



W.P.(MD) No.19110 of 2020

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.06.2022

CORAM

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.(MD) No.19110 of 2020
and W.M.P.(MD).Nos.15978, 15979 & 15982 of 2020

V.Suresh

.. Petitioner

Vs.

- 1.The Principal Secretary to Government,
School Education,
Secretariat, Chennai.
- 2.The Director of School Education,
DPI Campus,
College Road, Chennai.
- 3.The Chief Educational Officer,
Nagercoil,
Kanniyakumari District.
- 4.The Chief Educational Officer,
Virudhunagar District.

.. Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India to issue a writ of Certiorarified Mandamus, calling for the records and to quash the impugned G.O.(ID)No.188 dated 27.11.2020, passed by 1st respondent and



W.P.(MD) No.19110 of 2020

consequently, direct the respondents to include petitioner's name in the panel of list for the academic year 2019-2020 for the post of Government Higher Secondary School Headmaster.

For Petitioner : Mr.R.Murali

For Respondents : Mr.S.Shaji Bino
Special Government Pleader

ORDER

Heard the learned counsel appearing for the petitioner and the learned Special Government Pleader appearing for the respondents.

2. The charge against the petitioner through the charge memo, dated 10.02.2015, was to the effect that the petitioner herein, while working as Personal Assistant to the Chief Educational Officer, had taken the Certificate of Transfer of Charges (CTC) related files from the Superintendent and handed over it to the relieved Chief Educational Officer, without the knowledge of the concerned Assistant and Superintendent, which is against the office procedure. For the same incident, the out going Chief Educational Officer, as well as the Assistant, were also implicated with separate charges.



W.P.(MD) No.19110 of 2020

WEB COPY

In other words, all the three delinquents were implicated with the charges levelled around the same incident of the CTC being taken away by the outgoing Chief Educational Officer.

3. Through an order, dated 09.09.2015, the Joint Director (Personnel) was appointed as an Enquiry Officer. The appointment of the Enquiry Officer indicates that he was required to enquire into the delinquencies of the three delinquents. However, while the Enquiry Officer had chosen to enquire the petitioner separately and file his final report on 22.06.2016, holding all the charges against the petitioner as proved, the enquiry against the outgoing Chief Educational Officer was kept pending and after the final report against the petitioner was filed, the charges against the outgoing Chief Educational Officer was held to be proved through an enquiry report, dated 22.01.2019. Based on the proven charges, the petitioner was imposed with a punishment of stoppage of increment for a period of one year with cumulative effect through the impugned order, dated 27.11.2020, which is under challenge in the present writ petition.



W.P.(MD) No.19110 of 2020

WEB COPY

4. When the charges against the petitioner herein, as well as the Chief Educational Officer revolving around the same incident and the Enquiry Officer was also appointed for the purpose of conducting an enquiry into the incident against the delinquents, such an enquiry ought to have been conducted jointly, since the charges are interrelated to each other.

5. In the case of ***R.Rajkumar Vs. The Commissioner of Police, Trichy City, Trichy*** reported in ***2014 (2) CTC 769***, a Hon'ble Division Bench of this Court had held that the respondents cannot conduct a departmental enquiry in a piece-meal manner according to their whims and fancies.

6. Likewise, in the case of ***Balbir Chand Vs. Food Corporation of India Ltd.*** and others reported in ***(1997) 3 SCC 371***, the Hon'ble Supreme Court had held that when there are more than one delinquent officers involved in the disciplinary proceedings, a common enquiry requires to be conducted and splitting up of the cases between the co-delinquents, should not be encouraged. The relevant portion of the order reads as follows:



WEB COPY



W.P.(MD) No.19110 of 2020

“5. It is contended that when one delinquent officer seeks to summon other delinquent who is charged on the common cause of action or for the misconduct committed during the course of the same transaction or to summon more than one officer jointly, the petitioner should be given an opportunity of splitting up the matter and to contend that common enquiry has thereby caused grave prejudice to the petitioner denying him the opportunity to summon the officer to substantiate his defence. We find no force in the contention. It is seen that these are only instructions in conducting the proceedings as guidelines. When more than one delinquent officer are involved, then with a view to avoid multiplicity of the proceedings, needless delay resulting from conducting the same and overlapping adducting of evidence or omission thereof and conflict of decision in that behalf, it is always necessary and salutary that common enquiry should be conducted against all the delinquent officers. The competent authority would objectively consider their cases according to Rules and decide the matter expeditiously after considering the evidence to record findings on proof of misconduct and proper penalty on proved charge and impose appropriate punishment on the delinquents. If one charged officer cites another



W.P.(MD) No.19110 of 2020

WEB COPY

charged officer as a witness, in proof of his defence, the enquiry need not per se be split up even when the charged officers would like to claim an independent enquiry in that behalf. If the procedure is adopted, normally all the delinquents would be prone to seek split up of proceedings in their/his bid to delay the proceedings, and to see that there is conflict of decisions taken at different levels. Obviously, disciplinary enquiry should not be equated as a prosecution for an offence in a criminal Court where the delinquents are arrayed as co-accused. In disciplinary proceedings, the concept of co-accused does not arise. Therefore, each of the delinquents would be entitled to summon the other person and examine on his behalf as a defence witness in the enquiry or summon to cross-examine any other delinquent officer if he finds him to be hostile and have his version placed on record for consideration by the disciplinary authority. Under these circumstances, the need to split on the cases is obviously redundant, time consuming and dilatory. It should not be encouraged. Accordingly, we do not find any illegality in the action taken.”



W.P.(MD) No.19110 of 2020

WEB COPY

7. On an overall consideration of the aforesaid two decisions, the procedure adopted by the Enquiry Officer in splitting the enquiry and deciding them separately between the co-delinquents, is impermissible.

8. When the petitioner herein was implicated with allegations that he had taken away the CTC files from the Superintendent and handed over to the Chief Educational Officer directly without the knowledge of the concerned Assistant and Superintendent, the charge against the out going Chief Educational Officer was that he had locked the Chief Educational Officer's room and computer room on 05.06.2015 at 09.00 a.m. itself and that the Chief Educational Officer himself had taken away all the CTC related files. The Enquiry Officer in order to establish the charges ought to have considered these contradictory statements against and in favour of the delinquents together. Such a procedure could have been to the advantage of the petitioner also, since he would have had the opportunity to use the statements of the co-delinquent, namely the out going Chief Educational Officer, to his advantage. So also, the statement of the witnesses and the co-delinquents at the time of enquiry may also stand to the advantage of the petitioner herein. Such an



W.P.(MD) No.19110 of 2020

opportunity has now been deprived to the petitioner, since the enquiry against him came to be completed in the year 2016 itself, while the co-delinquent Chief Educational Officer's enquiry was concluded much later, in the year 2019.

9. In this background, the appropriate course would have been to remand the matter back for reconsideration. However, it is now brought to the notice of this Court that the petitioner is due to retire this year and as such, remitting the matter back may cause further prejudice to the petitioner herein. In this background, if the punishment imposed on the petitioner is reduced to a lesser punishment, the ends of justice could be secured.

10. In this background, the impugned G.O.(ID)No.188 dated 27.11.2020, passed by 1st respondent stands quashed. Consequently, there shall be a direction to the first respondent herein to pass appropriate orders, against the petitioner, imposing a punishment of stoppage of increment for a period of one year, “without” cumulative effect, within a period of eight weeks from the date of receipt of a copy of this order.



W.P.(MD) No.19110 of 2020

WEB COPY

11. Accordingly, this writ petition stands partly allowed. No costs.

Consequently, connected miscellaneous petitions are closed.

22.06.2022

Index : Yes / No

Speaking Order/ Non Speaking Order

TM

To

- 1.The Principal Secretary to Government,
School Education, Secretariat, Chennai.
- 2.The Director of School Education,
DPI Campus, College Road, Chennai.
- 3.The Chief Educational Officer,
Nagercoil, Kanniyakumari District.
- 4.The Chief Educational Officer,
Virudhunagar District.



WEB COPY



W.P.(MD) No.19110 of 2020

M.S.RAMESH,J.

TM

W.P.(MD) No.19110 of 2020

22.06.2022