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**(2015) 07 MAD CK 0194**

**In the Madras High Court**

**Case No :** Writ Petition No. 22932 of 2009 and M.P. No. 1 of 2009

Y. Selina Margaret

APPELLANT

Vs

The District Educational Officer, Vellore and Others

RESPONDENT

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**Date of Decision :** 24-07-2015

**Acts Referred:**

**Citation :** (2015) 07 MAD CK 0194

**Hon'ble Judges :** T.S. Sivagnanam, J

**Bench :** Single Bench

**Advocate :** M. Ravi, for the Appellant; R. Vijayakumar, AGP, Advocates for the Respondent

**Final Decision :** Allowed

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## **Judgement**

T.S. Sivagnanam, J—The prayer in the Writ Petition is for issuance of a Writ of Certiorarified Mandamus, to quash the order passed by the fourth respondent, the Correspondent the fourth respondent, an aided minority institution (school) and to direct the respondents 1 to 5 to reinstate the petitioner in service with backwages and attendant benefits.

2. Heard Mr.M.Ravi, learned counsel appearing for the petitioner, Mr.R.Vijayakumar learned Additional Government Pleader appearing for the first respondent, Fr.Dr.A. Xavier Arul Raj, learned counsel appearing for the respondents 2 to 4, Mr.K.Ignaci Muthu, learned counsel appearing for the respondents 5 & 6 and Mr.A.Arul Mary, learned counsel appearing for the respondents 7 & 8 and with the consent of the parties, the Writ Petition itself is taken up for final disposal.

3. The petitioner was appointed as Secondary Grade Teacher on 16.07.1987, posted in the C.S.I. Central Primary School, Arakkonam, subsequently, transferred to various schools under the same corporate management, on 11.07.2000, was transferred, posted in the fifth respondent school. It is not in dispute that the fifth respondent school falls within the Corporate Management of

the C.S.I., Diocese. On the eve of Christmas during 2006, after school hours, a family function was celebrated in the school campus. The petitioner, another teacher I.Sadhu Sunder Singh are said to be actively involved in arranging the function. The petitioner would state that she had questioned him about certain unilateral actions done by the said teacher which he raised his hands to assault the petitioner in the presence of the participants at the functions, the petitioner had to resist the same by raising her hands. It is stated that the said teacher also used unparliamentary words against the petitioner, apart from hurting her feelings. On 21.12.2006, the said teacher, I.Sadhu Sunder Singh, lodged a Police complaint alleging that the petitioner assaulted him. The petitioner is also said to have lodged a complaint against the said teacher before the All Woman Police Station on the same day. Ultimately a compromise is to have evolved, the controversy is said to have been resolved between the petitioner, the said teacher. Subsequently, the petitioner was placed under suspension by order dated 22.12.2006, which was followed by a charge memo dated 03.01.2007. Ultimately, the petitioner was dismissed service by order dated 31.07.2007.

4. The petitioner challenged the order of dismissal by filing a Writ Petition in W.P. No. 27152 of 2007, which was partly allowed by this Court on 24.04.2009, the order of dismissal was set aside, a denova enquiry was directed to be held by the fourth respondent. The fourth respondent was required to furnish the documents relied upon by the petitioner in the course of enquiry, the petitioner was at liberty to submit further or additional statement of defence after the receipt of the documents to be relied upon by the fourth respondent in the enquiry. A further direction was issued to the fourth respondent to make every endeavour to complete the enquiry within a period of six weeks from the date of receipt of copy of the order.

5. On 20.07.2009, the petitioner submitted a representation to the fourth respondent requesting copies of four documents namely the copy of the alleged complaint given by the I.Sadhu Sunder Singh to the Town Police Station, Arakkonam; copy of the written statement obtained from Daniel Talstoy relating to the incident said to have taken place on 21.12.2006; list of witnesses; their submissions, documents relating to charge No. 5, which was referred to in the order of suspension dated 15.03.2007. The petitioner pointed out that from the date of suspension i.e., from 01.08.2007, till 2009 no subsistence allowance was paid, in terms of the provisions of Tamil Nadu Recognised Private Schools Regulation Act, Private School Act, suspension cannot be continued beyond the period of four months. Further, the petitioner submitted that she has been forced to attend an enquiry without subsistence allowance, it is not possible for her as she is in poverty. By another representation dated 20.07.2009, the petitioner also sought change of enquiry officer. The petitioner stated that the enquiry officers are biased, they are acting as mouth piece of the management. In the said representation, a request furnishing four documents was reiterated as well as the nonpayment of subsistence allowance. By another representation dated 24.07.2009, addressed to the fourth respondent reiterating that when she

appeared enquiry before the enquiry officers, she has not been furnishing the documents, she was informed that the enquiry is over on 20.07.2009. It is submitted that as per the call letter issued to the petitioner directing her to appear enquiry, the date fixed is 24.07.2009 at 10 a.m., in the C.S.I., Goudie Higher Secondary School, Tiruvallur. Copy of the said call letter dated 15.07.2009, has been filed in the typed set of papers. Therefore, it is submitted that the enquiry could not have been concluded on 20.07.2009.

6. The learned counsel appearing petitioner after reiterating the above averments submitted that the enquiry report given by the enquiry officers is illegal, it is an ex-parte enquiry, the documents sought by the petitioner, were not furnished, she had no opportunity to cross examine the management witnesses, the management witnesses MW-7, MW-8 were the Headmaster, Correspondent,, MW-8 passed the impugned order, therefore, the Correspondent has acted as a Judge of his own cause, the other witnesses were all teachers, there is no independent witness. It is further submitted that on receipt of the enquiry report, the petitioner submitted a detailed objection reiterating the serious violation of principles of natural justice, other inherent infirmities in the enquiry proceedings, the impugned order is outcome of total non-application of mind. It is further submitted that no approval has been obtained by the Management from the department after the impugned order was passed. Therefore, it is submitted that the impugned order calls interference, the petitioner is to attain the age of superannuation during March 2016, she may be reinstated in service with all benefits.

7. The learned counsel appearing the respondent Management submitted that after the earlier Writ Petition was disposed of directing denova enquiry to be conducted, sufficient opportunity was granted to the petitioner, however she did not avail of the same, the enquiry officers conducted the proceedings in a proper manner, though the petitioner appeared before the enquiry officers, she has continuously argued with them, was shouting at them, not cooperating with the enquiry. Further, it is submitted that the documents sought by the petitioner, more particularly, the copy of the complaint given by I.Sadhu Sunder Singh to the Police, the statement given by Daniel Talstroy are not within the custody of the Management, the Management did not place reliance on the copy of the FIR or any statement, the departmental proceedings were initiated on account of the grave misconduct committed by the petitioner by slapping I.Sadhu Sunder Singh, slapping him in full view on all the high dignitaries, staff, students, general public. Therefore, it is submitted that the misconduct is grave in nature, on account of which the reputation of the school, the management was greatly jeopardised. It is further submitted that though the charge memo was issued by the Correspondent, the decision to dismiss the petitioner from service was taken by Corporate Management, the same is legal, valid. Further, it is submitted that since the respondent institution is a minority institution, the question of obtaining prior approval does not arise, Sections 22, 23, 24 and 41 of the Private Schools Act have been struck down, held to be not applicable to minority institutions. The

learned counsel elaborately referred to the findings recorded by the enquiry officer, submitted that based on evidence recorded during the course of enquiry, the enquiry officers submitted their report, which was considered by the Corporate Management, order of punishment has been issued. Further, it is submitted that all the teachers have lodged a complaint against the petitioner as she had adopted a threatening attitude to all the teaching, non teaching staff of the school, the congenial atmosphere, reputation of the institution has been grossly affected on account of the conduct of the petitioner. Therefore, it is submitted that the Management took a conscious decision, passed the impugned order, prayed that the same may not be interfered.

8. Heard the learned counsels appearing parties, carefully perused the materials placed on record.

9. Apart from several grounds raised in the Writ Petition, the petitioner contended that the documents required by her have not been supplied to her, she did not participate in the enquiry, the enquiry officers proceeded ex-parte, found her guilty of the charges. After taking into consideration the stand taken by the respondent Management, this Court allowed the Writ Petition in part by order dated 24.04.2009. While doing so, a finding has been recorded by this Court that perusal of the enquiry report reveals that apart from the charges framed against the petitioner some extraneous materials were taken into consideration, the finding of guilt has been arrived at by the enquiry officers, the petitioner has requested the enquiry officers to furnish the list of documents, list of witnesses, the request was not complied with, proceeded to examine eight Management witnesses, marked documents including the document namely, wound certificate produced by I.Sadhu Sunder Singh. Taking into consideration into all these factors, this Court observed that the petitioner cannot be made to face on additional charge apart from four charges initially framed, with a view to afford one more opportunity the order of dismissal dated 31.05.2007 was set aside, denova enquiry was ordered. While doing so, a specific direction was issued to the fourth respondent, the Correspondent of the institution, to furnish documents relied upon by them in the course of enquiry with liberty to the petitioner to submit further or additional statements of defence after receipt of the documents to be relied upon by the fourth respondent in the enquiry.

10. In terms of the direction issued by this Court in the earlier Writ Petition, the fourth respondent school was required to furnish the documents relied on. The petitioner requested four documents as stated above. The petitioner was not favoured with any reply her representations dated 20.07.2009 two, 24.07.2009. In the counter affidavit filed in this Writ petition a stand is taken by the respondent Management that those documents sought are not the basis of the charge. This Court is not inclined to accept the said submission simple reason that the first charge itself is a charge of assault alleged to be made by the petitioner on I.Sadhu Sunder Singh. The said charge is a criminal charge, it is not in dispute that I.Sadhu Sunder Singh gave a police complaint, a case was

registered, the petitioner also gave a police complaint which was acknowledged. Therefore, to state that the Management does not rely upon the complaint of I.Sadhu Sunder Singh given before the Police or any statement recorded from any other person in that regard is a farfetched plea.

11. Admittedly, MW-1 I. Sadhu Sundar Singh has spoken about the incident in the course of his examination in chief. Apart from the allegation made by the I.Sadhu Sunder Singh, there is no record placed to show that there was any other complaint relating to the same incident which triggered of the disciplinary action against the petitioner, the only material was the complaint given by I.Sadhu Sunder Singh. Thus, it is clear that the fourth respondent has violated the order passed by this Court in W.P. No. 27152 of 2007, dated 24.04.2009, inasmuch as the documents sought by the petitioner was not provided.

12. As noticed above from 2007 to 2009 when the petitioner was under suspension, she was not paid any subsistence allowance, this fact is not in dispute. Therefore, the petitioner during the relevant time could not have been compelled to attend the domestic enquiry, especially when she submitted representations requesting payment of subsistence allowance, also pleaded that she cannot participate in the enquiry due to poverty. In any event, the earlier order of dismissal was set aside by this Court, as a consequence of the same, the petitioner is deemed to have been reinstated in service, failing which denova enquiry could not have been proceeded. Even during the period of the denova enquiry no subsistence allowance has been paid to the petitioner.

13. The learned counsel appearing the respondent Management states that they have intimated the department regarding payment of subsistence allowance. In my view this will not absolve the Management of their duty to pay subsistence allowance to a suspended employee, when enquiry is in progress. This violation goes to the root of the matter as it has prevented the petitioner from the effectively defending herself in the domestic enquiry. The petitioner would state that she appeared before the enquiry officers, requested documents, but was denied those documents, when she appeared on 24.07.2009 as per the date fixed enquiry in terms of call letter dated 15.07.2009, the petitioner was orally informed that the enquiry is already completed. These infirmities are sufficient to scrap the enquiry report.

14. Perusal of the enquiry report does not show that the enquiry officers explained to the petitioner regarding alleged nonavailability of documents, inspite of that the petitioner refused to examine herself or cross examine the Management witnesses. The enquiry is said to have been concluded on 20.07.2009, based on the evidence on the side of the Management, the finding of guilt has been recorded, when the date fixed enquiry was 24.07.2009. Thus, at every stage of the enquiry proceedings there has been serious procedural violation resulting in grave prejudice to the petitioner. Based on such an illegal enquiry report, the petitioner could not have been dismissed from service.

15. The learned counsel appearing petitioner would state that the enquiry was held at Tiruvallur. There were no independent witnesses except the teachers of the school, the Headmaster, the Correspondent, who had issued the charge memo. The petitioner produced copy of an attendance book July 2009 to show that those teachers who are alleged to have appeared as Management witnesses on 20.07.2009 were attending the school at Arakonam, therefore, there was no enquiry in the eye of law. However, this issue need not be gone into, since this Court is satisfied that there has been serious violation of principles of natural justice, the ex-parte enquiry report cannot be relied upon, the enquiry has been concluded on 20.07.2009, when the date fixed enquiry as per call letter dated 15.07.2009 is 24.07.2009. Furthermore, the Management has not provided the documents sought by the petitioner inspite of the specific direction issued by this Court in the earlier Writ Petition. The petitioner was not paid any subsistence allowance after the earlier order of dismissal dated 31.05.2007 was set aside by this Court, thus, putting the petitioner to prejudice which she has highlighted in her representation.

16. Under normal circumstances when there has been violation of principles of natural justice, Court would interfere, set aside the impugned order, afford an opportunity to the Management to redo the entire exercise from the stage where there has been violation of principles of natural justice. However, in the instant case this Court is not inclined to adopt such course two reasons, firstly, the earlier Writ Petition filed by the petitioner was allowed, denova enquiry was directed to be conducted after furnishing the documents sought by the petitioner, giving the petitioner an opportunity to submit additional statement of defence. In the preceding paragraphs, it has been pointed out that this direction was not complied with. Therefore, this Court is not inclined to afford one more opportunity to the Management. Secondly, the petitioner had completed more than 20 years of service on the date when the petitioner was dismissed vide order dated 31.05.2007, which order was set aside, denova enquiry was ordered. Further, the petitioner is to attained the age of superannuation in March 2016. Thus, se two reasons, this Court is not inclined to remand the matter, but to quash the order of dismissal.

17. For all the above reasons, the petitioner is entitled to succeed, the Writ Petition is allowed, the impugned order is quashed, the respondent Management is directed to reinstate the petitioner in service with backwages, other attendant benefits, within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed.