



WP (MD) No.15341 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 08.07.2022

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CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P. (MD) No.15341 of 2021

and

W.M.P. (MD) No.15079 of 2021

Sri Ramakrishna Chidambareswarar
Higher Secondary School,
Rep. by its Secretary,
Swami Niyamanada

: Petitioner

Vs.

- 1.The Joint Director,
Higher Secondary Education,
College Road,
Chennai - 6.
- 2.The Chief Education Officer,
Tuticorin.
- 3.The District Education officer,
Tiruchendur,
Tuticorin.
- 4.I.Balakrishnan

: Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India seeking issuance of Writ of Certiorarified Mandamus calling for the records of the impugned order of the first respondent in Na.Ka.No. 001842/W5/E2/2021, dated 12.07.2021, confirming the order of the second respondent and quash the same and



consequently, direct the respondents 1 & 2 to give prior permission to impose the punishment of removal from service against the fourth respondent.

For Petitioner : Mr.H.Arumugam

For Respondents : Mr.P.T.Thiraviam,
Government Advocate
for R.1 to R.3

Mr.T.Lajapathi Roy
for R.4

ORDER

The petitioner School is a Higher Secondary School established by Ramakrishna Thapovanam, Thirupparaithurai. The fourth respondent is a PG Teacher (Tamil) employed in the said School. The School Management has initiated seven charges as against the fourth respondent as follows:-

"Charge No.1:- Failed to submit the death certificate of mother even after expiry of 4 months and 10 days but claimed the income tax benefit by giving false details.

Charge No.2:- Changing the name as I.Baladeva by conversion of religion and obtained benefit of purchasing other Christian minority Schools and acted as the Correspondent of the School in the name of I.Baladeva without informing the School and subsequently changed the name as I.Balakrishnan,



that is also without informing the School.

Charge No.3:- Non submission of any explanation for the show cause notice and charge memo more than 2.5 years for the charges and not responding to the communication of the Secretary of the School.

Charge No.4:- Tampering of Service Register by cancelling the entry made by the Secretary and affixing the order of DEO in the Service Register without informing the School.

Charge No.5:- Furnishing false details in Page No.20 of the Service Register and acting in violation of the Government Rules by making endorsement in most disrespect to the Secretary of the School.

Charge No.6:- Acting against the interest and goodwill of the School by giving false news in a newspaper through puppets and also making false allegation against the School and as well as Management.

Charge No.7:- Sending false complaint in the name of third person, namely, Avudaiyappan with an intention to degrade the good will of the School."

2.After conducting enquiry, the School Management proposed to dismiss the fourth respondent from service on 09.10.2018 and also sought prior approval from the second



respondent, as per Section 22 of the Tamil Nadu Private Schools (Regulation) Act, 1972. In the meantime, the fourth respondent was suspended from service on 16.10.2018, as he refused to revalue the quarterly answer sheets of 11th & 12th Students. The second respondent by order dated 02.11.2020 refused to give approval and rejected the petitioner's proposal. Aggrieved over the same, the petitioner preferred an appeal before the first respondent as per Sections 23 r/w 41 of the Tamil Nadu Private Schools [Regulation and Administration] Act, 1972, which was also dismissed by order dated 12.07.2021. Hence, this writ petition.

3. According to the petitioner School, the fourth respondent has been employed with them as PG Teacher (Tamil), in the name of I. Balakrishnan. Without obtaining permission from the School or the Government, he converted and changed his name as I. Baladeva, in violation of G.O. Ms. No. 198, Personnel and Administrative Reforms Department, dated 18.08.1998 and has also purchased a Christian Minority School, namely, "The Sacred Heart Sarada Middle School" at Pallakurichi and functioned as Secretary of the School. He also applied for grant from the



Government for the School, by stating that his name is I.Baladeva and he is a Christian. Parallely, he attended the petitioner School and worked as PG Teacher in the name I.Balakrishnan. When the same came to light, the fourth respondent again reconverted on 21.05.2014, by changing his name to I.Balakrishnan. Apart from the above, the fourth respondent failed to evaluate the half-yearly examination papers properly and has used unparliamentary words in the answer sheets.

4. Therefore, a charge memo was issued as against the fourth respondent in the year 2014 and after enquiry, a punishment of three years increment cut with cumulative effect was imposed as against him. The said punishment was challenged by the fourth respondent by filing WP (MD) No.2201 of 2015, however, the same was withdrawn on 21.03.2016. In the meantime, the fourth respondent, by taking advantage of his position as State Secretary in the Post Graduate Teachers' Association, influenced the authorities to pay his salary without any increment cut. In this regard, the third respondent has also passed an order in Na.Ka.No.PC/2016, dated 08.09.2016 on a representation made



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by the Association and the same was challenged by the School in WP (MD) No.8465 of 2018, which is pending consideration.

5. Learned Counsel appearing for the petitioner submitted that the fourth respondent, apart from the above, has also committed various misdeeds in acting against the interest of the School as well as Student's education, filing false cases through puppets against the institution, tampered the service register and not valued the answer sheets of the students properly, etc. Therefore, a charge memo was issued on 12.09.2016 and enquiry was contemplated. However, the fourth respondent did not co-operate for the enquiry with the intention to avoid the same. After conducting enquiry, the School Committee dropped the first charge and held that all other charges have been proved and resolved to dismiss the fourth respondent from service. Accordingly, the School sent a proposal on 14.12.2018 to the second respondent and sought prior approval, as required under Section 22 of the Tamil Nadu Private Schools (Regulation) Act, 1972. Instead of taking a decision on the proposal for dismissal, the respondents 2 & 3 kept the same



in abeyance and since the fourth respondent was about to reach the age of superannuation on 31.05.2019, the School filed WP (MD) No.9698 of 2019 for a mandamus directing the respondents 2 & 3 to pass final orders on the proposal. This Court, by order dated 24.04.2019, directed the respondents to pass orders within a period of four weeks. However, the second respondent has passed an order only on 02.11.2020 and that too, refused to give approval. The first respondent has also mechanically confirmed the order of the second respondent.

6.He further submitted that the first respondent while dismissing the appeal, has held that the details of the proceedings with respect to the present charge has not been submitted, which is not correct. The entire records, viz., show cause notice, charge memo, explanation received, enquiry report and explanation for the same, along with the proposal for punishment sent to the second respondent, were sent along with the appeal petition filed before the first respondent through registered post. Even assuming that the records have not been properly enclosed along with the appeal, the first respondent ought to have sought for the



same before deciding the appeal. However, the first respondent has summarily rejected the appeal, without any enquiry and without even providing an opportunity as contemplated under Section 43(2) of the Tamil Nadu Private Schools (Regulation) Act, 1972. Therefore, he prayed for appropriate orders.

7.Learned Counsel appearing for the fourth respondent submitted that with regard to the allegation of name change and running a Christian Minority Institution, already a charge memo was issued and a punishment of three years increment cut was imposed on 21.09.2014. Though the fourth respondent has challenged it by filing WP(MD)No.2201 of 2015, he withdrew the writ petition on 21.03.2016, on the advise of the Management. The third respondent / District Educational Officer has also passed an order dated 08.09.2016, directing the Management to pay the salary without any increment cut. Now, for the very same issue, the School has issued the charge memo again.

8.According to the learned Counsel, when the fourth respondent attended the enquiry, he was assaulted by the



Secretary of the School and on his complaint, a criminal case was also registered as against the Secretary of the School and 14 others in Cr.No.199 of 2018 on 16.10.2018 on the file of the Kulasekarapattinam Police Station. In fact, a decision was taken on 09.10.2018 itself by the School to dismiss the fourth respondent, even before the suspension order dated 16.10.2018. Without any enquiry and without even providing him an opportunity, the order of suspension and the proposal for dismissal were made, in violation of principles of natural justice.

9.He further submitted that the fourth respondent is presently aged about 60 years and attained the age of superannuation on 31.05.2019 itself. Therefore, the question of granting prior approval for dismissal after 31.05.2019 will not arise and it has become infructuous. It was rightly rejected by the first respondent and requires no interference.

10.Learned Government Advocate appearing for the official respondents, by relying upon the counter affidavit filed by them, submitted that there was a strained



relationship between the petitioner School Management and the fourth respondent with regard to the promotion as Headmaster. The fourth respondent has filed a writ petition as against the Management, which led to the increase of frictions. With regard to the charges levelled, learned Government Advocate submitted that for the charge of alleged impersonation, already a charge memo was issued and punishment was also imposed, though it was not approved by the Department. Therefore, for the very same issue, another charge memo could not be issued. Except this issue, all other charges are flimsy, however, the proposed punishment is not in proportion with the charges levelled. Hence, permission was denied.

11.This Court paid it's anxious consideration to the rival submissions and also perused the available materials.

12.In the present writ petition, seven charges are levelled as against the fourth respondent, of which, the first charge was dropped as not proved and the remaining charges were said to have been proved. Of the six charges, the main charge is that the fourth respondent, namely,



I.Balakrishnan, who is employed in the petitioner School as PG Teacher (Tamil), has converted and changed his name as I.Baladeva, purchased a Christian Minority School, namely, The Sacred Heart Sarada Middle School and functioned as its Secretary. On the one hand, he attended the petitioner School as I.Balakrishnan, worked as PG Teacher (Tamil) and received aid and on the other hand, he attended The Sacred Heart Sarada Middle School as I.Baladeva and worked as its Secretary.

13.This charge is of very serious in nature. Article 30 of Constitution of India ensures the right of minorities to open their own institutions for cultural, linguistic and religious protection. Several economic empowerment schemes are provided by the Government for minorities. Minority educational institutions are exempted from constitutional reservation for SCs, STs, and OBCs as required to be done by other educational institutions (Art 15(5)). In respect of control over representatives, minority educational institutions have substantially more power than other institutions. In case of admission of students, minority educational institutions can have reservation upto 50% for



the students of their own community. Apart from the above, several others grants are also provided by the Government. It appears that in order to have such power / aid, the fourth respondent, converted as a Christian and changed his name as I.Baladeva, purchased a Minority Institution, acted as its Secretary, while he continued to serve in the petitioner School as PG Teacher in the name I.Balakrishna.

14.As rightly pointed out by the respondents, this issue has already been raised in the charge memo issued in the year 2014 itself, in which, after enquiry, a punishment of three years increment cut was imposed with cumulative effect. This Court is of the considered opinion that the punishment imposed therein is not in proportion with this charge. A severe punishment ought to have been imposed for such mischief, if proved. In fact, this charge not only needs to be enquired by the School Committee, but a criminal prosecution ought to have been initiated.

15.It appears that even this punishment of three years increment cut was not given effect to. On a representation made on behalf of the Tamil Nadu Post Graduate Teachers'



Association dated 17.08.2016, the third respondent / District Education Officer, by proceedings dated 08.09.2016, directed the petitioner School not to cut any increments. It is to be noted that the representation was not made by the fourth respondent / the Teacher concerned, nor the School has sent any proposal to the third respondent seeking approval of the punishment imposed, but, on a representation made by the Association, such a direction came to be issued. The petitioner School has raised a ground that the fourth respondent, being the State Secretary of the Association, influenced the authorities to direct the School not to cut any increments. Curiously, in this proceedings dated 08.09.2016, the third respondent has not made any observations with regard to the allegation of impersonation.

16.Be that as it may, this proceedings dated 08.09.2016 is already put into challenge before this Court in WP(MD)No.8465 of 2018 and the said writ petition is pending consideration. Since this particular issue has already been seized off in an earlier writ petition, this Court refrains from passing any orders in this writ petition in this



regard. Since a charge has already been raised for this allegation and the matter is also pending consideration before this Court, the petitioner ought not to have raised the very same charge in the subsequent proceedings. Therefore, this Court deletes Charge No.2 from the charge memo dated 12.09.2016.

17.Apart from this charge, the allegations for the remaining charges are light in nature. It appears that the first respondent, without providing an opportunity of hearing to the petitioner, has passed the impugned order of rejection and as such, the matter needs to be remanded back. Even otherwise, the punishment proposed is not in proportion with the charges available, since this Court has now deleted a major charge and therefore, the matter needs to be decided afresh by the School Committee.

18.In view of the foregoing discussions and reasonings, the impugned order passed by the first respondent dated 12.07.2021, confirming the order passed by the second respondent dated 02.11.2020, is hereby set aside. The Charge No.2 in the charge memo issued by the School



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Committee dated 12.09.2016 is hereby deleted and the matter is remanded back to the petitioner School for fresh consideration. The School Committee shall conduct the enquiry afresh by affording due opportunity of hearing to the fourth respondent. The fourth respondent is directed to co-operate for the enquiry to be conducted by the School. The petitioner / School, after conducting enquiry, shall take a decision afresh, by following the procedures established under law. Insofar as the allegation of impersonation is concerned, it is open to the petitioner to agitate the same in the pending writ petition in WP(MD)No. 8465 of 2018.

In the result, this writ petition stands disposed of. No costs. Consequently, connected miscellaneous petition stands closed.

Index : Yes / No
Internet : Yes
gk

08.07.2022

To

1.The Joint Director,
Higher Secondary Education,
College Road,
Chennai - 6.



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B. PUGALENDHI, J.

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