



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.06.2022

CORAM

THE HONOURABLE MR. JUSTICE M.S.RAMESH

W.P. (MD) .No.124 of 2018

and

W.M.P. (MD) .No.132 of 2018

S.Messiahs Antony Durairaj

... Petitioner

Vs.

- 1.The Government of Tamil Nadu,
Represented by its Principal Secretary,
Department of School Education,
Fort St.George,
Chennai - 600 009.
- 2.The Director of School Education,
D.P.I. Campus, College Road,
Nungambakkam,
Chennai - 600 006.
- 3.The Chief Educational Officer,
Thoothukudi,
Thoothukudi District.
- 4.The District Educational Officer,
Thoothukudi,
Thoothukudi District.
- 5.Tuticorin Diocesan Association,
Represented by its President,
Bishop of Thoothukudi,
Bishop's House, Thoothukudi - 628 001.
- 6.The Corporate Manager of R.C. School,
Tuticorin Diocesan Association,
Catholic Bishop's House,
No.82, Great Cotton Road,
Thoothukudi - 628 001.
- 7.St.Mary's Higher Secondary School,
Represented by its Correspondent,
Pothakalanvilai - 628 702,
Thoothukudi District.



8.The Headmistress,
St.Mary's Higher Secondary School,
Pothakalanvilai - 628 702,
Thoothukudi District.

9.G.Mutharasu,
Advocate/Enquiry Officer,
No.459, New Additional Law Chambers,
High Court Buildings,
Chennai - 600 104.

...Respondents

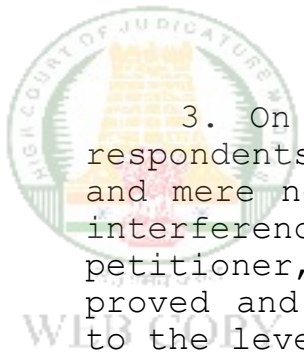
Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned Enquiry Report of the 9th respondent dated 09.10.2017 and the consequential dismissal order passed by the 6th respondent in Ref.No.2017/224, dated 21.11.2017 dismissing the petitioner from service, quash the same and direct the respondents to reinstate the petitioner into services.

For Petitioner	:	Mr.R.Anand for Mr.M.Saravanan
For R-1 to R-4	:	Mr.V.Nirmal Kumar, Government Advocate.
For R-5 to R-8	:	Fr.V.John Kennedy
For R-9	:	Mr.A.R.Kannappan

ORDER

On allegations of sexual abuse, the petitioner herein was implicated with two charges through the show cause notice dated 05.09.2017 calling upon the petitioner to render his explanation. Not being satisfied with the petitioner's explanation dated 08.09.2017, a charge memo came to be issued on 21.09.2017. On 23.09.2017, an enquiry officer was appointed, who had conducted an enquiry into the allegations, before whom, the Management had marked three evidences, namely, Exhibits A-1 to A-3 and examined two witnesses. On the side of the delinquent, he had examined himself as a witness and had marked two documents, namely, Ex.B1 and Ex.B2. Through the enquiry report dated 09.10.2017, both the charges were held to be proved, based on which, a dismissal order was passed on 21.11.2017, which is under challenge in the present Writ Petition.

2. The learned counsel for the petitioner raised a ground stating that the enquiry officer's report is not in consideration of the evidences before him and therefore, the consequential punishment requires to be set aside. He further submitted that though two witnesses were shown in the annexure to the charge memo, the victim girl, who is one among the two witnesses, was not examined.



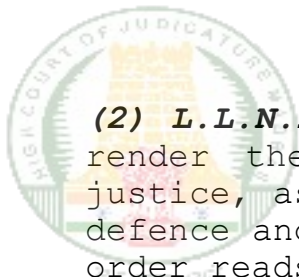
3. On the other hand, the learned counsels appearing for the respondents 5 to 9 submitted that the enquiry was properly conducted and mere non-examination of the victim girl cannot be a ground for interference. By placing reliance on the statement given by the petitioner, they submitted that the charges have been properly proved and therefore, the punishment of dismissal is in proportion to the levelled charges.

4. I have given careful consideration to the submissions made by the respective counsels.

5. A perusal of the enquiry report dated 09.10.2017 reveals that though the report goes to above 11 pages, the finding is in just one paragraph at Page 10. Apart from the recitals, the enquiry officer has narrated the marking of the documents on either side, but without discussing as to how the charges have been substantiated through the documents produced by the Management as well as the statement of their witnesses, has simply come to the conclusion that both the charges are held to be proved. Such a procedure in domestic enquiry is opposed to the basic principles in service rules. The very performance of conducting enquiry is to afford an opportunity to both the parties and the enquiry officer is required to weigh the evidences in hand, both oral and documentary and thereby, come to a conclusion as to whether the levelled charges have been substantially proved. No doubt, such a decision can be taken on an over all preponderance of probabilities. In the instant case, no such subjective satisfaction has been arrived at by the enquiry officer.

6. Thus, I am of the view that since the charges against the petitioner seem to be serious in nature, the ends of justice could be secured by remanding back the matter to the Management for conducting a fresh enquiry from the stage, after the petitioner had given his explanation to the initial show cause notice and the consequential framing of charges. In view of such a decision, this consequential punishment order cannot be sustained.

7. Insofar as the ground taken by the petitioner that the victim girl has not been examined in the domestic enquiry, is concerned, the same would not be fatal, since the material evidences came to be substantiated through the other witnesses named in the charge memo. This apart, the Hon'ble Supreme Court, in two decisions in the case of **Avinash Nagra Vs. Navodaya Vidyalaya Samiti and others** reported in **1998 (4) L.L.N. 961** as well as in the case of **State of Haryana Vs. Rattan Singh** reported in **(1977) 2 L.L.N. 50**, have disapproved conduct of proceedings exposing the students and modesty of the girl and held that, in a domestic enquiry, strict and sophisticated rules of evidence is not applicable. These two decisions were relied upon by the Hon'ble Division Bench of this Court in the case of **S.Tamiljeselvan Vs. Registrar, Tamil Nadu Central Administrative Tribunal, Chennai and others** reported in **2006**



(2) **L.L.N.272** and held that mere non-examination of victim does not render the dismissal as violatory in the principles of natural justice, as the petitioner had been given an opportunity to make his defence and participate in the enquiry. The relevant portion of the order reads as follows:

“7. While dealing with a similar case, wherein disciplinary proceedings were taken against a post-graduate teacher to terminate the services on the ground of his improper conduct with a girl student wherein the delinquent teacher was not given an opportunity to cross-examine and hence contended that the procedure adopted was in violation of the said legal principles of natural justice, the Supreme Court, in the case of *Avinash Nagra v. Navodaya Vidyalaya Samiti* and others reported in 1998 (4) L.L.N. 961, approved of the decision of the High Court confirming the order of dismissal. In the course of its judgment, while emphasizing the necessity of maintaining high degree of discipline and dedication in a profession which is endowed with a responsibility of imparting knowledge and moulding the calibre, character and capacity of the students to sustain them in later years of life as a responsible citizen in different responsibilities, the Supreme Court held:

“The fallen standard of the appellant is the tip of the iceberg in the discipline of teaching, a noble and learned profession. It is for each teacher and collectively their body to stem the rot to sustain the faith of the society reposed in them. Enquiry is not a panacea but a nail in the coffin. It is self-inspection and correction that is supreme. It is seen that the rules wisely devised have given the power to the Director, the highest authority in the management of the institution to take decision, based on the fact-situation, whether a summary enquiry was necessary or he can dispense with the services of the appellant by giving pay in lieu of notice.”

In the context of the facts found, the Supreme Court approved of the decision of the Director not to conduct the proceedings exposing the



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12. The Tribunal is not an appellate forum nor this Court under Article 226, to substitute its own inferences or go into the sufficiency or adequacy of evidence in support of the particular conclusion. On going through the various aspects of the matter, we are satisfied that there is no error committed, and the evidence relied on by the disciplinary authority is sufficient enough to support the conclusion arrived at. There is no manifest error of law to interfere with the order of the Tribunal."

8. Viewed from the light of the aforesaid decisions, the petitioner shall not insist that the victim girl in the present case, should be examined as a witness. On the other hand, the enquiry officer can proceed with the documentary and oral evidences, which are marked before him.

9. In the light of the above findings, the impugned order of punishment dated 21.11.2017 is set aside and the matter is remitted back to the sixth respondent for conducting a fresh enquiry. The sixth respondent is at liberty to appoint a fresh enquiry officer, who shall commence the enquiry on the basis of the show cause notice dated 05.09.2017, the petitioner's explanation dated 08.09.2017 and the subsequent charge memo dated 21.09.2017. The enquiry officer shall extend due opportunity to the petitioner during the course of enquiry and complete the enquiry at least within a period of three (3) months from the date of receipt of a copy of this order. Both the petitioner as well as the respondents herein are at liberty to make the documentary evidences already produced in the earlier round of enquiry, for the present enquiry to be conducted.

10. In view of the seriousness of the levelled charges, the petitioner will not be entitled for reinstatement and will be deemed to be under suspension till the final decision is taken in the matter.

11. This Writ Petition stands ordered accordingly. There shall be no order as to costs. Consequently, connected miscellaneous petition stands closed.

Sd/-

Assistant Registrar (C.O)

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/07/2022

Sub Assistant Registrar(CS)



- 1.The Principal Secretary,
The Government of Tamil Nadu,
Department of School Education,
Fort St.George,
Chennai - 600 009.
- 2.The Director of School Education,
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Nungambakkam,
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- 3.The Chief Educational Officer,
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- 4.The District Educational Officer,
Thoothukudi,
Thoothukudi District.

COPY TO:

G.Mutharasu,
Advocate/Enquiry Officer,
No.459, New Additional Law Chambers,
High Court Buildings,
Chennai - 600 104.

+1 CC to M/s.FATHER XAVIER ASSOCIATES, Advocate (SR-27007[F] dated 21/06/2022)

+1 CC to M/s.M. SARAIVANAN, Advocate (SR-27057[F] dated 21/06/2022)

+1 CC to M/s.SPL.GP (SR-27101[F] dated 21/06/2022)

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