



W.P.No.34241 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.03.2023

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P.No. 34241 of 2014
and M.P.No.1 of 2014

P.Jaganathan

... Petitioner

Vs.

1. The Government of Tamil Nadu,
Rep. by its Secretary to Government,
School Education Department,
Fort St.George, Chennai 600 009

2. The Director of School Education
College Road, Chennai 600 006

3. The Joint Director (Personnel),
School Education Department,
College Road, Chennai 600 006

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order of the first respondent issued in G.O.(Ms.)No.1, School Education (R2) Department, dated 02.01.2012 upholding the orders of the second respondent issued in Na.Ka.No.035826/



W.P.No.34241 of 2014

C6/S3/08 dated 09.08.2008 and that of the third respondent issued in Na.Ka.No.67748/A3/S2/07 dated 14.03.2008 and quash the same and grant the petitioner with all consequential benefits including regularization of period of suspension from 27.04.2007 to 12.11.2007 as duty period with due interest.

For Petitioner : M/s J.Lakshmi Narayanan
For RR 1 to 3 : Mr.Murugan Rajendran,
Additional Government Pleader

ORDER

This writ petition has been filed seeking to quash the impugned order of the first respondent issued in G.O.(MS).No.1, School Education (R2) Department, dated 02.01.2012, upholding the orders of the second respondent, dated 09.08.2008 and that of the third respondent dated 14.03.2008 and for a consequential prayer to grant the petitioner with all consequential benefits including regularization of period of suspension from 27.04.2007 to 12.11.2007 as duty period.

2. The petitioner herein was working as an upgraded Superintendent in the office of the Assistant Elementary Educational Officer, Hosur. While so, the petitioner was issued with a Charge Memo, dated 07.04.2007



W.P.No.34241 of 2014

containing eight charges, under Rule 17(b) of the Tamil Nadu Civil Services (Discipline & Appeal) Rules by the 3rd respondent. The details of the eight charges laid against the petitioner are as under:

2

குற்றச்சாட்டு 1

ஆசிரியர்களது வருங்கால வைப்பு நிதியில் முன்பணம் கோருதல் மற்றும் பிறவகை சார்பில் அனுமதி ஆணை வழங்குவதற்கு வேண்டுமென்றே காலதாமதம் மேற்கொண்டு கையூட்டு கோரும் (Bribe) செயல் மிகவும் கண்டிக்கத்தக்கதாகும். இச்செயல் அரசுப் பணியாளர் நடத்தை விதி 20(1)ஐ மீறியதாகும்.

குற்றச்சாட்டு 2

பஞ்சாயத்து யூனியன் நடுநிலைப் பள்ளியில் உடல் ஊனமுற்ற ஆசிரியர் திரு. டேவ்நாத் என்பாருக்கு, பணிப்பதிவேடு துவக்க ரூ.700/- இலஞ்சமாக கொடுத்தால் தான் பணிப்பதிவேடு துவக்க இயலும் எனக் கூறுவதும், இதே போன்று புதியதாக பணியில் சேரும் ஆசிரியர்களுக்கு பணிப்பதிவேடு துவங்க நடவடிக்கை ஏதும் மேற்கொள்ளாமல் இருக்கும் செயல், அரசுப் பணியாளர் நடத்தை விதி 20(1)ஐ மீறியதாகும்.

குற்றச்சாட்டு 3

அலுவலகத்தில் தங்கி இருந்த ஆசிரியர்கள் இரவு 7 - மணிக்கு மேல் வரச் சொல்லி அவர்களது கோரிக்கை சார்பான விண்ணப்பங்கள் மீது நடவடிக்கை மேற்கொள்ள இலஞ்சம் கோருகின்ற செயல் மிகவும் கண்டிக்கத்தக்கதாகும். இச்செயல் அரசுப் பணியாளர் நடத்தை விதி 20(1)ஐ மீறியதாகும்.



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குற்றச்சாட்டு 4

2001ல் இரண்டு அகவிலைப் புகள் சார்ந்து, இதுவரை பெற்று சார்த்த ஆசிரியர்களின் சேமிப்பு கணக்கில் சேர்க்க நடவடிக்கை எதும் மேற்கொள்ளப்படவில்லை. இச்செயல் அரசு பணியாளர் நடத்தை விதி 20(1)ஐ மீறியதாகும்.

குற்றச்சாட்டு 5

ஆசிரியர்களால் அன்பளிப்பாக (Donated) வழங்கப்பட்ட கம்ப்யூட்டர் தவறான முறையில் கையாண்டுள்ளார். (Spoiled the Computer and who is staying in the office during night times, spoiled the computer by operating and watching unwanted CDs during night times). இச்செயல் அரசு பணியாளர் நடத்தை விதி 20(1)ஐ மீறியதாகும்.

குற்றச்சாட்டு 6

ஒவ்வொரு வாரமும் புதன்கிழமை மற்றும் வெள்ளிக்கிழமை நாட்களில் கிருஷ்ணகிரி மாவட்ட தொாக்கக் கல்வி அலுவலகத்திற்கு செல்வதாகக் கூறிவிட்டு, சொந்த ஊரான திருப்பத்தூருக்கு சென்று விடும் செயல், அரசு பணியாளர் நடத்தை விதி 20(1)ஐ மீறியதாகும்.

குற்றச்சாட்டு 7

ஒருரில் உள்ள, செயின்ட் ஜான் பால்கோ உதவி பெறும் பள்ளியில், ஐந்தாம் வகுப்பு தேர்ச்சி பெற்று பாணவர்கள் ஆறாம் வகுப்பில் சேர, ஒவ்வொருவரீடமிருந்தும் ரூ.2,000/- தொகையினை வசூலித்துள்ளார். இச்செயல் அரசு பணியாளர் நடத்தை விதி 20(1)ஐ மீறியதாகும்.

குற்றச்சாட்டு 8

அலுவலகப் பணிகள் சார்பான விவரங்கள் எதேனும் திரு பி.ஜெகன்னாதன் என்பாரிடம் கோரினால், அன்னார் ஒருமையில் தரக் குறைவாகப் பேசுவதும், தவறான நடத்தியினை மேற்கொள்வதும் அரசு பணியாளர் நடத்தை விதி 20(1)ஐ மீறியதாகும்.

மேற்கண்ட ஒழுங்கு நடவடிக்கை தொடர்பான குற்றச்சாட்டுகள் மீது குற்றம் சாட்டப்பட்ட பணியாளரின் தன்னிலை விளக்கம் கீழ்க்கண்டவாறு கருக்கமாக அளிக்கப்படுகிறது.



W.P.No.34241 of 2014

3. Subsequently, the petitioner was placed under suspension by the third respondent on the same date i.e. on 07.04.2007. The petitioner submitted his explanations for the above said eight charges on 03.05.2007. Thereafter, the third respondent appointed the Chief Educational Officer, Krishnagiri, as the Enquiry Officer to conduct enquiry and the enquiry was conducted on 22.08.2007. After completing the enquiry, the Enquiry Officer submitted his report on 31.08.2007, holding charge Nos.2 and 6 as 'proven' and the remaining other charges as 'not proved'. In continuance of the same, the earlier order of suspension was revoked by the third respondent vide order dated 06.11.2007 and as a result of the same, the petitioner was posted at Chennai.

4. Thereafter, the petitioner submitted his additional explanations to the Disciplinary Authority, in respect of the proven charge nos.2 & 6 on 23.11.2007. Upon receipt of the additional explanations submitted by the petitioner, the third respondent had imposed a punishment of '*stoppage of increment for one year without cumulative effect*' vide proceedings dated 14.03.2008. But the same was not taken into consideration by the



W.P.No.34241 of 2014

respondents. Aggrieved against the same, the petitioner preferred an Appeal before the second respondent on 31.03.2008, wherein the same also came to be rejected vide proceedings dated 09.08.2008 by a non-speaking order. Thereafter, the petitioner preferred a revision on 07.10.2008, which was forwarded to the first respondent, but no order was passed on the above said revision. Thereafter, a reminder letter was sent by the petitioner on 16.10.2009, which, according to the learned counsel for the petitioner, was rejected by the first respondent, without assigning any valid reason vide the impugned order dated 02.01.2012.

5. The learned counsel for the petitioner submitted that the impugned order dated 02.01.2012 was not served upon the petitioner. Therefore, the petitioner made a representation through RTI Act seeking for documents pertaining to the disciplinary proceedings and had obtained the documents on 27.08.2014.

6. According to the learned counsel for the petitioner, the eight charges that were laid against the petitioner were vague and the explanations



W.P.No.34241 of 2014

that were submitted before the Disciplinary Authority by the petitioner was also not considered. It is his further contention that in a disciplinary proceeding, when a memo of charge sheet is given to the delinquent officer, the statement of facts and allegations must be specifically furnished along with the charge. When statement of allegations is not served with the memo of charge, it amounts to violation of the principles of natural justice.

7. In the present case the charges on the face of it have not been properly explained in the statement of allegation. In the said circumstances, the charge memo is liable to be set aside on the sole ground that the charges have not been properly explained in the statements of allegation, which resulted in gross detriment to the petitioner to give proper explanation.

8. The learned counsel for the petitioner would state that the 3rd respondent had regularized the period of suspension as 'eligible leave other than on medical certificate'. As a result of which, the petitioner was forced to lose 200 days salary. Once the petitioner was imposed with a major punishment of 'stoppage of increment for a period of one year without



W.P.No.34241 of 2014

cumulative effect', then the 3rd respondent has no jurisdiction to impose any more punishment. He would further state that imposing the major penalty and denial of promotion and consequence thereof is sufficient and in addition to that, regularizing the period of suspension as 'eligible leave other than on medical grounds' is also improper and the same amounts to inflicting multiple punishment for the same charge. Hence, the suspension period from 27.04.2007 to 12.11.2007 has to be regularized as duty period with due interest.

9. Per contra, the learned Additional Government Pleader appearing for the State would submit that the petitioner has failed to prove innocence in respect of charge Nos. 2 and 6. As the two charges are proved, the period of suspension cannot be treated as duty period and therefore the suspension period was treated as leave as per sub Rule (5) of FR 54(b).

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



W.P.No.34241 of 2014

11. In the case on hand the petitioner was issued with a charge memo containing eight charges and he was kept under suspension. Out of the eight charges, two charges have been proved. Thereafter, the suspension was revoked and the punishment of '*stoppage of increment for a period of one year without cumulative effect*' was imposed on the petitioner. When the punishment of stoppage of increment without cumulative effect was imposed on the petitioner, he cannot again be visited with a punishment of regularizing the period of suspension as eligible leave other than on medical certificate.

12. A person cannot be imposed with two punishments for same charges. Further, this Court in ***S.Muthuram Vs. The Chief Executive Officer and another*** reported in **2009 SCC OnLine Mad 3199**, has held that there cannot be two punishments for a single charge memo and it amounts to double jeopardy and it is violation of Article 20(2) of the Constitution of India.

13. The procedure for conducting the TDP proceedings is under Rule



W.P.No.34241 of 2014

17(b) of the Tamil Nadu Civil Services (Discipline & Appeal) Rules [hereinafter referred to as “the Rules”]. As per the Schedule, when it is proposed to impose a major penalty under Rule 8, the grounds on which it is proposed to take action should be reduced to definite charges, together with the statement of allegations on which each charge is based and on any other circumstances which it proposes in passing orders on the case. The Rule also envisages that charges should be accompanied by the list of witnesses and documents. The object behind this procedure under the Rule is to enable the delinquent to give an effective defence statement to the allegations in the charge memo. In the absence of all these material requirements, the charge memo itself is deemed to be vague, thereby depriving the delinquent to effectively defend himself by way of an explanation.

14. In *Anant R. Kulkarni Vs. Y.P. Education Society and Others* reported in **2013 (6) SCC 515**, regarding the absence of statement of allegations, the Hon'ble Supreme Court relied on its earlier decisions and held that such a vague charge memo cannot be maintained in the following manner:-



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W.P.No.34241 of 2014

“15. In Surath Chandra Chakravarty v. The State of West Bengal, AIR 1971 SC 752 this Court held, that it is not permissible to hold an enquiry on vague charges, as the same do not give a clear picture to the delinquent to make out an effective defence as he will be unaware of the exact nature of the allegations against him, and what kind of defence he should put up for rebuttal thereof. The Court observed as under:—

“5. ... The grounds on which it is proposed to take action have to be reduced to the form of a definite charge or charges which have to be communicated to the person charged together with a statement of the allegations on which each charge is based and any other circumstance which it is proposed to be taken into consideration in passing orders has to be stated. This rule embodies a principle which is one of the specific contents of a reasonable or adequate opportunity for defending oneself. If a person is not told clearly and definitely what the allegations are on which the charges preferred against him are founded, he cannot possibly, by projecting his own imagination, discover all the facts and circumstances that may be in the contemplation of the authorities to be established against him.”

16. Where the charge sheet is accompanied by the statement of facts and the allegations are not



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W.P.No.34241 of 2014

specific in the charge sheet, but are crystal clear from the statement of facts, in such a situation, as both constitute the same document, it cannot be held that as the charges were not specific, definite and clear, the enquiry stood vitiated. Thus, nowhere should a delinquent be served a charge sheet, without providing to him, a clear, specific and definite description of the charge against him. When statement of allegations are not served with the charge sheet, the enquiry stands vitiated, as having been conducted in violation of the principles of natural justice. Evidence adduced should not be perfunctory, even if the delinquent does not take the defence of, or make a protest with against that the charges are vague, that does not save the enquiry from being vitiated, for the reason that there must be fair-play in action, particularly in respect of an order involving adverse or penal consequences. What is required to be examined is whether the delinquent knew the nature of accusation. The charges should be specific, definite and giving details of the incident which formed the basis of charges and no enquiry can be sustained on vague charges. (Vide: State of



W.P.No.34241 of 2014

Andhra Pradesh & Ors. v. S. Sree Rama Rao, AIR 1963 SC 1723; Sawai Singh v. State of Rajasthan, AIR 1986 SC 995; U.P.S.R.T.C. & Ors. v. Ram Chandra Yadav, AIR 2000 SC 3596; Union of India & Ors.v. Gyan Chand Chattar, (2009) 12 SCC 78; and Anil Gilurker v. Bilaspur Raipur Kshetria Gramin Bank & Anr., (2011) 14 SCC 379).

17. The purpose of holding an enquiry against any person is not only with a view to establish the charges levelled against him or to impose a penalty, but is also conducted with the object of such an enquiry recording the truth of the matter, and in that sense, the outcome of an enquiry may either result in establishing or vindicating his stand, and hence result in his exoneration. Therefore, fair action on the part of the authority concerned is a paramount necessity.”

By laying down the aforesaid ratio to the present charge memo, which is not specific with regard to the allegations against the petitioner, the charge memo itself, cannot be sustained.

15. In view of the same, this Court is inclined to allow this Writ



W.P.No.34241 of 2014

petition. Accordingly, this writ petition is Allowed and the impugned order of the first respondent issued in G.O.(Ms.)No.1, School Education (R2) Department, dated 02.01.2012 upholding the orders of the second respondent issued in Na.Ka.No.035826/ C6/S3/08 dated 09.08.2008 and that of the third respondent issued in Na.Ka.No.67748/A3/S2/07 dated 14.03.2008 are set aside and the petitioner is granted with all consequential benefits including regularization of the suspension period from 27.04.2007 to 12.11.2007 as 'duty period'. No costs. Consequently, connected miscellaneous petition is closed.

07.03.2023

sts

Index:Yes/No

Internet:Yes/No

Speaking Order: Yes/No

To:

1. The Secretary to Government,
School Education Department,
Fort St.George, Chennai 600 009

2. The Director of School Education
College Road, Chennai 600 006

Page No.14 of 16



W.P.No.34241 of 2014

WEB COPY

3. The Joint Director (Personnel),
School Education Department,
College Road, Chennai 600 006



WEB COPY



W.P.No.34241 of 2014

J.NISHA BANU, J.,

sts

Order made in
W.P.No.34241 of 2014

Dated:
07.03.2023