



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 25.03.2022

DELIVERED ON : 14.06.2022

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P. (MD)No.9076 of 2016

and

W.M.P. (MD)Nos.7215 to 7217 of 2016

Sis.Kala

... Petitioner

vs

1. The District Educational Officer,
Thanjavur District, Thanjavur.
2. The Assistant Elementary Educational Officer,
Office of the Assistant Elementary Educational Officer,
Pattukkottai,
Thanjavur.
3. The General Manager,
Diocese Schools, Bishop of Thanjavur & President,
Diocese of Tanjore Society.
4. The Correspondent,
St.Soosaiyappar Elementary School,
Sanjaya Nagar, Aladikkumulai Po, Pattukkottai Taluk,
Thanjavur District.
5. The Head Mistress,
St.Soosaiyappar Elementary School,
Sanjaya Nagar, Aladikkumulai Po, Pattukkottai Taluk,
Thanjavur District.
6. Thiru.P.Murugan,
Advocate,
Enquiry Officer For and On Behalf of
St.Soosaiyappar Elementary School,
Sanjaya Nagar, Aladikkumulai PO,
Pattukkottai Taluk, Thanjavur District. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records relating to the impugned charge memo of the fourth respondent dated 7.10.2015 and 18.01.2016 impugned enquiry report of the sixth respondent dated 25.01.2016 & 21.03.2016 and the consequent impugned order of termination by third respondent dated 20.04.2016 and quash the same as biased and statutory violations and



consequently direct the respondents 4 to 6 herein to reinstate the petitioner in service with all monetary and attendant benefits within a reasonable time.

WEB COPY

For Petitioner : Mr.R.Russel Raj
For Respondents : Mr.V.Omprakash for R1 & R2
Government Advocate
Mr.Rozario Sundarraaj for R3 & R4
Mr.C.Muthusaravanan for R5
No appearance for R6

O R D E R

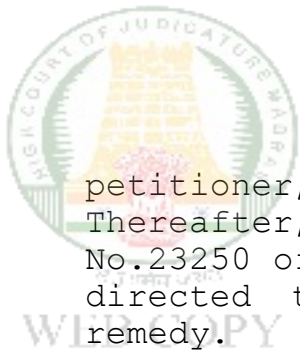
This Writ Petition is filed to quash the impugned charge memo issued by the fourth respondent dated 07.10.2015 and 18.01.2016, the impugned enquiry report of the sixth respondent dated 25.01.2016 and 21.03.2016 and the consequent impugned order of termination issued by the third respondent dated 20.04.2016 and consequently direct the respondents to reinstate the petitioner in service with monetary and attendant benefits.

2. The brief facts of the case are that the petitioner was appointed in the fourth respondent school as Secondary Grade Teacher on 15.10.1999 and she has put in continuous service of 16 years and the petitioner was receiving Rs.40,276/- as salary. The petitioner remitted her entire salary as charity for the fourth respondent school Management and the fourth respondent used to pay only Rs.350/- per month. The contention of the petitioner is that she has dedicated herself in rendering the service for the benefits of minority poor and welfare of the students and never utilized her salary received from the fourth respondent for her personal benefits. The contention of the petitioner is that in view of death of her uncle the petitioner took leave and subsequently on her continuous ill-health she was on leave from 19.09.2015. Before going on leave the petitioner informed to the President of State Council on 18.09.2015 at 7.00 pm., and also informed the same to the fourth respondent. The petitioner submitted a leave letter dated 19.09.2015 to the fourth respondent on 24.09.2015 by post, requesting to grant medical leave for 15 days from 19.09.2015 and has also enclosed the medical certificate. The fourth respondent has issued a show cause notice dated 22.09.2015, describing the petitioner's leave from 19.09.2015 as unauthorized leave. The petitioner submitted an explanation on 05.10.2015 explaining that in view of the death of her uncle and subsequently due to her sudden illness she took leave. The contention of the petitioner is that prior permission was also sought from the President of the State Council and also informed the same to the sixth respondent. In the said letter, the petitioner has requested the fourth respondent to grant medical leave up to 16.10.2015. In spite of the same, the



fourth respondent had issued a charge memo, dated 07.10.2015 alleging that the petitioner has not obtained medical certificate from the Government Doctor and also alleged that the petitioner has not submitted Clinical Examination and Reports and the status of the illness. For which the petitioner has submitted a reply dated 14.10.2015, requesting to accept the explanation and drop further action.

3. The contention of the petitioner is that subsequently on 19.10.2015 requested the fourth respondent to permit the petitioner to join duty on 19.10.2015, since the 17th and 18th being Saturday and Sunday. But the fifth respondent refused to allow the petitioner to join duty, denied work and prevented the petitioner from signing the Attendance Register and to discharge the duty on the ground that the disciplinary action has been taken against the petitioner. The contention of the petitioner is that the disciplinary action was initiated, a charge memo has been issued and the petitioner has submitted her explanation and decision on the explanation is pending. In such circumstances, it is totally unjustified and unreasonable on the part of the fourth respondent preventing the petitioner to join duty and discharge the work. Hence the petitioner submitted a representation to the second respondent dated 19.10.2015 by registered post stating that the fourth respondent has been preventing the petitioner from joining duty and discharging her duty. The contention of the petitioner is that during the pendency of disciplinary proceedings is not expected to deny work to the petitioner from 19.10.2015 despite her written explanation. Denial of work during the pendency of disciplinary action is violative of Fundamental Rights guaranteed under Article 311 (2) of the Constitution of India. The petitioner approached this Court by filing a writ petition in W.P.(MD)No.20022 of 2015. The said representation is pending and the fourth respondent has filed a detailed counter. The fourth respondent was appointed as an Enquiry Officer who is an Advocate and he is the sixth respondent in this petition. The sixth respondent, the Enquiry Officer has issued a notice on 05.12.2015 directing the petitioner to appear for enquiry on 15.12.2015. The petitioner also received a call through mobile number as if he was the Assistant Elementary Educational Officer and he questioned the petitioner how can the petitioner implead him as the first respondent in the above writ petition. Immediately the petitioner has preferred a complaint to the Superintendent of Police, on 10.12.2015 for taking action against the person and persons behind such anonymous calls. On 15.12.2015, the petitioner appeared before the enquiry officer and the enquiry officer compelled the petitioner to sign all the written pages where it has been stated that as if the petitioner is admitting all the charges. The claim of the petitioner is she refused to admit the charges which are all false and refused to sign the papers given by the sixth respondent. Since the sixth respondent compelled the



petitioner, she preferred a complaint before the second respondent. Thereafter, the petitioner has preferred a writ petition in W.P. (MD) No.23250 of 2015 praying to change of enquiry officer and this Court directed the petitioner to approach the fourth respondent for remedy.

4. In the meanwhile, the School Management has set up one R.Xavier, claiming to be father of a student of the fourth respondent School to allege that he had received a sum of Rs.20,000/- from the petitioner for interest of Rs.2/- per month and this act is amounting to violative of the Code of Conduct. Therefore, the fourth respondent issued another charge memo dated 18.01.2016. The petitioner was charged for another delinquency for lending Rs.20,000/- for interest. According to the petitioner, she was not having money at all, therefore, there is no question of lending money. Moreover, the petitioner is a Christian Nun and has dedicated her entire life to Christianity. Therefore, the petitioner has not indulged in any financial business.

5. The first respondent has filed a counter affidavit stating that the petitioner was appointed in the School Management. The petitioner has submitted the reasons for taking leave from 19.09.2015 onwards i.e., the death of the petitioner's Uncle and other reasons it is unbelievable, concocted story of the petitioner. The first respondent denied that the petitioner had informed to the fourth respondent for taking leave. The first respondent also denied the plea of the petitioner that the leave letter dated 19.09.2015 was submitted to the fourth respondent on 24.09.2015, vide post, requesting to grant medical leave for 15 days. The petitioner has taken unauthorized leave, thereafter, the fourth respondent has issued a show cause notice. Thereafter, the petitioner had sent a reply dated 05.10.2015. But no such leave letter has been sent to the fourth respondent and has not got further permission for the said leave. After the disputes arose between the petitioner and the second and third respondents, the above matter was not informed properly to the first respondent's office. Only thereafter it came to the knowledge of the first respondent about the disputes. Only after conducting the enquiry regarding the issue raised in this writ petition and also the petitioner's claim, the respondent has come to the conclusion that the plea cannot be considered since the same is against any law. The first respondent acknowledges that he personally knows that there was no prior permission got by the petitioner from the President of the State Council for taking leave. After receiving a charge memo, the petitioner has sent an explanation dated 14.10.2015 with invalid reasons for dropping the proceedings. Therefore, the first respondent prayed to dismiss the writ petition.



6. The fourth respondent has filed a counter affidavit stating that the writ petition is not maintainable either on law or facts. The fourth respondent denied the appointment of the petitioner in the School as Secondary Grade Teacher on 15.10.1999. The petitioner had joined the fourth respondent School only on 12.06.2013 as per the records. The fourth respondent has also denied the plea of the petitioner that she has rendered service for the past 16 years and returned the salary for charity of the School Management. The salary of the petitioner would be disbursed by the Government and it would be credited into her personal Bank Account through ECS and the School Management has nothing to do with salary of the petitioner nor the School has any power to operate the personal Bank Account. The School Management was not aware of the utilization of the salary of the petitioner. The fourth respondent vehemently denied that Rs.350/- per month was paid to the petitioner. The plea of the respondents that the contention of the petitioner is not clear whether the petitioner has taken leave due to the death of her Uncle or due to her illness. Moreover, there is no post of President of State Council as claimed by the petitioner and as such she could not have informed and obtained prior permission for the long absence. The petitioner has not informed about the leave to the fourth respondent also and the petitioner has not submitted any leave application dated 19.09.2015.

7. In the meanwhile, a show cause notice was issued to the petitioner on 22.09.2015. The petitioner has not offered any explanation. Hence, on 07.10.2015 the Management has issued a charge memo to the petitioner after making copies to the concerned authorities. Only thereafter, the Management received an undated explanation along with the medical certificate dated 19.09.2015 issued by Dr.R.Vijayakumar, a Homeopathy practitioner. The petitioner has not affixed her signature in the column provided in the medical certificate. Moreover, medical certificate dated 19.09.2015 was submitted along with the explanation only on 05.10.2015. Therefore, the contention of the respondent is that the claim of the petitioner is afterthought. The Provincial of the Congregation is no way connected with the affairs of the School Management and therefore the petitioner could not have accorded permission or leave as claimed by the petitioner. The contention of the respondent is that the petitioner has sent a letter dated 24.09.2015 is also false. The petitioner had come to the School on 19.10.2015 and submitted a letter dated 19.10.2015 requesting to permit the petitioner to join duty is also false. The petitioner did not turn up to the School as claimed by her in the affidavit and the petitioner never met any of the office bearers of the school Management and it is not clear from her affidavit that to whom the letter was submitted and with whom she requested to permit her to join duty. The affidavit is bereft of any material facts. It is an



imagination of the petitioner in order to manipulate the cause of action. Therefore, the school Management proceeded with the charge memo against the petitioner since she fails to give explanation to the show cause notice. The sixth respondent proposed to commence his enquiry on 20.11.2015. Incorporating all these, an enquiry notice dated 05.11.2015 was sent to the permanent resident of the petitioner colony by a registered post and it was returned as "refused by the addressee." The petitioner has alleged for the first time that too before this Court the documents were not served to the petitioner. But the respondents replied that the petitioner has never sought for documents during the time of enquiry. If the petitioner is aggrieved, the petitioner is at liberty to approach the appropriate authority according to the procedure of law. Rule 17 (2) (i) is not applicable to the present case of the petitioner since she was not suspended from service and she is not entitled to claim any subsistence allowance. It is well settled by the judgment of the Honourable Apex Court and the Division Bench of this Court that sections 8(1) (a), 11(1) (b), 14 to 18, 21(2) to 26, 31 to 33, 39(4), 41 to 45 and Rules 7, 9[except clauses (e) and (k) of sub rule(2)], 10 to 14, 16 to 18 and 22 to 24 of the Tamil Nadu Recognized Private Schools Act and Rules as in applicable to minority institutions and the Honourable Apex Court has directed to continue the Status Quo until the High Court decides to modify on application made by any of the party to litigation. Hence the respondent School prayed to dismiss the writ petition.

8. The fifth respondent was represented by an Advocate. But the fifth respondent has not filed any counter affidavit, but relied on the counter filed by the third and fourth respondents.

9. The third and fourth respondent has filed an additional typed set, wherein a copy of the affidavit filed in W.P. (MD) No.20022 of 2015 and W.P. (MD) No. 23280 of 2015 are enclosed and both the writ petitions are for writ of mandamus directing the school to appoint fresh enquiry officer and conduct fair and unbiased enquiry in which the respondents have filed a detailed counter.

10. Heard Mr.R.Russel Roy, learned Counsel appearing for the petitioner, Mr.V.Omprakash, learned Government Advocate appearing for the first and second respondents, Mr.Rozario Sundarraaj, learned Counsel appearing for the third and fourth respondents, Mr.C.Muthusaravanan, learned Counsel appearing for the fifth respondent and there is no appearance for the sixth respondent.

11. The allegation against the petitioner is that the petitioner has submitted an application for leave and has extended the leave without any prior permission or any application. The contention of the petitioner is that she submitted an application



for leave since her Uncle died. However, the petitioner has not returned after the said leave period but she claims that she was ill, therefore she applied for medical leave by submitting an application through post. The contention of the School is that after initiating the proceedings by issuing a show cause notice the petitioner has submitted a letter along with the medical certificate from the Homeopathy Doctor which is an afterthought. Therefore, the petitioner absented without obtained prior permission from the School. According to the petitioner, the absence is from 19.09.2015 to 19.10.2015 i.e., for a period of one month. The School vehemently opposed the contention of the petitioner stating that the petitioner has not submitted any application for the leave and the petitioner has not submitted any petition for seeking extension of leave but absented for the period of one month. The school also denied the contention of the petitioner stating that the petitioner never approached any authorities for joining the duty.

12. The respondents have issued the enquiry notice through registered post and there is an endorsement stating that the addressee has refused to receive. Admittedly, the petitioner has not participated in the enquiry and hence there is violation of principles of natural justice.

13. During the course of argument, it was suggested to remit the case back to the school for denova enquiry, so that the petitioner will get an opportunity to participate in the enquiry and the School has vehemently opposed. The learned Counsel appearing for the respondents submitted that the petitioner is uttering all falsehood. But the learned Counsel appearing for the petitioner submitted that the School is acting arbitrarily and it is not giving any natural justice to the petitioner. Even though the petitioner is a Christian Nun, the respondents are showing vindictive attitude towards the petitioner. Even if the petitioner is reinstated into service, then the petitioner cannot serve in the school peacefully, even for one day. Therefore, this Court is of the considered opinion denova enquiry will not have any fruitful effect.

14. On perusing the documents submitted before this Court and the submissions putforth by the learned Counsels, this Court is of the considered opinion that if the punishment of dismissal from service is modified as compulsory retirement, the petitioner would receive some terminal benefits. Therefore, this Court is modifying the punishment as 'Compulsory Retirement'. The respondent Nos. 3, 4 and 5 are directed to implement the modified punishment and shall submit the consequential proposal of monetary benefits and terminal benefits to the first and second respondents within a period of four weeks from the date of receipt of a copy of this order. Thereafter the first and second respondents shall process the paper of terminal benefits and disburse the same within a period of four weeks



thereafter.

15. With this modification and direction, the Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS-I)

// True Copy //

/06/2022

Sub Assistant Registrar(CS)

jbr

Note:

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

To

1. The District Educational Officer,
Thanjavur District, Thanjavur.
2. The Assistant Elementary Educational Officer,
Office of the Assistant Elementary Educational Officer,
Pattukkottai,
Thanjavur.
3. The General Manager,
Diocese Schools, Bishop of Thanjavur & President,
Diocese of Tanjore Society.
4. The Correspondent,
St.Soosaiyappar Elementary School,
Sanjaya Nagar, Aladikkumulai Po, Pattukkottai Taluk,
Thanjavur District.
5. The Head Mistress,
St.Soosaiyappar Elementary School,
Sanjaya Nagar, Aladikkumulai Po, Pattukkottai Taluk,
Thanjavur District.



+1 CC to M/s.R. RUSSEL RAJ, Advocate (SR-25538[F] dated 14/06/2022)

+1 CC to M/s.C. MUTHU SARAVANAN, Advocate (SR-25701[F] dated 15/06/2022)

+1 CC to M/s.SPL.GP (SR-25812[F] dated 15/06/2022)

Order made in
W.P. (MD) No. 9076 of 2016
14.06.2022

nsn(CO)
TR(22.06.2022) 9P 9C