



W.P.(MD)No.9426 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.04.2024

CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P.(MD)No.9426 of 2024 &
W.M.P.(MD)Nos.8554 & 8555 of 2024

A.Arulselvan

... Petitioner

vs.

- 1.The Chief Educational Officer,
Tenkasi District, Tenkasi.
- 2.The District Educational Officer,
Tenkasi Educational District, Tenkasi.
- 3.The Correspondent,
S.S.V. Higher Secondary School,
Mathapattanam, Koviloothu Post,
Kadayam Via, Tenkasi District.
- 4.S.John Kennedy

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the impugned order dated 09.04.2024 passed by the fourth respondent and quash the same as illegal and consequently, direct the respondents to permit the petitioner to engage legal practitioner to assist him during the course of domestic enquiry.

For Petitioner : Mr.A.Sankaramasubramanian
For Respondents : Mr.T.Amjadkhan,
Government Advocate for R1 and R2



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ORDER

Heard Mr.A.Sankaramasubramanian, learned counsel for the petitioner and Mr.T.Amjadkhan, learned Government Advocate appearing for the respondents 1 and 2.

2. The petitioner has filed this petition seeking Writ of Certiorarified Mandamus to call for the records pertaining to the impugned order dated 09.04.2024 passed by the fourth respondent and quash the same and consequently, direct the respondents to permit him to engage legal practitioner to assist him during the course of domestic enquiry.

3. By consent on either side, this writ petition is taken up for final disposal at the admission stage itself.

4. The petitioner has challenged the order dated 09.04.2024, through which, the fourth respondent rejected the petitioner's request to engage an Advocate on his behalf during domestic enquiry held against



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him on certain charges of sexual allegations.

5. The petitioner is working as BT Assistant at the third respondent School. Based upon the complaints received from many students that the petitioner had committed sexual assault on them, disciplinary action had been initiated against him. A criminal case has also been registered against him in this regard. Only in such circumstances, the petitioner had given a request that he should be given with a benefit of engaging an Advocate on his behalf during the domestic enquiry.

6. Mr.A.Sankaramasubramanian, learned counsel for the petitioner submitted that to engage a lawyer to represent him during departmental proceedings is the petitioner's fundamental right to defend effectively and hence that should not be denied. In support of his above contention, he *cited* the Judgment of the Hon'ble Supreme Court of India in *J.K.Aggarwal vs. Haryana Seeds Development Corporation Limited and others reported in (1991) 2 SCC 283*.



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7. Even in the above said Judgment, it is held that the right of representation through a lawyer may not in all cases be a part of natural justice. In non-statutory domestic tribunals, such a right can be availed if allegations are serious and technical.

8. According to the facts involved in the above case, it is seen that the Management therein had the advantage of getting represented through its Personnel and Administrative Manager who has qualified in law as well. But the respondents herein have not appointed any presenting officer who is qualified in law.

9. It is not out of place to mention that, earlier, the petitioner has himself filed a writ petition in W.P.(MD)No.9439 of 2023 challenging the removal of service, which was allowed by this Court on 30.11.2023 and the order of removal from service was set aside. However, a direction has been given to complete the enquiry within a period of four months from the date of submission of explanation by the writ petitioner to the Charge Memo.



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10. Mr.T.Amjadkhan, learned Government Advocate appearing for the respondents 1 and 2 submitted that the petitioner did not co-operate for the early completion of the enquiry proceedings.

11. The petitioner is at liberty to engage any retired Government Servant to represent on his behalf as allegations are not technical in nature but the complaints made by the students about the conduct of the petitioner. Hence, I don not find any reason to allow to petitioner to engage legal practitioner to represent him during enquiry.

12. In view of the above observations, the writ petition is disposed of and the petitioner is at liberty to engage any retired Government Servant to represent on his behalf during the domestic enquiry. No costs. Consequently, the connected Miscellaneous Petitions are closed.

17.04.2024

NCC: Yes/No
Index : Yes/No
Speaking/Non-Speaking order
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Tenkasi Educational District,
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R.N.MANJULA, J.

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