

R.Subashini Vs the District Elementary

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Court : Chennai

Decided On : Jun-21-2012

Judge : R. Banumathi; B. Rajendran, Jj.

Acts : [Constitution of India](#) - Articles 226; Letters Patent Act - Clause 15

Appeal No. : Writ Appeal (MD) No.451 of 2012

Appellant : R.Subashini

Respondent : The District Elementary

Advocate for Def. : Mr.Gunaseelan Muthiah, Adv

Advocate for Pet/Ap. : Mr.A.Thirumurthy, Adv.

Judgement :

JUDGMENT

B. RAJENDRAN, J

1. The writ appellant, aggrieved against the order dated 04.04.2012, has come forward with this Writ Appeal.

2. The appellant would contend that she was appointed as Assistant Teacher viz., Secondary Grade Teacher on 07.03.1985. At the time of appointment, as she

stood in the first rank she was appointed in the first vacancy in Turn No.17 (Backward Class) and the fourth respondent was appointed in Turn No.19(Backward Class). Both of them were appointed on the same day. According to her, her seniority and the fourth respondent's seniority were fixed as Turn Nos.17 and 19. Considering that she was in the senior most position, she was nominated as a Member in the School Committee in the year 2006. Similarly, Turn No.18, viz., P.Sarojinidevi was also nominated as a Member of School Committee. The Headmistress post became vacant on 01.05.20011 and the appellant was bona fide expecting her promotion. But, to her shock and surprise, she was asked to put her signature in the Minutes of the School Committee meeting alleged to have been held on 25.09.2011. According to her, there was no meeting conducted on 25.09.2011 and she refused to put her signature. Therefore, the Minutes of the School Committee meeting stating that the fourth respondent was to be appointed as the Headmistress is not correct. As the appellant is the senior most person and this was done only by the third respondent just to promote the fourth respondent. In view of the attitude of the third respondent, the appellant submitted a grievance petition to the third respondent on 27.09.2011 and the copy of the same was sent to the first and second respondents. In the meanwhile, the fourth respondent has joined duty as Headmistress on 26.09.2011 itself. As no reply was given to the grievance petition dated 27.09.2011, the appellant submitted an appeal to the first respondent and also sent a reminder to the first respondent on 20.01.2012. Pursuant to this, the third respondent has initiated disciplinary proceedings against the appellant and issued a memo dated 09.02.2012 alleging that the appellant had made an appeal dated 20.01.2012 directly to the higher officials and not routed through the third respondent. According to the appellant, sending of grievance petition cannot be construed as misconduct or violation of rules.

3. Further, the second charge states that the appellant did not accept the decision of the School Committee and disobeyed the action of the Secretary were all done only to victimise the appellant. The second charge is pertaining to refusal to place her signature in the Minutes of the School Committee meeting which is against the Code of Conduct No.1. Since the charge itself is based only on the victimisation without accepting the explanation, the appellant has filed a writ petition to quash

the very charge memo dated 08.03.2012. At the time of admission itself the writ petition was dismissed by the learned Single Judge stating that there is no legal ground to quash the charge memo. Aggrieved against the same, the writ petitioner has come forward with this Writ Appeal.

4. Even at the time of admission itself, we have heard in detail the learned Counsel for the appellant, the learned Government Advocate appearing for the respondents 1 and 2 as well as the learned Counsel for the third and fourth respondents.

5. The only ground of attack was that the charge memo itself was issued only to victimise the appellant. At the outset, when we see the charge memo, it is very clear that the appellant had been originally asked to show cause as to why she has written a letter directly to the respondents 1 and 2 without following proper channel. For which, she has sent her explanation and thereafter, the present charges have been framed. The second charge pertains to declining to sign in the Minutes of the School Committee meeting alleged to have been held on 25.09.2011. The contention of the appellant is that the alleged School Committee meeting itself did not take place. But the fact remains that she has kept herself from signing the Minutes of the School Committee meeting. These are the two charges, for which explanation has been sought for and the memo has been issued. When we see the representation dated 31.10.2011 it was sent directly to the District Educational Officer who is the concerned officer and even in that letter, it is very clearly stated that the appellant was under Backward Class quota Turn No.17, she was appointed on 07.03.1985 and the fourth respondent was under Backward Class quota Turn No.19 who was also appointed on the same day i.e on 07.03.1985. In the said letter, she has not stated anything about sending and forwarding through the proper authority concerned. Now the question falling for consideration is whether the petitioner can file a writ petition to quash the charge memo itself at the threshold.

6. In this connection, we are governed by a judgment of the Hon'ble Supreme Court reported in AIR 2007 SC 906, (Union of India and another v. Kunisetty Satyanarayana), wherein the Supreme Court has categorically held that a mere

charge sheet or show cause notice does not give rise to any cause of action because it does not amount to an adverse order which affects the rights of any party unless the same has been issued by a person having no jurisdiction to do so. Here, it is not the case of the appellant that the authority who issued the charge memo has no jurisdiction. Her only grievance is that her right has been infringed by the action and that too, it is a personal action. All these things could be raised at the time of enquiry. It is worthwhile to extract paragraphs 13, 14 and 15 of the above cited judgment which read as follows:

13. It is well settled by a series of decisions of this Court that ordinarily no writ lies against a charge sheet or show-cause notice vide *Executive Engineer, Bihar State Housing Board vs. Ramdesh Kumar Singh and others* JT 1995 (8) SC 331, *Special Director and another vs. Mohd. Ghulam Ghouse and another* AIR 2004 SC 1467, *Ulagappa and others vs. Divisional Commissioner, Mysore and others* 2001(10) SCC 639, *State of U.P. vs. Brahm Datt Sharma and another* AIR 1987 SC 943 etc.

14. The reason why ordinarily a writ petition should not be entertained against a mere show-cause notice or charge-sheet is that at that stage the writ petition may be held to be premature. A mere charge-sheet or show-cause notice does not give rise to any cause of action, because it does not amount to an adverse order which affects the rights of any party unless the same has been issued by a person having no jurisdiction to do so. It is quite possible that after considering the reply to the show-cause notice or after holding an enquiry the authority concerned may drop the proceedings and/or hold that the charges are not established. It is well settled that a writ lies when some right of any party is infringed. A mere show-cause notice or charge-sheet does not infringe the right of any one. It is only when a final order imposing some punishment or otherwise adversely affecting a party is passed, that the said party can be said to have any grievance.

15. Writ jurisdiction is discretionary jurisdiction and hence such discretion under Article 226 should not ordinarily be exercised by quashing a show-cause notice or charge sheet.

7. In this connection, the subsequent event also has been taken note of. The appellant has filed additional typed set of papers in which he has produced a communication dated 16.06.2012 wherein the appellant has been asked to submit her explanation. As she has not so far chosen to submit any explanation to the charge memo dated 08.03.2012, she has been given further time to give explanation on or before 20.06.2012. This letter is dated 16.06.2012 and it has been duly served on the appellant. At this juncture, we would like to state that as rightly held by the Hon'ble Supreme Court, normally Writ Court will not interfere in the intervention of charge memo level itself. As the present notice states that the appellant has to submit her explanation on or before 20.06.2012, we deem it fit to extend the time by another four weeks. Therefore, the appellant is entitled to submit her explanation on within four weeks. It is always open for the appellant to raise all her objections. Further, in respect of promotion of Headmistress already granted to the fourth respondent, the appellant has filed another Writ Petition in W.P.(MD) No.4304 of 2012 admittedly which is pending. Therefore, she cannot have any grievance at this point of time to answer to the charge memo.

8. The writ petition was rightly dismissed by the learned Single Judge stating that there is no legal ground to quash the charge memo at the earliest stage. Therefore, we do not find any reason to interfere with the reasoned order and following the decision of the Hon'ble Supreme Court, the writ appeal is dismissed giving liberty to the appellant to submit her explanation within four weeks from the date of receipt of copy of this judgment. No costs.

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