



W.P.(MD).No.18042 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 25.09.2023

PRONOUNCED ON : 03.11.2023

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD)No.18042 of 2023

and

W.M.P.(MD)Nos.15055, 15056 and 16342 of 2023

M.Pathimuthu Hajara,
Headmaster (Under Suspension),
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.
- 5.The Block Educational Officer,
Palayamkottai Nagar,



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Tirunelveli District – 627002.

6.Kazanathul Uloom Primary School,
Rep. By its Manager,

7.S.M.A.Uthuman

8.Manisankar

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for the records pertaining to the impugned order of charge memo dated 12.07.2023 and consequential impugned order dated 19.07.2023 on the file of the respondent no.6 and quash the same as illegal.

For Petitioner	: Mr.Aswin Rajasimman, Lajapathi Roy and Associates
For RR 1 to 5	: Mr.N.Ramesh Arumugam Government Advocate
For R6	: Mr.S.Kumar
For R7	: Mr.H.Mohammed Imran For Ajmal Associates

ORDER

The prayer in the writ petition reads as follows:-

The Writ petition has been filed for issuance of a Writ of Certiorari, to quash the impugned order of charge memo dated 12.07.2023 and consequential impugned order dated 19.07.2023 on the file of the 6th respondent.



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2.Heard Mr.Aswin Rajasimman, learned counsel for M/s.Lajapathi Roy and Associates, appearing for the petitioner, Mr.N.Ramesh Arumugam, learned Government Advocate appearing for the respondents 1 to 5, Mr.S.Kumar, learned counsel appearing for the 6th respondent and Mr.H.Mohammed Imran, learned counsel for M/s.Ajmal Associates, appearing for the 7th respondent and perused the entire materials available on record.

The case of the petitioner in nutshell is as follows:-

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 the said promotion was also approved by the fourth respondent in 19.04.2017. Due to the personal vengeance of the seventh respondent with the petitioner, she was not paid with several monetary benefits including monthly salary for the month of December 2015, annual increment for the year 2022, part final amount from the teachers provident fund and arrears of salary in the post of Headmaster from 10.08.2010 to 31.05.2017.



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4.The petitioner has sent several representations for the said monetary benefits to the respondents 4 to 6 on various dates and the last of which was made on 01.01.2023. While so, the sixth respondent had issued a memo dated 01.01.2023 making several allegations against the petitioner, which are vague and not specific. In response to the same, the petitioner had sent a letter dated 03.01.2023 seeking for the documents mentioned in the reference of the said memo. At the same time, the sixth respondent did not send the proposal for all the monetary benefits sought for by the petitioner to the respondents 4 and 5 enclosing the petitioner's request. Hence, the petitioner filed W.P.(MD)No.1361 of 2023 before this Court seeking to direct the sixth respondent to disburse the monthly salary, annual increment, etc. This Court on 24.01.2023 was pleased to allow the writ petition directing the respondents to dispose of her representation dated 01.01.2023. Despite the same, except the annual increment and part final amount, rest of the benefits are not yet disbursed to the petitioner by the sixth respondent.

5.The seventh respondent who is the present Manager of the sixth respondent school was earlier appointed as Headmaster in the place of the petitioner by the erstwhile Management. Aggrieved by the same, the



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petitioner filed writ petition in W.P.(MD)No.16820 of 2014 challenging the appointment of seventh respondent as Headmaster. On 15.09.2014, this Court was inclined to pass an order of status quo. Hence, the seventh respondent was not able to continue as Headmaster. Later subsequently the new Management forwarded the proposal seeking promotion of the petitioner as Headmaster and the same was favourably considered by the competent authority. As the result of which, the petitioner withdrew the said writ petition in W.P.(MD)No.16820 of 2014. In view of this, the second respondent with personal grudge against the petitioner started victimizing her after being selected as the Manager of the sixth respondent school by virtue of rotation policy. The petitioner has also lodged a criminal complaint in Crime No.68 of 2015 against the seventh respondent which ended in acquittal on 07.08.2018, in view of the compromise entered between them.

6.During the 74th Republic Day function, due to negligence of the seventh respondent, the National Flag has fallen to the ground during flag hoisting causing disrespect to the National Flag. Since the seventh respondent attempted to make the petitioner as scape goat for the said incident, she herself lodged a complaint to the authorities narrating the incident which happened on the 74th Republic Day on 26.01.2023. Based on



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the said complaint, an enquiry was conducted and as a result of which, the seventh respondent had reported to the authorities that he had initiated 17(a) proceedings against the teachers, who were responsible for the untoward incident and also ensured that the same will not occur in the future. While so on 30.06.2023, the sixth respondent has issued the impugned order of suspension on the petitioner. The reason put forth in the suspension order was with respect to a civil dispute, for which the petitioner was placed under suspension as on 29.07.2016. Thereafter, on 06.08.2016, the erstwhile suspension was revoked. That apart, the erstwhile Manager on being satisfied by the explanation furnished by the petitioner with respect to the erstwhile suspension, dropped further action against the petitioner. However, the sixth respondent has once again issued an impugned order of suspension on the same line. Challenging the same, the petitioner filed a Writ petition in W.P.(MD)No.16544 of 2023 before this Court and the same is pending.

7.In the meanwhile, the sixth respondent has issued the impugned charge memo dated 12.07.2023 containing 12 vague/baseless charges. Further the seventh respondent has sought for an explanation from the petitioner for the charges within a span of two days. However, the said



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charge memo was received by the petitioner only on 15.07.2023 but to her shock and surprise, even without waiting for her explanation, the consequential impugned order of appointment of an Enquiry Officer dated 19.07.2023 followed, stating that the Enquiry Officer is appointed for conducting enquiry within a period of seven days from the date of issuance of charge memo. Challenging the impugned charge memo dated 12.07.2023 and the consequential impugned order of appointment of Enquiry Officer dated 19.07.2023, this writ petition came to be filed.

Defence :-

8.The sixth respondent filed a counter affidavit and the learned counsel for the sixth respondent vehemently denied all the arguments made by the learned counsel for the petitioner. He vehemently submitted that the issue of national flag and connected proceedings has nothing to do with this case.

9.The learned counsel further submitted that the petitioner was placed under suspension on 29.07.2016 for her involvement in real estate business based on the petition given by one Thiru.Jailani. However the same was revoked by the subsequent Management as the petitioner influenced them.



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The involvement of the petitioner in real estate business cannot be termed as civil dispute and it is against the code of conduct of the petitioner's employment. As far as the suspension of the petitioner dated 30.06.2023 by order dated 27.06.2023 is concerned, the same has been done on the basis of a complaint, which was given by one P.Jabar Mohammed Kasin Beer, as forwarded by the fifth respondent against the petitioner for her continuous involvement in real estate business. Since the said allegation against the petitioner is against the Code of conduct, the same required a proper enquiry to be conducted by the disciplinary authorities. Hence, she was placed under suspension. Hence, charge memo dated 12.07.2023 was issued to the petitioner framing as many as 13 charges and seeking explanation within two days. Though the petitioner received charge memo, she neither submitted her explanation nor sought for extension of time to submit her explanation.

10. On the other hand on 15.07.2023, she submitted a petition under RTI Act seeking for connected documents of the charge memo. Since the petitioner failed to submit her explanation within the stipulated period of time, on 19.07.2023, the eighth respondent was appointed as Enquiry Officer to enquire into the charge memo. If the petitioner had felt that the



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time given for explanation is not sufficient to her, she should have come forward to seek extension of time. In such case the seventh respondent would have considered her request and would have granted extension of time for submitting her explanation. Having failed to submit her explanation, she cannot find fault with the seventh respondent. Since Section 22 of Private School Regulation Act contemplates to complete disciplinary proceedings within a period of two months, further period of two days for responding to charge memo was given to the petitioner. Even in the erstwhile year 2014, when the petitioner was placed under suspension, she was granted two days time to submit her explanation. Accordingly, she submitted the explanation within two days. This would suffice to prove that two days would be sufficient to submit her explanation. However, without doing the same, it is no proper for the petitioner to have approached this Court by filing this case and on that basis, he pressed for dismissal of the writ petition.

11. The fourth respondent has filed a counter affidavit and the learned Government Advocate for the fourth respondent submitted that the sixth respondent school is a minority school getting grant in aid from the Government. The petitioner is working as Headmaster in the school and the



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respondent has issued a charge memo for taking disciplinary action against the petitioner calling for explanation and has appointed an Enquiry Officer.

Taking disciplinary action against the petitioner by the Manager/seventh respondent of the sixth respondent minority school is an internal affair of the school over which the Department is debarred from interfering with in terms of Article 30(1) of Constitution of India. In view of the same, the fourth respondent pressed for dismissal.

Analysis:-

12.Having heard the rival submissions made by the various parties and on perusal of the records before me, it has become necessary to decide as to whether the sixth respondent School has issued a second charge memo with respect to same charges for which, the petitioner was already placed under suspension during the year 2014 and thereafter, the disciplinary proceedings was closed.

13.No doubt the erstwhile Management placed the petitioner under suspension on 29.07.2016 for the allegation that she was involved in real estate business for the purpose of initiating disciplinary proceedings against her based on the complaint given by one Thiru.Jailani. Though the same was



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revoked by the subsequent management on 06.08.2016 and the disciplinary proceedings was closed in favour of the petitioner, now the sixth respondent school has placed the petitioner under suspension on 30.06.2023 for a complaint, which has been forwarded to the sixth respondent school by the fifth respondent Block Educational Officer. The said complaint has been made by one Thiru.P.Jabar Mohammed Kasim Beer. The said complaint is with respect to the petitioner's continuous involvement in real estate business.

14.The critical perusal of the charge memo dated 12.07.2023 would reveal that as many as 13 charges has been framed as against the petitioner, of which the complaint of Mr.P.Jabar Mohammed Kasim Beer is incorporated as 3rd, 4th and 5th charges. However, the other 13 charges are with respect to the various irregularities, which has been crystallized and framed as charges as against the petitioner. Hence, outrightly I cannot conclude that the disciplinary proceedings initiated during the year 2016 and the one, which has been commenced by the issuance of charge memo dated 12.07.2023, in the current academic year would be one and the same. However, the seventh respondent has fairly submitted in his counter affidavit that only two days time was given to the petitioner to submit her



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explanation for the impugned charge memo dated 12.07.2023 and thereafter, immediately within a period of seven days from the date of issuance of charge memo without waiting for the petitioner to submit her explanation, the eighth respondent has been appointed as Enquiry Officer. That apart, it is understood that the seventh respondent has been selected as the Manager of the sixth respondent from 01.02.2021 to 31.01.2024 as per turn system and the period fixed in the judgment in A.S.No.36 of 2011 dated 06.08.2012 on the file of the II Additional District and Sessions Judge, Tirunelveli. Apart from the seventh respondent, one Thiru.Syed Ahamed Hanifa and Tmt.Samso Beevi are also entitled to manage the sixth respondent's school and other properties for three years, three years and 1½ years respectively. In such a way, a scheme has been framed by the judgment and decree in A.S.No.36 of 2011.

15.Since the stipulation of two days time for furnishing explanation is against the established principles of natural justice and since Rule 17(b) of Tamil Nadu Civil Services Discipline and Appeal Rules, 1955, categorically provides that reasonable time has to be given for the delinquent to submit their explanation, it is necessary that the sixth respondent ought to have given adequate time for submitting her explanation. However without



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providing adequate time for replying the charges, the sixth respondent mechanically appointed the eighth respondent as the Enquiry Officer. The Hon'ble Apex Court in the case of ***Uco Bank vs Rajendra Shankar Shukla*** reported in ***2018 14 SCC 92***, has held as follow: “*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 fair opportunity to defend, denial of fair opportunity would amount to violation of principles of natural justice.*”

16. That apart so far despite several requests by the petitioner, the sixth and seventh respondent have not furnished the documents pertaining to the various charges framed as against the petitioner. This Court in the case of ***G.Prakasam v. Secretary to Government*** reported in ***2011(2) CWC 705***, has held that “*as the Supreme Court in its repeated decisions has held that if the non furnishing of the documents is prejudicial to the delinquent Officer, the enquiry as held by the Enquiry Officer would vitiate the entire proceedings.*” In yet another case, the Hon'ble Apex Court in the case of ***State of Uttar Pradesh v. Saroj Kumar*** reported in ***(2010) 2 SCC 772*** has held as “*non furnishing of document would result in breach of rules of*



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natural justice”.

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17.In view of the same, I have no hesitation to observe that the sixth respondent and seventh and eight respondents are trying to initiate disciplinary proceedings against the petitioner violating all principles of natural justice without giving appropriate opportunity to submit her defence and without furnishing necessary documents for her to defend her case. That apart the appointment of Enquiry Officer within a period of seven days from the date of issuance of charge memo from 12.07.2023 without giving ample time for the petitioner to submit her explanation also vitiate the entire disciplinary proceedings.

18.In view of the same, I hereby quash the impugned order of appointment of eighth respondent as Enquiry Officer vide proceedings dated 19.07.2023 and further yet another Manager of the sixth respondent school namely Tmt.Samso Beevi is directed to furnish all the documents pertaining to the charge memo dated 12.07.2023 to the petitioner and to give 15 days time to the petitioner for giving explanation. Thereafter, on receipt of the explanation, if the said Tmt.Samso Beevi is not satisfied with the explanation given by the petitioner, she is directed to appoint Enquiry



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Officer of her choice. The Enquiry Officer if appointed, is directed to give an appropriate opportunity to the petitioner to participate in the disciplinary proceedings and defend her case and thereafter, submit an enquiry report to the sixth respondent school. The sixth respondent school is directed to furnish a copy of the said enquiry report, if any to the petitioner immediately on the date of receipt of the same by the School for her explanation giving 15 days further time for her to respond and thereafter, pass appropriate orders in accordance with law. The entire exercise has to be completed within two months from the date of receipt of copy of this order.

19. Accordingly, the Writ Petition stand partly allowed. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

03.11.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes
Mrn



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L.VICTORIA GOWRI, J.

Mrn

To

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