



WEB COPY



WP.No.10601/2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 14.09.2023

CORAM

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

WP.No.10601/2018

A.Rajinikanth

... Petitioner

Versus

1 Secretary to Government
School Education Department 6th floor
Namakkal Kavingar Maaligai Fort st George
Secretariat Chennai-009.

2 Director of School Education
College Road Nungambakkam Chennai.

3 Joint Director (Personnel)
College Road Nungambakkam Chennai.

... Respondents

Prayer :- Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorari to call for the records of the Impugned order passed by the 2nd respondent in Na.Ka.No. 42321/C4/E3/2017 dated 06.11.2017 and quash the same as being arbitrary against the materials available on record non appreciation of the evidence and documents in its proper perspective.



WP.No.10601/2018

For Petitioner : Mr.V.Balamurugane

For Respondents : Mr.U.Baranidharan, AGP

ORDER

- (1) The writ petition has been filed in the nature of a certiorari seeking records relating to an order passed by the 2nd respondent, Director of School Education at Chennai dated 06.11.2017 and to quash the same.
- (2) The writ petitioner was working as Assistant in the Government Higher Secondary School, Olakkur in Tindivanam, Villupuram District, from 21.04.2014. He was earlier working in the office of the District Educational Officer, Tindivanam. At that time, a case was registered against him by the District Crime Branch, Villupuram in Crime No.74/2011 alleging that along with the other accused, the petitioner had helped the 1st accused therein to copy during the 10th standard public examination and complete his examination successfully. It was therefore alleged that the petitioner and the other accused committed offences under Sections 468, 471, 120[B], 201



WP.No.10601/2018

WEB COPY

read with 34 of IPC. The petitioner had been suspended from service on 08.10.2011. A charge memo was issued on 01.02.2012. An enquiry was conducted and during the enquiry, the charges were held to be established by an order dated 28.01.2015. The petitioner gave a subsequent explanation on 19.05.2015 to the Director and Joint Director of School Education. The criminal case which had been registered against the petitioner herein, ended in acquittal in CrI.A.No.18/2013 in a judgment dated 24.07.2013 by the II Additional District and Sessions Court, Tindivanam. The order of suspension was revoked by an order of this Court in WP.No.29013/2013 dated 25.10.2013. The petitioner was then re-appointed to service after he had filed a contempt petition. The petitioner had also filed WP.No.37079/2016 calling upon the respondents to expedite the enquiry. Orders in that regard were also passed. Thereafter, the petitioner had filed an appeal questioning the findings of the Enquiry Officer before the 2nd respondent. The 2nd respondent had rejected the appeal and had confirmed the order of the 3rd respondent / Disciplinary Authority of imposing the punishment of



WP.No.10601/2018

stoppage of increments for two years without cumulative effect.

Questioning that particular order, the present writ petition has been filed.

- (3) The main ground which is urged by the learned counsel for the petitioner is that during the enquiry, the Enquiry Officer had recorded the statements of two witnesses. As a matter of fact, it is stated that the witnesses were not examined in person, but their statements alone were taken on record. The petitioner was not given any opportunity to cross examine both the said witnesses. The petitioner had also given a request for examining a witness on his side. That was also not considered by the Enquiry Officer. Thereafter, when the petitioner filed an appeal before the Appellate Authority / 2nd respondent herein, he had again raised the same issues of procedural violations during the enquiry, namely, denial of opportunity to cross examine the witnesses summoned on behalf of the respondents and also denial of opportunity to examine the witness on his side.
- (4) The records reveal tht the petitioner had actually raised these issues as grounds before the 2nd respondent, but, unfortunately, the order of the



WP.No.10601/2018

WEB COPY

2nd respondent which is impugned in the present writ petition, does not reveal that the 2nd respondent had applied his mind to these requests and had also not stated any reasons as to why opportunity should not be granted. It is also not been stated that even grant of opportunity would only be an empty formality. When reasons are not stated, the order naturally suffers. The right of every delinquent officer to cross examine a witness during enquiry is inbuilt in the principles of natural justice.

- (5) There cannot be an one-sided enquiry and opportunity should be granted to every delinquent officer to test, through cross examination, the statements made by witnesses with respect to the charges alleged against him. However, every delinquent officer would also have a right to produce witnesses. The witnesses can be rejected by the Enquiry Officer if it is found that any statement made by them, would be of no assistance to the enquiry and in the decision making process. But even then, that particular reason should be stated while rejecting that request. In the instant case, the Appellate Authority who had the responsibility to examine the entire records and examine whether



WP.No.10601/2018

WEB COPY

there had been any procedural violations, had unfortunately failed in that particular aspect. In view of this particular fact, the order impugned, is liable to be set aside.

- (6) The Disciplinary Authority had, however, imposed a punishment of stoppage of increment for two years without cumulative effect. The learned counsel for the petitioner stated that the said punishment had not yet been put to effect. **Let it be kept in abeyance.**
- (7) The matter is remitted back to the 2nd respondent, Director of School Education, who may re-examine the entire issue, examine the records once again and specifically find out whether the petitioner had placed a request for opportunity to cross examine the two witnesses whose statements had been taken on record by the Enquiry Officer and if that opportunity had been denied, examine whether necessary reasons have been given by the Enquiry Officer for denial of such opportunity. The 2nd respondent may also examine whether the petitioner had placed a request for examining any witness on his side and also examine whether the Enquiry Officer had applied his mind to either accepting such request or rejecting such request and whether



WP.No.10601/2018

WEB COPY

reasons had been given for rejection. The 2nd respondent may realise that he, as the Appellate Authority, has, not only the responsibility to look into the punishment aspect which has been imposed by the Disciplinary Authority, but more importantly, also has the responsibility to examine whether there had been procedural violations committed by the Enquiry Officer.

- (8) The Impugned Order passed by the 2nd respondent dated 06.11.2017 is set aside. The matter is remitted back to the 2nd respondent, who may re-examine the entire issue and pass necessary orders within a period of sixteen weeks from the date of receipt of a copy of this order. **The punishment may be kept in abeyance** and while reconsidering the entire issue, the 2nd respondent may also pass an order relating to the punishment imposed by the Disciplinary Authority.
- (9) The writ petition stands **disposed of**. No costs.

14.09.2023

AP

Internet : Yes



WEB COPY



WP.No.10601/2018

To

- 1 Secretary to Government
School Education Department 6th floor
Namakkal Kavingar Maaligai Fort st George
Secretariat Chennai-009.
- 2 Director of School Education
College Road Nungambakkam Chennai.
- 3 Joint Director (Personnel)
College Road Nungambakkam Chennai.



WEB COPY



WP.No.10601/2018

C.V.KARTHIKEYAN, J.,

AP

WP.No.10601/2018

14.09.2023