



W.P(MD)No.12004 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.10.2022

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.12004 of 2021

and

W.M.P.(MD)Nos.9458 & 14294 of 2021

T.Vimala Rose

... Petitioner

Vs.

1.The State of Tamil Nadu
rep. by its Secretary,
Department of School Education,
Fort St.George, Chennai-600 009.

2.The Director of School Education,
College Road,
Chennai-600 006.

3.The Chief Educational Officer,
Nagercoil-629 001,
Kanyakumari District.

4.M.K.Kabeer,
The Chief Educational Officer,
Nagercoil-629 001,
Kanyakumari District.

5.The District Educational Officer,
Nagercoil-629 001,
Kanyakumari District.



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6. The Additional Sub Treasury Officer,
Thovalai & Boothapandy,
Kanyakumari District-629 852.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records relating to the impugned charge memo issued by the third respondent Chief Educational Officer in Na.Ka.No.5936/A2/2018, dated 08.07.2021 and quash the same.

For Petitioner : Mr.Isaac Mohanlal
Senior Counsel
for M/s.Isaac Chambers

For Respondents : Mr.J.Ashok
Additional Government Pleader

ORDER

Heard the learned Senior Counsel appearing for the petitioner and the learned Additional Government Pleader appearing for the respondents.

2. The writ petitioner was working as Headmistress in Government High School, Boothapandy, Thovalai, Kanyakumari District in the year 2021. In the said school, including the petitioner, totally nine teachers were employed. Two teachers, namely, Mrs.F.Judes Leely Placida and Mrs.A.Virgin were already working in the school, when the petitioner joined the same in July 2018. The writ petitioner had been presenting their salary bills in the Sub Treasury,



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Thovalai and getting their salary also disbursed. However, issue arose in the month of April 2021. When the petitioner presented the salary bill in respect of the said two teachers, it was returned by the Additional Sub Treasury Officer, Thovalai on the ground that the petitioner must also furnish the proceedings of the Director of School Education indicating continuation of their posts even beyond 31.03.2021. Such proceedings had not been received by the writ petitioner. The treasury bill that was presented on 13.05.2021 was returned on 18.05.2021. The petitioner re-presented the same on 27.05.2021. Again it was returned on 31.05.2021. Since the said two teachers had not received their pay for the months of April and May, they lodged a complaint before the Chief Educational Officer, Nagercoil. In the meanwhile, the petitioner also wrote a letter bearing Na.Ka.401/2021, dated 21.05.2021 to the CEO, Nagercoil informing him about the return of the salary bill and seeking “continuation order” from the Director of School Education. The third respondent herein vide letter dated 04.06.2021 directed the petitioner to take steps for getting their salary released and also offer explanation as to why salary could not be disbursed to them. The petitioner submitted her explanation on 07.06.2021. Not satisfied with the same, the CEO reminded the petitioner that vide G.O.Ms.No.157, School Education Department, dated 05.09.2019, the posts in question had already been made permanent and instructed the petitioner to take



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emergent steps for getting their salaries for the months of April and May, 2021 released. In response thereto, the petitioner submitted a letter dated 12.06.2021 informing the third respondent that only if the continuation order is obtained for the period beyond 31.03.2021, she will be able to take steps. This explanation was not taken kindly by the CEO who expressed his displeasure vide communication dated 17.06.2021 and called upon the petitioner to offer her explanation within two days. The petitioner was warned that in the event of failure to do so, disciplinary action will be taken against her. It appears that the petitioner did not engage herself in further correspondence with the third respondent. The third respondent thereupon issued the impugned charge memo dated 08.07.2021. Challenging the same, the present writ petition has been filed.

3. The learned Senior Counsel appearing for the petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition and contended that the petitioner had not committed any act of misconduct and that the very issuance of the charge memo is a clear act of malice on the part of the third respondent. He called upon this Court to set aside the same.



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4. The respondents have filed a detailed counter affidavit. The learned Additional Government Pleader took me through its contents. The core argument of the learned Additional Government Pleader is that the petitioner could have re-presented the salary bill by enclosing G.O.Ms.No.157, School Education Department, dated 05.09.2019; that the petitioner was having knowledge of the said G.O is evident from her letter dated 12.06.2021. The learned Additional Government Pleader made available the copy of the proceedings whereby the petitioner's successor M/s.Dhanammal was able to get salary released on the strength of the aforesaid G.O.Ms.No.157, School Education Department, dated 05.09.2019. His contention is that when the CEO who is a superior authority had given specific instruction to get the salary released by citing G.O.Ms.No.157, School Education Department, dated 05.09.2019, nothing stopped the petitioner from doing so. Since the petitioner did not comply with the direction of the CEO, the third respondent was constrained to issue the impugned charge memo. He would also add that the Writ Court should be extremely reluctant to interfere at the stage of the charge memo. He pressed for dismissal of the writ petition.

5. I carefully considered the rival contentions and went through the materials on record. The stand of the respondents is that in view of



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G.O.Ms.No.157, School Education Department, dated 05.09.2019, there was no need for any “continuation order” from the Director of School Education in respect of the posts in question beyond 31.03.2021. I went through the contents of the aforesaid G.O. If the stand of the respondent is correct, then, there was no need for the Director of School Education to have issued the proceedings bearing R.C.No.001514/L/E3/2021, dated 05.01.2021. The said proceedings reads as follows:-

“Proceedings of the Director of School Education, Chennai

R.C.No.001514/L/E3/2021, Dated 05.01.2021

Sub: School Education-Temporary Posts Sanctioned-High School and Higher Secondary Schools-Teaching and Non-Teaching post Sanctioned Temporary Posts Continuation Orders from 01.01.2021 awaited from Government Certificate for a period of 3 months from 01.01.2021 issued regarding.

Ref: 1.G.O.(1D).No.377, School Education (SE5(1) Department dated 18.05.2018.

2. G.O.(1D)No.479, School Education (SE5(1)) Department dated 02.07.2018.

The under mentioned officers are hereby informed that the orders of Government Sanctioning further continuance of certain High School and Higher Secondary School-Teaching and Non-Teaching Temporary Post beyond 31.12.2020 as particularized in the enclosed certificates are awaited.

The Certificate as prescribed with reference to paragraph 3 of G.O.Ms.No.104, Finance (D) Department, dated 20.01.1974 for the drawls of



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Pay and Allowances of the incumbents in their Temporary Posts is in order to draw and disburse the pay and allowances of the incumbents for a period of three months from 01.01.2021.

Orders of Government Sanctioning further Continuance to temporary posts from 01.01.2021 will be communicated on its receipt.

Director of School Education

To
The Chief Educational Officer Concerned.
All District Treasury Officer Concerned.
The Pay and Accounts Officers, Chennai (South/North/East) & Madurai.
The Commissioner of Treasuries and Account, Chennai-15.
The Assistant Pay and Accounts Officer, Chennai Corporation, Chennai-3.”

6. The petitioner was, therefore, justified in her stand that “continuation order” is required. The petitioner had joined the School in question in July 2018. For full two years and eight months, it was she who was getting the salary in respect of the two teachers released. Therefore, no motive can be attributed against the writ petitioner. It is not the case of the authority that the writ petitioner willfully stopped release of their salary. It was the sub treasury official who returned the salary bill presented by the petitioner not once but twice. That is why, in her letter dated 12.06.2021, she informed CEO, Nagercoil that if the petitioner re-presented the salary bill without complying with the earlier return, there was a possibility of action being initiated against



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her. The petitioner is a lady and she is virtually on the verge of retirement.

Hence, she was hesitant to re-present the very same salary bill for the third occasion. “Once bitten, twice shy” is an old adage. The treasury had said “No” to the petitioner twice. It is also seen that there was a rapid-fire exchange between the CEO and the writ petitioner. It culminated into issuance of the impugned charge memo. It is true that the writ Court does not quash the charge memos at the drop of a hat. But if the element of pre-determination is evident, then, it is certainly a ground to interfere.

7. The charge memo runs to three pages. I carefully went through the entire contents. The third respondent after narrating all the antecedent developments concluded that the writ petitioner had committed the act of misconduct set out in the charge memo. The first charge is that the petitioner had misused her power. The second charge is that she had disobeyed the written instructions of the superior officer. The third charge is also allied to the second charge. The charge memo reads that it has been confirmed that the petitioner had committed all these three acts of misconduct. On the very same day, the petitioner was also transferred to another school. A copy of the transfer order has been enclosed in the typed set of papers. In the said transfer order, it has been mentioned that since during enquiry, it had been revealed that the



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petitioner had committed the aforesaid acts of misconduct, she was being transferred due to administrative reasons. A reading of the charge memo and the transfer order leads one to the irresistible conclusion that the disciplinary authority had already made up his mind as regards the guilt of the petitioner. This is not the way in which the charge memo can be issued. The disciplinary authority must frame the articles of charge and then give full opportunity to the delinquent to defend herself. In this case, even while issuing the charge memo, the disciplinary authority had also condemned the petitioner.

8. Since the charge memo is vitiated by the vice of pre-determination, it is quashed. The Writ Petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

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Index : Yes / No

Internet : Yes/ No

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Issue Today (02.11.2022)

To

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Fort St.George, Chennai-600 009.

2.The Director of School Education,
College Road,
Chennai-600 006.

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G.R.SWAMINATHAN, J.

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