

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.11.2019

CORAM :

THE HONOURABLE MR. JUSTICE M. DURAISWAMY

W.P. No.37265 of 2004

D.Ganesan

... Petitioner

Vs.

1.The Chairman/Special Officer,
The Dharmapuri District Co-operative Sugar Mills Polytechnic,
Palacode,
Dharmapuri District.

2.The Commissioner of Sugar,
474, Anna Salai,
Chennai – 35.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records in pursuant to the impugned order of termination passed by the 1st respondent in Proc.Na.Ka.No.7328/C3 dated 25.05.2002 and the appellate order passed by the 2nd respondent in Proc.Na.Ka.No.21774/Sa Tho 2/2002 dated 25.06.2003 and quash these orders and consequently to direct the respondents to reinstate the petitioner in service with full back wages and other consequential service benefits.

For Petitioner : Mr.R.Prem Narayan
for Mr.M.Saravana Kumar

For R1 : Mr.R.Parthiban

For R2 : Mr.S.Suresh Kumar
Government Advocate

ORDER

The petitioner has filed the above writ petition for a writ of certiorarified mandamus to call for the records in pursuance of the impugned order of termination passed by the 1st respondent dated 25.05.2002 and the appellate order passed by the 2nd respondent dated 25.06.2003 and quash these orders and consequently to direct the respondents to reinstate the petitioner in service with full back wages and other consequential service benefits.

2.The petitioner was working as the Principal of Dharmapuri District Co-operative Sugar Mills Polytechnic and he was placed under suspension by the 1st respondent vide proceedings dated 13.10.1997 on the ground that enquiry against him is pending under Section 42 of the Special by-laws. The following charges were framed against the petitioner :

"1.Misappropriation of funds by preparing bogus vouchers in the dues payable to the former students of the Polytechnic being connived with the former Secretary of the Polytechnic and Thiru K.Ranganathan, Clerk.

2.Misappropriation of funds by refunding lesser amount to the former students of the Polytechnic after obtaining their signature in the blank vouchers and filed-up much more amount subsequently than actually paid and being connived with Thiru K.Ranganathan, Clerk.

3.Misappropriation of scholarship amount by paying lesser scholarship amount to students and subsequently filled up in the vouchers indicating much more amount as having paid.

4.Indulged in Homo-sexual activities with the polytechnic students.

5.Made derogatory remarks writing in filthy language against the teaching staff in the notice board and allowed the students to read.

6.He had arranged to refund the fees without any authority and without following the formalities and incurred loss to the Polytechnic.

7.Failed to inform the students about their selection to the group/trade who attended interview, in contravention to the guidelines of the Director of Technical education and instructions of the selection committee.

8.He has admitted the students for admission in the management quota those who were not the (sons/daughters) heir of the cane growers/employees.

9.Deceived the Govt. and management allowing a student for admission in the administrative quota, who has not actually been selected by selection committee."

3.Out of the 9 charges framed against the petitioner, except charge Nos.3 and 7, all the other charges were proved. Consequent to the charges having been proved, inquiry report was examined and show cause notice, dated 18.09.2001, was issued to the petitioner, proposing the punishment of dismissal. Since the reply submitted by the petitioner was not satisfactory, a personal hearing was conducted on 28.03.2002, giving him an opportunity to defend himself from the charges. Subsequently not satisfied with the explanation given by the petitioner, he was dismissed from service by the 1st respondent, vide his

proceedings dated 25.05.2002. Thereafter, the petitioner preferred an appeal before the Appellate Authority, challenging his dismissal and the Appellate Authority also confirmed the order of dismissal.

4.The petitioner contended that the 1st respondent is not the appropriate authority to terminate the petitioner and that the subsistence allowance was not paid to him during the period of suspension.

5.In the counter affidavit filed by the 1st respondent, they have stated that the petitioner was sanctioned subsistence allowance at the rate of 75% of his salary after 90 days, i.e., from 14.01.1998. Though the petitioner was given sufficient time to submit his explanation, he did not submit his explanation till 02.04.1998 and was dragging the issue, which resulted in prolonging the matter. Since the petitioner was prolonging the matter, the subsistence allowance was reduced to 50% of his salary with effect from 01.04.1998. Thereafter, the subsistence allowance was stopped following the orders of the Assistant Commissioner of Labour, Salem.

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6.With regard to the jurisdiction of the 1st respondent, it could be seen that the petitioner himself has stated in the affidavit that he was appointed by the Chairman of the Polytechnic vide his proceedings dated 03.05.1993 and 24.10.1994 and therefore, the order of termination passed by the 1st respondent, who is the appointing authority, is proper. Further, on a reading of the charges

framed against the petitioner, it is clear that the charges are grave in nature and except charge Nos.3 and 7, all the other charges were proved against the petitioner. The petitioner, who was working as the Principal of the Polytechnic Institute, had indulged in homosexual activities with the polytechnic students. A person with such a conduct and character cannot be allowed to continue in employment, that too, as a Principal of a Polytechnic Institute. That apart, the petitioner had also made derogatory remarks, writing in filthy language against the teaching staff in the notice board and had allowed the students to read, which would establish that the petitioner is unfit to continue as the Principal of the Polytechnic Institute. The Hon'ble Apex Court, in **Avinash Nagra v. Navodaya Vidyalaya Samiti and others [1997 (2) SCC 534]**, has held as follows :

"6. The first question that arises for consideration is whether the dismissal of the appellant in terms of his letter of appointment is vitiated by any error of law and whether he is entitled to a full-fledged enquiry and opportunity to cross-examine the girl students who have gave the statements against the appellant? The second question is whether the High Court was right in dismissing the writ petition under the impugned order dated January 9, 1996? Indisputably, the provisions of C.C.S. (C.C.O.) Rules, 1965 of the Government of India would be applicable to the employees of Navodaya Vidyalaya. The respondent is running nation-wide co-educational specialized and prestigious schools in which 1/3rd of the students are girls. With a view to ensure safety and security to the girl students, to protect their modesty and prevent their unnecessary exposure at an enquiry in relation to the conduct of a teacher resulting in sexual harassment of the girl student etc. involving misconduct or moral turpitude, resolution prescribing

special summary procedure was proposed and published by notification dated December 23, 1993, after due approval of the Executives of the respondent-Samiti. The Minister of Human Resources and Development, Government of India is its Chairman. The notification postulates to dispense with regular enquiry under the Rules. In the case of a temporary employee whose integrity and conduct is doubtful but difficult to prove with sufficient documentary evidence to establish the charge and whose retention in service would be prejudicial to the interest of the institution or whose grave misconduct and the enquiry under the Rules would be likely to result in embarrassment to the class of employees or is likely to endanger the reputation of the institution, the appointing authority, for the reasons to be recorded in the file, may terminate his services in terms of the letter of appointment. The order of termination need not contain any reasons but the appointing authority has to obtain prior approval of the Deputy Director. Similarly, when the Director is satisfied, after summary inquiry, that there was a prima facie guilt of moral turpitude involving sexual harassment or exhibition of immoral behaviors towards any girl student, under clause (b) of the above notification, the Director "can terminate the services of that employee by giving him one month's or three months' pay and allowances in lieu thereof, depending upon whether the guilty employee is temporary or permanent in the services of the Samiti. In such cases, procedure prescribed for holding enquiry for imposing major penalty in accordance with the Rules as applicable to the employees of the Respondent, shall be dispensed with provided that the Director is of the opinion that it is not expedient to hold regular enquiry on account of serious embarrassment to the student or his guardians or such other practical difficulties. The Director shall record in

writing the reasons under which it is not reasonably practicable to hold such enquiry and he shall keep the Chairman of the Samiti informed of the circumstances leading to such termination of services. It would thus be seen that in a given situation, instead of adopting the regular procedure under the Rules to terminate the services of an employee, the notification prescribes the procedure to dispense with such enquiry, subject to the conditions mentioned above. The question is: whether the order terminating the services of the appellant in terms of his appointment letter is in violation of the Rules or the principles of natural justice? Before answering the question, it is necessary to consider the need for the education and the place of the teacher in that behalf. Article 45 of the Constitution enjoins that State to endeavour to provide free and compulsory education to all children, till they complete the age of 14 years. This Court has held that right to education is a Fundamental Right and the State is required to organise education through its agencies or private institutions in accordance with the law and the regulations or the scheme. As laid down by this Court, it is the duty of the State to provide compulsory primary education freely; secondary education and the university education according to the appropriate statutes and the schemes. The Union of India had adopted the Navodaya Vidyalaya Scheme to impart discipline and higher learning up to the stage of secondary education. Article 51A in Chapter IV-A of the Fundamental Duties envisages that it shall be the duty of every citizen of India to abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem. The citizen should cherish and follow the noble ideals which inspired our national struggle for freedom; to uphold and protect the sovereignty, unity and integrity of India. The citizens should, as a duty, defend the country and render national

service when called upon to do so; to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities. The citizen, as a duty, should renounce practices derogatory to the dignity of women; value and preserve the rich heritage of our composite culture; protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compass in for living creatures. Every citizen should develop scientific temper, humanism and the spirit of inquiry and reform; safeguard public property and abjure violence; strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement. These ideals should be nurtured and imbibed by imparting to the receptive minds of the children from their childhood. In Maharashtra State Board of Secondary and Higher Secondary Education v. K.S. Gandhi and Ors. [(1991) 2 SCC 716], this Court, while holding that right to education is a fundamental right, had held the native endowments of men are by no means equal. Education means a process which provides for intellectual, moral and physical development of a child for good character formation; mobility to social status; an opportunity to scale equality and a powerful instrument to bring about social change including necessary awakening among the people. Education promotes intellectual, moral and social democracy. Education lays foundation of good citizenship and is a principal instrument to awaken the child to intellectual and cultural pursuits and values in preparing the child for later professional training and helps him to adjust to the new environment. Education, therefore, should be co-related to the social, political or economic needs of our developing nation fostering secular values, breaking the barriers of casteism,

linguism, religious bigotry and should act as an instrument of social change. Education kindles its flames for pursuit of excellence, enables and enables the young mind to sharpen his or her intellect more with reasoning than blind faith to reach intellectual heights and inculcate in him or her to strive for social equality and dignity of person.

7.In "Human Values and Education" edited by S.P. Ruhela under the article on "The Problem of Values" by P.N. Mathur, it is stated that the spiritual values taught in education, act as the guiding starts providing motive force behind his thought, emotion and action; the value should be moral and spiritual in socio-cultural and spiritual life of man has to be such as brings peace, progress and welfare of both, the individual and the society. The talk of scientific temper, egalitarianism, freedom, social justice and secularism will be fruitless unless these constitutional values are imbued with spiritual and moral values. The need for religious, moral and spiritual education, as a part of educational curriculum, being taught in Sathya Sai Educational Institutions and its utility to the social regeneration of falling standard of moral and social conduct, was re-emphasised in those articles published in book form on the 60th Birthday of Shri Sathya Sai Baba. In the foreword to the said book, Shri Justice V. Bala Krishna Eradi, a former Judge of this Court, has emphasised that the rich cultural and spiritual heritages we have endowed, is being neglected after independence, denying to the youth of this country the opportunity to imbibe moral, cultural and spiritual values that form part of our heritage. He emphasised that in value oriented education, ethical values help in character building and develop discipline in students; cultural values enable the students to transcend the bounds of

narrow sectarianism and develop equal respect for all faiths. Similarly spiritual values open the vision of a student to 'one spirit' dwelling in all and unite him with the whole mankind as one family. He, therefore, emphasised that it is the duty of every citizen interested in the future of the country and in the preservation of our great cultural heritage, to extend cooperation for successful implementation of the programme of value-oriented education being imparted by Sri Sathya Sai Educational Institutions.

8.In "The Social and Political Thought of Dr. S. Radhakrishnan" by Clarissa Rodrigues, at page 120, it has been stated that education helps to improve the social order. An educated man has an open mind, a broad outlook, is willing to reconsider issues and make his own decisions. He is liberated from the tutelage to outmoded notions, to oppressive institutions and is always willing to learn from others and change whenever it is necessary. On the necessity of education, it is stated that the view of Dr. Radhakrishnan was that the education is meant to enable individuals to tackle the myriad problems of society (such as ignorance, disease, poverty and so on) and to cope with the accelerated pace of change in several spheres (such as agriculture, industry, medicine, transport, communication) which is a characteristic feature so society today. According to Dr. Radhakrishnan, education from the individual point of view will be incomplete, if it does not initiate the child to the supreme values of love, truth, goodness and beauty and fill him with a sense of purpose or else he suffers from merged, pusillanimity, anxiety and defeatism. Education, therefore, should not only train the intellect, promote technical skill but also develop a person's aesthetic abilities and especially moral and spiritual values. This is in

accordance with the Upanishadic view that we should aim at the play of life (pranaraman), the satisfaction of mind (manarandam) and the fullness of tranquillity (santisamdharm). On social aims of education, according to Dr. Radhakrishnan, man must also realise that in a society where there is social injustice, gross inequality and lack of fraternity, individual liberty cannot be preserved. It must also be borne in mind that individual freedom entails social responsibility. Education, therefore, transforms the social order by promoting a healthy nationalism and the spirit of internationalism.

9. On the functions of a teacher, at page 133, according to Dr. Radhakrishnan, the success of the educational process depends considerably on the teacher, for it is the teacher who has to implant aims, and to build the character of the students. According to Laski, at bottom of the education, the quality of a university is always in direct proportion to the quality of its teacher. A good teacher is one who knows his subject, is enthusiastic about it and one who never ceases to learn. Communication with the students and sense of commitment to his work are necessary. A good teacher, therefore, according to Dr. Radhakrishnan, is one who is objective, just, humble and is open to correction. According to Whitehead the teacher must be self-confident learned man. The teacher, therefore, is primary functionary to transmit the intellectual and ethical value to the young. He should encourage the attitude of free enquiry and rational reflections. The teacher should try to remove the leaden weights of pride and prejudice, passion and desire which are likely to cloud a student's vision. The devoted teacher is not only concerned with the child's intellectual development but also has the obligation to attend to his moral, emotional and social growth as well.

10. Mahatma Gandhi, the Father of the Nation has stated that "a teacher cannot be without character. If he lacks it, he will be like salt without its savour. A teacher must touch the hearts of his students. Boys imbibe more from the teacher's own life than they do from books. If teachers impart all the knowledge in the world to their students but do not inculcate truth and purity amongst them, they will have betrayed them." Shri Aurobindo has stated that "it is the teacher's province to hold aloft the torch, to insist at all times and at all places that this nation of ours was founded on idealism and that whatever may be the prevailing tendencies of the times, our children shall learn to live among the sun-lit peaks." Dr. S. Radhakrishnan has stated that "we in our country look upon teacher as gurus or, as acharyas. An Acharya is one whose aachar or conduct is exemplary. He must be an example of Sadachar or good conduct. He must inspire the pupils who are entrusted to his care with love of virtue and goodness. The ideal of a true teacher is andhakaraniridhata gurur itya bhidhiyate. Andhakar is not merely intellectual ignorance, but is also spiritual blindness. He who is able to remove that kind of spiritual blindness is called a guru. Are we deserving the noble appellation of an acharya or a guru?" Swami Vivekananda had stated that "the student should live from his very boyhood with one whose character is a blazing fire and should have before him a living example of the highest teaching. In our country, the imparting of knowledge has always been through men of renunciation. The charge of imparting knowledge should again fall upon the shoulder of Tyagis."

11. It is in this backdrop, therefore, that the Indian society has elevated the teacher as 'Guru Brahma, Gurur Vishnu Guru Devo Maheswaraha'. As Brahma, the teacher creates knowledge,

learning, wisdom and also creates out of his students, men and women, equipped with ability and knowledge, discipline and intellectualism to enable them to face the challenges of their lives. As Vishnu, the teachers is preserver of learning. As Maheswara, he destroys ignorance. Obviously, therefore, the teacher was placed on the pedestal below the parents. The State has taken care of service conditions of the teacher and he owed dual fundamental duties to himself and to the society. As a member of the noble teaching profession and a citizen of India he should always be willing, self-disciplined, dedicated with integrity to remain ever a learner of knowledge, intelligently to articulate and communicate and imbibe in his students, as social duty, to impart education, to bring them up with discipline, inculcate to abjure violence and to develop scientific temper with a spirit of enquiry and reform constantly to rise to higher levels in any walk of life nurturing Constitutional ideals enshrined in Article 51A so as to make the students responsible citizens of the country. Thus the teacher either individually or collectively as a community of teachers, should regenerate this dedication with a bent of spiritualism in broader perspective of the Constitutionalism with secular ideologies enshrined in the Constitution as an arm of the State to establish egalitarian social order under the rule of law. Therefore, when the society has given such a pedestal, the conduct, character, ability and disposition of a teacher should be to transform the student into a disciplined citizen, inquisitive to learn, intellectual to pursue in any walk of life with dedication, discipline and devotion with an inquiring mind but not with blind customary beliefs. The education that is imparted by the teacher determines the level of the student for the development, prosperity and welfare of the society. The quality, competence and character of the teacher are, therefore,

most significant for the efficiency of the education system as pillar of built democratic institutions and to sustain them in their later years of life as a responsible citizen in different responsibilities. Without a dedicated and disciplined teacher, even the best of education system is bound to fail. It is, therefore, the duty of the teacher to take such care of the pupils as a careful parent would take of its children and the ordinary principle of vicarious liability would apply where negligence is that of a teacher. The age of the pupil and the nature of the activity in which he takes part, are material factors determining the degree and supervision demanded by a teacher.

12.It is axiomatic that percentage of education among girls, even after independence, is fathom deep due to indifference on the part of all in rural India except some educated people. Education to the girl children is nation's asset and foundation for fertile human resources and disciplined family management, apart from their equal participation in socio-economic and political democracy. Only of late, some middle class people are sending the girl children to co-educational institutions under the care of proper management and to look after the welfare and safety of the girls. Therefore, greater responsibility is thrust on the management of the schools and colleges to protect the young children, in particular, the growing up girls, to bring them up in disciplined and dedicated pursuit of excellence. The teacher who has been kept in charge, bears more added higher responsibility and should be more exemplary. His/her character and conduct should be more like Rishi and as loco parent is and such is the duty, responsibility and charge expected of a teacher. The question arises: whether the conduct of the appellant is befitting with such higher

responsibilities and as he by his conduct betrayed the trust and forfeited the faith whether he would be entitled to the full-fledged enquiry as demanded by him? The fallen standard of the appellant is an ice berg in the discipline of teaching, a noble and learned professing; it is for each teacher and collectively their body to stem the rot to sustain the faith of the society reposed in them. Enquiry is not a panacea but a nail on the coffin. It is self-inspection and correction that is supreme. It is seen that the rules wisely devised have given the power to the Director, a highest authority in the management of the institution to take decision, based on the fact situation, whether a summary enquiry was necessary or he can dispense with the services of the appellant by giving pay in lieu of notice. Two safeguards have been provided, namely, he should record reasons for his decision not to conduct an enquiry under the rules and also post with facts the information with Minister, Human Resources Department, Government of India in that behalf. It is seen from the record that the appellant was given a warning of his sexual advances towards a girl student but he did not correct himself and mend his conduct. He went to the girl hostel at 10 p.m. in the night and asked the Hostel helper, Bharat Singh to misguide the girl by telling her that Bio-Chemistry Madam was calling her; believing the statement, she came out of the hostel. It is the admitted position that she was an active participant in cultural activities. Taking advantage thereof, he misused his position and adopted sexual advances towards her. When she ran away from his presence, he persued her to the room where she locked herself inside; he banged the door. When he was informed by her room mates that she was asleep, he rebuked them and took the torch from the room and went away. He admitted his going there and admitted his meeting with the girl but he had given a false

explanation which was not found acceptable to an Inquiry Officer, namely. Asst. Director. After conducting the enquiry, he submitted the report to the Director and the Director examined the report and found him to be not worthy to be a teacher in the institution. Under those circumstances, the question arises: whether the girl and her room-mates should be exposed to the cross-examination and harassment and further publicity? In our considered view, the Director has correctly taken the decision not to conduct any enquiry exposing the students and modesty of the girl and to terminate the services of the appellant by giving one month's salary and allowances in lieu of notice as he is a temporary employee under probation. In the circumstances, it is very hazardous to expose the young girls for tortuous process of cross-examination. Their statements were supplied to the appellant and he was given an opportunity to controvert the correctness thereof. In view of his admission that he went to the room in the night, though he shifted the timings from 10 p.m. to 8 p.m. which was found not acceptable to the respondents and that he took the torch from the room, do indicate that he went to the room. The misguiding statement sent through Bharat Singh, the hostel peon, was corroborated by the statements of the students; but for the misstatement, obviously the girl would not have gone out from the room. Under those circumstances, the conduct of the appellant is unbecoming of a teacher much less a loco parentis and, therefore, dispensing with regular enquiry under the rules and denial of cross-examination are legal and not vitiated by violation of the principles of natural justice."

7.The order of termination passed by the 1st respondent, which was also confirmed by the Appellate Authority, is proper. I do not find any error or irregularity in the order passed by the authorities. This writ petition is devoid of merits and the same is dismissed. No costs.

11.11.2019

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Index : Yes / No
Internet : Yes / No
Speaking order / Nonspeaking order

To

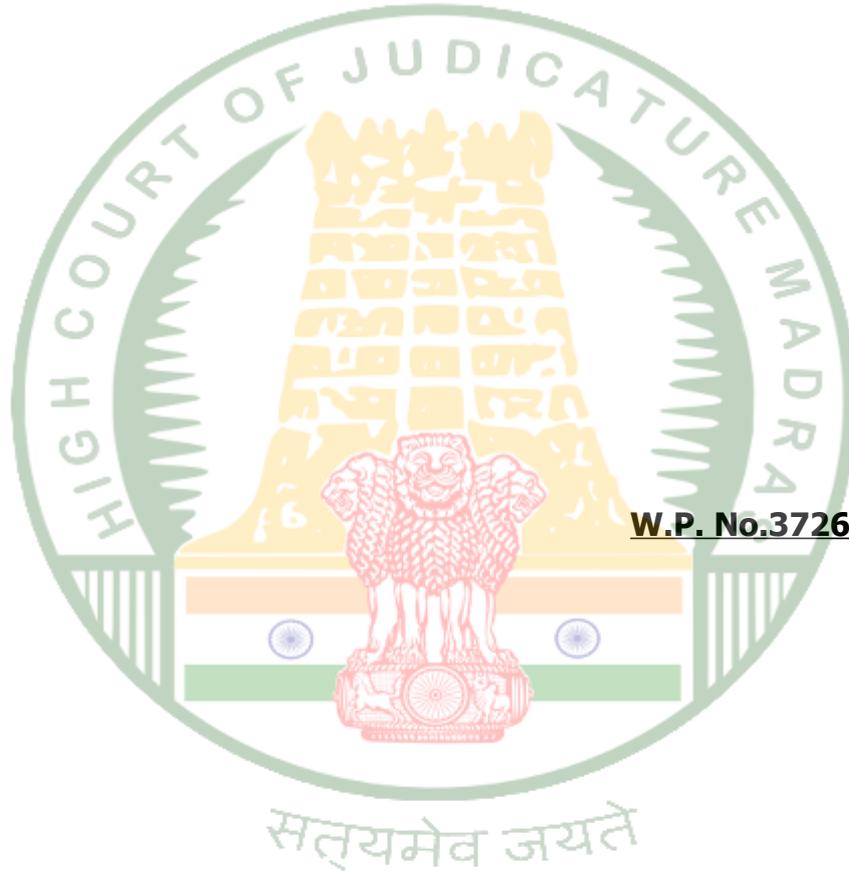
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