



W.P.No.21347 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.02.2023

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.21347 of 2019

V.Balamurugan

...Petitioner

-Vs-

1.The State of Tamil Nadu,
Rep. by its Principal Secretary,
School Education Department,
Fort St. George, Chennai – 9.

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

3.The Commissioner for Disciplinary Proceedings,
1st Floor, Kuralagam
Chennai – 600 108.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the order of the 1st respondent made in G.O.(1D) No.0235, School Education Pa.Ka.1(2) Department, dated 01.07.2019, to quash the same and to consequently direct the respondents to reinstate the petitioner into service with all benefits both service and monetary.



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For Petitioner : Mr.L.Chandrakumar

For Respondents : Mr.K.H.Ravikumar
Government Advocate

ORDER

Heard Mr.L.Chandrakumar, learned counsel for the petitioner and Mr.K.H.Ravikumar, learned Government Advocate for the respondents.

2. The petitioner herein was levelled with certain charges through a charge memo dated 01.04.2015 issued by the Tribunal for Disciplinary Proceedings (TDP). On 30.12.2016, the TDP had filed its report holding the charges levelled against the petitioner as proved. Consequently, the petitioner was called upon to submit his further representation, to which, he had initially submitted his representation on 27.02.2017. Thereafter, the petitioner had challenged the enquiry report before this Court in W.P.No.18151 of 2019 and by an order dated 27.06.2019, the petitioner was granted liberty to raise all the grounds raised in the writ petition by way of a supplemental explanation with a consequential direction to the TDP to consider the same and then take a final call in the matter. By that time, the Government had also obtained the views of the Tamil Nadu Public Service Commission (TNPSC)



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on 03.05.2019. Before the petitioner filed such explanations, the first respondents herein, through G.O.(1D) No.235, School Education Department, dated 01.07.2019, had imposed the punishment of compulsory retirement. Challenging the same, the present writ petition has been filed.

3. The learned counsel for the petitioner raised a ground stating that inspite of the High Court granting liberty to file his supplemental explanation, the respondents have hurriedly passed the impugned order.

4. Per contra, the learned Government Advocate appearing for the respondents placed reliance on the counter affidavit and submitted that the petitioner had already submitted his further explanation on 27.02.2017, which was considered. It is also his submission that the order passed by this Court in W.P.No.18151 of 2019, dated 27.06.2019, had reached them belatedly on 23.07.2019, by which time, the impugned order has been passed. Therefore, the impugned order does not require interference.

5. I have given careful consideration to the submissions made by the respective counsels.



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WEB COPY 6. Insofar as the first objection raised by the learned Government Advocate is concerned, when the petitioner had challenged the TDP proceedings before this Court in W.P.No.18151 of 2019, the writ petition was contested by the respondents through their Government Advocate and in his presence, the order came be passed on 27.06.2019. In the said order, this Court had granted liberty to the petitioner to give his supplemental explanation with a consequential direction to the respondents to consider the same. If that be so, the respondents cannot now plead ignorance of the existence of such an order, particularly when they were represented by the Government Advocate. In view of the order passed by this Court, they ought to have waited for the supplemental explanation to be submitted by the petitioner before taking a final decision. In this background, the plea taken by the respondents that the order copy had reached them belatedly, cannot be sustained.

7. This apart, the petitioner has also given his further explanation on 27.02.2017 before the Government. A perusal of the impugned order of punishment dated 01.07.2019 reveals that the grounds raised by the petitioner



in his further explanation have not been specifically addressed by the first respondent, apart from a vague reference to the further explanation. An overall reading of the impugned order also reveals that though the order runs to about 8 pages, the operative portion of the order commences in one paragraph, wherein it is stated that the views of the TNPSC were obtained and that the petitioner's explanations were considered and rejected and accordingly imposed the punishment of compulsory retirement. On an overall view, the order itself suffers from non-application of mind and hence, is deemed to be a non-speaking order. On this ground also, the impugned order cannot be sustained.

8. Since this Court had earlier granted liberty to the petitioner to approach the respondents before passing a final order, I am of the view that the matter could be remitted back to the first respondent for fresh consideration of the petitioner's explanations.

9. In the light of the above findings, the impugned order passed by the first respondent dated 01.07.2019 is quashed. Consequently, the petitioner is granted liberty to make a supplemental explanation, within a period of two



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weeks from the date of receipt of a copy of this order, in addition to the further explanation already made to the first respondent on 27.02.2017. On receipt of such an explanation, the first respondent herein is at liberty to obtain the views of the TNPSC, if required, and on consideration of all the grounds and objections raised in the further explanation dated 27.02.2017, as well as in the supplemental explanation, final orders shall be passed atleast within a period of six weeks from the date of receipt of supplemental explanation.

10. The writ petition stands thus allowed. No costs.

03.02.2023

Index:Yes/No
Neutral Citation:Yes/No
Speaking order/Non-speaking order
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To
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M.S.RAMESH,J.

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