



W.P(MD)No.23515 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.11.2022

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.23515 of 2022

and

W.M.P.(MD)No.17595 of 2022

P.Veeraselvi

... Petitioner

Vs.

**The Secretary / Deputy Commissioner,
Sri Meenakshi Sundareswarar Girls Hr.Sec. School,
Theppakulam,
Madurai-9.**

... Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned proceedings issued by the respondent in his proceedings in Se.Mu.Na.Ka. No.6906/2022/Aa3 dated 07.10.2022 and quash the same as illegal and consequently directing the respondent to promote the petitioner as P.G. Assistant (History) in the respondent school on the basis of the representation dated 01.07.2022 .

For Petitioner : Mr.B.Saravanan

**For Respondent : Mr.V.R.Shanmuganathan
Standing Counsel**



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ORDER

Heard the learned counsel on either side.

2. The writ petitioner is employed as PG Assistant in the respondent school. She questions the impugned charge memo dated 07.10.2022. The charge memo contains as many as five articles of charge.

3. The petitioner reiterated the contentions set out in the affidavit filed in support of the writ petition and called upon this Court to quash the impugned charge memo.

4. The respondent has filed the detailed counter affidavit and the learned counsel took me through its contents.

5. The primary contention putforth by the learned counsel appearing for the respondent is that this Court ought not to interfere at the stage of charge memo as factual aspects are involved. He also would contend that the allegation that the authority had already predetermined the issue is not correct. In Paragraph No.12 of the counter affidavit, this aspect has been specifically dealt with. He pressed for dismissal of the writ petition.



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

7. It is true that at the stage of charge memo, the writ court will be very reluctant to interfere. In the case on hand, the allegation is that the petitioner had adopted casteist approach. I called upon the petitioner to file an appropriate affidavit in this regard. The petitioner has today filed an affidavit and Paragraph No.3 of the affidavit reads as follows:-

“3. I respectfully submit that I respect all including the children studying in our school, the teachers and other staffs working in the school equally and I have never discriminated anyone on the basis of their caste, religion or creed. I strongly believe in the principle of equality enshrined in our constitution and I treat all equally. I have never uttered any casteist remarks against anybody and I will never ever utter any such remarks in future. I place on record that I respect and treat the people belonging to all castes and religions as my own brothers and sisters.”

8. There are certain circumstances, when the writ court will be justified in quashing the charge memo. Predetermination is one such ground. Even though in the counter affidavit, the respondent has asserted that he has formed only tentative conclusions and he has not predetermined the issue, a reading of the charge memo as a whole leads to a contrary conclusion.



9. The learned counsel appearing for the respondent contended that based on the manner in which charges have been formulated, one cannot come to the conclusion that the issue has already been decided. I do endorse the said contention. But here, the recital paragraphs preceding the charges condemn the petitioner in uncertain terms. That is why, I am constrained to interfere. The charge memo is vitiated by the vice of predetermination.

10. The Hon'ble Supreme Court in the decision reported in **(2006) 12 SCC 33 (Siemens Ltd Vs. State of Maharashtra and others)** held as follows:-

9. Although ordinarily a writ court may not exercise its discretionary jurisdiction in entertaining a writ petition questioning a notice to show cause unless the same inter alia appears to have been without jurisdiction as has been held by this Court in some decisions including *State of Uttar Pradesh v. Brahm Datt Sharma and Anr.* AIR 1987 SC 943, *Special Director and Another v. Mohd. Ghulam Ghouse and Another*, and *Union of India and Another v. Kunisetty Satyanarayana*, but the question herein has to be considered from a different angle, viz, when a notice is issued with pre-meditation, a writ petition would be maintainable. In such an event, even if the courts directs the statutory authority to hear the matter afresh, ordinarily such hearing would not yield any fruitful purpose. It is evident in the instant case that the respondent has clearly made up its mind. It explicitly said so both in the counter affidavit as also in its purported show cause.

10. The said principle has been followed by this Court in *V.C. Banaras Hindu University and Ors. v. Shrikant* stating:



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48. "The Vice Chancellor appears to have made up his mind to impose the punishment of dismissal on the Respondent herein. A post decisional hearing given by the High Court was illusory in this case.

49. In K.I. Shephard & Ors. etc. etc. v. Union of India & Ors. this Court held :

"It is common experience that once a decision has been taken, there is tendency to uphold it and a representation may not really yield any fruitful purpose."

11. A bare perusal of the order impugned before the High Court as also the statements made before us in the counter affidavit filed by the respondents, we are satisfied that the statutory authority has already applied its mind and has formed an opinion as regards the liability or otherwise of the appellant. If in passing the order the respondent has already determined the liability of the appellant and the only question which remains for its consideration is quantification thereof, the same does not remain in the realm of a show cause notice. The writ petition, in our opinion, was maintainable.

11. Respectfully applying the aforesaid ratio, the impugned charge memo is quashed. Since the respondent has already decided the issue, I do not want to remit it to the respondent himself. The department is given liberty to issue fresh charge memo, if advised. Since serious misgivings have been expressed against certain officials, considering the special facts and circumstances of this case, discretion to initiate fresh action is given to the Commissioner of HR & CE Department.



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G.R.SWAMINATHAN, J.

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12. The Writ Petition is allowed on these terms. No costs.

Consequently, connected miscellaneous petition is closed.

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