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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.03.2022

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THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P.No.7385 of 2020

and

W.M.P.Nos.8834 of 2020 & 18719 of 2021

R.Periyasamy

...Petitioner

Vs.

1. The Director of School Education,
DPI Campus, College Road,
Chennai - 600 006.
2. The Chief Educational Officer,
Erode District, Erode.
3. The District Educational Officer,
Erode, Erode District.
4. The Secretary,
Kasthuriba Gram High School,
Kasthuriba Gramam,
Archalur Via,
Erode District.
5. S.N.Balasubramanian,
Secretary,
Kasthuriba Gram High School,
Kasthuriba Gramam, Archalur Via,
Erode District.
6. R.Balamurugan,
Advocate/Enquiry Officer,
Room No.10, Law Chambers,
Sampath Nagar Main Road,
Opp to: District Court, Erode.

...Respondents

PRAYER: This Writ Petition has been filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records relating the impugned proceedings issued by the fourth respondent in No.111/2019-2020 dated 16.03.2020 and to quash the same and



consequently, direct the respondent to conduct the enquiry by appointing an independent enquiry officer to conduct the fair and impartial enquiry, within a time frame to be fixed by this Court.

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For Petitioner : Mr.G.Sankaran
For R1 to R3 : Mr.V.Manoharan
Additional Government Pleader
For R4 & R5 : Mr.V.P.Sengottuvel
for Mr.K.Sathish Kumar
For R6 : No appearance

O R D E R

The relief sought for in the writ petition is for Certiorarified Mandamus to call for the records relating the impugned proceedings issued by the fourth respondent in No.111/2019-2020 dated 16.03.2020 and to quash the same and consequently, direct the respondents to conduct the enquiry by appointing an independent enquiry officer to conduct the fair and impartial enquiry, within a time frame to be fixed by this Court.

2.Brief facts of the case:

(a).On 10.01.2014, the petitioner was appointed as Head master in the fourth respondent's School, which is a Government Aided School and was established by the Education Trust called Kasthuriba Gram Educational Memorial Trust. One S.N.Balasubramanian became the Secretary of the Trust and fourth respondent's School and thereafter, one A.S.Krishnamoorthy became as Vuba Prathinidhi of the Trust in the year 2017 and he started interfering with the school activities and suppressing the petitioner's duties and responsibilities. In such circumstances, the fourth respondent had issued charge memos dated 10.09.2018 & 15.09.2018 and in turn, the petitioner has also submitted his explanation and not satisfying with the same, the petitioner was placed under suspension on 22.10.2018. Thus, the writ petitioner has filed W.P.Nos.30548 & 30551 of 2018, challenging the charge memo dated 15.09.2018 and the order of suspension dated 22.10.2018 issued by the fourth respondent, but the said writ petitions are still pending before this Court. Thereafter, the fifth respondent has appointed one R.Balamurugan, as enquiry officer and he has issued notice of enquiry to the petitioner and thereby, the petitioner has made a request to allow him to engage an advocate to defend him in the



enquiry but the same has not been considered. Further the petitioner has filed a petition in W.P.No.4194 of 2019, challenging the enquiry notice and this Court by its order dated 13.12.2019 permitted the petitioner to engage an advocate for defending the charge memo and with further direction that the petitioner should be provided with documents to defend his case by producing his own documents and witnesses etc.

(b).Further, on attending the enquiry in the Chamber of the Enquiry Officer viz., Mr.R.Balamurugan, the petitioner came to know that the counsel appearing for the School Management viz., Mr.V.Sampathkumar and the enquiry officer are the Junior Advocates under one senior and they were sharing same advocate chamber and hence, it can never be expected that the enquiry officer would do justice in the enquiry. Hence, by stating the above said fact, the petitioner has send a representation on 06.02.2020 to the fifth respondent to the change the enquiry officer. Since there is no response, the petitioner has filed W.P.No.4678 of 2020, to direct the respondents 1 to 5 to change the sixth respondent/enquiry officer and to appoint some other Advocate as enquiry officer to conduct fair enquiry and the said writ petitioner was listed for further hearing. Thereafter, the enquiry officer has filed enquiry report on 02.03.2020 and sent to the fourth respondent. Based on enquiry report, the fourth respondent issued second second show cause notice to the petitioner for further explanation. Hence, the writ petition.

3.The learned counsel for the petitioner reiterate the above said facts and seeks indulgence of this Court to issue the writ of certiorafied mandamus as prayed for.

4.The learned counsel for the respondents would submit that the allegation of the petitioner that enquiry officer viz., Mr.R.Balamurugan and the learned counsel for the fourth respondent School Management viz., Mr.V.Sampathkumar belong to the same office, worked under the same senior and they are sharing the same chamber in the Court campus, is not a ground for the petitioner to seek for the independent enquiry. He would further submit that the petitioners are also relied upon the order passed by this Court in W.P.No.35069 of 2018, wherein, this Court has made a specific observation that the petitioner cannot be permitted to approach this Court repeatedly during every stage of the proceedings and ultimately, if in case the said writ petition ends up adversely against the petitioner, at that point of time the petitioner can take all grounds and challenge the same. Further, he would submit that the connected writ petitions filed by the petitioner challenging the charge memo and suspension orders are pending and there is no interim order has been passed. Further, he would submit that the enquiry officer has submitted his report and the writ petition now



became infructuous.

5. Heard the learned counsel on either side and perused the materials placed on record.

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6. Considering the above facts and circumstances of the case, it is seen that the petitioner is challenging the impugned show cause notice on the ground that enquiry officer viz., Mr.R.Balamurugan and the learned counsel for the fourth respondent School Management viz., V.Sampathkumar belong to the same office, worked under the same senior and they are sharing the same chamber in the Court campus and this Court cannot accept the aforesaid allegation to entertain the writ petition. Further, according to the petitioner no opportunity has been granted to the petitioner by the enquiry officer, if that being so, the petitioner having ground to be taken by way of explanation before the concerned explanation. Further, this Court has already observed in a similar case in W.P.No.35069 of 2019 as under:

"The petitioner cannot be permitted to approach this Court repeatedly during every stage of the proceedings and virtually this is the third time the petitioner approached this Court, pending the enquiry. Enquiry, assuming that there are some infirmities in the conduct of the enquiry, the same cannot be challenged before this Court at every stage. Ultimately, if in case, it ends up adversely against the petitioner, at that point of time the petitioner can take all the grounds and challenge the same."

Therefore, this Court has observed that the petitioner has not placed any material to question the conduct of the enquiry officer or by way of explanation before the fourth respondent. Thus, this Court is of the view that there is nothing warrants to interfere with the impugned show cause notice issued by the respondent.

7. Therefore, this Court directs the fourth respondent to settle entire subsistence allowance to the petitioner within a period of one week from the date of receipt of a copy of this order, failing which, the petitioner will be at liberty to seek appropriate remedy to interfere with the disciplinary proceedings. The writ petitioner is directed to submit his detailed explanation before the fourth respondent within a period of two weeks in reply to the show cause notice dated 16.03.2020, from the date of receipt of a copy of this order.



8. With the above directions, this writ petition is disposed.
No costs. Consequently, connected miscellaneous petition is closed.

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Sd/-
Deputy Registrar (CS)

//True Copy//

Sub Assistant Registrar

Dua

To

1. The Director of School Education,
DPI Campus, College Road,
Chennai - 600 006.
2. The Chief Educational Officer,
Erode District, Erode.
3. The District Educational Officer,
Erode, Erode District.
4. The Secretary,
Kasthuriba Gram High School,
Kasthuriba Gramam, Archalur Via, Erode District.

+1cc to Mr.G.Sankaran, Advocate, S.R.No.22052

+1cc to Mr.K.Sathishkumar, Advocate, S.R.No.21666

+1cc to the Government Pleader, S.R.No.22221

W.P.No.7385 of 2020
and

W.M.P.Nos.8834 of 2020 & 18719 of 2021

SPD(CO)
RGA(05/05/2022)