
(2012) 02 MAD CK 0249
In the Madras High Court
Case No : Writ Petition No. 38445 of 2004

V. Jayabalan

APPELLANT

Vs

The Government of Tamil Nadu

RESPONDENT

Date of Decision : 17-02-2012

Acts Referred:

Constitution of India, 1950 — Article 21, 309

Citation : (2012) 02 MAD CK 0249

Hon'ble Judges : D. Hariparanthaman, J

Bench : Single Bench

Advocate : Isaac Mohanlal, for the Appellant; M.C. Swamy Special Government Pleader for Respondents 1 - 3 in W.P. No. 38445/2004 and for Respondents 3 - 5 in W.P. No. 1748/2006, Mr. M. Suresh Kumar for Respondent - 4 in W.P. No. 38445/2004 and for Respondents 1 and 2 in W.P.No.1748/2006 and Mr. R. Saravana Kumar for Respondents 6 - 9 in W.P. No. 1748/2006, for the Respondent

Judgement

Honourable Mr. Justice D. Hariparanthaman

1. The petitioner in both the writ petitions is the same person. Both the writ petitions involved common questions of fact and law and thus, the writ petitions are disposed by a common order. The petitioner is a Gold Medalist in M.A (Tamil). He also passed M.Ed. He was appointed as Headmaster on 01.02.1985 in YMCA Boys Town Middle School, Fort, Chennai - 600 009, which is an aided minority school. The said School was upgraded as High School on 01.06.1990 with a condition that the aid would be confined upto Middle School level. That is, the High School was run on self financed basis. On completion of ten years of service, the petitioner was granted Selection Grade in the cadre of Middle School Headmaster.

2. While so, the petitioner was transferred to YMCA Boys Town Higher Secondary School, Kottivakkam, Chennai, by the Management, by an order dated 12.04.2004 due to the vacancy caused by the retirement of one Mr. Vedha

Manickam. The Higher Secondary school was also granted aid upto Middle School level. The petitioner was relieved from YMCA Boys Town High School, Fort, Chennai - 600 009 on 31.05.2004 and joined as Headmaster of the YMCA Boys Town Higher Secondary School, Kottivakkam, Chennai, on 01.06.2004.

3. The Management sought approval from the District Educational Officer, Chengalpattu, for appointment of the petitioner as Headmaster of the Higher Secondary School in their letter dated 30.08.2004.

4. The District Educational Officer, Chengalpattu, passed an order dated 08.12.2004 refusing to approve the transfer and appointment of the petitioner as Headmaster of the Higher Secondary School, Kottivakkam.

5. The petitioner, while seeking to quash the said order dated 08.12.2004 of the District Educational Officer, Chengalpattu in W.P.No.38445 of 2004, also sought for a direction to the District Educational Officer, Chengalpattu to approve the transfer and appointment of the petitioner as Headmaster in the Higher Secondary School, together with all monetary benefits.

6. The claim of the petitioner for approval to the post of Headmaster in the Higher Secondary School is based on G.O.Ms.No.525, School Education Department, dated 29.12.1997.

7. While so, the petitioner was placed under suspension by the Management, by an order dated 31.01.2005, alleging that as per the internal audit of school accounts, he failed and neglected to remit the amount collected from the students to the tune of Rs.37,394/-as on 30.01.2005 which amounts to misappropriation of funds.

8. Thereafter, a charge memo dated 15.04.2005 was issued by the Management alleging two charges and those charges are:

(i) the amount of Rs.37,394/-collected from several students that was handed over to the petitioner by one Mrs. Ida Gladys was not deposited by the petitioner into the school account and the same was retained by him and the same would constitute a grave misconduct of misappropriation of school funds and criminal breach of trust.

(ii) the petitioner collected donation from several students belonging to different classes and allowed them to attend classes without bringing their names on the records of the school and entering their names in the relevant registers and it would also constitute a grave misconduct of misappropriation of school funds and dereliction as well as negligence in performing the duties.

9. The petitioner submitted his explanation dated 18.04.2005 denying the allegations. In the said explanation, he has stated that he was not permitted to attend duties after the first week of January 2005 stating that he would be permitted to join duty only after getting approval from the Government for his transfer and posting as Headmaster of Higher Secondary School. Further, he was

informed about the audit that took place during September 2004 and the audit took place in his presence. At that time, as per the accounts, a sum of Rs.20,00,000/-(Rupees Twenty Lakhs Only) that was collected from the students were remitted, but he was not aware of the audit that led to the issuance of the charge memo. He further stated that he was not given salary from November 2004 onwards. He alleged that in his place at YMCA Boys Town High School, Fort, Chennai - 600 009, the wife of the Accounts Officer was promoted and posted as Headmistress. He also alleged that the wife of the Accounts Officer was treated favourably and his transfer to Higher Secondary School at Kottivakkam was to help the wife of the Accounts Officer. He also complained that the school failed to challenge the order dated 08.12.2004 of the District Educational Officer, Chengalpattu refusing to approve the action of the school in transferring and appointing the petitioner as Headmaster in YMCA Boys Town Higher Secondary School, Kottivakkam, Chennai.

10. Not satisfied with the explanation offered by the petitioner, the Management sent a letter dated 28.06.2005 informing the petitioner that a domestic enquiry would be conducted by the Enquiry Tribunal constituted by the Board of Directors of YMCA Madras and the enquiry would be held on 06.07.2005 at 03.00 p.m at the YMCA Esplanade, Chennai.

11. The petitioner sent a letter dated 02.07.2005 to the Management seeking to adjourn the enquiry until he is paid wages from 01.11.2004 to 31.01.2005 and thereafter, subsistence allowance for the period of suspension. He further stated that he was the only earning member in the family and he was not able to pay rent for the house and his family was starving due to the financial crisis that arose due to the non-payment of salary and subsistence allowance.

12. The Management sent a reply dated 17.08.2005 stating that the claim for subsistence allowance should lie only with the District Educational Officer, Chengalpattu and that the salary payable to him would be disbursed on receipt of the same from the Government, since the institution is only an aided minority institution. Further it is stated that the enquiry stood adjourned to 07.09.2005.

13. Since the Management took such a stand, the petitioner made a representation dated 24.08.2005 to the District Educational Officer, Chengalpattu seeking to pay him subsistence allowance. He has also enclosed the letter dated 17.08.2005 of the Management. The petitioner also sent a representation dated 01.09.2005 to the Management stating that since they only transferred him as Headmaster of Higher Secondary School at Kottivakkam, the Management is liable to pay salary, when the transfer was not approved by the Government. He has also stated that holding enquiry, without paying salary and subsistence allowance, is unfair and the same is in violation of principles of natural justice. He further requested the Management to furnish the documents that could be relied on in the enquiry and inform him the Members of the Enquiry Tribunal that would conduct enquiry and also the details of the list of witnesses.

14. In reply to the petitioner's representation dated 01.09.2005, the Management sent a reply dated 06.09.2005 to the petitioner reiterating the same reply as communicated in their earlier letter dated 17.08.2005. Further, it is stated that since their institution is a minority institution, they need not seek approval from the authorities for his transfer and appointment as Headmaster to the Higher Secondary School at Kottivakkam and it was just intimated to the District Educational Officer, Chengalpattu. On intimation to the District Educational Officer, the transferred employee stands transferred to the pay roll of the District Educational Officer to enable him to draw the salary of the transferred employee and therefore, the issue of salary is between the petitioner and the concerned District Educational Officer. The Management has also stated that they are not aware of any communication denying approval to his transfer and appointment and the Management did not receive any communication from the District Educational Officer, Chengalpattu questioning the transfer or its illegality. The Management furnished the names of the Directors, who would constitute the Enquiry Tribunal for conducting the domestic enquiry.

15. The Management sent a letter dated 20.09.2005 to the petitioner informing him that the enquiry was adjourned to 29.09.2005.

16. With respect to the same, the petitioner sent a letter dated 22.09.2005 to the Management stating that except giving the names of the persons constituting the Enquiry Tribunal, no other demand of the petitioner that was made in his letter dated 01.09.2005 was met. Further, he pleaded for payment of salary and subsistence allowance and also to furnish the documents and the list of witnesses that were sought for in his letter dated 01.09.2005.

17. In the said circumstances, the enquiry took place on 29.09.2005. The petitioner wrote a letter dated 04.10.2005 to the Management stating that though he requested to adjourn the enquiry till the writ petition in W.P.No.38445 of 2004 is over, the enquiry commenced at 11.30 a.m and concluded at 05.30 p.m., without even giving lunch break. He complained that he was not in a good mental condition to face the enquiry, since he was not paid salary and subsistence allowance. Further, though he requested for the documents that could be relied on in the enquiry, the same was not given before the enquiry or during the enquiry and that he was not even permitted to read those documents in the enquiry. He has also complained that the proceedings in the enquiry was not fairly and truly typed. The Chairman of the Enquiry Tribunal left the enquiry at 03.00 p.m. and two others only continued the enquiry and without even permitting him to read the proceedings, he was asked to sign. He waited up to 06.30 p.m., but however, the Chairman did not turn up. He was assured of furnishing of the proceedings of the enquiry immediately after obtaining signature from the Chairman on the next day. But the same was not received by him so far. The petitioner complained that the enquiry was conducted in utter disregard to the principles of natural justice. The petitioner also wrote another letter dated 04.10.2005 complaining that the Accounts Officer acted as the

Presenting Officer of the Management, while he was transferred to an un-approved post in the Higher Secondary School at Kottivakkam to give promotion to the wife of the Accounts Officer.

18. The District Educational Officer, Chengalpattu sent a letter dated 19.10.2005 to the School as well as to the petitioner stating that the Government could not pay subsistence allowance to the petitioner and the Management has to pay the same. The said letter was in reply to the letter dated 24.08.2005 of the petitioner claiming subsistence allowance from the District Educational Officer, Chengalpattu, pursuant to the letter dated 17.08.2005 of the Management. The District Educational Officer also stated that if the Management issued a revised order transferring and posting the petitioner as B.T. Assistant, instead of Headmaster of Higher Secondary School, the same would be approved and the salary could be drawn for the said post.

19. While so, the Management sent a letter dated 09.11.2005 to the petitioner enclosing the report of the Enquiry Tribunal finding him guilty and also the proceedings as well as the documents relied on in the enquiry and the petitioner was asked to make his representation on the findings of the Enquiry Tribunal.

20. The petitioner made a representation dated 28.11.2005 to the Management on the findings of the Enquiry Tribunal. In the said representation, the petitioner has sought for re-enquiry, since the enquiry was conducted in blatant violations of the principles of natural justice. He complained that the enquiry was conducted on 29.09.2005 from 11.30 to 05.30 p.m continuously without even lunch break and the proceedings were not truly recorded. Further, he pleaded that it is not the duty of the Headmaster to deposit the amount collected from the students and collection and deposit are the responsibilities of the Clerk and the Superintendent of the School. Further, he alleged that in order to enable the wife of the Accounts Officer be promoted as Headmaster in the High School at Fort, from where he was transferred, the disciplinary action was initiated.

21. The Management rejected the reply of the petitioner vide letter dated 12.12.2005 and proposed to impose punishment of termination of service for the proved misconduct in the enquiry. The Management has also sent another letter dated 12.12.2005 enclosing a cheque for Rs.79,300/-representing the subsistence allowance from 31.01.2005 to 30.11.2005, pursuant to the letter dated 19.10.2005 issued by the District Educational Officer, Chengalpattu that the School shall pay the subsistence allowance.

22. The petitioner gave his reply dated 26.12.2005 to the proposed punishment and he requested to drop the proceedings. He has also sent another letter dated 26.12.2005 stating that payment of subsistence allowance after the completion of enquiry could not cure the illegality and that non-payment of subsistence allowance deprived him effective opportunity in the enquiry.

23. However, the Management passed an order dated 06.01.2006 terminating the petitioner from service.

24. Challenging the order dated 06.01.2006, the petitioner filed a writ petition in W.P.No.1748 of 2006 and also sought for a direction to reinstate him with continuity of service with all monetary benefits.

25. The first respondent in W.P.No.1748 of 2006 is the Management, the second respondent is the Manager and Correspondent of the Higher Secondary School at Kottivakkam, the third respondent is the Director of School Education, the fourth respondent is the District Educational Officer, Chengalpattu, the fifth respondent is the District Educational Officer, Chennai East, the sixth respondent is the Accounts Officer, the respondents 7 to 9 are the members who constituted the Enquiry Tribunal.

26. The Government Authorities filed a counter affidavit in W.P.No.38445 of 2004 and sought to sustain the impugned order dated 08.12.2004 of the District Educational Officer, Chengalpattu refusing to approve the transfer of petitioner as Headmaster in the Higher Secondary School at Kottivakkam. It is pleaded that the YMCA Boys Town Higher Secondary School at Kottivakkam was granted aid only up to Middle School level and there was no approved post of Headmaster of High School / Higher Secondary School. It is stated that the YMCA Boys Town Middle School was upgraded as High School from 01.06.1994. In 1991, that is prior to up gradation, the School was sanctioned with the post of Middle School Headmaster. On upgradation, the post of Headmaster of the Middle School was converted as B.T. Assistant as per the Government Order in G.O.Ms.No.1529, Education Department, dated 13.11.1990. It is further stated that the High School was further upgraded as Higher Secondary School on 21.03.2000 by the orders of the Director of School Education, Chennai. At the time of upgradation both as High School and Higher Secondary School, the condition of upgradation was that the upgradation could be based on self financing basis. It is further stated that since the Management sought for approval of transfer and appointment of the petitioner as Headmaster of Higher Secondary School, the same was rejected. That is, according to the school authorities, on upgradation as High School / Higher Secondary School, there existed only the post of B.T. Assistant and the Management could not seek for appointment as Higher Secondary Headmaster. It is also stated that G.O.Ms.No.525, School Education Department, dated 29.12.1997 relied on by the petitioner is not applicable, as the School was upgraded as High School from 01.06.1994 prior to the issuance of G.O.Ms.No.525. It is stated that the School Management did not raise any objection to the order dated 08.12.2004 of the District Educational Officer, Chengalpattu. The previous incumbent Mr. Vedha Manickam was in receipt of the pay of B.T. Assistant alone, and on his retirement, the Management could not have transferred and appointed the petitioner as Higher Secondary School Headmaster. Thus, the authorities sought for dismissal of the writ petition in W.P.No.38445 of 2004.

27. The Management of the School filed a counter affidavit seeking dismissal of the writ petition in W.P.No.38445 of 2004. However, it is stated that if the

concerned authorities approved the post of Higher Secondary Headmaster, by virtue of G.O.Ms.No.525, as claimed by the petitioner, they would have no objection for the same.

28. In W.P.No.1748 of 2006, the Management of the School alone filed counter affidavit and other respondents have not filed counter affidavit. The Management denied the allegation that the petitioner was transferred and appointed as Headmaster of YMCA Boys Town Higher Secondary School, Kottivakkam, to enable the wife of the Accounts Officer to become the Headmaster in his place. It is pleaded that the petitioner was given ample opportunities in the enquiry, but however, he failed to avail the same. It is stated that the Management never sought approval for the post of Higher Secondary School Headmaster and therefore, the petitioner could not claim the salary of a Higher Secondary School Headmaster from them. Since the petitioner committed misappropriation of school funds to the tune of Rs.37,394/-collected from the students, disciplinary action was initiated and hence, there was no illegality in terminating the services of the petitioner

29. Heard the submissions made by the learned counsel on either side relating to W.P.No.38445 of 2004.

30. The learned counsel for the petitioner has submitted that in view of the Government Order in G.O.Ms.No.525, School Education Department, dated 29.12.1997 and more particularly, para 5(II)(b), the impugned order dated 08.12.2004 passed by the District Educational Officer, Chengalpattu refusing to approve the transfer and appointment of the petitioner as Headmaster of the Higher Secondary School at Kottivakkam has to be quashed and the petitioner is entitled to the pay of a Headmaster of the Higher Secondary School. The learned counsel has further submitted that the Government Order in G.O.Ms.No.1529, Education Department, dated 13.11.1990 relied on by the Educational Authorities is not applicable to the private aided institutions and the same would cover only the Government / Local Body Schools. In this context, he pointed out that G.O.Ms.No.525 specifically states that it is relating to private aided schools.

31. The learned Special Government Pleader has sought to sustain the impugned order placing reliance on G.O.Ms.No.1529.

32. I have considered the submissions made on either side and perused the materials available on record.

33. It is not in dispute that the School Management is an aided minority institution receiving cent percent aid from the Government and the same is governed by the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973. If G.O.Ms.No.1529 is closely read, it would make it clear that the said Government Order is applicable only to Government Schools and the G.O. nowhere refers to aided institutions. Therefore, as rightly contended by the learned counsel for the petitioner, the said G.O. could not be applied in the case of aided institutions. Whenever Middle Schools are upgraded as High Schools,

G.O.Ms.No.1529 contemplates transfer of the Headmasters of Middle Schools to some other Middle Schools where the junior most Middle School Headmaster is serving and reversion of the junior most Middle School Headmaster as B.T. Assistant. If the same was not feasible, the Headmaster of the Middle School has to be absorbed as B.T. Assistant in the upgraded High Schools. This would not arise in private aided institutions, as each institution is an independent entity and in normal circumstances there is no transfer.

34. On the other hand G.O.Ms.No.525 refers to recognised private schools. Para 5(II)(b) of the said G.O. relied on by the learned counsel for the petitioner is extracted hereunder:

When a Middle School is upgraded as High School the post of Middle School Headmaster will be converted into High School Headmaster. In respect of elementary schools, one post of Headmaster will be sanctioned as per existing orders.

The aforesaid para of G.O.Ms.No.525 deals with the situation wherein the post of Middle School Headmaster would be converted into High School Headmaster in the case of Middle School being upgraded as High School. In my view, the same shall be applied to upgradation of High School as Higher Secondary School. But it seems that the said G.O., was not applied at all when YMCA Boys Town Middle School was upgraded as High School on 01.06.1990. That is, when G.O.Ms.No.525 was issued on 29.12.1997, the said G.O., was not applied with effect from 01.06.1998 as contemplated in the said G.O., by converting the Middle School Headmaster post into High School Headmaster at YMCA Boys Town Middle School, Fort, Chennai.

35. Likewise, when YMCA Boys Town Middle School at Kottivakkam was upgraded on 01.06.1994 as High School, the Middle School Headmaster post shall be converted into High School Headmaster with effect from 01.06.1998 as per G.O.Ms.No.525. Likewise, when the YMCA Boys Town High School at Kottivakkam was upgraded as Higher Secondary School on 21.03.2000, the post of High School Headmaster shall be converted into the post of Headmaster of a Higher Secondary School. Therefore, I am inclined to quash the impugned order dated 08.12.2004 and to direct the respondents to pay the petitioner the salary of Higher Secondary Headmaster.

SUBMISSIONS WITH RESPECT TO W.P.NO.1748 OF 2006

36. The learned counsel for the petitioner made the following submissions:

(i) The entire disciplinary action is malafide since when the District Educational Officer, Chengalpattu refused to approve the transfer and appointment of the petitioner as Higher Secondary School Headmaster at YMCA Boys Town Higher Secondary School, Kottivakkam, vide proceedings dated 08.12.2004, the Management should have shifted him back to the previous School at YMCA Boys Town High School, Fort. But the petitioner was suspended from service on

31.01.2005 and proceeded with the disciplinary action resulting in his dismissal, in order to safeguard the promotion given to the wife of the Accounts Officer at YMCA Boys Town High School, Fort. The appointment of Accounts Officer as the Presenting Officer in the enquiry also was assailed in the said circumstances. It was also submitted that the General Secretary of YMCA issued a letter dated 01.03.2005 directing the petitioner to meet him on 07.03.2005 and when the petitioner met him, he was threatened to resign the job.

(ii) The charges are vague and not specific and he made elaboration on the same.

(iii) The documents relied on in the enquiry were not furnished in spite of the requests were made. Further, list of witnesses was not furnished. The appointment of the Accounts Officer as the Presenting Officer was not informed. Even the constitution of the Enquiry Tribunal was belatedly informed to the petitioner.

(iv) Enquiry was conducted in an unfair manner since the enquiry was concluded on a single day by commencing at 11.30 a.m., and ending at 05.30 p.m., without even any lunch break, while the members of the Enquiry Tribunal went for lunch on rotation. Further, the Chairman went out of the enquiry at 03.00 p.m. The enquiry officers behaved like prosecutors. Though Presenting Officer was there, the enquiry officers acted as the Presenting Officer / Prosecutor. No documents were marked as exhibits through witnesses. The proceedings were not truly recorded. The proceedings of the enquiry were not furnished. Before examining the witnesses, the petitioner was closely cross examined at length by the Enquiry Tribunal thereby rendering the entire proceedings vitiated.

(v) The petitioner was denied the reasonable opportunity and he was denied effective participation since he was not paid salary from 01.11.2004 till 30.01.2005 and thereafter, he was not paid subsistence allowance from 31.01.2005 onwards. The subsistence allowance alone was paid on 12.12.2005 along with the letter dated 12.12.2005 and he was made to suffer for about 11 months without subsistence allowance. Hence, the same is in violation of principles of natural justice.

(vi) On merits, it was submitted that the witnesses did not speak anything about the nature of the allegations or the contents of the documents. No details were given by them as to (a) who paid the money? (b) when it was paid? (c) what was the amount? (d) for whose admissions donations were collected? etc. It was further complained that the enquiry officer relied on the Bank passbook that was neither produced during the enquiry nor marked through witnesses nor a copy thereof supplied to the petitioner. Thus, the findings are perverse. It was submitted that the Management failed to establish that it was the duty of the Headmaster to deposit the amount collected from the students into the Bank account. On the other hand, the oral evidence reveals that it was the duty of the management staff viz., Clerk for collection and Superintendent for deposit of the amount collected from the students into the Bank. As per the evidence, the

amount said to have been collected from the students, but not deposited into the Bank account could not tally with the amount mentioned in the charge memo. It was also submitted that during September 2004, the amount collected to the tune of Rs.20,00,000/-(Rupees Twenty Lakhs Only) was deposited in the Bank.

(vii) It was submitted that the petitioner reached the age of superannuation on 10.10.2008 during the pendency of the writ petitions and he is entitled to be continued in service till the end of the academic year viz., 31.05.2009. In view of the reaching of the age of superannuation, no question of reinstatement would arise. The learned counsel sought for payment of salary and other benefits for the period of non-employment from 31.01.2005 to 31.05.2009 by the School Management.

37. The learned counsel for the petitioner relied on various judgments for each proposition and those are considered at the appropriate place.

38. On the other hand, the learned counsel for the Management submitted that the petitioner was given due opportunity to participate in the enquiry and subsistence allowance was ultimately paid. It was submitted that the charges are very serious as the petitioner committed misappropriation of funds. There were sufficient evidence to establish the charges. Based on the materials, the Enquiry Tribunal recorded that the charges were proved and the Management passed the dismissal order on such findings. Thus, the learned counsel sought for dismissal of the writ petition.

39. I have considered the submissions made on either side and perused the materials available on record.

40. The following issues arise for consideration in W.P.No.1748 of 2006:

I. Whether the very initiation of disciplinary action is malafide?

II. Whether the charges are vague and not specific?

III. Whether the non-furnishing of documents relied on by the Management in the enquiry and non-furnishing of list of witnesses would amount to denial of reasonable opportunity to the petitioner?

IV. Whether the enquiry was conducted in a fair and proper manner?

V. Whether the non-payment of salary and subsistence allowance would amount to violation of principles of natural justice?

VI. Whether the findings of the Enquiry Tribunal based on which the termination order is passed is perverse?

VII. Whether the order of termination is liable to be set aside?

VIII. To what relief the petitioner is entitled?

ISSUE - I

41. The grievance of the petitioner was that the Management sought for approval for transfer and appoint" of the petitioner as Higher Secondary Headmaster in the YMCA Boys Town Higher Secondary School at Kottivakkam and the same was rejected by the order dated 08.12.2004 by the District Educational Officer, Chengalpattu. The same was not challenged by the Management. He was also not shifted back to the earlier school from where he was transferred. In this background, in my view, the grievance of the petitioner could not be simply brushed aside.

42. It is surprising that the Management sent a letter dated 06.09.2005 to the petitioner in reply to his letter dated 01.09.2005 stating that the Management was not aware of the order of the District Educational Officer, Chengalpattu refusing approval of transfer and appointment and that the Management was not responsible for salary and subsistence allowance. The relevant paras from the reply dated 06.09.2005 of the Management are extracted hereunder:

Regarding the payment of salary and subsistence allowance to you we have already made it clear to you vide our earlier letter dated 17.8.2005. That our institution being aided, the salaries of Teaching Staff are paid only by the Government of Tamilnadu and the school is only a disbursing agency. Whatever money received from the govt. is being paid to the staff for whom the money is intended to be paid. Being so the question of the school paying you either the salary or the subsistence allowance does not arise at all when no such money payable to you has been received from the govt. This position has been made absolutely clear to you already.

Regarding the issue of approval of your transfer by the DEO of Chengleput, you appear to be misinformed of you have deliberately misconceived the position. Simultaneously with your transfer from Fort to Kottivakkam, the authorities have been informed. Being a minority institution the question of approval of the transfer by the govt. does not arise at all. On the other hand it is only information to the concerned DEO that the transferred employee stands transferred to the pay roll of the DEO to enable him to draw your salary. Therefore again the issue is between you and the concerned DEO. As you have wrongly pointed out no question of approval is involved and until date no communication is received from the DEO Chengleput questioning the transfer or its legality. Therefore, this has already been pointed out to you. You may have to agitate the issue only with the DEO Chengleput and have your grievance redressed.

43. Even the Management did not own responsibility for payment of salary to the petitioner. Therefore, the grievance of the petitioner is well founded. When the approval was not granted for his transfer, he should be sent back to the earlier school. According to him, the same was not done to safeguard the interest of the wife of the Accounts Officer who was promoted as Headmaster in the YMCA Boys Town High School, Fort in the vacancy caused due to the transfer of the petitioner. When he made allegations that the School was acting against the

interest of the petitioner, to safeguard the interest of the wife of the Accounts Officer, the said Accounts Officer was appointed as the Presenting Officer. Furthermore, the General Secretary of YMCA sent a letter dated 01.03.2005 directing the petitioner to meet him on 07.03.2005. There is no details as to why he was directed to meet him. In this regard, the contents of the letter dated 01.03.2005 of the General Secretary of YMCA is extracted hereunder:

You are requested to meet me on Monday the 7th March" 2005 at 11 A.M at my office.

44. The petitioner made an allegation in his explanation dated 18.04.2005 to the charge memo that he was threatened to resign the job. He has also made similar allegation in para 5 of the affidavit filed in support of the writ petition in W.P.No.1748 of 2006 and the same was denied in para 7 of the counter affidavit filed in W.P.No.1748 of 2006. However, it is not explained as to why he was directed to meet the General Secretary on 07.03.2005. Taking into account the entirety of the circumstances, I am of the view that the allegation of the petitioner that the entire disciplinary action is malafide is well founded. Issue -I is answered accordingly.

ISSUE - II

45. The contention of the petitioner is that the charges made in the charge memo dated 15.04.2005 are vague and not specific. While the first charge relates to collection of Rs.37,394/-from several students, the details as to the names of the students from whom the amounts were collected, the details of the amounts collected from each student, the dates on which the amounts were collected, were not furnished. It was stated that the amount was handed over by Mrs. Ida Gladys to the petitioner. However, it was not stated on what date the amount was handed over to the petitioner. It is also not clear as to whether the entire amount was handed over on a day or the amounts were handed over by Mrs. Ida Gladys periodically. No statement of allegation was enclosed along with the charge memo explaining the charges. The charge memo proceeds that the allegation was made on the basis of the report. However, the report was not furnished. In these circumstances, the learned counsel for the School is also not able to give any answer, when it was pointed out by the learned counsel for the petitioner that the charges are vague and not specific, by pointing out the aforesaid lack of details. In these circumstances, I am of the view that the first charge is vague.

46. The second charge is relating to the collection of donations from several students. It is not stated as to the amount of donations collected, the dates on which the alleged collection was made, the details of the students from whom the amounts were collected. The details of the classes to which the students are belonging are also not given, when the allegation states that the amount was collected from students belonging to different classes. The details of the classes to which the petitioner allowed those students to attend were also not given. The

details of the register referred to in the charge memo was also not given except stating that "the relevant register".

47. In these circumstances, I am of the view that the following judgments of the Honourable Supreme Court relied on by the learned counsel for the petitioner squarely applies to this case:

(a) State of Uttar Pradesh Vs. Mohd. Sharif (Dead) through Lrs.,

3.....Admittedly, in the charge-sheet that was framed and served upon the plaintiff no particulars with regard to the date and time of his alleged misconduct of having entered Government Forest situated in P.C. Thatia district, Farrukhabad and hunting, a bull in that forest and thereby having injured the feeling of one community by taking advantage of his service and rank, were not mentioned. Not only were these particulars with regard to date and time of the incident not given but even the location of the incident in the vast forest was not indicated with sufficient particularity. In the absence of these plaintiff was obviously prejudiced in the matter of his defence at the enquiry.....

(b) Sawai Singh Vs. State of Rajasthan,

14. Quite apart from that fact, it appears to us that the charges were vague and it was difficult to meet the charges fairly by any accused. Evidence adduced was perfunctory and did not at all bring home the guilt of the accused.

15. Shri B.D. Sharma, learned advocate for the respondent, contended that no allegations had been made before the enquiry officer or before the High Court, that the charges were vague. In fact the appellant had participated in the enquiry. That does not by itself exonerate the department to bring home the charges.

16. It has been observed by this Court in *Surath Chandra Chakrabarty v. State of W.B.*¹ that charges involving consequences of termination of service must be specific, though a departmental enquiry is not like a criminal trial as was noted by this Court in the case of *State of A.P. v. S. Sree Rama Rao* and as such there is no such rule that an offence is not established unless it is proved beyond doubt. But in a departmental enquiry entailing consequences like loss of job which nowadays means loss of livelihood, there must be fair play in action; in respect of an order involving adverse or penal consequences against an employee, there must be investigations to the charges consistent with the requirement of the situation in accordance with the principles of natural justice insofar as these are applicable in a particular situation.

(c) Transport Commissioner, Madras-5 Vs. A. Radha Krishna Moorthy,

9. Insofar as the vagueness of the charges is concerned we find that it deserves acceptance. It is asserted by Shri Vaidyanathan, learned counsel for the respondent that except the memo of charges dated 4-6-1989, no other particulars of charges or supporting particulars were supplied. This assertion

could not be denied by the learned counsel for the appellant. A reading of charges would show that they are not specific and clear. They do not point out clearly the precise charge against the respondent, which he was expected to meet. One can understand the charges being accompanied by a statement of particulars or other statement furnishing the particulars of the aforesaid charges but that was not done. The charges are general in nature to the effect that the respondent along with eight other officials indulged in misappropriation by falsification of accounts. What part did the respondent play, which account did he falsify or help falsify, which amount did he individually or together with other named persons misappropriate, are not particularised. The charge is a general one. It is significant to notice that respondent has been objecting to the charges on the ground of vagueness from the earliest stage and yet he was not furnished with the particulars. It is brought to our notice that respondent's name was not included in the schedule appended to GOMs 928 dated 25-4-1988 mentioning the names of officials responsible for falsification of accounts and misappropriation and that he is also not made an accused in the criminal proceedings initiated in that behalf.

10. We are, therefore, of the opinion that the judgment of the Enquiry Tribunal is right insofar as it holds that the charges communicated to the respondent are vague. In the ordinary course we would have directed the disciplinary authority or the authority which framed the charges to particularise the charges and then to proceed with the enquiry but it appears that the respondent has hardly about seven or eight months to go for retirement. Having regard to the facts and circumstances of the case, we are of the opinion that the matter should end here.

(d) Union of India and Others vs. Gyan Chand Chattar [2009 (12) SCC 78]

32. In Surath Chandra Chakrabarty v. State of W.B. this Court held that it is not permissible to hold an enquiry on a vague charge as the same does not give a clear picture to the delinquent to make an effective defence because he may not be aware as what is the allegation against him and what kind of defence he can put in rebuttal thereof. This Court observed as under: (SCC p. 553, para 5)

5. The grounds on which it is proposed to take action have to be reduced to the form of a definite charge or charges which have to be communicated to the person charged together with a statement of the allegations on which each charge is based and any other circumstance which it is proposed to be taken into consideration in passing orders has also to be stated. This rule embodies a principle which is one of the basic contents of a reasonable or adequate opportunity for defending oneself. If a person is not told clearly and definitely what the allegations are on which the charges preferred against him are founded he cannot possibly, by projecting his own imagination, discover all the facts and circumstances that may be in the contemplation of the authorities to be established against him.

(emphasis added)

33. In a case where the charge-sheet is accompanied with the statement of facts and the allegation may not be specific in charge-sheet but may be crystal clear from the statement of charges, in such a situation as both constitute the same document, it may not be held that as the charge was not specific, definite and clear, the enquiry stood vitiated. (Vide State of A.P. v. S. Sree Rama Rao.) Thus, where a delinquent is served a charge-sheet without giving specific and definite charge and no statement of allegation is served along with the charge-sheet, the enquiry stands vitiated as having been conducted in violation of the principles of natural justice.

34. In *Sawai Singh v. State of Rajasthan* this Court held that even in a domestic enquiry, the charge must be clear, definite and specific as it would be difficult for any delinquent to meet the vague charges. Evidence adduced should not be perfunctory even if the delinquent does not take the defence or make a protest against that the charges are vague, that does not save the enquiry from being vitiated for the reason that there must be fair play in action, particularly, in respect of an order involving adverse or penal consequences.

35. In view of the above, law can be summarised that an enquiry is to be conducted against any person giving strict adherence to the statutory provisions and principles of natural justice. The charges should be specific, definite and giving details of the incident which formed the basis of charges. No enquiry can be sustained on vague charges. Enquiry has to be conducted fairly, objectively and not subjectively. Finding should not be perverse or unreasonable, nor the same should be based on conjectures and surmises. There is a distinction in proof and suspicion. Every act or omission on the part of the delinquent cannot be a misconduct. The authority must record reasons for arriving at the finding of fact in the context of the statute defining the misconduct.

Hence, I have no hesitation to hold that the charges are vague and not specific and that would vitiate the entire disciplinary proceedings. Issue-II is answered accordingly.

ISSUE - III

48. The enquiry took place on 29.09.2005. Before the said date, the petitioner has sought for the documents that were relied on by the Management in respect of the charges, in his letters dated 01.09.2005 and 22.09.2005. In the said letters, the petitioner has also sought for the details of the witnesses, who would depose against him in the enquiry. In this regard, the relevant passage from those letters are extracted hereunder:

Letter dated 01.09.2005

(Vernacular matter deleted)

It is relevant that in the reply dated 06.09.2005 of the Management, the request of the petitioner for furnishing of the documents, list of witnesses was not at all considered and dealt with and only the names of the members of the Enquiry

Tribunal was furnished.

49. After the enquiry was over, the petitioner, in his letter dated 04.10.2005 has again pointed out that the documents were not furnished to him even during the enquiry. The relevant passage from the said letter is extracted hereunder in this regard:

(Vernacular matter deleted)

50. The letter dated 04.10.2005 was sent by the petitioner before the Management furnished him the report of the Enquiry Tribunal and the proceedings of the enquiry and the documents along with their letter dated 09.11.2005. But, this letter was not considered and answered.

51. The petitioner, in his letter dated 22.09.2005, has stated that his basic requirements were not met, except furnishing the names of the members of the Enquiry Tribunal. The Management did not bother to send reply to the letter of the petitioner. Furthermore, the Management did not bother to reply to the serious allegations made in the letter dated 04.10.2005 about the conduct of the enquiry. In this regard, Ground (vii) from the affidavit filed in support of the writ petition in W.P.No.1748 of 2006 is extracted hereunder:

The first respondent did not produce list of documents and witnesses despite the petitioner's written request and as such the entire disciplinary proceedings are void and non-est in law.

52. In reply to the same, in para 23 of the counter affidavit filed in W.P.No.1748 of 2006, it was averred as follows:

23. With regard to ground (vii), this respondent submits that the petitioner was willingly participated in the enquiry in which, the documents are marked through the concerned witnesses. The petitioner also had the liberty to cross examine the witnesses and also to question the admissibility / verocity of the documents. But the petitioner himself did not do so and therefore, the averment of the petitioner for want of supply of documents, enquiry is vitiated is incorrect and improper."

53. It is thus clear that the Management did not furnish the documents and the list of witnesses as requested by the petitioner. The question is as to whether the same would amount to denial of opportunity to the petitioner. In my view, the Management shall furnish the documents, which are relied on by them in support of the charges, so that the petitioner could effectively defend himself in the enquiry. However, no reason was given by the Management for not furnishing the documents. Hence, I am of the view that non-furnishing of documents has put him in disadvantageous position in the enquiry.

54. Normally non-furnishing the list of witnesses would not be fatal to the proceedings. But however, the same would depend on the facts of the case. In this case, the petitioner has sought for the list of witnesses and documents. It was not furnished and no reason was given and the same was brought to the

notice of the Management by the petitioner in his letter dated 22.09.2005. More importantly, the enquiry was concluded on a single day viz., 29.09.2005 and all the four witnesses were examined on 29.09.2005 itself. In these circumstances, had the Management given the list of witnesses, the same could have provided him reasonable opportunity to defend himself in the enquiry. Hence, I am of the view that non-furnishing of the documents and list of witnesses in the circumstances of the case, have denied reasonable opportunity to the petitioner. In view of the same, the enquiry proceedings is vitiated.

55. In this regard, the learned counsel for the petitioner relied on a judgment of the Honourable Supreme Court in Kashinath Dikshita Vs. Union of India (UOI) and Others, and the relevant para from the said judgment is extracted hereunder:

10. This application was unceremoniously rejected by the Board on December 20, 1963. It is thus clear that the appellant's request for supply of copies of relevant documents and statements of witnesses has been refused in no unclear terms. We do not consider it necessary to burden the records by quoting the extracts from the letters addressed by the appellant and the reply sent to him. The extracts quoted hereinabove leave no room for doubt that the disciplinary authority refused to furnish to the appellant copies of documents and copies of statements. When a government servant is facing a disciplinary proceeding, he is entitled to be afforded a reasonable opportunity to meet the charges against him in an effective manner. And no one facing a departmental enquiry can effectively meet the charges unless the copies of the relevant statements and documents to be used against him are made available to him. In the absence of such copies, how can the concerned employee prepare his defence, cross-examine the witnesses, and point out the inconsistencies with a view to show that the allegations are incredible? It is difficult to comprehend why the disciplinary authority assumed an intransigent posture and refused to furnish the copies notwithstanding the specific request made by the appellant in this behalf. Perhaps the disciplinary authority made it a prestige issue. If only the disciplinary authority had asked itself the question: "What is the harm in making available the material?" and weighed the pros and cons, the disciplinary authority could not reasonably have adopted such a rigid and adamant attitude. On the one hand there was the risk of the time and effort invested in the departmental enquiry being wasted if the courts came to the conclusion that failure to supply these materials would be tantamount to denial of reasonable opportunity to the appellant to defend himself. On the other hand by making available the copies of the documents and statements the disciplinary authority was not running any risk. There was nothing confidential or privileged in it. It is not even the case of the respondent that there was involved any consideration of security of State or privilege.....

56. While following the aforesaid judgment, the Honourable Supreme Court, in State of U.P. and Others Vs. Saroj Kumar Sinha, held that non-furnishing of documents would result in the breach of rules of natural justice. In this regard, it

is relevant to extract paras 34, 35 and 36 of the said judgment, which reads as follows:

34. This Court in *Kashinath Dikshita v. Union of India*, had clearly stated the rationale for the rule requiring supply of copies of the documents, sought to be relied upon by the authorities to prove the charges levelled against a government servant. In that case the enquiry proceedings had been challenged on the ground that non-supply of the statements of the witnesses and copies of the documents had resulted in the breach of rules of natural justice. The appellant therein had requested for supply of the copies of the documents as well as the statements of the witnesses at the preliminary enquiry. The request made by the appellant was in terms turned down by the disciplinary authority.

35. In considering the importance of access to documents in statements of witnesses to meet the charges in an effective manner this Court observed as follows: (*Kashinath Dikshita case*, SCC pp. 234-35, para 10)

10. ... When a government servant is facing a disciplinary proceeding, he is entitled to be afforded a reasonable opportunity to meet the charges against him in an effective manner. And no one facing a departmental enquiry can effectively meet the charges unless the copies of the relevant statements and documents to be used against him are made available to him. In the absence of such copies, how can the employee concerned prepare his defence, cross-examine the witnesses, and point out the inconsistencies with a view to show that the allegations are incredible? It is difficult to comprehend why the disciplinary authority assumed an intransigent posture and refused to furnish the copies notwithstanding the specific request made by the appellant in this behalf. Perhaps the disciplinary authority made it a prestige issue. If only the disciplinary authority had asked itself the question: "What is the harm in making available the material?" and weighed the pros and cons, the disciplinary authority could not reasonably have adopted such a rigid and adamant attitude. On the one hand there was the risk of the time and effort invested in the departmental enquiry being wasted if the courts came to the conclusion that failure to supply these materials would be tantamount to denial of reasonable opportunity to the appellant to defend himself. On the other hand by making available the copies of the documents and statements the disciplinary authority was not running any risk. There was nothing confidential or privileged in it.

36. On an examination of the facts in that case, the submission on behalf of the authority that no prejudice had been caused to the appellant, was rejected, with the following observations: (*Kashinath Dikshita case*, SCC p. 236, para 12)

12. Be that as it may, even without going into minute details it is evident that the appellant was entitled to have an access to the documents and statements throughout the course of the inquiry. He would have needed these documents and statements in order to cross-examine the 38 witnesses who were produced at the inquiry to establish the charges against him. So also at the time of

arguments, he would have needed the copies of the documents. So also he would have needed the copies of the documents to enable him to effectively cross-examine the witnesses with reference to the contents of the documents. It is obvious that he could not have done so if copies had not been made available to him. Taking an overall view of the matter we have no doubt in our mind that the appellant has been denied a reasonable opportunity of exonerating himself.

Hence, I am of the view that the Management has acted in violation of the principles of natural justice, by not furnishing the documents and list of witnesses. Issue - III is answered accordingly.

ISSUE -IV

56. The complaint of the petitioner is that the enquiry was concluded in a day, that is commenced at 11.30 a.m., and concluded at 05.30 p.m., without even any lunch break. The said complaint was made by him on 04.10.2005 after the enquiry was over. The following is the allegation made by the petitioner in his letter dated 04.10.2005:

(Vernacular matter deleted)

58. It is not in dispute that no reply was sent by the Management. However, when the petitioner made the same allegation in para 9 of the affidavit filed in support of the writ petition, the same was disputed by the School Management in para 10 of the counter affidavit. The relevant passage in para 9 of the affidavit filed in support of the writ petition in W.P.No.1748 of 2006 is extracted hereunder:

9.On 29/9/2005 the enquiry was conducted by the Enquiry Tribunal. I was shocked to see that Mr.Samikkan, Accounts Officer was the Presenting Officer on behalf of the 1st Respondent and there were four witnesses brought by the Management. The Enquiry Tribunal conducted the enquiry in a biased manner. On the same day of Enquiry the Presenting Officer and four witnesses were examined without even allowing me to have my lunch. The Enquiry started from 11.30 A.M. and ended by 5.30 P.M.....

59. In para 10 of the counter affidavit filed in W.P.No.1748 of 2006, the said allegation was denied. Para 10 of the counter affidavit filed in W.P.No.1748 of 2006 is extracted hereunder:

10. With regard to para 9, the averment of the petitioner that the Enquiry Tribunal conducted the enquiry in a biased manner is totally false and denied. On 29.9.2005, the Presenting Officer and four witnesses were examined and the enquiry started in the morning and after lunch recess, the same was completed only in the evening. The petitioner was given ample opportunity to cross examine the four witnesses name, (1) Ida Gladys (2) Mr. Rajan (3) Mr. Balakrishnan (4) K. Haridoss. However, the petitioner did not chose to cross examine any one of the witnesses or questioned the admissibility of the documents filed by the management. On the other hand, the petitioner had openly declared that he

neither intended to cross examine the witnesses nor he disputed the version of the witnesses.

Though the allegation was denied in the counter affidavit, it is not known as to why the Management did not choose to send any reply to the letter dated 04.10.2005 of the petitioner, making serious allegations about the conduct of the enquiry.

60. In the said letter dated 04.10.2005, the petitioner also complained that the Chairman of the Enquiry Tribunal left the enquiry at 03.00 p.m. and his signature was obtained in the enquiry proceedings without permitting him to read the proceedings and it was informed that as soon as the Chairman signed in the enquiry proceedings, the same would be forwarded to the petitioner. However, the same was not furnished until he wrote the letter dated 04.10.2005. In this regard, para 8 of the letter dated 04.10.2005 of the petitioner is extracted hereunder:

(Vernacular matter deleted)

But no reply was sent by the Management. The aforesaid fact was stated by the petitioner in para 9 of the affidavit filed in support of the writ petition in W.P.No.1748 of 2006, which reads as follows:

... The Chairman of the Enquiry Tribunal Mr. Benjamin Franklin went away at 3 PM and the enquiry was conducted only by 2 other members till 5.30 P.M. The Enquiry Tribunal did not record what was stated by me. Likewise the cross examination of the Management witnesses by me was not properly recorded, nor was a copy furnished to me. The Enquiry Chairman was sitting in a very big round table and I was standing on the opposite side. I was not able to hear what was dictated to the Typist, who was sitting very near to the Enquiry Chairman. After the completion of enquiry, I was not allowed to read the evidence recorded and I was forced to sign the same. Therefore, on 4/10/2005, I sent a letter setting out the above irregularities. There was no reply for the same either from the 1st Respondent or the Enquiry Tribunal. Therefore, it is clear that the enquiry was not conducted in a fair manner, however to suit the convenience of the Management to record of its own.

61. The same was not denied specifically in para 10 of the counter affidavit, while para 10 deals with the allegations made in para 9. Further, appointment of Accounts Officer as Presenting Officer, was also not informed to the petitioner and he was aware of the same only when the Accounts Officer was present in the enquiry on 29.09.2005. The petitioner has been repeating from the beginning that he was transferred to Higher Secondary School at Kottivakkam in order to give promotion to the wife of the Accounts Officer and that the Accounts Officer also was one of the reasons for initiating disciplinary action against him. In these circumstances, it is not known as to why the Management has chosen to appoint the Accounts Officer as Presenting Officer.

62. Further, when the Management took about three months for issuing charge memo, has chosen to conclude the enquiry in a single day. As stated above, the allegations made by the petitioner on 04.10.2005 was not denied by the Management and no reply was sent to the petitioner. Furthermore, the counter affidavit has also not satisfactorily dealt with the allegations made by the petitioner. Hence, I am of the view that the enquiry was not fairly and properly conducted.

63. Besides, while submitting reply to the report of the findings of the Enquiry Tribunal, the petitioner, in para VI(3) of his explanation dated 28.11.2005 stated as follows:

3. On the same day of enquiry, you have examined four witnesses without even allowing me to have my lunch. The enquiry started from 11.30 A.M. and ended at 5.30 P.M. Further, the Chairman of Enquiry Tribunal Mr. Benjamin Franklin went away at 3 P.M. and Enquiry was conducted only by other two Member till 5.30 P.M. For this reason also the enquiry is void and non-est.

The same was considered by the Management in their letter dated 12.12.2005, but however, no answer was given. Furthermore, the enquiry was commenced with the close cross examination of the petitioner, prior to the examination of the witnesses on the side of the Management. Moreover, when the Presenting Officer was very much available during the enquiry, the Enquiry Tribunal put leading questions to the witnesses and there was no chief examination and completed the enquiry in a single day.

64. Cross examining the employee at the very beginning of the enquiry that is, even prior to the examination of the witnesses on the side of the Management, coupled with the absence of any chief examination of the Management witnesses make that the enquiry was not fairly and properly conducted. In this regard, the judgment of the Honourable Supreme Court in State of Uttaranchal and Others Vs. Kharak Singh, relied on by the learned counsel for the petitioner squarely applies to the facts of this case.

10. The following observations and principles laid down by this Court in Associated Cement Co. Ltd. v. Workmen¹ are relevant: (SCR pp. 659-61)

..... It is necessary to emphasise that in domestic enquiries, the employer should take steps first to lead evidence against the workman charged, give an opportunity to the workman to cross-examine the said evidence and then should the workman be asked whether he wants to give any explanation about the evidence led against him. It seems to us that it is not fair in domestic enquiries against industrial employees that at the very commencement of the enquiry, the employee should be closely cross-examined even before any other evidence is led against him. In dealing with domestic enquiries held in such industrial matters, we cannot overlook the fact that in a large majority of cases, employees are likely to be ignorant, and so, it is necessary not to expose them to the risk of cross-examination in the manner adopted in the present enquiry

proceedings. Therefore, we are satisfied that Mr Sule is right in contending that the course adopted in the present enquiry proceedings by which Malak Ram was elaborately cross-examined at the outset constitutes another infirmity in this enquiry.

15. From the above decisions, the following principles would emerge:

(i) The enquiries must be conducted bona fide and care must be taken to see that the enquiries do not become empty formalities.

(ii) If an officer is a witness to any of the incidents which is the subject-matter of the enquiry or if the enquiry was initiated on a report of an officer, then in all fairness he should not be the enquiry officer. If the said position becomes known after the appointment of the enquiry officer, during the enquiry, steps should be taken to see that the task of holding an enquiry is assigned to some other officer.

(iii) In an enquiry, the employer/department should take steps first to lead evidence against the workman/delinquent charged and give an opportunity to him to cross-examine the witnesses of the employer. Only thereafter, the workman/delinquent be asked whether he wants to lead any evidence and asked to give any explanation about the evidence led against him.

(iv) On receipt of the enquiry report, before proceeding further, it is incumbent on the part of the disciplinary/punishing authority to supply a copy of the enquiry report and all connected materials relied on by the enquiry officer to enable him to offer his views, if any.

Hence, I have no hesitation to hold that the enquiry was not a fair and proper enquiry. Issue - IV is answered accordingly.

ISSUE -V

65. The petitioner seriously complained that the non-payment of salary from 01.11.2004 to 30.01.2005 and non-payment of subsistence allowance from 31.01.2005 onwards would deny him the reasonable opportunity to participate in the enquiry effectively. In his explanation dated 18.04.2005 itself, he pointed out that he was not paid salary from 01.11.2004. In this regard, the relevant passage in the said letter dated 18.04.2005 is extracted hereunder:

(Vernacular matter deleted)

66. The above is not in dispute. Later, the petitioner sent another letter dated 02.07.2005 wherein also, he stated that he was not paid salary from 01.11.2004 to 30.01.2005 and no subsistence allowance was paid from 31.01.2005 onwards. He further stated that in these circumstances, it is difficult for him to participate effectively in the enquiry. The relevant paras from the said letter dated 02.07.2005 are extracted hereunder:

(Vernacular matter deleted)

67. While sending reply dated 17.08.2005 to the aforesaid letter dated

02.07.2005 of the petitioner, the Management took a stand that he should claim subsistence allowance from the District Educational Officer, Chengalpattu and the Management was not responsible for payment of salary. At this juncture, it is relevant to extract the relevant passage from the reply dated 17.08.2005 of the Management, which is as follows:

..... Being an aided institution salary payment is being done only by the TN Government, and on the receipt of the amount the management disburse the same. Therefore, legally your claim, if any for payment of Subsistence allowance should lie only with the District Educational Officer, Chenglepet and it is not clear as to why you have not taken it up to DEO if you have not already been paid.

68. The petitioner reiterated the same grievance in his letter dated 01.09.2005 and the relevant passage in the letter dated 01.09.2005 is extracted hereunder:

(Vernacular matter deleted)

69. The Management sent a reply dated 06.09.2005 to the aforesaid letter dated 01.09.2005 of the petitioner. The Management also reiterated their earlier stand by stating that they are not responsible for payment of salary and subsistence allowance and the relevant passage in the reply dated 06.09.2005 reads as follows:

Regarding the payment of salary and subsistence allowance to you we have already made it clear to you vide our earlier letter dated 17.8.2005. That our institution being aided, the salaries of Teaching Staff are paid only by the Government of Tamilnadu and the school is only a disbursing agency. Whatever money received from the govt. is being paid to the staff for whom the money is intended to be paid. Being so the question of the school paying your either the salary or the subsistence allowance does not arises at all when no such money payable to you has been received from the govt. This position has been made absolutely clear to you already. Therefore, that issue is now between you and the govt., who has been paying salary to you.

70. In the said circumstances, the petitioner participated in the enquiry. Therefore, he could not be blamed and the Management alone shall be blamed for non-payment of salary as well as subsistence allowance. The petitioner also reiterated the same in his letter dated 04.10.2005, which reads as follows:

(Vernacular matter deleted)

71. In the affidavit filed in support of the writ petition in W.P.No.1748 of 2006, the petitioner pleaded about the non-payment of salary and subsistence allowance in Ground(v) which reads as follows:

(v) The first Respondent has failed to pay the subsistence allowance during the suspension period despite the petitioner's written request and as such the entire proceedings are vitiated in law, for the simple reason that the Enquiry was proceeded and completed with subsistence allowance.

72. There was no reply to ground (v) in the counter affidavit filed by the respondents. The salary from 01.11.2004 to 30.01.2005 is not at all paid. As far as the subsistence allowance is concerned, the subsistence allowance from 31.01.2005 to 30.11.2005 was paid on 12.12.2005 by the Management stating that when the District Educational Officer, Chengalpattu made it clear that it was only for the Management to pay subsistence allowance, the Management paid the subsistence allowance. In my view, that could not be the reason for not paying subsistence allowance for 11 months.

73. Furthermore, no subsistence allowance is paid from 01.12.2005 to 06.01.2006, till the date of termination. In my view, non-payment of salary and subsistence allowance would amount to denial of opportunity to the petitioner to participate effectively in the enquiry. The action of the Management in not paying the salary and subsistence allowance, when the petitioner was asked to participate in the enquiry, amounts to violation of principles of natural justice. In this regard, it is relevant to extract the relevant para from the judgment of the Honourable Supreme Court in Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. and Another,

31. On joining government service, a person does not mortgage or barter away his basic rights as a human being, including his fundamental rights, in favour of the Government. The Government, only because it has the power to appoint does not become the master of the body and soul of the employee. The Government by providing job opportunities to its citizens only fulfils its obligations under the Constitution, including the Directive Principles of State Policy. The employee, on taking up an employment only agrees to subject himself to the regulatory measures concerning his service. His association with the Government or any other employer, like instrumentalities of the Government or statutory or autonomous corporations, etc., is regulated by the terms of contract of service or service rules made by the Central or the State Government under the proviso to Article 309 of the Constitution or other statutory rules including certified standing orders. The fundamental rights, including the right to life under Article 21 of the Constitution or the basic human rights are not surrendered by the employee. The provision for payment of subsistence allowance made in the service rules only ensures non-violation of the right to life of the employee. That was the reason why this Court in State of Maharashtra v. Chandrabhan Tale struck down a service rule which provided for payment of a nominal amount of rupee one as subsistence allowance to an employee placed under suspension. This decision was followed in Fakirbhai Fulabhai Solanki v. Presiding Officer and it was held in that case that if an employee could not attend the departmental proceedings on account of financial stringencies caused by non-payment of subsistence allowance, and thereby could not undertake a journey away from his home to attend the departmental proceedings, the order of punishment, including the whole proceedings would stand vitiated. For this purpose, reliance was also placed on an earlier decision in Ghanshyam Das Shrivastava v. State of M.P.

Hence, I am of the view that non-payment of salary and subsistence allowance amounts to violation of principles of natural justice and issue - V is answered accordingly.

ISSUE -VI

74. While holding charge no.1 as proved, the Enquiry Tribunal proceeded as if the petitioner admitted his guilt. It is pertinent to extract the relevant passage from the findings of the Enquiry Tribunal, which reads as follows:

In fact there is an admission that the moneys collected from students have been entrusted to him, but the same have not been remitted into the bank.

But the petitioner never made any admission as stated by the Enquiry Tribunal. In fact, when the Enquiry Tribunal questioned the petitioner as to whether he admitted the charges, he categorically stated that he denies the same. According to him, the alleged audit did not take place in his presence and he disputed the very audit itself. According to him, during September 2004, a sum of Rs.20,00,000/-(Rupees Twenty Lakhs Only) collected from the students was remitted in the Bank. That is, while Rs.20,00,000/-was remitted, there was no reason to come to the conclusion that he misappropriated Rs.37,394/-as alleged in the charge memo. Since the Enquiry Tribunal proceeded as if the petitioner admitted his guilt, when there is no material on record to come to such a conclusion, the findings have to be characterised as perverse.

75. Furthermore, one Mr. Arockiarajan, Superintendent, who was examined as the second witness, has categorically deposed in the enquiry as follows:

(Vernacular matter deleted)

That is, as per the admission made by the Superintendent, it is his responsibility to see as to whether the amounts collected from the students is deposited in the Bank. It is significant to note the reply dated 28.11.2005 given by the petitioner to the findings and the contents of the same is extracted hereunder:

.... It is pertinent to mention here that collection of fees is not my duty. It is only the Office Clerk who is collecting the fees and initialed by me. It will be deposited only by the Office Clerk in the Bank. Therefore there was no personal involvement by me in collecting the fees and depositing the same. It is the duty of the Superintendent Mr. Rajan to look into whether the fees collected are deposited or not into Bank. Mr. Rajan has also admitted the same in the evidence.

The aforesaid reply of the petitioner on the findings, is based on the deposition of Mr. Arockiarajan, Superintendent of the School. When the Management sent the reply dated 12.12.2005, referring to the reply dated 28.11.2005 of the petitioner, they failed to consider the aforesaid significant passage.

76. Even the learned counsel for the School Management also admitted that the non-remitted amount as per the deposition, does not tally with the amount as mentioned in the charge memo. More importantly, the Enquiry Tribunal relied on

the Bank passbook to come to the conclusion that the amount was not remitted in the Bank account, while the passbook was not produced in the enquiry. Nowhere in the enquiry proceedings, the Bank passbook was referred to. The reliance placed on by the Enquiry Tribunal on the documents that were not produced before them, would render the findings perverse. For all the aforesaid reasons, I am of the view that the findings of the Enquiry Tribunal on the first charge, is perverse.

77. The findings of the Enquiry Tribunal on the second charge is also not based on any legal evidence. In respect of the second charge, Mr. Balakrishnan and K. Haridoss were examined as third and fourth witnesses. They did not depose anything except saying that they gave a letter dated 03.02.2005. That is, both Balakrishnan and K. Haridoss did not depose in chief examination. Furthermore, the complaints are not specific. In both the complaints dated 03.02.2005, it is not stated as to the date on which they paid money. Balakrishnan stated that he again made payment and thereafter only, his son's name was brought to the school register. But the school register is not produced. The same is the case of Haridoss. It is not known what is the relationship between Haridoss and the student for whom he allegedly paid the money. In this case, the concerned register relating to the students, was not produced. Hence, I have no hesitation to hold that the charges are vague. In fact, the complaints dated 03.02.2005 was subsequent to placing the petitioner under suspension. For all these reasons, I am of the view that there is no legal evidence in respect of the second charge and hence, the findings on the second charge also is perverse. Issue - VI is answered accordingly.

ISSUE -VII

78. In view of my findings to all the issues, the termination order dated 06.01.2006, is liable to be set aside and issue - VII is answered accordingly.

ISSUE -VIII

79. It is not in dispute that the petitioner reached the age of superannuation on 10.10.2008 and he could have continued up to 31.05.2009, that is till the end of the academic year. Though I am inclined to set aside the termination order, he could not be reinstated in service, in the said circumstances. In view of my findings and setting aside the termination order, the petitioner is entitled to wages for the period of non-employment. While the Management is liable to pay salary from 31.01.2005 to 31.05.2009 after deducting the subsistence allowance paid, the Education Department is liable to pay salary from 01.06.2004 to 30.01.2005, since I am inclined to allow the writ petition in W.P.No.38445 of 2004. Issue-VIII is answered accordingly. In the result, both the writ petitions are allowed and the impugned orders are set aside. The respondents 1 to 3 in W.P.No.38445 of 2004 are directed to grant the scale of pay of Headmaster of a Higher Secondary School to the petitioner with effect from 01.06.2004 and thereby pay salary from 01.06.2004 to 30.01.2005. The respondents 1 and 2 in

W.P.No.1748 of 2006 are directed to pay salary of Headmaster of Higher Secondary Headmaster to the petitioner from 31.01.2005 to 31.05.2009 after deducting the subsistence allowance and the salary paid by the Management from 01.06.2004 to 31.10.2004. The said exercise shall be completed within a period of four weeks from the date of receipt of a copy of this order. No costs.