



W.P.No.11



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 11.07.2024

Pronounced on : 20.08.2024

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THE HONOURABLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

W.P.No.11914 of 2021

and

W.M.P.No.12663 of 2021

S.Dhilip Kumar

... Petitioner

Vs.

1. The Joint Director of School Education (Personnel),
DPI Complex, College Road, Chennai – 600 006.
2. The Chief Educational Officer,
O/o the Chief Educational Office,
Salem – 636 001.
3. The District Educational Officer,
O/o the District Educational Office,
Edapadi, Salem – 637 101.
4. The Head Master,
Government Higher Secondary School,
Thevur, Sankagiri Taluk,
Salem – 637 104.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari Mandamus, to call for the impugned order of removal from service of the 2nd respondent in R.C.No.3919/C1/2020, dated 19.04.2021 and quash the same, consequently to direct the 2nd respondent to reinstate the petitioner in service and a Secondary Grade Teacher of Thevur Government Higher Secondary School Salem with all attendant benefits.



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For Petitioner : Mr.D.Selvaraju
For Respondent : Mr.K.H.Ravikumar,
Government Advocate

ORDER

The petitioner herein was appointed as a 'Secondary Grade Teacher' on 30.01.2001 in Ara Chettipetti Government High School and thereafter, transferred to the Government Higher Secondary School, Thevur in the year 2008. While the petitioner was working in the said School, one S.Revathy, a Post Graduate Assistant was transferred to the said School in the Month of June, 2017. Thereafter, the said S.Revathy rented the first floor of the petitioner's house and started living there. Over a period of time, an illicit relationship developed between the petitioner and the said S.Revathy, resulting in the petitioner fathering a child through the said S.Revathy. Thereafter, certain disturbances arose between the petitioner, the said S.Revathy and the wife of the petitioner herein, resulting in the said S.Revathy making a complaint to the Tamil Nadu State Commission for Women, Chennai on 02.03.2020. In the said complaint, several allegations were made against the petitioner and it was also alleged that the petitioner married the said S.Revathy and she gave birth to a child through the petitioner herein. The said complaint was forwarded by the Secretary, Tamil Nadu State Womens' Commission to the Respondent No.1 herein, calling for a report and in turn, the Respondent No.1 called for a report from the Respondent No.2 through proceedings bearing Na.Ka.No.37983/C5/E13/ 2020 dated 09.10.2020. Thereupon,



the Respondent No.2 through proceedings bearing Na.Ka.No.3919/C1/2020 dated 04.03.2021, directed the Vishaka Committee of the School Education Department, Salem District, headed by the Respondent No.3 herein, to submit a detailed enquiry report on the complaint made by the said S.Revathy. It is thereafter, the said Committee headed by the Respondent No.3 herein, summoned both the petitioner as well as the said S.Revathy and conducted a detailed enquiry by recording their statements and submitted its report to the Respondent No.2 herein. The findings recorded by the said Vishaka Committee were extracted in Paragraph No.8 in the Counter-affidavit filed by the Respondent No.2 herein. This Court does not deem it necessary to extract the same in this order. The said Committee recorded a finding that the said S.Revathy had entered into a relationship with the petitioner with complete knowledge of the probable family complications and that the said S.Revathy was an equal partner in the entire episode and also concluding that the petitioner as well as the said S.Revathy share equal role in the acts of offences and misconduct and that they also acted in utter violation of the Rule 19 of the Tamil Nadu Government Servants' Conduct Rules, 1973. It is thereafter, the Respondent No.2 issued the impugned proceedings bearing RC.No.3919/C1/ 2020 dated 19.04.2021, imposing the penalty of removal from service in exercise of power under Rule 17(d)(ii) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. It is aggrieved by the said order, dated 19.04.2021, the petitioner approached this Court by filing the present



Writ Petition.

2. The learned counsel for the petitioner contended that the impugned order came to be passed in violation of the principles of natural justice and also without following the mandatory procedure that is required to be followed in the case of imposing a major penalty of removal from service as contemplated under Rule 17(d)(ii) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955 and also further contended that the report of the said Committee, which is the basis for passing the impugned order was also not furnished to the petitioner and no opportunity was afforded to the petitioner to submit his comments or objections on the said report. Thus, it is contended that the impugned order is liable to be set aside.

3. On the other hand, the Respondent No.2 filed a counter-affidavit contending that the petitioner was afforded every opportunity by the Respondent No.3/ District Educational Officer, who happens to be the Chairman of the Vishaka Committee and after conducting a detailed enquiry by duly examining the relevant witnesses, the Vishaka Committee submitted its report and it is only basing upon the said report, the impugned order came to be passed. Thus, it is contended that the Disciplinary Authority/ Respondent No.2 having come to the conclusion that, it is not reasonably practicable to follow procedure provided under Sub-rule (b) of the Rule 17, came to the conclusion that it is a fit case, where the power under Rule 17(d)(ii) is to be



invoked, passed the impugned order.

4. Heard Mr.D.Selvaraju, learned counsel for the petitioner and Mr.K.H.Ravikumar, learned Government Advocate appearing for the respondents and perused the entire material on record.

5. From the perusal of the material on record, especially the explanation dated 10.03.2021 submitted by the petitioner, it is seen that the petitioner has admitted his relationship with the said S.Revathy and also about fathering a child through the said S.Revathy, though the petitioner has denied of having contacted second marriage with the said S.Revathy. In fact, the petitioner has tried to explain in so many words as to how the said S.Revathy lured the petitioner to get into an illicit relationship and as to how the said S.Revathy extracted huge amounts of money from the petitioner on several occasions. Thus, it is a case of admission on the part of the petitioner of having illicit relationship with the co-employee, though the marriage, as claimed by the said S.Revathy was denied by the petitioner. Though the petitioner, in the affidavit filed in support of the Writ Petition, contended that he has denied about the said relationship with the said S.Revathy, the record speaks otherwise as already noted herein above.

6. In the light of the admission of the petitioner, as is evident from the



explanation dated 10.03.2021 submitted by the petitioner before the Respondent No.3 and also considering the nature of misconduct committed by the petitioner, this Court is of the considered view that no detailed enquiry need to be made by issuing a charge-memo as required under Rule 17(b) of the Rules, 1955. The admitted conduct of the petitioner of having illicit relationship with the said S.Revathy, though there is no concrete proof of marrying the said S.Revathy, straight-away tracting the misconduct under Rule 19 of the Tamil Nadu Government Servants' Conduct Rules, 1973, certainly, the conduct of the petitioner would attract Sub-Rule 2 of Rule 19 of the Rules 1973, and the misconduct of the petitioner is definitely the one involving moral turpitude, causing embarrassment to the Department, especially in the context of the fact that the petitioner is working in a Education Department, as a Secondary Grade Teacher.

7. Once the disciplinary authority came to the conclusion that on consideration of the overall facts and circumstances of the case, that it is a case fit for exercise of powers under Clause (ii) of Rule 17(d) of the Rules, 1955, the question of following the procedure, as contemplated under Rule 17(b) of the Rules, 1955 does not arise. In the entire affidavit filed in support of the Writ Petition, there is no contest against the power that was exercised by the Respondent No.2 under Rule 17(d)(ii) of the Rules. In the absence of any contest to the same and also in the light of the observations



made by this Court herein above, the action of the Respondent No.2 in invoking Clause (ii) of Rule 17(d) of the Rules, 1955 cannot be said to be unjust and in the considered view of this Court, the Respondent No.1 has rightly exercised the power under clause (ii) of the Rule 17(d) of the Rules, 1955 and such a discretion needs no interference.

8. Once it is concluded that the petitioner has committed the misconduct within the meaning of Sub-Rule 2 of Rule 19, the necessary consequence is to impose the penalty as provided under Clauses (vi), (vii) and (viii) of Rule 8 of the Rules, 1955. The disciplinary authority has a discretion to impose any of the penalties, as provided under the above said clauses on conclusion that the petitioner has committed misconduct under Rule 19 of the Rules 1973. The 2nd respondent, in such an event, is also under an obligation to justify or explain as to how he concluded to impose the punishment of removal from service under Clause (vii) of Rule 8. No doubt this is a case where the continuance of the petitioner in service is not in the interest of the Education Department and certainly, the petitioner is liable to be discontinued from service, but the Respondent No.2 failed to assign any reasons for imposing the punishment of removal from service, which has the effect of taking away the entire benefits of service rendered by the petitioner so far.



9. As already noted above, the petitioner was appointed as 'Secondary Grade Teacher' on 30.01.2001 and continued as such till the date of passing of the impugned order in the year 2021 i.e., for a period of more than 20 years, the misconduct that is alleged and established against the petitioner is only from the year 2017 onwards and from the material on record, it is also noticed that it is not the petitioner alone, who is responsible for such misconduct and that is the finding of the Vishaka Committee as well. Further, from the material on record, it is also noticed that the petitioner has tried his best to come out of the mess, but he could not succeed in his attempts resulting in the said S.Revathy making a complaint to the Tamil Nadu State Womens Commission in the year 2020.

10. Considering the overall facts and circumstances of the case, this Court is of the considered view that the Respondent No.2, while passing the impugned order, failed to exercise his discretion in proper perspective and therefore, the impugned order needs interference to the limited extent on the quantum of punishment. Accordingly, while upholding the impugned order bearing RC.No.3919/C1/ 2020 dated 19.04.2021, the punishment of 'removal from service' is modified to that of 'compulsory retirement' under Clause (vi) of Rule 8 of the Tamil Nadu Government Servants (Discipline and Appeal) Rules, 1955. Accordingly, the respondents are



directed to pass appropriate consequential orders settling the terminal benefits of the petitioner under Rule 39 of the Tamil Nadu Pension Rules within a period of three months from the date of receipt of a copy of this order.

11. Accordingly, the Writ Petition is disposed of. No costs. Connected Miscellaneous Petitions, if any, shall stand closed.

20.08.2024

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Index : Yes / No

Speaking order / Non-speaking order

Neutral Citation : Yes / No

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MUMMINENI SUDHEER KUMAR, J.

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Pre-Delivery Order made in
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