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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON	PRONOUNCED ON
25.02.2022	03.03.2022

CORAM

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
AND
THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.A.NO.2972 OF 2021
AND
C.M.P.NO.20176 OF 2021

W.T.Masilamani Mudaliar Higher Secondary School,
Rep. by its Secretary / Correspondent,
Walajabad-631 605. ...Appellant / 5th Respondent

Vs

1.E.Soundararajan

2.The Principal Secretary to Government,
Educational Department, Fort. St.George,
Chennai-600 009.

3.The Joint Director of School Education (Secondary),
Chennai-600 006.

4.The Chief Educational Officer,
Kanchipuram.

5.The District Educational Officer,
Kanchipuram.

...Respondents 1 to 4 / Petitioners 1 to 4

Prayer : Writ Appeal filed under Clause 15 of Letters Patent to set aside the order of the learned Judge in W.P.No.33149 of 2017 dated 19.08.2021 and allow the Appellant Management to conduct enquiry.

Prayer in W.P.33149 of 2017 : Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records relating to the 5th respondent herein in School Committee Secretary Proceedings order R.C.03/2012 dated 09.11.2017 and quash the same in so far as directing to submit explanation to the charge memo dated



21.06.2012 is concerned and consequently direct the respondents to regularize the period of suspension from 02.06.2012 to 31.07.2012 and the period of out of employment from 01.08.2012 to 12.11.2017 as duty for all purpose and confer all the attendant and monetary benefits with due regards to my seniority.

For Appellant : Mr.P.Ebenezer Paul

For R1 : Mr.R.S.Anandan

For R2 to R5 : Mrs.S.Mythreye Chandru
Spl. Govt. Pleader (Education)

J U D G M E N T

S.VAIDYANATHAN, J.,
AND
MOHAMMED SHAFFIQ, J.,

This Writ Appeal has been filed, challenging the order dated 19.08.2021, passed by the learned Single Judge in W.P.No.33149 of 2017, by which the impugned order, calling for explanation from the Writ Petitioner once again was set aside.

2. For the sake of brevity, the parties are referred to by their nomenclature in the Writ Petition as "Writ Petitioner, the Appellant School and the Government" in this judgment.

Facts in nutshell:

3. It was averred by the Writ Petitioner that he joined the services of the Appellant School as Record Clerk on 31.12.1987 and was subsequently, promoted as Laboratory Assistant on 09.11.2005 and Junior Assistant thereafter on 02.06.2008. He was placed under suspension by an order in R.C.No.3 dated 02.06.2012 on the charges of misappropriation of funds, etc., under Rule 17 (2) (i) of the Tamil Nadu Recognised Private Schools (Regulations) Rules, 1974 (in short 'Rules, 1974') and a charge memo was issued on 21.06.2012. Rules 17(2) (i) of the Rules, 1974 reads as follows:

"17 (2) (i) Whenever a teacher or other person employed in a private school is kept under suspension, such suspension shall, immediately on the date of issue of the suspension order, be intimated by the Secretary of the school committee to the District Educational Officer concerned along with a copy of the suspension order"

3.1. It was further averred by the Writ Petitioner that consequent to the issuance of charge memo, he was dismissed from service on 01.08.2012 without even furnishing the enquiry report



and the approval petition filed before the 4th Respondent herein through the 5th Respondent herein was rejected by the 4th Respondent herein on 07.11.2012 and the Writ Petitioner was directed to be reinstated in service after cancelling the punishment. Aggrieved by the rejection order, the Appellant School preferred an appeal before the 3rd Respondent herein and the Writ Petitioner also filed an appeal for issuance of an order for reinstatement, which were heard together. After considering both sides, the 3rd Respondent confirmed the order of the 4th respondent, thereby rejecting the appeal filed by the Appellant School and allowing the appeal preferred by the Writ Petitioner.

3.2. It was also averred by the Writ Petitioner that after a lapse of more than 19 months, a Review Petition was filed by the Appellant School before the Government / 2nd Respondent herein, which came to be dismissed on 19.05.2017. Though he had sent several representations and reminders to the respondents one after the other, there was no response thereon, which compelled him to file W.P.No.39150 of 2016 for a direction to dispose of the representation and this Court, by an order dated 07.09.2017, directed the 2nd Respondent herein to pass suitable orders within six weeks, pursuant to which, an order of reinstatement dated 09.11.2017 was passed, however, with a direction to the Writ Petitioner to answer to the charges framed on 21.06.2012.

3.3. It was submitted by the Writ Petitioner that aggrieved by such a clause in the impugned order, he filed W.P.No.33149 of 2017, seeking to quash the order dated 09.11.2017, which was allowed by this Court, against which, the Appellant School is before this Court.

4. Learned counsel for the Appellant School strenuously submitted that despite granting several opportunities, no explanation was submitted by the Writ Petitioner and he also failed to attend the enquiry fixed on 12.07.2012. Since there was no cooperation on the side of the delinquent employee to proceed with the enquiry, having left with no other option, he was set exparte and the order of dismissal was passed against him. Learned counsel further submitted that even assuming for the sake of argument that there was a violation of principles of natural justice, the learned Single Judge ought to have remanded the matter to rectify the defects from where it has occurred, in terms of the Judgements of the Supreme Court in the case of Union of India and others Vs. Mohd. Ramzan Khan reported in AIR 1991 SC 471 and Managing Director, ECIL, Hyderabad and others vs. Karunakar and others, reported in (1993) 4 SCC 727 so as to continue the proceedings. Learned Single Judge failed to note that the Appellant passed the order of reinstatement, duly reserving their rights to proceed further departmentally and as



such, it cannot be said that the Appellant school has been trying to reopen the settled issue once again. Hence, it was prayed that the order of the learned Single Judge is liable to be set aside.

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5. Per contra, learned counsel for the Writ Petitioner / 1st Respondent herein contended that no disciplinary proceedings have been initiated and the subsistence allowance was paid only for two months, which itself is contrary to the provisions of Rules, 1974. It has been clearly established that reasonable opportunity has not been granted to the Writ Petitioner to defend the charges in the enquiry allegedly conducted on 27.07.2012. He has further contended that the issue has attained finality and the Review Petition filed by the Appellant School before the Government / 2nd Respondent herein was also dismissed as early as on 19.05.2017. Therefore, the order of the learned Single Judge, insofar as it quashes the charge memo dated 21.06.2012 is concerned, is perfectly justified, warranting no interference by this Court.

6. Heard the learned counsel for the Appellant School, learned counsel for the Writ Petitioner / R1, learned Special Government Pleader (Education) for R2 to R5 and perused the material documents available on record.

7. The Writ Petitioner was charged sheeted, departmental proceedings have been initiated against him and thereafter, punishment of dismissal from service was imposed. Since there was no sufficient material placed in the enquiry, the Appellate Authority accepted the case of the Writ Petitioner and set aside the order of punishment. The Government also confirmed the order of the Appellate Authority in the Review Petition filed by the Appellant School. Though there was an order of reinstatement passed by the Appellant School, the Writ Petitioner was asked to submit his explanation on the charges, which was objected to by him and he has approached this Court, questioning the said condition in the order of reinstatement. After hearing both sides, learned Single Judge has rightly observed that the Writ Petitioner was absorbed by the School, that the issue had already attained finality and that the punishment order was also set aside. When the 4th Respondent refused to grant approval for dismissal of the Writ Petitioner, it is not open to the Appellant School to issue such a communication and the issuance of reinstatement order with condition has no legs to stand in the eye of law.

8. The next plea advanced by the Appellant School was that in case there was a procedural irregularity or in particular, violation of principles of natural justice, in terms of the judgments of the Supreme Court (cited supra), they are entitled



to proceed further from the point where defects had occurred. We are not inclined to accept the said contention raised by the Appellant School for the reason that when the approval has been rejected, they cannot be permitted to continue the enquiry till such time the Writ Petitioner is found guilty. The judgments relied upon by the Appellant school stand on a different footing. It is no doubt true that once there is a violation, the enquiry proceedings can start from the stage it was found defective. But, in the present case on hand, there is no material available and documents have not been produced to the delinquent employee. In that context, learned Single Judge has congruously held that the issue, which has been given quietus to cannot be allowed to be reopened. Moreover, the Writ Petitioner has also attained the age of superannuation on 31.07.2019 and almost three years have gone by.

9. In the midst of argument, when this Court posed a question to the Writ Petitioner as to whether he is willing to accept any reduction in payment of backwages, he has filed an affidavit dated 24.02.2022, stating that he is prepared to forego 40% of the backwages and the relevant paragraph of the affidavit is extracted hereunder:

"3. I respectfully submit that considering the financial difficulties faced by the School Management, I am willing to accept for reduction of backwages amount for the period from 2.6.2012 to 12.11.2017 to an extent of 40% and the balance 60% of the back wages may be paid to me within a period prescribed by this Hon'ble Court. Further my entire DCRG and retirement benefits after refixation of my pay scales may be conferred to me. Further the monthly pension and arrears of pension after deducting the amount paid as provisional pension may be paid to me within a reasonable time prescribed by this Hon'ble Court and thus render justice."

10. Taking into consideration the above affidavit dated 24.02.2022, consenting to forego 40% of the backwages and finding no merits in the argument of the Appellant School, this Writ Appeal is dismissed. The Government / 2nd Respondent herein is directed to pay all the terminal benefits together with interest (as per Rules / Regulations in existence) due to the Writ Petitioner, within a period of four months from the date of receipt of a copy of this order. It is made clear that while extending the terminal benefits, last drawn pay (after re-fixation of pay) on the date of superannuation will have to be taken into account for the purpose of settlement of full benefits (100%), such as gratuity, pension, Provident Fund and such other benefits in terms of Rules / Regulations except the



reduction in backwages as mentioned supra. No costs.
Consequently, connected Miscellaneous Petition is closed.

Sd/-
Deputy Registrar (CS)

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Sub Assistant Registrar

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To:

- 1.The Principal Secretary to Government,
Educational Department,
Fort. St.George,
Chennai-600 009.
 - 2.The Joint Director of School Education (Secondary),
Chennai-600 006.
 - 3.The Chief Educational Officer,
Kanchipuram.
 - 4.The District Educational Officer,
Kanchipuram.
- +1cc to Mr.R.S.Anandan, Advocate Sr.No.14085
+1cc to Mr.Ebenezer Paul, Advocate Sr.No.14295
+1cc to the Government Pleader Sr.No.14572

W.A.No.2972 of 2021

KK(CO)
RVM(16/03/2022)