



W.P.No.24017 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.12.2023

CORAM

THE HONOURABLE Ms.JUSTICE R.N.MANJULA

W.P. No.24017 of 2021
and W.M.P.Nos.25326 & 25327 of 2021

M.H.Mueedur Rahman

...

Petitioner

/vs/

1. The Principal Secretary,
Department of School Education,
Govt. of Tamil Nadu,
St. George Fort, Secretariat,
Chennai – 600 009.
2. The Director,
Directorate of School Education,
DPI Complex, College Road,
Chennai – 600 006.
3. The Chief Educational Officer,
Vellore – 632 001
Vellore District.
4. The District Educational Officer,
Vellore – 632 001
Vellore District.
5. The Correspondent,
Islamiah Higher Secondary School,
Pernambut – 635 810
Vellore District.



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6. A.HumayunBasha
Headmaster – Incharge,
Islamiah Higher Secondary School,
Pernambut – 635 810
Vellore District.

7. A.R.Devarajan ... Respondents

Writ Petition is filed under Article 226 of the Constitution of India to issue a writ of certiorarified mandamus to call for the records pertaining to the impugned order dated 23.09.2021 in R.C.No.F3/43/2021-22 on the file of the 5th and 7th respondent and to pass further order.

For Petitioner : Mr.Father Xavier
Senior Counsel

for Mr.Sharath P.Nair

For Respondents : Mr.G.Nanmaran
Special Govt. Pleader for RR1to4,6&7

Ms.R.Dakshayani Reddy
Senior Counsel

for Ms.Suneetha for R5



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ORDER

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This Writ Petition has been filed to quash the impugned order dated 23.09.2021 in R.C.No.F3/43/2021-22 on the file of the 5th and 7th respondent

2. Mr.Father Xavier, the learned counsel for the petitioner, submitted that the petitioner was terminated from service on 23.09.2021 in continuation of the disciplinary proceedings held against him in view of five charges levelled against him; the petitioner has earlier filed a Writ Petition in W.P.No.12699 of 2021 to consider his representation with regard to furnishing of certified copies of certain documents which were mentioned in the charge memo; in the said writ petition an order has been passed on 16.06.2021 by directing the respondent to consider the representation of the petitioner dated 03.06.2021 and furnish him the copies of the documents in case they have not been furnished to him; even subsequent to that the documents were not furnished to the petitioner; but the petitioner was suspended; even thereafter the petitioner was not given with any subsistence allowance; the petitioner has filed W.P.No.24017 of 2021 challenging the order of termination and W.P.No.301 of 2022 for seeking direction to consider him for the appointment of Head Master in the sixth respondent



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school.

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2.1 Mr.Father Xavier further submitted that the petitioner has filed these writ petitions on the ground that the petitioner was not given with any due opportunity to make his representation during the disciplinary proceedings, as he had not been given with the copies of the documents which were relied by the management in the enquiry proceedings, non-payment of subsistence allowance during the suspension period itself would vitiate the entire enquiry proceedings.

2.2 In support of his above contentions, the learned Senior Counsel for the petitioner relied on the judgment of the Hon'ble Supreme Court in ***UCO Bank and others Vs. Rajendra Shankar Shukla*** reported in ***(2018) 14 SCC 92*** wherein it is held that without paying subsistence allowance it will be unreasonable to expect an employee to meaningfully participate in the Departmental enquiry and the said ground itself would vitiate the proceedings. The relevant paragraphs of the said judgment is extracted hereunder:



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“14. We were also little taken aback to learn from the learned counsel for Shukla that after his superannuation on 31-1-1999 Shukla was paid nothing during the pendency of the disciplinary inquiry. He was not paid his salary because he had superannuated. For some reason he was not paid his pension, perhaps because a departmental inquiry was pending against him. He was also not paid any subsistence allowance during the period that the disciplinary inquiry was pending and even thereafter till 30-6-1999. In other words, Shukla was made to face a financial crunch and presumably, he did not have a fair opportunity of defending himself.

15. An employee is entitled to subsistence allowance during an inquiry pending against him or her but if that employee is starved of finances by zero payment, it would be unreasonable to expect the employee to meaningfully participate in a departmental inquiry. Access to justice is a valuable right available to every person, even to a criminal, and indeed free legal representation is provided even to a criminal. In the case of a departmental inquiry, the delinquent is at best guilty of a misconduct but that is no ground to deny access to pension (wherever applicable) or subsistence allowance (wherever applicable). As far as Shukla is concerned he was denied his pension as well as subsistence allowance which prevented him from effectively participating in the disciplinary inquiry. On this ground as well, the proceedings against Shukla are vitiated.”

3. Ms.Dakshayani Reddy prays that the Court can order for a *de nova* enquiry after passing the documents relied upon by the petitioner be furnished to the petitioner and that the petitioner be given with the subsistence allowance as well.



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3.1. It is further submitted that the fifth respondent cannot be blamed for non-payment of subsistence allowance; fair opportunities have been given to the petitioner and the petitioner did not make use of those opportunities and he remained *ex parte*.

4. On perusal of the petitioner's representation, it is seen that the petitioner himself has admitted about the receipt of copies of the documents in compliance of the earlier orders of this Court and hence the petitioner cannot raise the above ground for the sake of this petition.

5. Ms.Dakshayani Reddy submitted that only five documents have been issued to him, and in the enquiry report, 13 documents were shown. But the petitioner did not appear for the hearing and each time he was seeking adjournment. Had the petitioner appeared for enquiry, it would have been possible for him to take note of any of the documents that have been marked during the course of enquiry and he could have demanded a copy of the same as well. But the petitioner had not given any request to furnish copies of any other documents other than the ones given to him. Even though the petitioner has stated that he was given with five documents, in the explanation he did



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not specifically state that many of the documents were not given to him.

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6. Even if the Court gives any direction in the interest of justice, that can be of any help only if the delinquent also cooperates for the process of enquiry, by not keeping himself absent. Having waived the opportunity to cross-examine, it would be unfair on the part of the petitioner to state later that the fundamental principles of natural justice was not complied and he was not given with any opportunity.

7. Regarding subsistence allowance, it is submitted by the fifth respondent that the petitioner was kept under suspension for four months and all those period for which the Government has released subsistence allowance has been paid to him. Only if the Government release the subsistence allowance for the next two months, it can be paid to the petitioner for the remaining two months.

8. The petitioner had pointed out some infirmities in the documents relied by the fifth respondent. But he did not make use of the opportunity to cross-examine the witnesses when they had spoken about the same. Since



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the petitioner continued to be kept under suspension, I feel the petitioner can be given with a liberty to make his fresh representation and the respondents shall consider the same.

9. Accordingly, this Writ Petition is partly allowed by quashing the impugned order dated 23.09.2021 in RC No.F3/43/2021-22 with regard to punishment alone. The petitioner is at liberty to give a fresh representation to the respondents and on receipt of the same, appropriate authority shall reconsider the order of punishment imposed on the petitioner and pass an order afresh within a period of four weeks from the date of representation given by the petitioner. However, it is made clear that this order will not have any impact on the punishment which is already in force. The factual grounds raised by the petitioner are left open for the appreciation of respondents. No costs. Connected miscellaneous petitions are closed.

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Index: Yes / No
Speaking order / Non-speaking order
Neutral Citation : Yes / No
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To:

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R.N.MANJULA ,J.

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