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Court : Chennai Madurai

Decided On : Apr-21-2016

Judge : B. Rajendran

Appeal No. : Writ Petition (MD) No. 7754 of 2016 & W.M.P. (MD) No. 6422 of 2016

Appellant : S. Andi

Respondent : The Joint Director of Elementary Education (Administration) Office of Director of Elementary Education Chennai and Another

Judgement :

(Prayer: 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 the impugned order of the 2nd respondent in Na.Ka.No.3404/Aa5/2012, dated 10.04.2015 and consequential impugned order on Appeal in Na.Ka.No.14524/D4/2015, dated 01.02.2016 passed by the 1st respondent and quash the same and consequently direct the respondents to reinstate the petitioner in service with all service benefits.)

1. The petitioner has filed this writ petition challenging the order of dismissal dated 10.04.2015 passed by the second respondent, which was confirmed by the first

respondent on 01.02.2016 rejecting his appeal .

2. The petitioner was appointed as Secondary Grade Teacher on 21.10.2004 and he was posted at Anna Nagar Vadakarai Panchayat Union Primary School, Tenkasi. While he was working as such, by an order dated 11.06.2002 of the second respondent, the petitioner was placed under suspension pending enquiry into grave charges. The charges levelled against the petitioner is that he has misbehaved with girl students studying in the school where he was working.

3. The petitioner was departmentally proceeded with by issuing a charge memo dated 29.06.2012 containing four charges. Thereafter, a supplementary charge memo dated 20.07.2012 was issued alleging that the petitioner has contravened Rule 19 (2) of the Government Servant Conduct Rules. Simultaneously, a criminal case was registered against the petitioner and after charge sheet was filed by the investigation officer, it was taken on file as S.C. No. 111 of 2013 in which the petitioner was acquitted from the criminal offence. In the meantime, the District Educational Officer, Cuddalore an enquiry was conducted. Thereafter, the second respondent has passed an order holding that the petitioner is guilty of the charges and consequently dismissed him from service. Such an order passed by the second respondent was confirmed by the first respondent in the appeal.

4. The learned counsel for the petitioner would mainly contend that the petitioner was given a clean chit by the Criminal Court specifically holding that the prosecution has failed to prove his guilt. However, in the departmental enquiry conducted by the respondents on the same set of charges, the petitioner was imposed with capital punishment, which according to the learned counsel for the petitioner is unwarranted, excessive, harsh and disproportionate to the charges. The enquiry officer, disciplinary authority as well as the appellate authority have mainly relied on newspaper reports and the consequential protest at the instance of certain vested interested persons against the petitioner. Even though the disciplinary authority found that the persons enmical towards the petitioner have informed the media and blown the issue out of proportion, still, erroneously finds that the charges against the petitioner are proved. The appellate authority also, without considering any of the grounds raised by the petitioner, has concluded that

the punishment imposed on the petitioner is proportionate. The learned counsel for the petitioner would therefore contend that the impugned orders passed by the respondents warrant interference by this Court.

5. On the above contention, this Court heard the learned Additional Government Pleader appearing for the respondents and perused the material records placed.

6. Before considering the contentions urged on behalf of the petitioner, it has to be indicated that before passing the order of dismissal, an enquiry was conducted in which the petitioner was given adequate opportunity to put forth his defence. During the course of such enquiry, the victim girl herself was examined and she has deposed against the petitioner. The victim girl has narrated the misdeeds committed by the petitioner. Further, several other student were also examined and their statements have been recorded. The victim girl was a young girl and she was not even aware as to what is happening around her. Whether such a person is entitled to continue as a teacher in the school. The simple answer to this question will be a big 'No'. The petitioner was employed as a Teacher and he is expected to behave as a role model so that the student can emulate his path. On the contrary, he has indulged in a heinous delinquency not befitting to his status as a teacher. In such circumstance, this Court is of the view that the punishment of dismissal from service imposed against the petitioner is just and proper and no leniency can be shown to the petitioner in the matter of imposition of the punishment. If the persons like this petitioner are not dealt with harshly, it will give rise to many more such incidents. Therefore, the question of disproportion of punishment will not stand to scrutiny

7. It is vehemently contended on behalf of the petitioner that when the petitioner was acquitted by the criminal court, the department ought not to have proceeded with the enquiry on the same set of charges. It is well settled that before the Criminal Court, the mens rea or Criminal intention on the part of the accused has to be proved by the prosecution beyond reasonable doubt. On the other hand, in the departmental enquiry, a preponderance of probability as to the nature of discharge of duty or the irregularity committed by the delinquent in contravention of the Tamil Nadu Government Servant Conduct Rules can be gone into. Thus,

the Criminal trial and the departmental enquiry are totally different especially in a case of this nature where the petitioner was employed as a Teacher and indulged in an act unbecoming of a Teacher. Therefore, I am not inclined to accept the submissions made on behalf of the petitioner that the departmental enquiry is a bar when the criminal trial ended in favour of the petitioner.

8. On an analysis of the orders passed by both the disciplinary authority as well as the appellate authority, it is seen that they have assigned very many reasons and/or justifications to hold that the petitioner should not be permitted to continue in service and he only deserve a capital punishment of dismissal from service. Having regard to the nature of charges levelled against the petitioner and the evidences made available during the course of departmental enquiry, especially the oral testimony of the girl student, I am of the view that the orders impugned in this writ petition need not be interfered with by this Court. Accordingly, the Writ Petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

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