity to both sides within a period of 12 weeks from the date of receipt of a copy of this order.

19. So far as W.P(MD).No.22215 of 2017 is concerned as pointed out by this Court earlier, the same is liable to be quashed for the reasons found in the order of this Court, dated 17.10.2012 in WP(MD).No.1315 of 2012. This Court in similar circumstances allowed the Writ Petition, after quashing the impugned order.

20. As it was followed by this Court earlier in the case of third respondent in WP(MD).No.2562 of 2016, the first respondent, who is performing a quasi of judicial function cannot relegate his power to his subordinate officer. It is for the District Educational Officer to consider and decide whether the proposal submitted by the petitioner for approval should be accepted or not. Consequently, the first respondent is directed to take a final decision on the proposal submitted by the petitioner regarding the approval of dismissal in accordance with law after hearing both sides.

21. The learned counsel appearing for the third respondent in WP(MD).No.22215 of 2017 would submit that the third respondent teacher is suffering from Cancer and therefore, she may be permitted to appear through representatives in the course of enquiry before the first respondent. Considering the nature of reason, this Court is inclined to direct the first respondent to consider the petitioner's request to appear before the first respondent through her representatives.



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W.P.(MD) No. 2562 of 2016 and W.P(MD).No. 22215 of 2017

22. Accordingly, both the Writ Petitions are allowed and disposed of with the above directions. No costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-II)

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/ /2021

Sub Assistant Registrar(CS)

trp

To

1.The District Elementary Educational Officer,
Government Higher Secondary School Campus,
Allinagram, Theni.

2.The Assistant Elementary Education Officer,
Periyakulam, Theni District.

3.The Director of Elementary Education,
DPI Campus, Nungambakkam,
Chennai.

+2 CC to M/s.AJMAL ASSOCIATES, Advocate (SR-32194,SR-32196[F] dated 22/10/2021)

+1 CC to M/s.SPL.GP (SR-32373[F] dated 25/10/2021)

W.P.(MD) No. 2562 of 2016 and
W.P(MD).No. 22215 of 2017 and
WMP(MD).Nos. 2265 of 2016 and
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W.P.(MD) No. 2562 of 2016 and
W.P(MD).No. 22215 of 2017

21.10.2021

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