
(2007) 03 MAD CK 0192
In the Madras High Court
Case No : W.A. No. 1612 of 1998

B.S. Murugesan

APPELLANT

Vs

The Chief Educational Officer, The District Educational Officer
and Rahim Brothers Middle School

RESPONDENT

Date of Decision : 30-03-2007

Acts Referred:

Citation : (2007) 03 MAD CK 0192

Hon'ble Judges : V. Dhanapalan, J; S.J. Mukhopadhaya, J

Bench : Division Bench

Advocate : G. Rajagopalan, SC for A. Thirumurthy, for the Appellant; R. Chandrasekaran, AGP for RR1 and 2 and M. Vaidyanathan, for R-3, for the Respondent

Final Decision : Allowed

Judgement

S.J. Mukhopadhaya, J.—The appellant/writ petitioner has challenged the judgment dated 8th Oct., 1998, passed by the learned single Judge in W.P. No. 12541/94. By the said judgment, learned single Judge, while held that the punishment of dismissal from service was harsh, directed the State Government to create a super-numerary post as a special case and to give fresh appointment in favour of the appellant.

2. The only question required to be determined in this appeal is whether the Court could direct to give fresh appointment to a charged employee if the order of dismissal is held illegal.

3. The brief facts of the case is that the appellant, who was a teacher in Rahim Brothers Middle School (hereinafter referred to as "School"), Periyakulam, a Government aided school, was proceeded departmentally vide charge memo dated 7th March, 1994. The following charges were mainly levelled against him:

i) that he was to conduct a mathematical tables class at 8.40 a.m. on 3.2.94, but he failed to attend the school at appropriate time and for that another teacher

had to perform such duty; and

ii) even though he attended the school on 3.2.94 at 9.10 a.m., he made false entry in the attendance register as if he attended school at 9.00 a.m.

4. An additional charge memo dated 2nd April, 1994 was served wherein giving reference to the first charge memo dated 7th March, 1994, it was alleged that he had not furnished explanation to the first charge memo and thus he attempted to cheat the management about the background of the reply dated 18th March, 1994. A third charge memo was issued on 6th May, 1994, wherein it was alleged that he had absented from duty on 30th April, 1994 without permission and failed to discharge his duty.

5. From the affidavit filed by the petitioner, as accepted by the management of the school in their counter as was filed before the learned single Judge, it appears that one Mr. C.G. Pethanaraj, Advocate, was appointed as enquiry officer. The appellant, by his letter dated 23rd April, 1994, requested the management to let him be represented by an advocate, but it was denied. In view of such denial, the appellant did not choose to appear in the enquiry before the advocate/enquiry officer, who held ex-parte enquiry and submitted report and held the charges proved. After issuing a show cause notice proposing punishment, order of dismissal was passed by management of the school on 9th July, 1994.

6. The appellant challenged the aforesaid order of dismissal and brought to the notice of the court the facts as narrated above and alleged violation of principles of natural justice. Learned single Judge, by impugned judgment dated 8th Oct., 1998, while observed that there was no material to find out anything wrong with regard to previous record, further observed that the proved charges being not major, and not being fatal, the order of dismissal was disproportionate to the gravity of the charges. Though such finding was given, instead of allowing the authority to proceed to impose some other lesser punishment, it was ordered to give fresh appointment to the appellant and the State was directed to create a super-numerary post to accommodate the appellant/writ petitioner.

7. The aforesaid fact has not been disputed by the counsel appearing on behalf of the management-school. It appears that the appellant/writ petitioner has rejoined duty.

8. From the charge memo it will be evident that the allegation relate to late coming for about 10 - 15 minutes on one day and absence from duty on another day. We do not understand as to how such charge, even if found to be proved, could be held to be a grave charge to impose harsh punishment, such as dismissal from service.

9. Further, we have noticed that an advocate was appointed as enquiry officer to bring home the charge against the appellant, but when the appellant requested to allow him to engage an advocate to defend him, he was denied such right.

This also shows that the appellant was put in very great disadvantage to place his case before an enquiry officer, who was an expert in law and the appellant, who was merely a teacher and not so well versed with law. This is against the rules of natural justice and, therefore, we hold that the ex-parte enquiry as was conducted against the appellant was illegal, being violative of principles of natural justice.

10. In the result, it is not only that the order of dismissal is required to be set aside, but the appellant/writ petitioner has to be reinstated in service and not a fresh appointment to be given. We, accordingly, set aside the order of dismissal, the result of which will be reinstatement, but allow only 25% of the back wages to be paid by the management for the period the appellant/writ petitioner was forced to remain out of job. The management of the school will treat the intervening period for all other purpose as on duty except salary, which is to be paid, as directed above, within three months from the date of receipt/production of a copy of this order. The order passed by the learned single Judge dated 8th Oct., 1998, is set aside. The writ appeal is allowed with the aforesaid observations and directions. However, there will be no order as to costs.