



W.P(MD)No.16544 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 25.09.2023

DELIVERED ON : 17.11.2023

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P(MD)No.16544 of 2023

and

W.M.P(MD)No.13831 of 2023

M.Pathimuthu Hajara,
Headmaster,
Kazanatul Uloom Primary School,
Melapalayam,
Tirunelveli District.

... Petitioner

Vs.

- 1.The Director of Elementary Education,
DPI Campus,
Chennai-6.
- 2.The Joint Director of Elementary Education,
DPI Campus,
Chennai-6.
- 3.The Chief Educational Officer,
Tirunelveli District.
- 4.The District Educational Officer (Elementary),
Tirunelveli District.



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5.The Block Educational Officer,
Palaiyamkottai Nagar,
Tirunelveli District-627 002.

6.Kazanathul Uloom Primary School,
Represented by its Manager,
133/50A - Moolan Ahmed Pillai Street,
Melapalayam,
Tirunelveli District.

7.S.M.A.Uthuman,
Manager,
Kazanathul Uloom Primary School,
Melapalayam,
Tirunelveli District.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order of suspension, dated 30.06.2023 on the file of the sixth respondent and quash the same as illegal and consequently for a direction, directing the sixth respondent to reinstate the petitioner in the post of Headmaster in the sixth respondent School.

For Petitioner : Mr.Aswin Rajasimman
for M/s.Lajapathi Roy Associates

For R-1 to R-5 : Mr.N.Ramesh Arumugam
Government Advocate

For R-6 : Mr.S.Kumar

For R-7 : Mr.Mohammed Imran
for Ajmal Associates



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ORDER

The present writ petition has been filed for a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order of suspension, dated 30.06.2023 on the file of the sixth respondent and quash the same as illegal and consequently for a direction, directing the sixth respondent to reinstate the petitioner in the post of Headmaster in the sixth respondent School.

2. Heard the learned Counsel on either side and carefully perused the materials available on record.

3. The petitioner was appointed in the post of Secondary Grade Teacher on 05.04.1995 and her appointment was duly approved by the fourth respondent. Further, she was promoted to the post of Headmaster with effect from 10.08.2010 and her promotion was also duly approved by the fourth respondent vide his proceedings, dated 19.04.2017. The seventh respondent, who is the present Manager of the School was earlier appointed as the Headmaster in the petitioner's place by the erstwhile Management.



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Assailing the same, the petitioner has filed a writ petition in W.P(MD)No. 16820 of 2014 and this Court on 15.09.2014 was pleased to pass an order of *status quo* as on date of impugned order. In view of the same, the seventh respondent was not able to continue as Headmaster and further subsequently, the new Management forwarded the proposal seeking promotion of the petitioner as Headmaster and the same was favorably considered by the Competent Authority (i.e.,) the erstwhile District Elementary Educational Officer. Hence, the petitioner withdrew the said writ petition.

4. Thereafter, the seventh respondent developed a personal grudge against the petitioner and he started to victimize the petitioner after getting selected as the Manager of the sixth respondent School by virtue of rotation policy. That apart, the petitioner had also lodged a criminal complaint in crime No.68 of 2015 against the seventh respondent, which ultimately ended in acquittal on 07.08.2018, in view of the compromise entered between the petitioner and the seventh respondent at that point of time. Since the seventh respondent could not get appointed as Headmaster due to the interference of the petitioner, he has developed bias and personal grudge



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against the petitioner and has been trying to harass the petitioner in every situation. As a result of which, the petitioner was not paid several monetary benefits such as monthly salary of the petitioner for the month of December 2015, annual increment for the year 2022, part final amount from the teachers provident fund, arrears of salary in the post of Headmaster from 10.08.2010 to 31.05.2017.

5. The petitioner had sent several detailed representations to the respondents 4 to 6 on various dates such as 21.11.2022, 26.11.2022, 10.12.2022, 11.12.2022, 12.12.2022, 25.12.2022, 31.12.2022 and 01.01.2023. While the petitioner was with a legitimate expectation that she would be provided with all the aforesaid monetary benefits, the sixth respondent has issued a memo, dated 01.01.2023 making several allegations against the petitioner, which are all vague and not specific. Hence, the petitioner had sent a letter, dated 03.01.2023, seeking for the documents mentioned in the reference of the said memo, dated 01.01.2023. Similarly, instead of disbursing the monetary benefits, the sixth respondent School has not so far sent the proposal to the respondents 4 and 5 enclosing the petitioner's request. Hence, the petitioner filed a writ petition in



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W.P(MD)No.1361 of 2023 before this Court seeking for a direction for disbursement of monthly salary, annual increment etc.

6. On 24.01.2023, this Court was pleased to issue a direction to dispose of the petitioner's representation, dated 01.01.2023 within six weeks. Despite the same, except the annual increment and part final amount, rest of the benefits are not yet disbursed to her, including the arrears of annual increment. While so, during the 74th Republic Day function, due to the negligence of the seventh respondent, the National Flag had fallen in the ground during flag hoisting causing disrespect to the National Flag. Since news spread about the said incident, the seventh respondent attempted to make the petitioner as a scapegoat for the said incident. Aggrieved by the same, the petitioner lodged a complaint to the authorities, including the Chief Minister Cell explaining the incident which happened on the 74th Republic Day on 26.01.2023. Based on the petitioner's complaint, enquiry was conducted and in the same, the seventh respondent has reported to the authorities that he has initiated 17(a) proceedings against the teachers, who were responsible and also ensured that such incident will not occur in the future.



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7. While so, the District Elementary Educational Officer, Tirunelveli vide his proceedings, dated 02.02.2023 has forwarded a communication stating that suitable action has been taken against her complaint by the sixth respondent. Under such circumstances, the sixth respondent had issued the impugned order of suspension, dated 30.06.2023. The said suspension order is highly arbitrary and issued with *mala fide* intention. Further, the reasons stated for the suspension is regarding a civil dispute for which, the petitioner was already placed under suspension as on 29.07.2016. On 06.08.2016, the suspension order, dated 29.07.2016 was revoked and further, the erstwhile Manager has recorded the petitioner's explanation on the basis of which, the same was found satisfactory and all further action was dropped in the issue of the erstwhile suspension. But now on the very same set of allegation, once again the sixth respondent has issued the impugned order of suspension. Hence, assailing the same, this writ petition came to be filed.

8. The learned Government Advocate for the respondents 1 to 5 relying upon the case reported in **2006 (12) SCC page 28 in the case of**
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Union of India and Another Vs. Kunisetty Satyanarayana, pressed for dismissal of this writ petition and the relevant portion of which is extracted as follows:

"13. It is well settled by a series of decisions of this Court that ordinarily no writ lies against a charge-sheet or show-cause notice vide Executive Engineer, Bihar State Housing Board Vs. Ramesh Kumar Singh, Special Director Vs. Mohd. Ghulam Ghouse, Ulagappa Vs. Divisional Commr., Mysore, State of U.P. Vs. Brahm Datt Sharma, etc.

14. The reason why ordinarily a writ petition should not be entertained against a mere show-cause notice or charge-sheet is that at that stage the writ petition may be held to be premature. A mere charge-sheet or show-cause notice does not give rise to any cause of action, because it does not amount to an adverse order which affects the rights of any party unless the same has been issued by a person having no jurisdiction to do so. It is quite possible that after considering the reply to the show-cause notice or after holding an enquiry the authority concerned may drop the proceedings and / or hold that the charges are not established. It is well settled that a writ petition lies when some right of any party is infringed. A mere show-cause notice or charge-sheet does not infringe the right of anyone....."



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9. The learned Counsel for the sixth respondent relied upon the order passed by this Court in W.P.No.8158 of 2022, dated 05.04.2022 and the portion of the case which is relevant herein is extracted as follows:

"7. In view of the legal principles settled, writ petition against the charge memo cannot be entertained in a routine manner and judicial review against the charge memo is certainly limited. This being the factum, the writ petitioner has to participate in the process of enquiry and it is for the competent authorities to take steps for an early disposal of the disciplinary proceedings as prolonged pendency is also against the delinquent officials."

10. Now, the pertinent question which has to be decided is whether the petitioner has been visited with charge memo slapping her with suspension order twice for the same set of allegation? The original suspension order, dated 29.07.2016 came to be issued on the basis of the complaint made by one Thiru.A.S.Jeylani that the petitioner was doing real estate business and on that basis under Rule 74 of the Private Schools Regulations Act, 1973, the petitioner was suspended for a period of two months. Thereafter, on 06.08.2016, the Correspondent of the sixth



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respondent School fully accepting the explanation made by the petitioner to the suspension order, dated 29.07.2016, confirmed that the petitioner has not indulged in any real estate business and on that basis cancelled the suspension order, dated 29.07.2016 by converting the period of suspension as earned leave as duty period with all monetary benefits. The latest suspension order, dated 30.06.2023 has been issued on the basis of the complaint made by one Thiru.P.Jaffer Mohammed Kaseen Peer, dated 09.06.2023, claiming that the petitioner is doing real estate business.

11. The learned Counsel for the petitioner submitted that the allegation about petitioner doing real estate business had already been enquired into earlier by the sixth respondent School and she had been exonerated of all the charges in the earlier proceeding. Hence, he contended that the impugned charge memo would amount to double jeopardy and therefore, illegal. Since the charge, which has been levelled under the suspension order, dated 29.07.2016 had earlier been enquired into in a regular enquiry by a Competent Authority and since the petitioner has been exonerated, on that very same charge a second enquiry would not be maintainable.



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12. However, a critical perusal of the records produced before me would make it clear that the suspension order, dated 29.07.2016 came to be visited on the writ petitioner on the basis of a complaint made by one Thiru.T.Jeylani, who alleged that the petitioner had indulged in real estate business violating the service rules, for which, the erstwhile Management has found it baseless and revoked the suspension order of the writ petitioner. On the other hand, the second suspension order, dated 30.06.2023, issued by the sixth respondent School is based on the complaint made by one another Thiru.P.Jaffer Mohammed Kaseen Peer on 09.06.2023 stating that the petitioner is indulging in real estate business. The complaint made by the said Thiru.Jaffer Mohammed Kaseen Peer was placed before me for perusal and the same reveals several land transactions of the writ petitioner by executing various sale deeds in favour of several persons during the period from 2009-2020 along with the details of the sale deed. Since, the earlier complaint was made by another person as early as in the year 2016 that will not absolve the petitioner from giving explanation to the complaint made by Thiru.Jaffer Mohammed Kaseen Peer as against the petitioner with respect to certain transfer of property transferring land properties after 2016. That



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apart, the petitioner is suspended as early as on 30.06.2023.

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13. Be that as it may keeping in mind, the submission made by the petitioner that the sixth respondent School has issued such a suspension order as against the petitioner due to the personal grudge of the seventh respondent and considering the fact that the petitioner is kept under suspension for more than three months, it is necessary to direct the sixth respondent School to immediately revoke the suspension of the petitioner and reinstate her in the post of Headmaster in the sixth respondent School with immediate effect on the receipt of copy of this order. However, in view of the fact that the seventh respondent is functioning as the Manager of the sixth respondent School by virtue of rotation policy and apart from him there are two other trustees of the School, who would also occupy the post of Manager in terms of the rotation policy, I am inclined to direct one of the other trustees, namely, Tmt.Samsu Beevi to deal with the complaint made against the petitioner by Thiru.Jaffer Mohammed Kaseen Peer by appointing an enquiry officer and thereafter furnishing the copy of the complaint received as against the petitioner along with all the supporting documents and giving her an opportunity of submitting her explanation and



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participate in the enquiry submitting her defence. On the basis of which, enquiry officer could file a report before Tmt.Samsu Beevi and on the basis of which, she can take a final decision in accordance with law, within a period of twelve (12) weeks from the date of receipt of a copy of this order.

14. This writ petition stands disposed of, accordingly. There shall be no order as to costs. Consequently, connected Miscellaneous Petition stands closed.

17.11.2023

NCC : Yes
Index : Yes
Internet : Yes
BTR



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To

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Tirunelveli District.
- 7.The Manager,
Kazanathul Uloom Primary School,
Melapalayam,
Tirunelveli District.
- 8.Samsu Beevi,
Old No.84/1,
New No.56,
Kattu Pudhu Theru,
Melapalayam, Tirunelveli-627 005.

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L.VICTORIA GOWRI, J.

BTR

Pre-delivery Order made in
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.11.2023