



W.A(MD)No.401 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.08.2024

CORAM:

**THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN
and
THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI**

W.A(MD)No.401 of 2022

and

C.M.P(MD)No.4088 of 2022

A.Govindan

... Appellant/Writ petitioner

-VS-

- 1.The State of Tamil Nadu,
Rep. By its Secretary to Government,
School Education Department,
Chennai.
 - 2.The Director of School Education,
O/o.the Director of School Education,
DPI Complex,
College Road,
Chennai.
 - 3.The Joint Director of School Education(Personnel),
O/o.the Director of School Education,
DPI Complex,
College Road,
Chennai.
 - 4.The Chief Educational Officer,
O/o.the Chief Educational Office,
Ramanathapuram,
Ramanathapuram District.
 - 5.The District Educational Officer,
O/o.the District Educational Office,
Paramakudi,
Ramanathapuram District.
- ... Respondents/Respondents



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PRAYER: Appeal filed under Clause 15 of Letters Patent, to set aside the order dated 21.03.2022 made in W.P(MD)No.1376 of 2019.

For Appellant : Mr.M.Ajmal Khan,
Senior Counsel for
M/s.Ajmal Associates
For Respondents : Mr.S.P.Maharajan,
Special Government Pleader

JUDGMENT

[Judgment of the Court was made by R.SUBRAMANIAN, J.]

Being aggrieved by the order of the Writ Court, dated 21.03.2022 made in W.P(MD)No.1376 of 2019, the appellant/writ petitioner has filed this writ appeal.

2. The writ petition has been dismissed on the ground that challenge therein is to a show cause notice. The appellant who was working in the Education Department was charged with certain delinquencies and after enquiry, punishment of stoppage of increment with cumulative effect for a period of three years was imposed on him by order dated 26.11.2018. The appellant had preferred an appeal against the said order before the Director of School Education the second respondent herein. The fact that the said appeal is pending is not in dispute. While so the third respondent issued the impugned show cause notice purportedly invoking Rules 36 and 37 of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955.



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The said show cause notice was primarily challenged on the ground that the power invested to issue a show cause notice for enhancing the punishment cannot be invoked where an appeal had been filed against the order imposing punishment and the same is pending. Hence, this writ appeal.

3. We have heard Mr.M.Ajmal Khan, learned Senior Counsel for M/s.Ajmal Associates for the appellant and Mr.S.P.Maharajan, learned Special Government Pleader for respondents 1 to 5.

4. Mr.M.Ajmal Khan, learned Senior Counsel appearing for the appellant would vehemently contend that when jurisdictional issue is raised, a challenge to the show cause notice itself is permissible. According to the learned Senior Counsel in the teeth of the prohibition contained in Sub-Rule 2 of Rule 36, the authority cannot invoke Rule 36 for enhancing the punishment. Rule 37 invests a power to review in the State Government on discovery of new evidence.

5. Reading of the notice impugned in the writ petition would show that it is not based on discovery of evidence in order to bring it under Rule 37. Even though Rule 37 would apply only to the State Government and not to the Disciplinary Authority. Sub-Rule 2 of Rule 36 reads as follows:



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(2) *No proceeding for revision shall be commenced--*

(a)Where no appeal has been preferred, before the expiry of the period of limitation for an appeal, or

(b)Where an appeal has been preferred, before the disposal of such appeal.

(c)An application for revision shall be dealt with in the same manner as if it were an appeal under these rules.

6. Reading of the above provision shows that *suo motu* power invested on the Disciplinary Authority to enhance the punishment on its own will not be available during the pendency of an appeal against the order imposing punishment.

7. Mr.S.P.Maharajan, learned Special Government Pleader would however contend that Rule 23 r/w Rule 37 empowers the Disciplinary Authority to issue notice for enhancement of the punishment.

8. We are unable to agree with the said submission of the learned Special Government Pleader. Rule 23 prescribes the power and procedure of the appellate authority. Dos and Dont's in an appeal are set out in Rule 23. Therefore, the same cannot be invoked to enhance the punishment *suo motu*. As we had already pointed out, Rule 37 deals with review by the



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Government as the very heading of Rule 37 suggests that it is a review by the Government of its own order. Therefore, there should be an order of Government which is capable of reviewing in order to exercise the power under Rule 37. Admittedly, the appeal is pending with the Appellate Authority and it is the Disciplinary authority has issued the instant show cause notice under Rule 36. As we had already pointed out, Sub-Rule 2 of Rule 36, prohibits an action for enhancement when the appeal is pending.

9. In view of the same, we are unable to sustain the order of the writ Court dismissing the writ petition. We find that the show cause notice itself is without jurisdiction. Hence, the writ petition stand allowed and the order impugned in the writ petition dated 28.12.2018, is quashed.

10. Accordingly, this writ appeal is allowed. No Costs. Consequently, connected Miscellaneous Petition is closed.

[R.S.M., J.]

[L.V.G., J.]

28.08.2024

NCC :Yes/No
Index :Yes/No
Internet:Yes
PM



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R.SUBRAMANIAN, J.
and
L.VICTORIA GOWRI, J.

pm

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24.08.2024