



WP.(MD).No.28029 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 04.03.2024

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD)No.28029 of 2023

and

**W.M.P.(MD)Nos.24131 and 24132 of 2023 and 2128 and
2137 of 2024**

R.Anbalagan

... Petitioner

Vs.

1.The Joint Director of School Education (Secondary),
O/o. The Joint Director of School Education,
DPI Campus,
Chennai - 06.

2.The Chief Educational Officer,
O/o. Chief Educational Officer,
Theni District.

3.The District Educational Officer,
O/o. District Educational Officer,
Theni District.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records pertaining to impugned suspend order passed by the respondent no.3 in R.C.No.3659/A3/2023 and quash the same as illegal and consequently direct the respondent to revoke the suspension order with consequential benefits within the time period stipulated by the Court.

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For Petitioner

: Mr.M.Ajmal Khan,
M/s.Ajmal Associates

For Respondents

: Mr.P.T.Thiraviyam
Government Advocate

ORDER

Challenging the order of suspension passed by the third respondent/District Educational Officer dated 17.11.2023, the petitioner has filed this Writ Petition.

2.The petitioner was working as a Secondary Grade Teacher in Muthaiah High School, Alinagaram, Theni District. The said School is a Government Aided School receiving grant in aid from the Government. The petitioner is also holding the Honorary post of Secretary in another School namely Maharaja Elementary School found by his father. One M.Sentraya Perumal and one Sumathi were working as Headmaster and staff in that School respectively. Due to certain internal misunderstanding between the petitioner, Headmaster and other staffs working in Maharaja Elementary School, continuous internal problems prevailed in the administration of the School. While so, the said Headmaster Sentraya Perumal gave a complaint against the petitioner, as if the petitioner had abused him and other staff Sumathi on 11.01.2023 at 11.00 a.m. As the consequence of which, a FIR in Crime No.172



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of 2023 came to be registered as against the petitioner by the Theni Police under Sections 294(b), 323, 506(ii) and 379(NH) of IPC and Section 4 of Tamil Nadu Prohibition of Harassment of Woman Act. The petitioner availed anticipatory bail before this Court in CrI.O.P.(MD)No.12001 of 2023 dated 30.06.2023 in the said Crime. In view of the said pending criminal case, till the date of obtaining anticipatory bail on 30.06.2023, the petitioner could not join duty and on 11.07.2023, after executing surety, he gave a representation to the third respondent stating the pending criminal case and seeking permission to join duty. Subsequently, on 17.11.2023, the impugned order of suspension citing the pendency of the criminal case came to be passed after seven months from the date of FIR. Challenging the same, this Writ Petition came to be filed.

3.The learned Senior Counsel Mr.M.Ajmal Khan, for the petitioner attacked the impugned suspension order dated 17.11.2023 on two counts namely;

'(i)the said order has been passed by the third respondent District Educational Officer (Secondary), Theni without jurisdiction and hence, the same cannot stand the scrutiny of law.



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(ii)by citing that the Joint Director of School Education (Secondary) vide proceedings dated 12.10.2023 has delegated special powers to the third respondent District Educational Officer (Secondary), Theni to take disciplinary action against the petitioner, the order of deemed suspension of service with effect from 17.11.2023 is passed citing the registration of FIR in Crime No.172 of 2023 by the Theni Police on 12.04.2023.'

4.He further contended that the power of suspension vests with the appointment authority and the Management of Muthaiah High School is the appointing authority. While the power of administration vests with the Management, the third respondent District Educational Officer (Secondary) Theni, who is only the salary disbursing authority is not competent to issue an order of suspension. That apart due to the internal problems existing in the Management of Muthaiah High School, Alinagaram, Theni District, the School is under the direct payment of the Government. Even in that case, until and unless a Special Officer is exclusively appointed for the purpose of administering the said School, the power of administration of the School fully vests on the Management alone and hence, the third respondent District Educational Officer



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(Secondary), Theni District has passed the impugned order of suspension beyond jurisdiction.

5.As far as the question of deemed suspension is concerned, Rule 17(e) of the Tamil Nadu Civil Services (Disciplinary and Appeal) Rules, 1955 contemplates that only a Government servant who is detained in custody whether on a criminal charge or otherwise for a period longer than 48 hours shall be deemed to have been suspended and in the case in hand, the petitioner was not detained in custody and he had availed anticipatory bail before this Court in CrI.O.P.(MD)No.12001 of 2023 dated 30.06.2023 and he duly executed sureties on 11.07.2023 before the learned Chief Judicial Magistrate, Theni. In view of the same, the impugned order will not stand the scrutiny of law and pressed for quashing the impugned suspension order.

6.Per contra the learned Government Advocate Mr.P.T.Thiraviyam, has filed a counter affidavit on behalf of the third respondent and submitted that the petitioner in his letter dated 11.07.2023 requested the third respondent seeking to allow him to join the school on obtaining an anticipatory bail. Since FIR



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has already been registered against the petitioner, who is in Government service, he is liable for disciplinary action. But the petitioners School is under direct payment and the third respondent performed the duties of Secretary of the School. Since he need additional powers to initiate disciplinary action against the petitioner, he had sent a proposal to the first respondent through the second respondent seeking permission for the said purpose. The first respondent accorded additional powers as a special case to the third respondent to initiate disciplinary action against the petitioner vide proceedings dated 12.10.2023. In the absence of School committee in Muthaiah High School, the first respondent permitted the third respondent to perform the functions of Secretary of the said School for taking disciplinary action against the petitioner as per Rule 30(c) of the Tamil Nadu Private School (Regulation) Rules, 2023 against the petitioner and he was placed under suspension from 17.11.2023 vide proceedings dated 17.11.2023. In view of the interim order of stay granted by this Court in the Writ Petition in W.M.P.(MD)No.24132 of 2023 till 05.01.2024, now the petitioner is reinstated with effect from 18.12.2023 without prejudice to the disciplinary proceedings and subject to the final outcome of this Writ Petition.



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7.He further submitted that the petitioner was holding the post of Secretary of Maharaja Elementary School, Theni in which Mr.Sentraya Perumal was working as Headmaster and Mrs.Sumathi was working as Secondary Grade Teacher. On 11.04.2013, the petitioner went to the said School and quarrelled with the Headmaster and assaulted him and also abused the lady Teacher Sumathi. This incident was published in Social Media and following which, the said Sentraya Perumal filed a complaint against the petitioner in Theni Police Station and Crime No.172 of 2023 came to be registered as against the petitioner. Knowing the registration of the said Crime, the petitioner absconded from the Headquarters until he got anticipatory bail from this Court. Despite being a Teacher in Muthaiah High School, in the capacity of Secretary of the School Committee of Maharaja Primary School, Theni, he had indulged in illegal activities of abusing and assaulting a Teaching staff of the said School and in view of the additional power accorded by the first respondent to the third respondent, the third respondent has duly passed an order of suspension on 17.11.2023 and there is no illegality in the said order and pressed for dismissal of the Writ Petition.



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8.While so, the Headmaster of the Maharaja Primary School, Theni has filed a impleading petition in W.M.P.(MD)No.2128 of 2024 seeking to implead himself as the fourth respondent. The learned counsel Mr.M.Kaliraj appearing for the proposed 4th respondent categorically submitted that he is a necessary party in the Writ Petition. Only on the complaint lodged by him on 11.01.2023 and only at his instance, one FIR in Crime No.172 of 2023 came to be registered as against the petitioner by the Theni Police on 12.04.2023. The petitioner in the capacity of Secretary of Maharaja Primary School, though empowered to administrate the said School do not have any power or authority to assault or abuse the Teaching staff of the said School. Having indulged in such criminal activity, the impleading petitioner duly lodged a complaint against the petitioner and FIR has been registered against the petitioner and on the basis of which, the third respondent duly passed an suspension order dated 17.11.2023. Hence, the impleading petition need to be allowed and the petitioner is to be impleaded as the fourth respondent in the Writ Petition.



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9. Heard Mr.M.Ajmal Khan for M/s.Ajmal Associates, learned Senior Counsel appearing for the petitioner, Mr.P.T.Thiraviyam, learned Government Advocate appearing for the respondents, Mr.M.Kaliraj, learned counsel appearing for the impleading petitioner and carefully perused the entire materials available on record.

10.The petitioner while so serving as a Secondary Grade Teacher in Muthaiah High School, Alinagaram, Theni District, also served as a Honorary Secretary of Maharaja Elementary School, Theni District. At the instance of the Headmaster of Maharaja Elementary School, Theni, a FIR in Crime No.172 of 2023 came to be registered as against the petitioner. Following which, he absconded till he availed an order of anticipatory bail from this Court in Crl.O.P.(MD)No.12001 of 2023 dated 30.06.2023. After a span of seven months from the date of registration of the said FIR on 17.11.2023, the impugned order of deemed suspension from service with effect from 17.11.2023 came to be passed by the third respondent/District Educational Officer (Secondary), Theni, on 17.03.2023. The legality of the said order of suspension has been questioned by the petitioner by filing this Writ Petition and the



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same has been put to test before this Court. The Hon'ble Supreme Court in the case of **Somesh Tiwari v. Union of India and others** reported in **(2009) 2 SCC 592**, while dealing with the case of punitive transfer had elaborated on the administrative order passed on materials, which is non existent and had categorically held that any order passed on non existing material would reveal the total non application of mind on the part of the authorities suffering from malice in law. Even in the instant case, the impugned order of deemed suspension has been passed on non existing materials. Rule 30(2) of Tamil Nadu Private School Regulations Rules, 2023 is extracted as follows:-

"30(2) A staff of an Aided private School shall be deemed to have been suspended with effect from the date of his detention, if he is detained in custody whether on a criminal charge or otherwise, for a period exceeding forty eight hours."

11.In terms of the said Rule, a staff of Aided Private School cannot be deemed to have been suspended unless and until he is detained in custody for a period exceeding 48 hours. However, in this case, the petitioner was neither arrested nor detained to custody. On the other hand, he had availed anticipatory bail and has executed sureties duly before the learned Chief Judicial



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Magistrate, Theni and thereafter, approached the third respondent seeking permission to join in the service of Muthaiah High School, Theni District. Hence, it is needless to state that the impugned order of deemed suspension has been passed by the third respondent on the basis of non existent materials without application of mind and the same suffers from malice in law.

12.This Court in the case of ***K.Alagu Sundaram and others v. The Director of Collegiate Education and others*** reported in ***CDJ 2012 MHC 4837*** had dealt with the case of suspension order issued by an Authority without jurisdiction and the relevant portion of which is extracted as follows:-

“10.In this context, a reference was made to the Government Order in G.O.Ms.No.1021 (Education Department), dated 0209.1985. The said G.O. Came to be issued to authorise the Regional Deputy Directors of Collegiate Education to attend to certain items of work in case of dispute in the management. The said G.O. Lists out the nature of work to be performed by the Regional Deputy Director of Collegiate Education. A perusal of the items of works and powers delegated in the said GO, only shows that it was mainly to enable the Government to resort to direct payment system as the college is Government aided colleges and the payment of salary has also been entrusted to the Officer, who is notified under the said G.O. But, a perusal of the said G.O. Did not indicate that there is a power to take disciplinary action against the teaching staff in the college. It



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cannot be said that the said G.O. Delegated any such power, which are essentially notified under the Act, to the representing bodies. Therefore, in the absence of the Government resorting to the proceedings under Section 14A and appointing a Special Officer, the question of the 2nd respondent assuming the disciplinary jurisdiction does not arise.

15.In case, there is a fight among the Educational Agency and because of that, the College Committee could not be convened, nothing prevented the Director of Collegiate Education to inform the State Government and the State Government on such a report to take a decision to appoint a Special Officer superseding the management. In such circumstances, the power can be available to be authority who will be appointed as a Special Officer. But in the guise of regulating the payment of salary and leave facilities, and in the absence of any delegation of power to take disciplinary action, the impugned order passed by the second respondent is clearly misconceived and on that short score, the impugned order is set aside."

13.In yet another case of ***K.M.Valliappan v. Joint Director of School Education*** reported in ***2006(4) CTC 471***, this Court has held that '*essential function of initiating disciplinary action and framing charge and further enquiry vests only with the School Committee and such functions cannot be delegated to any other smaller body*'.



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14.The School Committee in relation to private school means the School Committee constituted under the Tamil Nadu Private School Regulations Rules, 2023 and Rule 24 contemplates that the School Committee shall consists of five representatives of the educational agency, namely Headmaster of the School, two senior Teachers of the School, one senior non teaching staff of the School and one nominee of Parents-Teachers Association.

15.Rule 29 empowers the School committee to take disciplinary action against the teaching and non teaching staffs of the Private School, being the appointing Authority. Rule 30 empowers the School Committee even to place the staffs under suspension. Any decision or action taken by the School Committee within the jurisdiction shall be deemed to be the decision or action taken by the educational agency and the Secretary on behalf of the School Committee shall perform the functions as prescribed. In the instant case, Muthaiah High School, Theni District is a private School receiving grant-in-aid from the Government functioning under the Management of Private Educational Agency. Due to certain administrative problems within educational Agency, the said School was brought under the direct payment of Government and



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the third respondent is only a salary disbursing authority and has no role in the administration and the Management of the said School. That apart neither a Special Officer nor a decision even to appoint a Special Officer superseding the Management/Education Agency of Muthaiah High School has been taken by the State Government. Making use of the problems within the educational agency, no specific power can be conferred on the third respondent by delegation, thereby according additional powers to the third respondent by the first respondent contrary to the provisions of relevant Acts and Rules.

16.In view of the aforesaid discussions, the impugned order of deemed suspension when tested cannot withstand the scrutiny of law and the same is bad for want of jurisdiction and for violation of Rule 30(2) of Tamil Nadu Private School Regulations Rule, 2023 and Rule 17(e) of Tamil Nadu Civil Service (Disciplinary and Appeal) Rules, 1955.

17.As far as the impleading petition is concerned, this Court in the case of ***Sudalaikannu v. The Principal Secretary and others in W.P.(MD)No.8871 of 2018***, has dealt with the similar



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case wherein the complainant sought for impleading himself as the respondent in connection to the Writ Petition filed by a suspended employee and the relevant portion of which is extracted as follows:-

“5. When this Court has raised a preliminary objection, with regard to the locus of the petitioner, as, it is not the service dispute of the petitioner and if at all any disciplinary proceedings to be completed or concluded, even though the same has been instigated by the petitioner by making the complaint against the respondents 4 to 6, the same shall be the matter between the employee and the employer (i.e.,) the official respondent herein and the private respondents herein.

8. The learned senior counsel, in response would submit that, the law is well settled in this regard as a third party cannot stand in the way in between the employee and the employer in matters of service disputes, especially in the context of disciplinary proceedings.

14. As it is rightly pointed out by the learned Amicus, the law in this regard is well settled, as a third party, not connected with any service dispute cannot maintain the Writ Petition, invoking Article 226 of the Constitution of India, on the service side seeking a Writ of Mandamus to take action against any employee or officials.”

18. Obviously the impleading petitioner, even though he is the complainant as against the petitioner in Crime No.172 of 2023 in Theni Police Station with respect to the internal problems, which



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had arisen in the administration of Maharaja Elementary School, Theni in which the petitioner is a Honorary Secretary, beyond the factum of registration of FIR at the first instance, the impleading petitioner, has no locus to interfere with the disciplinary action initiated as against the petitioner by the third respondent, who is serving as the Secondary Grade Teacher in Muthaiah High School, Alinagaram, Theni.

19.It is well settled law that the third party cannot stand in way between the employee and employer in matters of service disputes especially in context of disciplinary proceedings. Obviously the impleading petitioner namely M.Sentraya Perumal, is a third party. In view of the same, this Court is inclined to dismiss the impleading petition in W.M.P.(MD)No.2128 of 2024 and further quash the impugned order of deemed suspension dated 17.11.2023 citing lack of jurisdiction and violation of relevant rules.

20.Accordingly, this Writ Petition stands allowed. There shall be no order as to costs. Consequently, W.M.P.(MD)Nos.24131 and



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WEB COURT 24132 of 2023 and 2137 of 2024 are closed. W.M.P.(MD)No.2128 of 2024 is dismissed.

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NCC : Yes / No
Index : Yes / No
Internet : Yes
Mrn

To

- 1.The Joint Director of School Education (Secondary),
O/o. The Joint Director of School Education,
DPI Campus,
Chennai - 06.
- 2.The Chief Educational Officer,
O/o. Chief Educational Officer,
Theni District.
- 3.The District Educational Officer,
O/o. District Educational Officer,
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L.VICTORIA GOWRI, J.

Mrn

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