



W.P(MD)No.18927 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.09.2022

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.18927 of 2022

and

W.M.P.(MD)No.13812 of 2022

N.Gomagan

... Petitioner

Vs.

1.The Chief Educational Officer,
Ramanathapuram District,
Ramanathapuram.

2.The District Educational Officer,
Mandapam Educational District,
Ramanathapuram.

3.M.Murugammal,
District Educational Officer,
O/o. District Educational Officer,
Mandapam Educational District,
Ramanathapuram.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling for the records to the impugned order passed by the 2nd respondent in his proceedings in R.C.No.978/A4/2022 dated 29.07.2022 and quash the same as illegal.



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For Petitioner : Mr.Ajmal Khan, Senior Counsel,
For M/s.Ajmal Associates.

For Respondents : Mr.N.Satheeskumar,
Addl. Government Pleader.

ORDER

Heard the learned senior counsel for the writ petitioner and the learned Additional Government Pleader for the respondents 1 and 2. The second respondent has been named in her personal capacity also.

2.The writ petitioner questions the impugned order of suspension dated 29.07.2022. The petitioner joined service as Secondary Grade Teacher on 17.06.1991 and he was promoted as Headmaster on 10.10.2005. He is presently working as Headmaster of Panchayat Union Primary School, Akkidavalasai, Mandapam Union, Ramanathapuram District. The second respondent has issued the impugned order dated 29.07.2022 suspending the petitioner from service, since an enquiry into grave allegations against him were contemplated. The learned senior counsel for the petitioner submitted that the charge memo had subsequently been issued against the writ petitioner on 05.08.2022 and that therefore the ground on which the impugned suspension order was issued may no longer survive.



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3.I cannot accept this contention. It is true that the suspension order was issued in contemplation of issuance of charge memo. But the issuance of charge memo subsequently will not render the suspension order infructuous. It would be operative till such time the disciplinary proceedings are concluded or is revoked earlier by the disciplinary authorities **[2013 SCC Online Cal 17775 (Vinay Kumar Sinha Vs. Union of India and Others)]** The suspension order will have to be questioned on independent grounds.

4.The learned senior counsel submitted that the suspension order is vitiated by malafides. He also added that there is no warrant or justification for keeping the petitioner under suspension any further. He took me through the averments set out in the affidavit filed in support of the writ petition and called upon this Court to quash the impugned order and direct reinstatement of the writ petitioner.

5.The respondents have filed a detailed counter affidavit. The allegation of malafides have been denied. The learned Additional Government Pleader for the respondents submitted that one of the allegations made against the writ petitioner is that Government grants credited to the account of the school



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management committee had been withdrawn even though resolutions were not passed for such withdrawal. Since allegations of financial impropriety are involved, it is only just and proper that the petitioner is kept under suspension till he comes clean. He pressed for dismissal of the writ petition.

6.I carefully considered the rival contentions and went through the materials on record.

7.Let me take up the question of malafides. The primary contention urged by the learned senior counsel is that the Chief Educational Officer, Ramanathapuram District passed an order dated 09.09.2021 directing the petitioner to open an account in Ramanathapuram Branch of Canara Bank. According to the petitioner, the Panchayat Union Primary School, Akkidavalasai is already having bank account in Indian Overseas Bank in Mandapam itself. The Ramanathapuram Branch of Canara Bank is situated at a distance of 25 Kms from the school and that therefore opening a new account in the said branch will not be convenient. He therefore filed W.P.(MD)No.18427 of 2021 challenging the said direction issued by the Chief Educational Officer, Ramanathapuram District. The said writ petition is still pending. According to the learned senior counsel, only because the petitioner dared to challenge the



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direction of the Chief Educational Officer, Ramanathapuram District, the impugned suspension order has been issued. He would state that immediately after suspending the writ petitioner from service, on the very next day a new account was opened in Ramanathapuram Branch of Canara Bank.

8.The aforesaid contention advanced by the learned senior counsel does appear to be having some force. At the same time, the standards for establishing an allegation of malafides are fairly high. W.P.(MD)No.18427 of 2021 was filed by the writ petitioner way back in 2021. The impugned order of suspension was passed only in July 2022. This substantial time gap in my view does considerably weaken the allegation of malafides. I therefore reject the allegation of malafides made by the writ petitioner against the third respondent.

9.It was further argued that the District Educational Officer, Mandapam Educational District, Ramanathapuram had acted under dictation. This was sought to be substantiated by contending that in the suspension order, there is a reference to the communication dated 28.07.2022 issued by the Chief Educational Officer, Ramanathapuram District. I therefore directed the learned Additional Government Pleader to produce a copy of the said communication. I went through the said communication. The Chief Educational Officer,



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Ramanathapuram District had nowhere directed the second respondent to suspend the writ petitioner. I therefore cannot accept the stand of the learned senior counsel that the second respondent had acted under dictation.

10. Even though I have rejected the aforesaid contentions of the learned senior counsel, I find that the writ petition has to be allowed on the final contention. It has been strongly urged that there is absolutely no justification in keeping the petitioner under suspension.

11. As I already noted, the charge memo contains two articles of charges. The first article of charge is that the petitioner did not properly correct the answer sheets of a fourth standard student and a fifth standard student. I went through the answer sheets. The question involved filling in the blanks, the child concerned had erroneously spelt the word crocodile. Letter “o” was missing. The writ petitioner has circled the said answer in green ink indicating that the word has not been correctly spelt. However, he had given full mark to the child. Likewise when matching the rhyming words, instead of writing “hot” the answer looks like “not”. This answer has also been circled by the writ petitioner but full mark has been given. I am more than satisfied that the children concerned knew the correct answer but while writing, they had



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committed a minor error. I must congratulate the petitioner for adopting such a sensitive approach. Such nitpicking on the part of the second respondent shocks my judicial conscience. As regards the other charge, the grant amounts are not really substantial. It is firmly asserted by the petitioner and materials have also been placed before me indicating that resolutions were passed by the school management committee for withdrawing the amounts in question. In any event, I am not concerned with the validity of the charge memo. It is for the petitioner to establish his innocence in a regular enquiry. But the question that arises for my consideration is whether the petitioner should continue to be under suspension. The suspension order was passed on 29.07.2022. Subsequently charge memo has also been issued. The second charge has to be proved on the basis of documentary evidence. Considering the nature of charges, it is absolutely unnecessary to continue to keep the petitioner under suspension.

12. In this view of the matter, I direct the second respondent to reinstate the petitioner forthwith and without any other delay. Regarding the treatment of the suspension period, the same shall abide by the outcome of the enquiry. I would expect the disciplinary authority to drop the first article of charge and confine the enquiry to the second article of charge alone.



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G.R.SWAMINATHAN, J.

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13.The writ petition is allowed on these terms. No costs. Consequently, connected miscellaneous petition is closed.

20.09.2022

Index : Yes / No

Internet : Yes/ No

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To:

- 1.The Chief Educational Officer,
Ramanathapuram District,
Ramanathapuram.
- 2.The District Educational Officer,
Mandapam Educational District,
Ramanathapuram.

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