

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date:- 23.12.2008

Coram

The Honourable Mr. Justice F.M. IBRAHIM KALIFULLA

W.P. No.7564 of 1999

J. Hirudayaraj (deceased)

2. S.A. Jesintha

3. H. Dominic

4. H. Wilfred Maxim

... Petitioners

(Petitioners 2 to 4 are substituted as per order dated 22.6.2006 in W.P.M.P. No.12852/2006)

...Vs...

The District Elementary
Education Officer,
Tiruchirapalli.

... Respondent

Petition under Article 226 of the Constitution of India, praying to issue a writ of certiorari, to call for the records comprised in the proceedings of the respondent dated 9.3.1999 in Na.Ka.No.9333/A4/98 and quash the same.

For Petitioner : Mr. Satish Parasaran

For Respondents : Mrs. Malarvizhi Udhayakumar,
Special Government Pleader

O R D E R

The petitioner, since deceased, was aggrieved against the final order of punishment dated 9.3.1999 in Na.Ka.No.9333/A4/98, in and by which, the petitioner was imposed with the punishment of temporary demotion for a period of one year. The petitioner is stated to have expired on 15.2.2006 and thereafter, his legal representatives viz. the wife and sons of the deceased petitioner came to be impleaded as petitioners 2 to 4 by an order dated 22.6.2006 in W.P.M.P. No.12852 of 2006.

2. The brief facts, which are required to be stated, are that the deceased first petitioner joined the service in education department on 22.9.1970 on temporary basis and was appointed on regular basis from 1.7.1971 as Secondary Grade Teacher. He got his promotion as Headmaster in Municipal Primary School, Puthur, Tiruchirapalli. Based on the inspection conducted by the respondent on 10.12.1998, a charge sheet came to be issued to the first petitioner on 29.1.1999 in which four charges were framed against him. The charges are as under:-

" (i) the petitioner had not taken classes from 1.6.98 and had not written notes of Lessons;

(ii) that the petitioner had not taken classes from 9.1.1997 and had not written notes of lessons:

(iii) that by not taking any classes, the petitioner had acted in violation of rules and failed to perform his duties and responsibilities; and

(iv) that he had reported wrong informations without conducting classes as if he had performed his duties correctly."

3. By letter dated 1.2.1999, the first petitioner prayed for extension of time to submit his explanation and also asked for copies of documents to be furnished to him to enable him to submit his explanation. By reply dated 3.2.1999, the respondent rejected both the requests and the first petitioner was directed to appear for an enquiry on 10.02.1999 at 10.30 a.m. The first petitioner submitted his explanation on 10.2.1999 and also participated in the enquiry. The respondent, who is stated to have held the enquiry, issued his findings-cum-second show-cause notice dated 23.2.1999. The first petitioner submitted his reply to the same on 5.3.1999. Thereafter, the present impugned order dated 9.3.1999 came to be passed.

4. When this writ petition was entertained on 28.4.1999, the impugned order was stayed by this Court and subsequently, the same was also made absolute by order dated 30.12.2002. In pursuance of the order of stay granted by this Court, it is stated that the first petitioner was allowed to function as Headmaster and he continued to discharge his functions till he reached the age of superannuation on 28.2.2003. It is also stated that subsequently, he expired on 15.2.2006.

5. Inasmuch as the first petitioner is no more and the impugned order of punishment viz. temporary demotion for a period of one year did not operate till the date of superannuation of the petitioner viz. 28.2.2003, it will have to be held that the said order of punishment cannot be sustained on that ground itself. Further, after

hearing the learned counsel for the petitioner as well as learned Government Pleader, I find that even on merits, the impugned order cannot be sustained.

6. Mr. Satish Parasaran, learned counsel for the petitioner pointed out that since the issuance of charge memo dated 29.1.1999 was based on the inspection carried out by the respondent on 10.12.1998, the very same Officer ought not to have held the enquiry. It is not in dispute that the respondent is the competent Disciplinary Authority to conduct the enquiry of the petitioner. In such circumstances, in the absence of any other allegation of mala fide or prejudice caused at the instance of the respondent in holding the enquiry, I do not find any serious flaw in having held the enquiry based on the inspection held by him on 10.12.1998. The said submission of the petitioner cannot therefore be countenanced.

7. Learned counsel then pointed out certain serious flaws in the matter of holding the enquiry as well as the ultimate findings rendered by the respondent in pursuance of the charge memo dated 29.1.1999. Immediately after issuance of charge memo, the first petitioner, by his letter dated 1.2.1999 wanted copies of certain documents to enable him to submit his reply. The documents, which were called for by the petitioner in his letter dated 1.2.1999, are as follows:-

- " 1. திரு. ஜெ. இருதயராஜ் ஆகிய எனது பணிப்பதிவேட்டின் உண்மைநகல்,
2. பள்ளி பார்வை புத்தகம் கல்வி ஆண்டு 1998-99-ன் உண்மைநகல்.
3. 10.12.98-ல் தலைமை ஆசிரியர் திரு.ஜெ.இருதயராஜ் அவர்கள் பள்ளி பார்வையின்போதே மாவட்ட கல்வி அதிகாரிக்கு எழுதிக் கொடுக்கப்பட்டதாக பின் இணைப்பு 3-ல் கண்ட ஆவனத்தின் உண்மைநகல்,
4. 10.12.98-ல் திருமதி. விஜயகுமார் ஆசிரியை அவர்கள் பள்ளி பார்வையின்போதே மாவட்ட கல்வி அதிகாரிக்கு எழுதிக் கொடுக்கப் பட்டதாக பின் இணைப்பு 3-ல் கண்ட ஆவனத்தின் உண்மைநகல்.
5. 9.1.97 அன்று பள்ளிக்கு பார்வையிட வந்த திருச்சி மாவட்ட அறிவியல் உதவி தொடக்கக் கல்வி அதிகாரி பின் இணைப்பு 2-ல் கண்டவர் திருச்சி மாவட்டக் கோட்டத்தில் பணியில் சேர பிறப்பிக்கப்பட்ட ஆணையும் அவர்கள் பணியில் சேர்ந்த காலத்தின் உண்மை நகல்.
6. குற்றச்சாட்டு குறிப்பாணையுடன் இணைத்து வழங்கப்பட்டுள்ள Form of Questioner -----ன் தமிழ் மொழிபெயர்ப்பின் படிவம்."

8. The charges against the first petitioner are related to failure of the first petitioner in taking classes on and after 9.1.1997 and that there were no entries in having taken classes after 1.6.1998. For each one of the charges in the charge sheet itself, reference has been made to the report of the D.E.O. dated 10.12.1998 and the statement of the first petitioner of the same date as well as that of another Teacher by name Tmt. Vijayakumari, which was also dated 10.12.1998 and one other letter said to have been given by the first petitioner on 27.1.1999 requesting documents related to the inspection took place on 10.12.1998, the copies of service records of the first petitioner and the letter dated 10.12.1998 said to have been submitted by the first petitioner as well as the other teacher Tmt. Vijayakumari.

9. The first petitioner also wanted the inspection report of earlier inspection held by another Officer on 9.1.1997. When the documents called for by the first petitioner are considered with reference to the four charges framed against him, it is quite apparent that those documents were very relevant for the purpose of finding out as to whether the charges levelled against the first petitioner are true or not. Unfortunately, the respondent in his letter dated 3.2.1999 (wrongly typed as 3.1.1999) while rejecting the first petitioner's request for extension of time to submit his explanation straightaway rejected his claim for furnishing the copies of the documents called for by him.

10. No reasoning was shown as to why those documents could not be furnished to the first petitioner. It is not the case of the respondent that none of those documents were relevant to the charges framed against the first petitioner. Therefore, that very circumstance had virtually deprived the valuable right of the first petitioner from submitting his explanation to the charges levelled against him. According to the first petitioner, since there was surplus teachers in the school, as per the prevailing practice, only in the absence of those surplus teachers, he was supposed to take classes or otherwise he has to bestow whole of his time in discharging the function of Headmaster. If the document called for by the first petitioner in his letter dated 1.2.1999 viz. the letter of other teacher Tmt. Vijayakumar dated 10.12.1998 as well as the inspection report of the respondent dated 10.12.1998 and earlier inspection held by another Officer on 9.1.1997 would have definitely thrown much light as to the charges levelled against the first petitioner.

11. Therefore, the outright rejection of the request of the first petitioner for furnishing copies of those documents certainly caused serious prejudice to the first petitioner and therefore on that score, all further proceedings would get vitiated. That apart, when the so called findings of the respondent dated 23.2.1999 is perused, I find that the respondent has merely extracted the charges without considering the stand of the first petitioner and after placing reliance upon his

own report, the letter of the first petitioner as well as the other teacher Tmt.Vijayakumari and the earlier inspection report dated 9.1.1997 (wrongly mentioned as 9.1.1999), proceeded to state that the charges were found proved. Except making a reference to the charges, the explanation and the above referred documents, there was no discussion at all in the so called findings of the respondent to state how the charges levelled against the first petitioner stood proved.

12. In such circumstances, such a finding cannot be considered as a finding in the eye of law. All the above factors only go to show that the respondent only had a farce of an enquiry and ultimately passed the impugned order dated 9.3.1999 by imposing the punishment of temporary demotion of the first petitioner for a period of one year.

13. Having regard to the above, I hold that the enquiry itself is vitiated for failure on the part of the respondent to follow the principle of audi alteram partem and not having applied his mind while rendering the findings of guilt as against the petitioner and consequently, the ultimate order of punishment cannot stand. Therefore, on this ground as well, the impugned order is liable to be set aside. The writ petition therefore stands allowed.

14. Since the first petitioner, who reached the age of superannuation as early as 28.2.2003 and the impugned order has now been set aside, there should be no impediment in settling the terminal benefits of the first petitioner to the dependants viz. petitioners 2 to 4.

15. While setting aside the order impugned in this writ petition, the respondent is directed to settle the terminal benefits payable to the first petitioner and disburse the same with applicable interest to petitioners 2 to 4 in accordance with law expeditiously preferably within 3 months from the date of receipt of a copy of this order. Apart from the terminal benefits payable to the first petitioner, it was represented on behalf of the petitioners that in spite of allowing the first petitioner to function as Headmaster after the order of stay granted by this Court on 28.4.1999, he was not paid his salary till the date of superannuation. If the said submission of the petitioner is true, it goes without saying that the salary payable to the first petitioner for the period between 9.3.1999 and the date of his superannuation 28.2.2003 with all increments and other benefits should also be paid in favour of petitioners 2 to 4. The non payment of salary and other benefits by the respondent at the relevant point of time for no fault of the first petitioner is only due to the inaction of the respondent. Hence, it is just and proper that the respondent pay interest on such payments. Accordingly, the respondent is also directed to pay the salary payable to the first petitioner for the period between 9.3.93 and 7.2.2003 with all increments and other benefits payable to him along with simple interest @ 6% from the date the salary fell due in the respective months till it is settled. Such payment should also be

made within three months from the date of receipt of a copy of this order. The writ petition stands allowed. M.Ps. closed. No costs.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

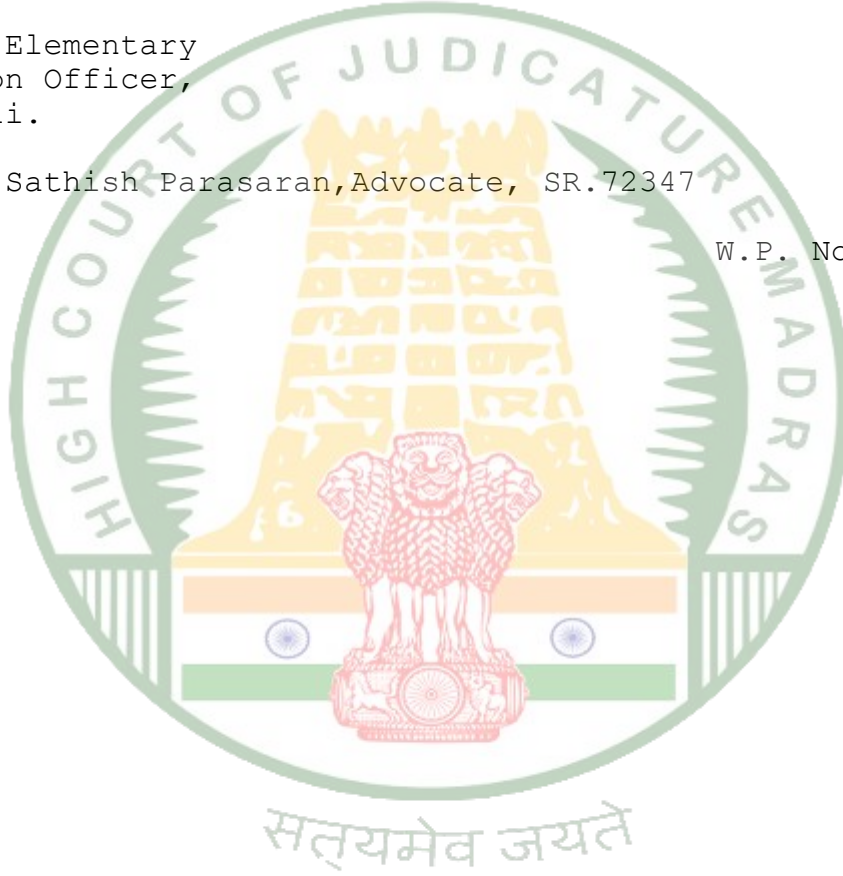
ssa.

To
The District Elementary
Education Officer,
Tiruchirapalli.

+ 1 cc to Mr.Sathish Parasaran, Advocate, SR.72347

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