



W.P.No.12936 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.06.2024

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.No.12936 of 2024
and W.M.P.No.14102 of 2024

G.Kumar

.. Petitioner

Versus

1. The State of Tamil Nadu,
Rep. by its Principal Secretary to Government,
School Education Department,
Secretariat, Fort St. George,
Chennai - 600 009.
 2. The Director of School Education,
DPI Campus, College Road,
Chennai - 600 006.
 3. The Joint Director of School Education (Personnel),
Directorate of School Education,
DPI Campus, College Road,
Chennai - 600 006.
- .. Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorarified Mandamus to call for the records relating to the impugned charge memo issued by the 3rd respondent in Na.Ka.No.75896/C2/E1/2022, dated 31.10.2023 and to quash the same and consequently, directing the respondents to treat the period of service from



W.P.No.12936 of 2024

27.11.2015 to 16.03.2017 as well as from 01.10.2022 to 08.08.2023 as duty period, with all consequential and other attendant benefits.

For Petitioner : Ms.M.Kaviya

For Respondents : Mrs.S.Mythreye Chandru,
Special Government Pleader

ORDER

This Writ Petition is filed challenging the charge memorandum, dated 31.10.2023 and consequently, for the relief of treating the period of service from 27.11.2015 to 16.03.2017 as well as from 01.10.2022 to 08.08.2023 as duty period.

2. The case of the petitioner is that the petitioner was appointed as a Secondary Grade Teacher on 28.08.1995. While so, after absorption into Government service, the petitioner was appointed as Deputy Inspector of Schools vide order, dated 20.10.2010. However, subsequently, the petitioner was again reverted to B.T. Assistant on 27.11.2015. Aggrieved by the same, the petitioner filed a Writ Petition in W.P.No.38530 of 2015, in which, there was an interim order. However, the respondents did not permit the petitioner to again join the duty as Deputy Inspector of Schools pending the Writ Petition. Ultimately, the said Writ Petition was dismissed.



W.P.No.12936 of 2024

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However, the matter was taken up by way of a Writ Appeal and in the connected Writ Appeal in W.A.(MD).No.254 of 2022, the Madurai Bench of this Court, by the judgment, dated 25.03.2022, held that the post of B.T. Assistant and Deputy Inspector of Schools are not inter-transferable posts and once the candidates are appointed to the post of Deputy Inspector of Schools, they cannot be re-appointed as B.T. Assistants.

3. The matter was also carried to the Hon'ble Supreme Court of India and the Hon'ble Supreme Court also affirmed the judgment of the Division Bench. Thereafter, the petitioner joined the duty on 16.03.2017. Again, on 30.09.2022, when the petitioner was transferred, on 08.08.2023, the said order was cancelled. During the said period also, the petitioner did not work. Therefore, now, a charge memorandum is issued against the petitioner containing four charges. The first charge against the petitioner is that the petitioner did not properly inform his initial date of employment in the corporation service, thereby, causing loss to the department. The second charge is in respect of the unauthorised absence for the period from 26.11.2015 to 16.03.2017. The third charge is in respect of the



W.P.No.12936 of 2024

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unauthorised absence for the period from 13.09.2022 till 08.08.2023. The fourth charge is only the consequential charge.

4. *Ms.M.Kaviya*, learned Counsel for the petitioner submits that as far as the first charge is concerned, the petitioner has a record which was submitted before the concerned Head Master that he correctly informed all the dates. The said particulars are also correctly mentioned in the promotional panel which was drawn on 23.06.2008. Therefore, the first charge is factually incorrect. As far as the second charge is concerned, the petitioner had an interim order pending the Writ Petition. Without even taking the same into account and ultimately, when the petitioner was given a favourable order by the Division Bench, the said period cannot be treated as unauthorised absence as it is only the respondents who did not permit the petitioners to join the duty as Deputy Inspector of Schools. As far charge the third charge is concerned, the learned Counsel submits that by the second order, dated 08.08.2023, the earlier order was cancelled. Therefore, that would date back to the original date of order on 30.09.2022 and therefore, now, that period can also be treated as unauthorised absence. The fourth charge is only the consequential charge. Therefore, she submits that



W.P.No.12936 of 2024

there is nothing for the respondents to enquire into the matter and as such, this Court should interfere with the charge memorandum and quash the same.

5. In reply thereof, *Mrs.S.Mythreye Chandru*, learned Special Government Pleader for the respondents submits that as far as the first charge is concerned, the allegation is that the petitioner wrongly informed the date of joining. Now, what is being argued before this Court is only the defence in respect of the said charge. The same should only be raised before the Disciplinary Authority by way of an explanation and the said factors can only be considered in the enquiry and this Court cannot go into the factual correctness or otherwise of the defence of the petitioner in the Writ Petition. She submits that as far as the second charge is concerned, the respondent Department itself would consider the same during the enquiry given the subsequent judgments of the Hon'ble Supreme Court of India. Similarly, as far as the third charge is also concerned, the petitioner can very well submit his explanation before the Disciplinary Authority which will be duly considered. She further submits that already the petitioner submitted an explanation and an Enquiry Officer was appointed and the enquiry is



W.P.No.12936 of 2024

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going on. She submits that the respondents would conclude the enquiry within such period as may be directed by this Court.

6. I have considered the rival submissions made on either side and perused the material records of the case.

7. Even though there is force in the contention of the learned Counsel for the petitioner in respect of the part charges in the second charge etc., merely because some of the facets of the charge are not upfront maintainable, the entire charge memorandum cannot be interfered and quashed. If some of the facets of the charge memorandum require the explanation of the petitioner, then, the explanation shall be submitted only during the enquiry. The petitioner will be entitled to raise the defence, as raised before this Court in respect of all the four charges, before the Enquiry Officer and the submission that the respondent Department will consider as far as the period from 27.11.2015 and 16.03.2017 in favour of the petitioner, is also recorded.



W.P.No.12936 of 2024

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8. In view thereof, this Writ Petition is disposed of on the following terms :-

(i) The prayer of the petitioner to quash the entire charge memorandum, dated 31.10.2023 shall stand negatived;

(ii) The petitioner will be entitled to raise all the objections, which are raised before this Court, before the respondent Disciplinary Authority as well as before the Enquiry Officer and the same shall be considered objectively while coming to the conclusion;

(iii) The respondents shall proceed with and finalise the Disciplinary Proceedings and pass final orders thereon within three months from the date of receipt of a copy of this order;

(iv) There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

21.06.2024

Neutral Citation : no
grs

To

1. The State of Tamil Nadu,
Rep. by its Principal Secretary to Government,
School Education Department,



W.P.No.12936 of 2024

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W.P.No.12936 of 2024

D.BHARATHA CHAKRAVARTHY, J.

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W.P.No.12936 of 2024
and W.M.P.No.14102 of 2024

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