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W.P.No.17932 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09..08..2023

Coram

THE HON'BLE MR JUSTICE N.SATHISH KUMAR

Writ Petition No.17932 of 2022
and
W.M.P.No.17263 of 2022

C.S.I. Higher Secondary School for the Deaf,
Mylapore,
Chennai 600004,
Rep. by its Correspondent,
C.Joseph Mohan

..... Petitioner

-Versus-

- 1.The State Commissioner / Director for the Welfare
of the Differently Abled,
Lady Willingdon College Campus,
Kamarajar Salai, Chennai 600 005.
- 2.The District Welfare Officer for Differently Abled,
DMS Compound, Anna Salai,
Teynampet, Chennai 600 006.
- 3.D.Sahila Jancy

..... Respondent

Petition filed under Article 226 of The Constitution of India, praying to issue a Writ of Certiorari calling for the records relating to the impugned proceedings issued by the 1st respondent in R.O.C.No.6853/SSAd2/2021 dated 13.05.2022 and to quash the same.



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For Petitioner : *Mr.G.Sankaran,*
Senior Counsel for
Mr.S.Nedunchezhiyan

For Respondent (s) : *Mr.P.Baladhandayutham,*
Spl. Government Pleader for
RR1& 2
Mr.S.Thankasivan for
Mr.J.Selvarajan for R3

ORDER

Challenging the impugned proceedings of the 1st respondent in R.O.C.No.6853/SSAd2/2021 dated 13.05.2022 whereunder the order of punishment of dismissal from service of the petitioner imposed by the 1st respondent was reconsidered and set aside, the petitioner school management has come forward with the present writ petition.

2. The brief facts leading to the filing of the present writ petition are as follows:-

(i) The 3rd respondent was a Secondary Grade Teacher in the petitioner school. A departmental proceeding was initiated against her on the allegation that she had assaulted a student of class XII viz., Ragavaraj C.L. on 09.08.2014. It is to be noted that the said student died subsequently on 25.01.2016 on account of some medical complications. On the above



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allegation, an enquiry was conducted. In the enquiry, it was found that there was no nexus between the cause of death of the student and the injuries alleged to have been caused by the 3rd respondent on the deceased student.

(ii) Thereafter, its appears, again an enquiry was conducted second time at the instance of the management and in that enquiry also, it was found that there was no nexus between the cause of death of the student and the injuries alleged to have been caused by the 3rd respondent. However, in the second enquiry report, there was a recommendation made to the effect that the 3rd respondent should be punished for the having assaulted a differently abled student of class 12 on 09.08.2014 and transferred to some other school. Based on such finding, the disciplinary authority imposed the punishment of dismissal from the service by order dated 28.02.2017.

(iii) The above said order of punishment of dismissal from service was put in challenge by the 3rd respondent herein in W.P.No.7030 of 2017 and this court by order dated 27.07.2021 this court while granting liberty to the petitioner (3rd respondent herein) to make a written request to the management ventilating her grievance, directed the school management (petitioner herein) to send a proposal to the authority concerned (1st respondent herein), expressing the grievance of the petitioner (3rd respondent herein) as well as on



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the charge of misconduct was proved, merely on the basis of some concession shown by the management and on the basis of the affidavit filed by the 3rd respondent, this court had directed to redo the exercise by the 1st respondent, Therefore, according to the petitioner school management, when there are sufficient materials to prove the serious act of misconduct of assault on a differently abled person in the special school and she was not acquitted in the criminal case on merits and was acquitting only on technical ground by giving benefit of doubt as the prosecution independent witnesses had turned hostile, the 1st respondent ought not to have directed the 3rd respondent to be reinstated in service. Therefore, the order directing reinstatement which is impugned in the writ petition is not sustainable in law.

4. Heard Mr.G.Sankaran, learned senior counsel appearing on behalf of the learned counsel on record for the petitioner; Mr..Baladhandayutham, learned Special Government Pleader appearing for the respondents 1 and 2 and Mr.S.Thankasivan, learned counsel on record for the 3rd respondent.

5. It is contended by the learned counsel for the 3rd respondent that there is absolutely no nexus between the cause of death of the student and the alleged



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assault on the student by the 3rd respondent. The deceased student was, in fact, suffering from autism right from the birth and he was also suffering from muscular dystrophy. The 3rd respondent was acquitted by the criminal court from the charges under Section 341 and 323 r/w 34 of IPC. Neither the first enquiry nor the second enquiry proved that there was nexus between the death of the student and the injuries said to have been inflicted on the student by the 3rd respondent. Therefore, the disciplinary authority, upon considering the entire aspect of the matter, had proceeded to pass the impugned order on merits and the same cannot be interfered with at the whims of the petitioner school management.

6. The charge against the 3rd respondent is that 09.08.2014 when three of the students had left the campus and returned back, questioning their act, 3rd respondent attacked the deceased student of class 12, who was a deaf and dumb and suffering from autism. The enquiry officer has proceeded as if the attack made by the 3d respondent has led to the further consequences of losing eye sight and the death of the student. However, in the enquiry conducted by the school committee at the first instance it was found that there was no nexus between the losing of eye sight and the death of the student and the injuries



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alleged to have been caused by the 3rd respondent. However, second enquiry was ordered wherein a different stand had been taken by the management as if the 3rd respondent should be punished and transferred to some other school run by the management. Even in the second enquiry report, there was no material produced to establish the nexus between the injuries said to have been caused by the 3rd respondent and the subsequent complications. Though the 3rd respondent was prosecuted in C.C.No.3052 of 2016 on the file of the XVIII Metropolitan Magistrate, Saidapet, Chennai, for the alleged offences u/s 341 and 323 r/w 34 of IPC along with another accused, that case was ended in acquittal by judgement dated 14.11.2019. The medical officer, who was examined before the trial court had clearly stated that on the alleged date of occurrence, the student was not admitted in any hospital and whereas he was admitted for some other complications only in the month of December, 2014. Thus, the medical evidence that were brought on record would also clearly indicate that the deceased student was suffering from autism from the birth. This court is also informed that the deceased student was also suffering from muscular dystrophy. These facts would clearly establish that there was no nexus between the injuries alleged to have been caused by the 3rd respondent on the deceased student and the subsequent death of the injured. It



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is to be noted that the 1st respondent passed the order only on considering the proposal made by the petitioner school management, representation of the 3rd respondent and enquiry report of the Joint Director and also the fact that the criminal case had been ended in acquittal, has proceeded to set aside the order of punishment of dismissal and directed the 3rd respondent to be reinstated.

7. Considering the entire gamut of evidence and the nature of the charge levelled against the 3rd respondent, this court is of the view that the order passed by the 1st respondent does not require any interference and in fact, earlier, the punishment was imposed without any evidence merely on assumption and presumption, particularly, when there was no nexus between the injuries alleged to have been caused by the 3rd respondent on the deceased student and the subsequent death of the student. In such view of the matter, this court does not find any perversity or illegality in the impugned order warranting interference by this court. The writ petition fails and the same deserves only to be dismissed.

In the result, the writ petition is dismissed. The petitioner shall reinstate the 3rd respondent, as directed by the 1st respondent, in service. It is made clear that it is open to the the 1st respondent to pass an order transferring the



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petitioner from the petitioner school to any other school run by the management. The 3rd respondent would not be entitled to back wages from 28.02.2017 till date of reinstatement, however, the period from 28.02.2017 till date the 3rd respondent joins duty would be counted towards her continuity of service, seniority and terminal benefits as directed the impugned order. No costs. Consequently, connected WMP is closed.

09..08..2023

Index : yes / no
Neutral Citation : yes / no
Speaking / Non Speaking Order
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To

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N.SATHISH KUMAR.J.,

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