

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.01.2012

CORAM:

THE HON'BLE MR. JUSTICE K.CHANDRU

W.P.Nos.36871 of 2004,19808 of 2008

WPMP.No.44252 of 2004 and M.P.No.1 of 2008

C.Nallammal

... Petitioner in
both WPs

Vs.

- 1.The District Elementary Education Officer, Dharmapuri District at Dharmapuri.
- 2.The District Elementary Education Officer, Salem District at Salem.
- 3.The Assistant Elementary Education Officer, Veerapandi Union,Veerapandi Salem District.

...Respondents in
both WPs

W.P.No.36871 of 2004 filed under Article 226 of the Constitution of India praying for a Writ of Certiorari, calling for the records relating to the proceedings in Na.Ka.No.4578/A2/04 dated 27.06.2004 of the second respondent and consequential order in Na.Ka.NO.3996/A2/01 dated 18.07.2004 of the first respondent and quash the same.

W.P.No.19808 of 2008 filed under Article 226 of the Constitution of India praying for a Writ of Certiorari and mandamus, to call for the records of the impugned termination order issued by the second respondent in Na.Ka.No.4578/A2/2004 dated 31.08.2007 herein and quash the same as illegal and consequently direct the respondents to reinstate the petitioner into service with all monitory benefits.

For Petitioner : Mr.K.Thennan in
W.P.No.36871/2004
Mr.K.Gandhi Kumar in
W.P.No.19808/2008

<https://hcservices.ecourts.gov.in/hcservices> For Respondents : Mr.M.Dig Vijaya Pandian,AGP

C O M M O N O R D E R

Both the writ petitions were filed by one and the same person.

2. W.P.No.36871 of 2004 was filed challenging the order cancelling her transfer to Salem District and reverting her back to Dharmapuri District, in view of the pendency of the proceedings against her with reference to the criminal case registered against her for producing false educational certificate at the time when she joined as Secondary Grade Teacher during the year 2001. Thereafter, the petitioner was issued with a consequential order dated 18.07.2004 by the District Elementary Educational Officer, Dharmapuri.

3. That writ petition was admitted on 22.12.2004. Pending the writ petition, this Court granted an interim stay. The respondents have not filed any counter affidavit in the writ petition.

4. Even while the writ petition was pending, a criminal case was registered under Sections 468, 471 and 472 of IPC by the Inspector of Police, Crime Branch, Dharmapuri. The said case after investigation was tried before the Judicial Magistrate I, Dharmapuri in C.C.Case No.193 of 2004. The petitioner was acquitted by the learned Judicial Magistrate on 05.02.2008 by giving benefit of doubt. But however due to the pendency of the criminal case, by an order dated 31.08.2007, the petitioner was terminated from service. It was stated in the said order that charge memo under Rule 17(b) of Tamil Nadu Civil Services (Discipline and Appeal) Rules was issued to the petitioner on 17.05.2005. The Charges levelled against the petitioner was that she had obtained employment as a Secondary Grade Teacher by giving a fake Teacher Training Certificate.

5. The basis for framing the charges was based on a letter written by the Secretary of the Government Examination Department, Chennai -6, wherein it was stated that the petitioner's Certificate and the marks produced were false. On the basis of the report and after considering the petitioner's explanation dated 12.10.2005, the petitioner was removed from service. The petitioner's request to withhold the disciplinary action pending criminal trial was not considered by the Department.

6. Subsequent to the acquittal in the Criminal Court, the petitioner sent a representation dated 05.05.2008, wherein she also mentioned about her subsequent acquittal by the Criminal Court. Since the petitioner did not get any reply, she filed the second writ petition being W.P.No.19808 of 2008.

7. That writ petition was admitted on 07.11.2008. Pending the writ petition, though the petitioner sought for an interim direction for payment of total salary, only notice was ordered in the said petition. On notice from this Court, the third respondent has filed a counter affidavit dated 16.10.2008 justifying the dismissal order.

8. With reference to the nature of enquiry conducted against the petitioner, in Page 6 of the counter affidavit, it was averred as follows:-

...In the meantime the District Elementary Educational Officer, Dharmapuri sent a copy of her mark sheet for verification of genuineness to the Director of Government Examination, Chennai. After verification of the petitioner's mark sheet showing Reg.No.992002 it was found that Part II English mark differs from the records maintained in the office of the Director of Government Examination Chennai, as reported by the Director of Government Examination Chennai Proceedings in Rc.No.52894/V4-2/2001, dated 08.05.2002."

9. On the question of acquittal of the petitioner by the Criminal Court, it was stated in the counter affidavit that it was only by giving benefit of doubt and the petitioner had not proved that the certificate given by her was genuine.

10. In the present case, after the issuance of the charge memo under Rule 17(b), the respondents have not conducted any enquiry though the rule envisages a proper enquiry to be conducted unless the aggrieved individual seeks for only a personal hearing and waives a regular oral enquiry. The petitioner has also been working in the school from 26.02.2001. Therefore, dismissing her after a period of six years without holding any proper enquiry especially when she has protection under Article 311(2) of the Constitution, cannot be countenanced by this Court.

11. In the affidavit filed in support of the writ petition, the ground raised by the petitioner that in view of her subsequent acquittal, the department should reconsider her termination may not stand to reason as the Supreme Court vide its judgment in Southern Railway Officers Association and another v. Union of India and others reported in (2009) 9 SCC 24 has held that any subsequent acquittal cannot be a ground for interfering with the punishment imposed by the disciplinary authority.

12. The other contention raised by the petitioner that there was no proper enquiry is well founded. The Supreme Court vide its judgment in Rajasthan State Road Transport Corporation and another

v. Bal Mukund Bairwa reported in (2009) 4 SCC 299 has held that an employee charged with grave misconduct is entitled for fair hearing according to the principles of natural justice and the provisions of statutory Rules.

13. Similarly in the judgment in Kamal Nayan Mishra v. State of Madhya Pradesh and others reported in (2010) 2 SCC 169, the Supreme Court has held that a confirmed Government servant cannot be dismissed without following the procedure established under Article 309 of the Constitution. Similar was the view taken by the Supreme court in Satwati Deswal v. State of Haryana and others reported in (2010) 1 SCC 126, wherein, it was held that a major penalty cannot be imposed without following due procedure.

14. Under the said circumstances, the impugned order dated 31.08.2007 in W.P.No.19808 of 2008, dismissing the petitioner is hereby set aside. The respondents are at liberty to conduct a proper enquiry with reference to the alleged false educational certificate produced by the petitioner after giving due opportunity. But until the completion of the enquiry, this Court is not willing to direct the petitioner to be restored to service. But however, she will be eligible for subsistence allowance from the date of this order till the date of completion of the disciplinary proceedings. The question of back wages will be considered by the Department after the disciplinary action is decided and the petitioner succeeds in establishing that she has not given any bogus certificate.

15. W.P.No.19808 of 2008 stands allowed with the above directions. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

16. In so far as W.P.No.36871 of 2004 is concerned, since the impugned order was passed based upon the criminal complaint and that the criminal case had ended in acquittal and that the dismissal order is also set aside in W.P.No.19808 of 2008 today, the order reverting her back to Dharmapuri will also become invalid. Since she is already enjoying a stay order, it is unnecessary to order that writ petition. It is suffice to state until the completion of enquiry, the petitioner will be retained in Salem District. Hence, the writ petition is dismissed as infructuous. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Asst.Registrar.

/true copy/

Sub Asst.Registrar.

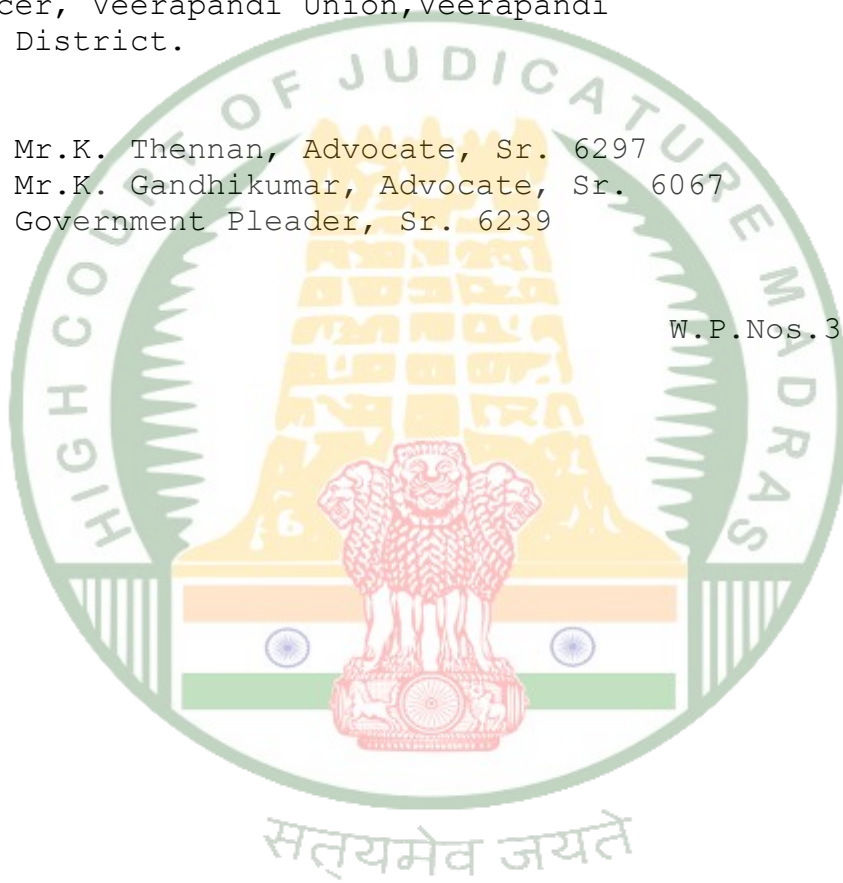
To

- 1.The District Elementary Education
Officer, Dharmapuri District at
Dharmapuri.
- 2.The District Elementary Education
Officer, Salem District at Salem.
- 3.The Assistant Elementary Education
Officer, Veerapandi Union,Veerapandi
Salem District.

- 1 cc to Mr.K. Thennan, Advocate, Sr. 6297
1 cc to Mr.K. Gandhikumar, Advocate, Sr. 6067
1 cc to Government Pleader, Sr. 6239

W.P.Nos.36871 of 2004 and
19808 of 2008

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