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WP.No.13520 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.08.2023

CORAM

THE HON'BLE Mr. JUSTICE **G.K.ILANTHIRAIYAN**

W.P. No.13520 of 2013

Elizabeth Rani

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Petitioner

Vs

1. The Convenor

Board of Elementary Education,
C.S.I. Diocese of Vellore,
No.3A, Officers Line, Vellore.

2. The Correspondent,

V.RV Elementary School,
Walaja East Range,
Ranipet.

3. The Head Master,

V.RV Elementary School,
Walaja East Range,
Ranipet.

4 The Head Master,

M.D.Elementary School,
Mathapoondi,
Gingee Range, Villupuram District.

5. The District Elementary Educational Officer,

Office of the District Elementary Educational Office,
Vellore, Vellore District.



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6. The Assistant Elementary Educational Officer,
Wallajah East Range, Ranipet, Vellore District.

Respondents

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Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the entire records of the first respondent, relating to the revised transfer order dated 16.11.2012 and consequential order of dismissal of service passed by the first respondent under Rule17/B/1, dated 28.01.2013 and quash the same as illegal, unwarranted and in operative in law and consequentially direct the second respondent to reinstate the petitioner with full back wages and consequential service benefits.

For Petitioner	:	Mr.R.Venkatesan
For R1 to R4	:	Mr.D.Muthukumar for M/s.Paul & Paul
For R5 & R6	:	Mr.L.S.M.Hasan Fizal Additional Government Pleader

ORDER

This Writ Petition has been filed challenging the order dated 16.11.2012 passed by the first respondent, thereby transferred the petitioner and the consequential order dated 28.01.2013, thereby dismissed the petitioner from her service.

2. Heard the learned counsel appearing on either side and perused the materials available on record.



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3. The petitioner had entered into service as a Secondary Grade Teacher on 19.08.2009 in the fourth respondent School , which is under the control of the first respondent, viz.,C.S.I. Diocese of Vellore. The fourth respondent School consists of Class 1 to 5 and it is a condition to maintain the minimum staff strength of two, which comprised of one Head Master and one Assistant Teacher. During the period of probation, the petitioner was compelled to give consent for transfer to the second and third respondents School with effect from 04.10.2010. Accordingly, the petitioner had joined in the fourth respondent as 11th Teacher. There was already seven deployment teachers were employed and the petitioner became a tenth teacher.

4. While she was serving, there was harassment by one another teacher viz., Johnson. Though she informed to the Head Master, there was no action and as such, she was lodged a complaint before the Ranipet Police Station on 12.03.2012 against the said Johnson and also the respondents. Since no action was taken on her complaint, she was constrained to file a petition before this Court in CrI.O.P.No.22409 of 2012, to register a FIR on her complaint. Thereafter, the police registered a case as against the said Johnson and the respondents 2 and 3



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herein. Pursuant to the registration of the said FIR, the petitioner was transferred to Periararamapuram, R.K.Pet Range, Tiruvallur District on 21.03.2012. She was deputed on 21.03.2012 and 22.03.2012 for health training at Walajah Central Primary School and she also applied for medical leave on 26.03.2012 which was extended subsequently.

5. In fact, she also challenged the order of transfer dated 21.03.2012 before this Court in W.P.No.10574 of 2012 and obtained an order of stay. However, she was not allowed to report to duty by the third respondent. She had reported the details of attending the School to the 5th and 6th respondents herein. Again, she made a detailed representation to the District Collector and finally she was permitted to rejoin with effect from 01.06.2012. Thereafter, there was inspection made by the District Vigilance Authorities in the third respondent School in the presence of Sub Inspector of Police, Ranipet. Pursuant to the inspection, a case was registered in Cr.No.20 of 2012 as against second respondent for the offences under Sections 120B, 490, 420, 465, 468, 471, 477-A of IPC and Section 13(2) read with 13(1C) of P.C.Act 1988. In fact, during inspection, the third respondent was directed to produce the entire School records for verification. The third respondent stated



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that already the alleged complaint against the petitioner for having stolen all school records and a sum of Rs.10,000/- was filed as early as on 23.05.2012 itself. Due to enmity of approaching this Court by the petitioner, a false case was foisted as against the petitioner as if she had stolen School records and also a sum of Rs.10,000/- from the third respondent.

6. It is also pertinent to note that the petitioner had joined in the third respondent School only on 01.06.2012. As a result of inspection, the second respondent had transferred five surplus teachers in the month of September 2012 except the petitioner. On the FIR registered as against the second and third respondents, the petitioner gave statement before the learned Judicial Magistrate No.I, Vellore, as contemplated under Section 164 of Cr.P.C with regard to the poor strength of students and other malpractices committed by the second and third respondents. Pursuant to the same, the petitioner was served with a Memo dated 17.10.2012 alleging that the petitioner submitted grievance petition before the District Collect, Vellore, about non permitting to join her service as per the interim order passed by this Court. On receipt of the same, the petitioner had also submitted a detailed reply on



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22.10.2012. However, the Writ Petition filed by the petitioner was dismissed and immediately, the second respondent cancelled the earlier order of transfer and issued another transfer order dated 16.11.2012 for the second time to the fourth respondent School, on the same ground of surplus teacher on the date of transfer. Thereafter, the disciplinary authority concluded the disciplinary proceedings and dismissed the petitioner by an order dated 28.01.2013. She was served with a charge memo that she failed to join in the fourth respondent School as per the order of transfer dated 16.11.2012. Though the petitioner submitted a detailed explanation, it was refused to be received by the School Authorities. Thereafter, by the impugned order dated 31.11.2013, the petitioner was dismissed from her service. Therefore, the order of transfer is deliberate, malpractice and wrong reasons have been stated.

7. Admittedly, no enquiry was conducted by the Disciplinary Authority and the petitioner was not given an opportunity to submit her explanation. In view of the above narrated facts and circumstances, the order of transfer itself is nothing but punitive action, since the petitioner lodged a complaint as against the second and third respondents and also made statement under Section 164 of Cr.P.C before the learned Judicial MagistrateNo.I, Vellore, pursuant to the registration of FIR.



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8. That apart, immediately, after dismissal of her Writ Petition on 15.11.2012, she was relieved by the third respondent and the impugned transfer order was passed on 16.11.2012, thereby transferring the petitioner to the fourth respondent School. The order of dismissal was passed on 28.01.2013 within a span of one month for non-joining duty in the fourth respondent School. Further, there was no prior approval granted by the authority concerned before passing the order of dismissal from service. Even after passing the order of dismissal, so far the order of dismissal had not yet approved by the authority concerned.

9. In this regard, it is relevant to extract the provisions under Sections 22(1) and 22(2) of the Tamil Nadu Recognized Private Schools Regulations Act as follows:-

“22. Dismissal, removal or reduction in rank or suspension of teachers or other persons employed in private schools. - (1) Subject to any rule that may be made in this behalf, no teacher or other person employed in any private school shall be dismissed, removed, or reduced in rank nor shall his appointment be otherwise terminated except with the prior approval of the competent authority.

(2) Where the proposal to dismiss, remove or reduce in rank or otherwise terminate the appointment of any



teacher or other person employed in any private school is communicated to the competent authority, that authority shall, if it is satisfied that there are adequate and reasonable grounds for such proposal, approve such dismissal, removal, reduction in rank or termination of appointment.”

10. It is relevant to extract the Rule 17(1) of Tamil Nadu Recognized Private Schools Regulations as follows:-

“17. Dismissal, removal or reduction in rank or suspension of teachers or other persons employed in private school.—(1) The competent authorities to accord prior approval for the dismissal, removal or reduction in rank of a teacher or other person employed in any private school, shall be the District Educational Officer in respect of teacher or other person employed in Pre-Primary, Primary and Middle Schools and the Chief Educational Officer in respect of teacher or other person employed in High Schools and Teachers’ Training Institutes.”

11. Admittedly, the second respondent did not send any proposal to the competent authority seeking prior approval of the petitioner's dismissal. The specific stand of the respondents 1 to 4 is that Section 22 of the Act and Section 17(1) of the Rule are not applicable to minority institutions. It is not in dispute that the respondents 1 to 4 is a



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recognized private school of the State. It may be a minority institution, but the fact remains that the provision and Rule are applicable to all the recognized schools. Therefore, the respondents 1 to 4 cannot state that the same is not applicable to the minority schools. Further, only after the order of dismissal dated 31.11.2013, it was sent to the competent authority for approval. On receipt of the same, the competent authority approved the order of termination by an order dated 28.05.2014.

12. The learned counsel for the second and third respondents placed reliance on the decision of the Hon'ble Division Bench of this Court in *W.A.No.574 of 2010* in the case of *T.Sanjeeva Rao Vs The Director of School Education, Directorate of School/Public Instruction, College Road, Chennai 6 and others*, wherein it was held that obtaining sanction or approval for removal in respect of minority institution is not mandatory and the same is also condition precedent in respect of non minority aided schools. It was held therein that in the case of minority school, an obligation of constituting a School Committee for the purpose of dealing with disciplinary proceedings against teaching and non-teaching staff is caste upon the institution. Therefore, plea of the second respondent cannot be accepted.



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13. The second respondent, being the minority institution, is not governed by all the provisions of the Act. But it is governed by some of the provisions of the Act and Rules. In the case of ***Frank Anthony Public School Employees' Association Vs Union of India and others***, reported in ***1987 ISCR 238***, the Hon'ble Supreme Court of India held that the rights of the minority institutions is guaranteed by Article 30(1) of Constitution of India and held that regulatory measures which are designed towards the achievement of the goal of making the minority educational institutions effective instruments of imparting education do not impinge upon the rights guaranteed by the said Article. The regulations can be made for ensuring proper conditions of service of the teachers and also for securing a fair procedure in the matter of disciplinary action against them. There is no dispute that the Sections and Rules referred to earlier are applicable to institutions. The fact that these provisions afford protection to the teachers and govern the administration of the minority institutions is sufficient to make the second respondent amenable to Article 226 of the Constitutions of India.

14. The provisions under Section 22(1) of the Act is clear as to what the competent authority is required to do at that stage is to see



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whether the punishment proposed commensurate with the proved charges. Though the second respondent is a minority institution, it is a private aided school. The nature of this provision is meant for protection of staffs of the private schools. All the judgments cited by the learned counsel for the respondents 2 and 3 is not related to the issue which arose in the case on hand. Therefore, the Judgment cited are not applicable to the case on hand. Hence, the prior approval from the competent authority is mandatory. Admittedly, the second respondent, after passing an order of removal, had not sent for any approval.

15. Insofar as charges are concerned, the petitioner was served with a show cause notice dated 29.11.2012. Accordingly, after dismissal of her Writ Petition challenging the order of transfer dated 15.11.2012, the first respondent passed revised transfer order on 16.11.2012 and pursuant to the transfer order, she was relieved from duty from the third respondent School on 19.11.2012. However, she failed to report to duty before the fourth respondent from 20.11.2012 and she had not reported duty till 29.11.2012, without submitting any leave letter. As stated supra, on the next day, the revised transfer order was passed by the first respondent and the petitioner was relieved from her duty on 19.11.2012.



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Therefore, the petitioner applied for information under the Right to Information Act from the Vigilance and Anti Corruption Department about the strength of the students in the third respondent School at the time of inspection and number of students on the date of inspection. She also asked about the criminal case registered against the respondents 1 to 4 herein. Again she was served with another show cause notice dated 10.12.2012.

16. In fact, the petitioner submitted leave letter and sought for leave from 17.12.2012 till 31.01.2013, since she was taking treatment at Ranipet. On receipt of the second show cause notice dated 10.12.2012, the petitioner submitted her explanation on 11.01.2013. The petitioner also applied for leave vide leave letter dated 14.01.2013 seeking leave from 14.01.2013 to 10.02.2013 and she also enclosed a medical certificate issued by the Senior Civil Surgeon, Chief Medical Officer, Ranipet Municipality. She also received information from the Deputy Superintendent of Police, Vellore, dated 13.12.2012, which reveals that the enquiry is pending pursuant to the registration of FIR in Crime No. 20 of 2012 against the respondents 1 to 4 herein. In respect of police protection is concerned, it was replied that they have no jurisdiction to



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give police protection. In the meanwhile, the order of dismissal was passed by the first respondent dated 28.01.2013, thereby dismissing the petitioner from her service. Again, the petitioner submitted her leave letter dated 11.02.2013 seeking leave from 11.02.2013 to 09.03.2013 on the ground of illness. On receipt of the order of dismissal, she made an appeal before the fifth respondent. Therefore, for non-joining in the duty, pursuant to the revised order of transfer led to her capital punishment.

17. In fact, she also submitted her explanation for the show cause notice and she also applied for leave on the ground of her illness. Admittedly, the first respondent did not conduct any domestic enquiry and straight away dismissed her from service. As stated supra, the first respondent failed to send any proposal of capital punishment for prior approval to the authority concerned. In fact, even after passing the order of removal, it was not sent for post approval. Though the first respondent stated in their counter that the order of termination is only a termination simplicitor and there is no stigma attached to it and therefore, conduction of departmental enquiry will not arise.

18. On perusal of the impugned order revealed that it was the



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order of dismissal, thereby dismissed the petitioner from her service.

Therefore, it cannot be said that it does not require any enquiry. Further the first respondent stated that the order of dismissal had already been sent to the fifth respondent for getting approval on 04.02.2013. However the counter filed by the fifth respondent does not even whisper about the communication sent by the first respondent for approval of order of dismissal. The first respondent also did not produce any material evidence to show that the first respondent had sent the dismissal order for approval to the fifth respondent. Even assuming that it was sent for approval on 04.02.2013, even today, it is not approved by the competent authority concerned. Therefore, the order of dismissal dated 28.01.2013 cannot be sustained and is liable to be quashed.

19. Accordingly, the order dated 28.01.2013 passed by the first respondent, is hereby quashed. Insofar as the order of transfer is concerned, now the petitioner is ready and willing to join in the fourth respondent School. The first respondent is directed to reinstate the petitioner without back wages and with continuity of service and all benefits. The petitioner is directed to report for duty before the fourth respondent forthwith and the fourth respondent is directed to permit the



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petitioner to join duty as Secondary Grade Teacher. However, the petitioner is not entitled for any back wages for the period from 20.11.2012 till her joining duty before the fourth respondent.

20. Accordingly, the Writ Petition stands partly allowed.

There shall be no order as to costs.

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Index:Yes/No

Internet:Yes/No

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