



W.P.No.26656 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.01.2024

CORAM

THE HONOURABLE MR.JUSTICE BATTU DEVANAND

W.P.No.26656 of 2017

and

W.M.P.No.28383 of 2017

K.Chandrasekar

... Petitioner

Vs

1.The Director of School Education
(Higher Secondary),
DPI Complex, College Road,
Chennai – 600 006.

2.Joint Director of School Education
(Higher Secondary),
DPI Complex, College Road,
Chennai – 600 006.

3.Chief Educational Officer,
Udhagamandalam,
Finger Post, Ooty,
Nilgiris District – 643 006.

4.Bala Murali
5.T.Ganesha Moorthy

... Respondents

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PRAYER:- Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari to call for the records and quashing the order dated 05.07.2017 passed in Moo/Mu/En.012988/W1-E3/2017 passed by the 1st respondent and to pass such other order.

For Petitioner : Ms.Kavya
for Mr.S.Nedunchezhiyan

For Respondents : Mr.L.S.M.Hassain Fizal
Additional Government Pleader

ORDER

The case of the petitioner is that he was appointed as Post Graduate Assistant Teacher (Botany) on 09.10.2000 and posted in Government Higher Secondary School, Anikorai, The Nilgiris District vide order dated 22.09.2000. Thereafter, the petitioner was transferred and posted in Government Higher Secondary School, Kotagiri. Whiles, the Headmaster by a relieving order dated 02.04.2014 appointed the petitioner as Assistant Examiner for the Botany subject, based on the phone message received from the 3rd respondent office. As per the relieving order, the petitioner reported at Bethlehem Girls

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Higher Secondary School, Udhagamandalam on 03.04.2014 for answer sheets valuation, on the said day, the petitioner was not allotted with any work and returned back to his school. Once again on 05.04.2014, the petitioner was relieved from school duty and appointed as Assistant Examiner for the Botany subject, as per the phone message received from the 3rd respondent. Based on the relieving order, the petitioner reported at Bethlehem Girls Higher Secondary School, Udhagamandalam for answer sheet valuation, instead of evaluation, the petitioner was asked to attend an enquiry as to why he was not present for answer sheet evaluation on 03.04.2014, the said enquiry was conducted by the 4th respondent herein/then CEO of the 3rd respondent office and an order of suspension was issued on 07.04.2014 stating that *".... failed to discharge my Higher Secondary Central Valuation Duty March/April 2014 and discourteously signed in the School attendance register without the approval of the competent authority"*. Challenging the order of suspension dated 07.04.2014, the petitioner filed WP.No.19363 of 2014 before this Court contending that the suspension



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order has been passed by the 4th respondent without authority of law as he is not appointing authority. This Court by an order dated 24.07.2014, set aside the order of suspension stating that the 4th respondent is not the competent authority to pass orders as per Rule 13 of the Tamil Nadu Civil Service (Discipline and Appeal) Rules. Pursuant to the order of this Court dated 24.07.2014, petitioner was reinstated in service.

2. During enquiry, the petitioner was questioned as to why he did not attended the paper evaluation work, the petitioner replied that he was not allotted any work and informed that the petitioner was surplus staff and will not be allotted any work, hence, the petitioner returned back to school to do his regular work. Thereafter, the petitioner was issued with charge memo dated 12.05.2014 by the 2nd respondent containing five charges under Rule 17(b) of the Tamil Nadu Civil Services (Disciplinary and Appeal) Rules. The petitioner offered his explanation on 31.05.2014. Being not satisfied with the explanations

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offered by the petitioner, the second respondent was appointed as an enquiry officer by a proceedings dated 26.07.2014. By a communication dated 17.12.2014, the petitioner was asked to appear for an enquiry on 22.12.2014 at 10.00am at the 3rd respondent office. In the enquiry proceedings, the petitioner was asked to fill up a questionnaire containing various questions for each of the charges and the same was filled up by the petitioner and handed over to the enquiry officer. The petitioner was not examined orally as well as cross examined by the departmental representatives nor the petitioner was permitted to cross examine the witnesses examined on behalf of the department.

3. Whiles, on 19.05.2014, the second respondent issued an order of transfer asking the petitioner to join Kolappalli School, Nilgiris. The petitioner submitted a request letter dated 28.08.2014 seeking to post him at Kothagiri School. Considering the request of the petitioner, the Second respondent passed an order on 02.09.2014 asking

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him to join the school at Kothagiri, thereby the petitioner joined the School at Kothagiri on 03.09.2014.

4. Subsequently, as per the order of this Court in WP.No.19363 of 2014, the petitioner was transferred to Government Higher Secondary School, Bitherkad. Based on the complaint dated 21.08.2015, by an order of the 5th respondent dated 21.08.2015 which is 110kms away from the residence of the petitioner.

5. Thereafter, the petitioner had filed writ petition in WP.No.33238 of 2016 to direct the respondents to pass final orders in the disciplinary enquiry, this Court by an order dated 22.09.2016 directed the 2nd respondent to pass final orders in the disciplinary proceedings within a period of twelve weeks. Pursuant to the order of this Court, the second respondent conducted enquiry and after considering the explanation offered by the petitioner passed the order of punishment for stoppage of increment with cumulative effect vide

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order No.Pa.Mu.No.32184/W2/E3/2014 dated 25.11.2016. The said order was communicated to the petitioner on 09.12.2016. Aggrieved against the said order, the petitioner preferred an appeal before the first respondent. Thereafter, the petitioner approached this Court by filing writ petition in WP.No.14100 of 2017 seeking to dispose of the appeal pending before the first respondent. This Court by an order dated 07.06.2017 directed the first respondent to pass an appropriate orders within a period of two months from the date of receipt of a copy of this order. Pursuant to the said order, the first respondent passed an order on 05.07.2017, confirming the order of the second respondent for stoppage of increment for a period of three years. Challenging the said order dated 05.07.2017, the petitioner filed the present writ petition before this Court.

6. Per contra, the third respondent has filed counter affidavit, wherein it is averred that the petitioner is a PG teacher, Government Higher Secondary School, Kotagiri and incharge HM of the School.

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On 01.08.2015, one Mrs.S.Alamelu, Tamil Teacher of the school went to the office for signing the attendance register placed in the HM table.

The petitioner who is incharge HM sitting nearby HM table blocked her from signing the attendance and involved in manhandling by catching her blouse and pushed her down, on seeing this incident another teacher Mr.K.Srinivasan who was entering the office room tried to save her was also attacked by the petitioner. The said incident was informed to the HM of the school who was in the valuation center, an enquiry was made by the HM with regard to the incident and found to be true. Thereafter, the School teachers and the PTA President have preferred a complaint before the Chief Educational Officer through HM stating that the writ petitioner should be transferred immediately for the safety of the school teachers and students. It is to be stated that there were already many complaints were received against the petitioner, which was lodged by the school students for his misbehavior. Based on the incident, by GO (1D) No.232 Department of School Education dated 10.07.2015 for the welfare of the students, the petitioner was

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transferred to Government Higher Secondary School, Bitherkad, Gudalur, since there was no vacancy in Coonoor Education District.

The enquiry was conducted on 24.02.2015, the petitioner also in his letter stated that the enquiry proceedings were satisfactory. The petitioner is the Post Graduate teacher and there is no meaning in saying that the letter was dictated by the enquiry officer/5th respondent. It is further stated that the incident was large, instead of suspending the petitioner and by considering the family situation meager punishment was awarded for stoppage of increment. Hence, it is prayed for dismissal of the writ petition.

7. Heard the learned counsel for the petitioner and the learned Additional Government Pleader for the respondents and perused the materials available on record.

8. The learned counsel for the petitioner would submit that the order of the first respondent is perverse, not valid in law, and the

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petitioner was not given an opportunity to represent his case. The learned counsel further submits that the 1st respondent failed to apply his mind independently while deciding the appeal filed by the petitioner and simply followed the opinion rendered by the 2nd respondent. The 1st respondent also failed to consider the ground raised by the petitioner in appeal in proper perspective. As such, the order of the first respondent is liable to be set aside.

9. The learned counsel further contends that the report of the enquiry officer which was the basis for passing punishment order by the 2nd respondent against the petitioner was not furnished to the petitioner and the petitioner took specific ground in the appeal with regard to non furnishing of enquiry report. But the first respondent being the appellate authority without considering the same and without giving any finding on that aspect erroneously dismissed the appeal, which is in violation of the principles of the natural justice.

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10. The learned counsel for the petitioner has placed reliance on the judgment of the Hon'ble Apex Court in ***Union of India and others v. Mohd. Ramzan Khan*** reported in ***(1991) 1 SCC 588*** to substantiate his arguments on this point.

11. On the other hand, the learned Additional Government Pleader appearing for the respondents submits that a charge memo was issued against the petitioner and after considering the explanation, the disciplinary authority passed an order dated 25.11.2016 imposing punishment of stoppage of increment for a period of three years with cumulative effect and the same was confirmed by the 1st respondent who is the appellate authority.

12. The learned counsel further contends that the magnitude and the gravity of the instant was large, but the disciplinary authority and the appellate authority considering the family situation, the petitioner was given meager punishment for stoppage of increment, as such, the

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order impugned in this writ petition is passed in accordance with law and he prays for dismissal of the writ petition.

13. This Court has given serious and anxious consideration to the submission made by respective counsel and carefully perused the materials available on record including the reliance place by the learned counsel for the petitioner.

14. The main ground raised by the leaned counsel for the petitioner is that the report of the enquiry officer which was basis for imposing punishment against the petitioner was not furnished to him. On perusal of the impugned order, it appears that the specific ground raised by the petitioner with regard to non furnishing of the enquiry report is not considered at all. Even in the counter affidavit filed by the respondents 1 to 3 also no where it is stated that the copy of the enquiry officer report has been furnished to the petitioner.

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15. The Chief Educational Officer, Erode District passed the suspension order against the petitioner on 07.04.2014, though he is not a competent authority to pass such order, as per Rule 13 of the Tamil Nadu Civil Service (Discipline and Appeal) Rules. As the suspension order was passed without any authority, this Court was pleased to set aside the same by an order dated 24.07.2014 in WP.No.19363 of 2014. This Court can't ignore the submission of the petitioner that the Chief Educational Officer, Erode District felt offended by the action of the petitioner approaching the High Court against the suspension order passed by him and obtaining order from High Court and reinstating into service and as such, he was constantly interfered with the affairs of the petitioner. The same situation can be noted by non passing final orders in the enquiry conducted against the petitioner till 25.11.2016, even after two years of the conclusion of the enquiry. As no final orders were passed by the 2nd respondent, thereafter, the petitioner filed WP.No.33238 of 2016 and this Court by an order dated 22.09.2016 directed the 2nd respondent to pass final orders in the disciplinary

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enquiry. Only after order dated 22.09.2016 in WP.No.22328 of 2016, the 2nd respondent passed the punishment order in disciplinary proceedings on 25.11.2016.

16. Subsequently, the petitioner preferred an appeal before the 1st respondent on 18.01.2017, the said appeal was also not taken up for hearing till June 2017. Once again the petitioner filed WP.No.14100 of 2017. Only after passing orders on 07.06.2017 directing the 1st respondent to dispose of the appeal within two months, thereafter the appellate authority passed the order impugned in this writ petition on 05.07.2017.

17. Besides this, on careful consideration of the factual position happened from 03.04.2014 to till the date of punishment order dated 05.07.2017 passed by the 1st respondent, this Court has no other option except to come to an opinion that the respondents intends to victimize the petitioner for the reasons best known to them.

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18. Considering all these aspects, it appears that the disciplinary authority and the appellate authority have failed to consider the entire issue in proper perspective and passed the impugned order mechanically with non application of mind.

19. With regard to the contention of the petitioner about non furnishing of the enquiry report to the petitioner, before passing the proceedings of the 2nd respondent dated 25.11.2016, wherein the punishment was imposed against the petitioner, it appears that the 2nd respondent being the enquiry officer submitted his report on 22.11.2016. Thereafter, in the order of the disciplinary authority or in the order of the appellate authority, there was no mention, whether the copy of the enquiry officer report was furnished to the petitioner or not. In the grounds of appeal filed before the 1st respondent, though there is a specific ground raised with regard to non furnishing of enquiry report, while dismissing the appeal, there was no finding on that aspect.

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20. In the counter affidavit filed in this writ petition, the official respondents maintained silence on this aspect. Non furnishing the enquiry report to the petitioner is in violation of principles of natural justice, as reasonable opportunity is denied to the petitioner. The Hon'ble Apex Court and this Court time and again declared that non furnishing of the enquiry report to the delinquent employee and holding that the delinquent was guilty of the charges is clear violation of principles of natural justice and as such in the considered opinion of this Court, the order impugned in this writ petition is liable to be set aside on the ground of violation of principles of natural justice.

21. The view of this Court is fortified by the judgment of the Hon'ble Apex Court in the case of ***Union of India and others v. Mohd. Ramzan Khan*** reported in ***(1991) 1 SCC 588*** in paragraph 18 of the judgment it is held as extracted herein under :-

“18. We make it clear that wherever there has been

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an Inquiry Officer and he has furnished a report to the disciplinary authority at the conclusion of the inquiry holding the delinquent guilty of all or any of the charges with proposal for any particular punishment or not, the delinquent is entitled to a copy of such report and will also be entitled to make a representation against it, if he so desires, and non-furnishing of the report would amount to violation of rules of natural justice and make the final order liable to challenge hereafter.”

22. A three judges Bench of the Hon'ble Apex Court in ***State of Gujarat V. R.G.Teredesai*** reported in ***(1969) 2 SCC 128*** observed as extracted herein under :-

“The requirement of a reasonable opportunity, therefore, would not be satisfied unless the entire report of the Enquiry Officer including his views in the matter of punishment are disclosed to the delinquent servant.”

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23. The Hon'ble Apex Court in **Uttar Pradesh Government V.**

Sabir Hussain reported in **(1975) 4 SCC 703** held as extracted herein under :-

“In view of these stark facts the High Court was right in holding that the plaintiff (respondent) was not given a reasonable opportunity to show cause against the action proposed to be taken against him and that the non-supply of the copies of the material documents had caused serious prejudice to him in making a proper representation.”

24. In view of the above facts and circumstances of the case and in the light of the law laid down by the Hon'ble Apex Court in the judgments cited supra, this Court holds that the petitioner was not given a reasonable opportunity by not furnishing the copy of the enquiry report which is against to the principles of natural justice and accordingly, the order impugned in this writ petition is liable to be set aside.

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25. Accordingly, this writ petition is allowed and the impugned order dated 05.07.2017 in Moo/Mu/En.012988/W1-E3/2017 passed by the 1st respondent is hereby set aside.

26. Consequently, connected miscellaneous petition is closed.

27. There shall be no order as to costs.

23.01.2024

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Index : Yes/No

Speaking order : Yes/No

Neutral Citations : Yes/No

To

1.The Director of School Education
(Higher Secondary),
DPI Complex, College Road,
Chennai – 600 006.

2.Joint Director of School Education
(Higher Secondary),
DPI Complex, College Road,
Chennai – 600 006.

3.Chief Educational Officer,
Udhagamandalam,
Fingerpost Post, Ooty,
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