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W.A.No.1490 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.08.2023

CORAM

THE HON'BLE Mr. JUSTICE R.SURESH KUMAR
AND
THE HON'BLE Mr. JUSTICE K.KUMARESH BABU

W.A.No.1490 of 2019 and
C.M.P.No.10189 of 2019

The Secretary /Correspondent,
Gnanodhaya Girls High School,
No.165, Melpatti Ponnappan Street,
Vyasarpadi, Chennai – 39.

... Appellant

Vs.

1.Sweetey Jeya Mary

2.The Director,
Directorate of School Education,
D.P.I. Campus, College Road,
Chennai – 600 006.

3.The Chief Educational Officer,
Panagal Building, Saidapet, Chennai – 15.

4.The District Educational Officer,
Chennai North, Chennai – 8.

5.The Enquiry Officer,
Dr.A.Sahib Ali, MA. M.Ed, Ph.D.,
Assistant Educational Officer (Retired)
No.9, First Cross Street,
Seethamma Extension,
Teynampet, Chennai – 39.

... Respondents



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Prayer : Appeal filed under Clause 15 of the Letters Patent Act, praying to set aside the order dated 18.01.2019 in W.P.No.33457 of 2017.

For Appellant : Mr.R.Saravanakumar

For Respondents : Mr.M.A.R.Pragash for R1

: Mr.K.Suresh
Government Advocate
for R2, R3, & R4

: Served - No appearance for R5

JUDGMENT

(Judgment of the Court was delivered by R.SURESH KUMAR, J.)

The 1st respondent herein was the writ petitioner before the Writ Court, therefore she will be called as writ petitioner or petitioner and the appellant herein is the School management henceforth would be called as management.

2. The writ petitioner was a Teacher working under the school run by the appellant management where there was a disciplinary proceedings under which the 5th respondent was appointed as an Enquiry Officer having accepted his appointment as an Enquiry Officer, the writ petitioner subjected herself to such enquiry.



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3. In the enquiry, on behalf of the management witnesses were enquired and based on the enquiry, the Enquiry Officer has come to the conclusion that the charges framed against the writ petitioner were proved.

4. Accepting the said report of the Enquiry Officer, the appellant management by order dated 17.11.2017 inflicted the major punishment of dismissal against the petitioner and that order was under challenge before the Writ Court.

5. The Writ Court, by order dated 18.01.2019 in W.P.No.33457 of 2017 allowed the writ petition by setting aside the order of dismissal with a direction to the management appellant to reinstate the writ petitioner with all backwages.

6. Aggrieved over the said order passed by the Writ Court, the appeal has been directed by the appellant management of the School.

7. Heard Mr.R.Saravanakumar, learned counsel appearing for the appellant School who would submit that, insofar as the findings given by



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the learned Judge that, the Enquiry Officer's report has not been furnished to the writ petitioner/1st respondent is concerned, it is an admitted fact that the said Enquiry Officer's report has not been furnished to her before passing the order of dismissal.

8. He would also submit that, insofar as other allegation that has been made by the writ petitioner is concerned, it is not factually correct as the full-fledged enquiry was conducted where the witnesses were examined though there was a chance for the delinquent/writ petitioner to cross examine those witnesses and she cross examined them, it is the present contention of the writ petitioner that no proper opportunity had been given and the enquiry was not conducted as per the procedure contemplated under the Act and the rules which governing the service conditions of the writ petitioner and these aspects as projected by the writ petitioner was factually incorrect but this aspect has not been considered in proper perspective by the learned Judge and therefore erroneously allowed the writ petition, hence he seeks indulgence of this Court.

9. However, Mr.M.A.R.Pragash, learned counsel appearing for the 1st respondent/writ petitioner has submitted that, in one single day 6



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witnesses were examined and on the second day, one witness was examined. Therefore, even though chance was given to cross examine, there was no enough opportunity available to the delinquent/writ petitioner to cross examine properly of all those witnesses, therefore that is the first flaw according to him in the enquiry.

10. The second flaw as per the learned counsel appearing for the writ petitioner/1st respondent is that, 6 witnesses are management witnesses as they were working under the same management, therefore naturally they would be biased in favour of the management. Therefore, what has been stated by them cannot be taken as a true factual aspect and accordingly the conclusion arrived at by the Enquiry Officer as if that the charges framed against the writ petitioner having been proved was not at all correct and therefore it cannot be accepted.

11. The third major flaw, according to the learned counsel appearing for the writ petitioner, is concerned, though after completing the enquiry if at all any Enquiry Officer's report has been filed by the Enquiry Officer as per the procedure which is in vogue, the copy of the report should have been furnished to the writ petitioner and the second



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opportunity by way of show cause notice also ought to have been issued.

However, in this case the copy of the Enquiry Officer's report has not been furnished to the writ petitioner and no such second opportunity has been given to her, therefore on that ground itself, the conclusion arrived at by the management who was the Disciplinary Authority to pass an order of dismissal against the writ petitioner would be vitiated, he contended.

12. He would also submit that, insofar as the payment of subsistence allowance is concerned, during the period of enquiry also though the writ petitioner was entitled to get the subsistence allowance, the same has not been paid, that was one of the reason that has been taken into account by the learned Judge in the order impugned, he contended.

13. We have considered the said rival submissions made by the learned counsel appearing for both sides and have perused the materials placed before this Court.

14. Insofar as the first two allegations or alleged flaw on the part



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of the enquiry as stated by the learned counsel for the 1st respondent/writ petitioner that, in two days 7 witnesses were examined, therefore no proper opportunity could be availed by the writ petitioner is concerned, this kind of plea cannot be accepted by this Court because it is not the case where the opportunity of cross examine was denied.

15. Like that, merely because those witnesses were also working in the School they would be biased also cannot be accepted by this Court as the witnesses can only be gathered from the School where the delinquent also was working and since the allegations made against her or the charges framed against her relates to her work at the School, therefore naturally the co-employees alone can be the witnesses and they are capable of deposing the things before the Enquiry Officer, therefore that allegation also is untenable.

16. Insofar as the third flaws pointed out by the learned counsel appearing for the writ petitioner that the copy of the Enquiry Officer's report has not been furnished to the writ petitioner is concerned, it has been admitted by the learned counsel appearing for the appellant management that, before passing the order of dismissal no such copy of



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the Enquiry Officer's report has been furnished to the writ petitioner.

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17. Having considered all these aspects, we do feel that insofar as the non-serving of the Enquiry Officer's report to the writ petitioner/delinquent is concerned, it is a flaw on the part of the management as before they passed the order that too inflicted the major punishment of dismissal from service against the delinquent such a second show cause notice along with the copy of the Enquiry Officer's report ought to have been issued or furnished to the delinquent/writ petitioner, which they have miserably failed, therefore on that ground we feel that the dismissal order which was impugned before the Writ Court is vitiated, therefore to that extent, setting aside the order of dismissal made by the learned Judge through the impugned order can be approved. However, non-furnishing the Enquiry Officer's report by giving the second show cause notice to the delinquent would not automatically vitiated the entire enquiry, which was conducted thoroughly and strictly in accordance with the procedure contemplated in this regard, where we do not find any error in conducting such enquiry and we do not find any flaw where the alleged reason of violation of principles of natural justice also not available.



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18. Therefore for all these above discussions and reasons, we feel that the order impugned passed by the learned Judge dated 18.01.2019 is liable to be modified with the following effect:

(i) That the order of the learned Judge, which is impugned herein setting aside the order of dismissal dated 17.11.2017 is concerned, is to be approved, accordingly it is approved. However, consequential direction issued by the learned Judge to reinstate the petitioner/delinquent with all backwages is liable to be set aside, accordingly that portion of the order impugned is set aside. As a sequel, there shall be a direction to the appellant School management to provide a copy of the Enquiry Officer's report with a second show cause notice to the delinquent/writ petitioner within a period of two weeks from the date of receipt of a copy of this judgment. On receipt of the same, the delinquent/writ petitioner is at liberty to give her reply within a period of two weeks thereafter. On receipt of such reply, the final decision can be taken by the Disciplinary Authority i.e. the appellant management on the basis of the Enquiry Officer's



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report and final order to that effect shall be passed by the management thereafter within four weeks.

(ii) It is made clear that, insofar as the entitlement of the subsistence allowance of the delinquent/writ petitioner is concerned, as per her entitlement she is entitled to receive such subsistence allowance.

19. With these modifications, the Writ Appeal is ordered accordingly. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

[R.S.K., J.] [K.B., J.]

21.08.2023

Index : Yes/No

Speaking Order : Yes/No

Neutral Citation : Yes/No

Sgl



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