

W.P.(MD)Nos.13409 to 13415 of 2022
BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 21.09.2023

PRONOUNCED ON : 17.11.2023

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD)Nos.13409 to 13415 of 2022

and

W.M.P.(MD)Nos.9515, 9518, 9523, 9522, 9524, 9521, 9520 of 2022

J.Jayaraj ... Petitioner in W.P.(MD)No.13409 of 2022
T.K.Ranjithkumar ... Petitioner in W.P.(MD)No.13410 of 2022
P.Arulkulanthai Devadoss ... Petitioner in W.P.(MD)No.13411 of 2022
M.J.Coxton Jerald Titus ... Petitioner in W.P.(MD)No.13412 of 2023
T.Shakila ... Petitioner in W.P.(MD)No.13413 of 2023
A.Tamilarasi ... Petitioner in W.P.(MD)No.13414 of 2023
K.Johnson ... Petitioner in W.P.(MD)No.13415 of 2023

Vs.

- 1.The Chief Educational Officer,
Karur, Karur District.
- 2.The District Educational Officer,
Karur, Karur District.
- 3.The Block Educational Officer,

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Karur, Karur District.

4.R.Madhankumar,
The Chief Educational Officer,
Karur, Karur District.

... Respondents in all W.Ps.

5.N.Vijeyandran,
The District Educational Officer,
Karur, Karur District. ... Respondent in W.P.(MD)Nos.13409, 13411,
13413, 13414 of 2022

6.A.Balasubramanian,
The District Educational Officer,
Kulithalai, Karur District. ... Respondent in W.P.(MD)Nos.13410, 13412,
13415 of 2022

PRAYER in W.P.(MD)No.13409 of 2022 : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for the records relating to impugned proceedings order in Na.Ka.No.2469/A3/2022 dated 06.06.2022 of the second respondent herein and quash the same.

PRAYER in W.P.(MD)No.13410 of 2022 : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for the records relating to impugned proceedings order in Na.Ka.No.1901/B3/2022 dated 06.06.2022 of the second respondent herein and quash the same.

PRAYER in W.P.(MD)No.13411 of 2022 : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for the records relating to impugned proceedings order in Na.Ka.No.2469/A3/2022 dated 06.06.2022 of the second respondent herein

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and quash the same.

PRAYER in W.P.(MD)No.13412 of 2022 : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for the records relating to impugned proceedings order in Na.Ka.No.1901/B3/2022 dated 06.06.2022 of the second respondent herein and quash the same.

PRAYER in W.P.(MD)No.13413 of 2022 : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for the records relating to impugned proceedings order in Na.Ka.No.2470/B3/2022 dated 06.06.2022 of the second respondent herein and quash the same.

PRAYER in W.P.(MD)No.13414 of 2022 : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for the records relating to impugned proceedings order in Na.Ka.No.2469/A3/2022 dated 06.06.2022 of the second respondent herein and quash the same.

PRAYER in W.P.(MD)No.13415 of 2022 : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for the records relating to impugned proceedings order in Na.Ka.No.1901/B3/2022 dated 06.06.2022 of the second respondent herein and quash the same.

For Petitioner
(in all W.Ps.)

: Mr.T.Pon Ramkumar

For RR 1 to 3
(in all W.Ps.)

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: Mr.N.Ramesh Arumugan
Government Advocate

COMMON ORDER

The prayer in all the writ petitions are reads as follows:-

“(i)W.P.(MD)No.13409 of 2022 has been filed for issuance of a Writ of Certiorari, to quash the impugned proceedings in Na.Ka.No.2469/A3/2022 dated 06.06.2022, of the second respondent herein.

(ii)W.P.(MD)No.13410 of 2022 has been filed for issuance of a Writ of Certiorari, to quash the impugned proceedings in Na.Ka.No.1901/B3/2022 dated 06.06.2022, of the second respondent herein

(iii)W.P.(MD)No.13411 of 2022 has been filed for issuance of a Writ of Certiorari, to quash the impugned proceedings in Na.Ka.No.2469/A3/2022 dated 06.06.2022, of the second respondent herein

(iv)W.P.(MD)No.13412 of 2023 has been filed for issuance of a Writ of Certiorari, to quash the impugned proceedings in Na.Ka.No.1901/B3/2022 dated 06.06.2022, of the second respondent

herein

(v)W.P.(MD)No.13413 of 2023 has been filed for issuance of a Writ of Certiorari, to quash the impugned proceedings in Na.Ka.No.2470/B3/2022 dated 06.06.2022, of the second respondent herein

(vi)W.P.(MD)No.13414 of 2023 has been filed for issuance of a Writ of Certiorari, to quash the impugned proceedings in Na.Ka.No.2469/A3/2022 dated 06.06.2022, of the second respondent herein

(vii)W.P.(MD)No.13415 of 2023 has been filed for issuance of a Writ of Certiorari, to quash the impugned proceedings in Na.Ka.No.1901/B3/2022 dated 06.06.2022, of the second respondent herein.

2.Prelude :-

2.1.The seeds of peaceful struggle was sown in this soil during the Coloniel era by the Father of our Nation “Mahatma”. The soul and substance of the Indian Constitution could be traced from the ethos of the various non

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violent protests, Satyagrahas and agitations against the British hatched by the founding fathers of this Nation. The might to dissent, the courage to launch disobedience and the consistent non-cooperation ripened into a Sovereign Socialist Secular Democratic Republic.

2.2.Once Martin Luther King Jr. came on a pilgrimage to India in 1959 from U.S., to learn the idea of Gandhiji's non-violence - 'Ahimsa'. Non-violent protest is a trait of courageous people. The unrestricted right to protest peacefully is enshrined in the Indian Constitution Article 19(1)(a) guarantees the freedom of speech and expression. Article 19(1)(b) ensures the citizens' right to assemble peacefully without arms. In such a country, with great Constitutional values, here is a case where a group of teachers were suspended and then visited with 17(b) charge memos for protesting peacefully as against the arbitrary exercise of administrative powers by the respondents.

3.The case of the petitioners in nutshell is as follows:-

3.1.The petitioners are Secondary Grade Teachers working in various

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Panchayat Primary Union and Middle Schools in various Unions of Karur District. All of them are members of the Tamil Nadu Primary School Teachers Federation bearing Registration No.60/2009. One Thiru.J.Jeyaraj/petitioner in W.P.(MD)No.13409 of 2022 is the District Secretary of the Tamil Nadu Primary School Teachers Federation (herein after referred to as 'Teachers Federation'). The object of formation of the said Teachers Federation is to work for the welfare of the Teachers and to ventilate the grievance of the Teachers working across the State by maintaining the cordial relationship between the Education Authorities, State and Teachers.

3.2.The guidelines for preparation of seniority list and seniority panel of Secondary Grade Teachers would be prepared by the Director of Elementary Education. The guidelines for preparation of seniority list and seniority panel was issued by the Director of Elementary Education on 05.02.2021 and 06.01.2022. As per the said guidelines, in case of any employee as against whom a charge memo under Rule 17(b) of Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955 has been issued or awarded with punishment then the concerned employee/Teacher's name

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would not be considered for promotion even if the issuance of charge memo and award of punishment has been proceeded after the preparation of seniority list and seniority panel.

3.3.On 25.02.2021, the seniority list and seniority panel for the post of BT Assistant (English) and Primary School Headmaster post for the year 2021 for Kadavoor Union was prepared by the Block Educational Officer, Kadavur. The names of one Thiru.Mohan and Thiru.Santhanam were included in the seniority list for the post of BT Assistant (English) and Primary School Headmaster. After the inclusion of Thiru.Mohan and Thiru.Santhanam in the seniority list, the Block Educational Officer, Kadavur, Karur District initiated disciplinary proceedings against the said Thiru.Mohan and Thiru.Santhanam under Rule 17(b) of Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955. That apart vide proceedings dated 06.09.2021, the Block Educational Officer, Kadavur, Karur District awarded two years punishment of stoppage of increment with cumulative effect to the said Thiru.Mohan and Thiru.Santhanam and the said punishment was entered in the service register of those two delinquents and the same was endorsed by the Block Educational Officer, Kadavur, Karur

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District. Since the said persons were punished on the basis of the departmental proceedings, their names ought not to have been considered for promotion till the currency of punishment period was over.

3.4. In so far as the preparation of the seniority list and seniority panel is concerned, the Clerk/Superintendent of Block Educational Office, concerned Union has to verify the service records of the eligible Teachers and submit the same to the concerned Block Educational Officer. Thereafter, the Block Educational Officer should verify the same and has to prepare the draft seniority list and has to obtain objections if any, from the eligible Teachers before finalizing the seniority list and seniority panel. In furtherance to the same, on preparation of the seniority list and seniority panel, the same has to be approved by the concerned District Educational Officer. After obtaining the approval from the concerned District Educational Officer, the concerned Block Educational Officer has to circulate the seniority list and seniority panel to the eligible Teachers and obtain signatures from all the eligible candidates whose names were found in the seniority list and seniority panel. However, contrary to the guidelines of

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the Director of Elementary Education, on 19.11.2021, the District Educational Officer without verifying the service records of the said Thiru.Mohan and Thiru.Santhanam has approved the seniority list for the posts of BT Assistant (English) and Primary School Headmaster. However, no signature was obtained from the said Thiru.Mohan and Thiru.Santhanam in the seniority list.

3.5.That apart one Thiru.Balakarnan, who is a blind person working as BT Assistant in the Panchayat Union Boys Middle School, Mayilampatti, Kadavoor Union met with an accident in the year 2018 and he is continuously in unauthorized absence. However, without taking any departmental proceedings or obtaining any order from the Directorate of School Education to fill up the said post in view of the unauthorized absence of Thiru.Balakarnan, the first respondent and District Educational Officer, Kulithali together declared the said post as vacant without any authority of law/illegally, thereby preparing a seniority panel as if BT Assistant (English) post served by the said Thiru.Balakarnan was vacant. Though one BT Assistant (English) post alone was vacant in Kadavoor Union, the names of two eligible Primary Headmasters were included in the seniority panel and

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the name of Thiru.Mohan was not included in the seniority panel. Thereafter, the BT Assistant promotion counselling was conducted on 05.02.2022. While so, one Thiru.Manonmani and Thiru.Pathiyanathan whose names were found in the seniority panel, expressed their unwillingness to get promoted as BT Assistant in the said promotional counselling. Under such circumstances, on 04.02.2022, the Block Educational Officer, Kadavoor called the said Thiru.Mohan over phone and directed him to participate in the counselling, following which Thiru.Mohan had participated in the counselling and was promoted as BT Assistant (English).

3.6.While so, the said Thiru.Balakarnan who is also a member of the Teachers Federation requested the first respondent to reinstate him in service. However, the respondents orally informed him that they are awaiting orders from the Directorate for him to be permitted to join duty. But in real terms, the respondents have illegally shown the post of Thiru.Balakarnan as vacant and had promoted Thiru.Mohan in the said post. The writ petitioner in W.P.(MD)No.13409 of 2022, Thiru.J.Jeyaraj in the capacity of the Office Bearer of the Teachers Federation, questioned the said illegality of promoting the said Thiru.Mohan and Thiru.Santhanam. Only on

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being objected by Thiru.J.Jeyaraj, the respondents 1 to 3 woke up from deep sleep and realized that the BT Assistant post held by Thiru.Balakarnan should not have been shown as vacant without obtaining permission from the Directorate or without taking departmental proceedings against the said BT Assistant Thiru.Balakarnan for his unauthorized absence.

3.7.In furtherance to the same, the respondents 1 to 3 also found out that the said Thiru.Mohan was not eligible to be included in the seniority list and seniority panel in view of the punishment awarded to him. As a result, vide proceedings dated 06.02.2022, the third respondent cancelled the promotion given to said Thiru.Mohan and Mr.Santhanam and their names were removed from the seniority list and seniority panel. It is significant to mention that the District Educational Officer, Kulithalai who actually approved the seniority list and seniority panel was one among the authorities, who have arrived at the erroneous seniority list and seniority panel. As the consequence, the following persons were suspended:-

Sl.No.	Name	Post
1.	M.Mohan	Secondary Grade Teacher
2.	Jancy	Clerk in Block Educational Office, Kadavoor
3.	Gunasekaran	Clerk in District Educational Office,

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		Kulithalai
4.	Senthilkumari	Block Educational Officer, Kadavoor
5.	Rajalakshmi	Block Educational Officer, Kadavoor

3.8. Though the second respondent is equally responsible for the finalisation of an erroneous seniority list and seniority panel on the instigation of the first respondent, the second respondent has suspended the above mentioned Officers on being informed of the illegal action by the first and second respondents, suspending Thiru.Mohan who is also a member of Teachers Federation. The writ petitioner Thiru.J.Jeyaraj in W.P. (MD)No.13409 of 2022 who is the Secretary of the Federation along with other members of the Federation approached the first and second respondents and submitted a representation dated 04.04.2022 explaining before the first respondent that the mistake was actually committed by the office of the respondents 2 and 3 and that the name of Thiru.Mohan was wrongly included in the seniority list for no fault on his part and requested to revoke the suspension order. In the said representation, it was insisted that, if the suspension order of Thiru.Mohan was not revoked that would result in

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agitation in front of Kulithalai Education office. Since there was no response for the representation made by the Teachers Federation, the District Teacher's Federation decided to undergo "Waiting Agitation" in front of the District Educational Office, Kulithalai on 11.04.2022.

3.9.Following which, all the petitioners in seven Writ Petitions including 70 Teachers across the district have applied for casual leave on 11.04.2022 and the same was entered in their attendance and master register. Thereafter, the petitioners along with 70 Teachers of the Teacher's Federation, underwent "Waiting Agitation" in front of office of the District Educational Office, Kulithalai and conducted their agitation in a peaceful manner without any hindrance to the public or students or office bearers of the said office. The said District Educational Office, Kulithalai is situated adjacent to the playground of Government Boys Higher Secondary School and the distance between District Educational office and school is 350 kms. Wide spread Media coverage was given to the said agitation organised by the Teachers Federation. While so, the second respondent vide proceedings dated 11.04.2022 suspended the petitioners and the said Thiru.Mohan and the details of the same is tabulated as follows:-

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Sl.No.	W.P. (MD)No.	Name of the petitioner	Date of agitation	Date of suspension	Date of revocation of suspension	Transferred from	Transferred to	Re transferred to	Date of 17(b) Charges
1.	13409/2022	J.Jeyaraj	11.04.2022	11.04.2022	04.06.2022	Panchayat Union Middle School, Panchamadevi, Karur Union	Panchayat Union Middle School, K.Rasapatti, Kadavoor, Karur District	Panchayat Union Primary School,	06.06.2022
2.	13410/2022	T.K.Ranjitkumar	11.04.2022	11.04.2022	04.06.2022	-	-	-	06.06.2022
3.	13411/2022	P.Arul Kulanthas	11.04.2022	11.04.2022	04.06.2022	Panchayat Union Primary School, Coolagundanur, Karur Union	Panchayat Union Primary School, N.Pudhur Union, Karur	-	06.06.2022
4.	13412/2022	M.J.Coxtion Jerald Titus	11.04.2022	11.04.2022	04.06.2022	Panchayat Union Middle School, Oomanbur, Krishnarayapuram Union	Panchayat Union Primary School, Navamarathupatti, Aravakurichi Union	Panchayat Union Middle School, Panchamaden Karur Union	06.06.2022
5.	13413/2022	T.Shakila	11.04.2022	11.04.2022	04.06.2022	Panchayat Union Middle School, Kumarapalayam, Thanthoni Union	Panchayat Union Primary School, Paganatham, Thanthoni Union	-	06.06.2022
6.	13414/2022	A.Tamilarasi	11.04.2022	11.04.2022	04.06.2022	Panchayat Union Middle School, N.Pudur, Karur Union	Panchayat Union Middle School, Coolagundanur, Karur Union	-	06.06.2022
7.	13415/2022	K.Johnson	11.04.2022	11.04.2022	04.06.2022	-	-	-	06.06.2022

3.10.The said illegal action taken against the petitioners by the respondents were brought to the knowledge of the State Teacher's Federation. As a result of which, statewide agitation was also conducted condemning the action of the respondents 1 to 3. Pursuant to the statewide agitation the first respondent revoked the suspension order issued as against the petitioners and the said Thiru.Mohan on 04.06.2022. The details of the punitive transfers effected as against the petitioners are detailed supra in the tabular column. While so, to the shock and surprise of the petitioners with malafide intention, contrary to guidelines stipulated in the Tamil Nadu Civil Service (Discipline and Appeal) Rules, 1955, at the instigation of the first respondent, the second respondent vide impugned proceedings dated 06.06.2022 issued charge memos against the petitioners under Rule 17(b) of Tamil Nadu Civil Service (Discipline and Appeal) Rules, 1955. The substance of the charge is that the petitioners on 11.04.2022, along with other members of the Teacher Federation had gathered in front of the campus of the Government Boys Higher Secondary School, Kulithalai and underwent waiting agitation in front of the office of the District Educational

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Office by taking casual leave and thereby, causing disturbance to the Government servants, criticizing the act of the Government servants. That apart the second respondent had informed the petitioners that those activities would amount to the charges of imputations of misconduct on the basis of the statement of the proposed witnesses and the documents annexed along with the said charge memos calling upon the petitioners herein to submit their explanation within 21 days from the date of receipt of the same. Challenging the same, the writ petitioners have filed these Writ Petitions.

4.Submissions :-

4.1.The learned counsel Mr.T.Pon Ramkumar appearing for the petitioner categorically submitted that the second respondent had issued the charge memos without conscious application of mind as to whether the charges would attract the provisions under Section 17(b) of Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955.

4.2.He vehemently submitted that the respondents failed to see that the said Thiru.Mohan and Thiru.Santhanam having been awarded two years stoppage of increment with cumulative effect during the currency of their punishment, which had been entered in their respective service registers

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ought not to have included their name in the seniority list and seniority panel for the post of BT Assistant and Primary School Headmaster and ought not to have promoted the said Thiru.Mohan as BT Assistant. Having arrived at a seniority list erroneously violating the various mandates of law and guidelines framed with respect to the seniority list and seniority panel, later the respondents ought not to have suspended the said Thiru.Mohan for no fault on his part. Being a member of the Teachers Federation, it is the bounden duty of the petitioners to bring to light, the irregularities committed by the respondent Authorities in arriving at a final seniority list and seniority panel for the post of BT Assistant and Primary School Headmaster by including ineligible persons. The respondents are fully unjustified in suspending the petitioners and issuing 17(b) charge memos as against the petitioners for having participated in an agitation as against the School Education Department of Karur District, which was conducted in a well organized and decent way after getting appropriate permission from the competent authorities.

4.3.He further submitted that the respondents failed to see that the charges which are pending against the petitioners are filmsy in nature and do not find them demanding or collecting illegal gratification, commission or

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omission for personal gain or receipt of any favour, misappropriation, dereliction of duty, insubordination or allegation involving moral turpitude and the said action is *per se* illegal, arbitrary and violative of Article 14 and 16 of Constitution and on that basis, pressed for allowing writ petition.

5.Heard Mr.T.Pon Ramkumar, learned counsel appearing for the petitioners, Mr.N.Ramesh Arumugam, learned Government Advocate appearing for the respondents 1 to 3 and perused the entire materials available on record.

5.1.Per Contra, the learned Government Advocate, Mr.N.Ramesh Arumugam appearing for the respondents 1 to 3 submitted that Thiru.Mohan Secondary Grade Teacher and four others and three Block Educational Officers of Kadavur and the Assistant District Educational Officer, Kulithalai were suspended in view of the administrative lapse committed by the persons concerned. The writ petitioner in W.P.(MD)No.13409 of 2022 in the guise of District Secretary of Teacher's Federation threatened the Government Officials that waiting agitations would be arranged in front of the District Educational Officer, Kulithalai on 11.04.2022, if the suspension

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of Thiru.Mohan who is the member of the Teachers Federation was not revoked. The said Thiru.Jeyaraj instigated the other six petitioners and 70 more Teachers to go on casual leave on 11.04.2022 and conducted the said agitation as informed by him in the guise of District Secretary of Teachers Federation. The said District Educational Office is situated adjacent to the playground of Government Boys Higher Secondary School, Kulithalai. Hence, the second respondent suspended the petitioners and other persons, who were involved in the agitation.

5.2.However the learned Government Advocate fairly conceded that at the intervention of the State Teachers Federation, the suspension orders issued as against the petitioners were revoked and all the Teachers including the petitioners were reinstated and they joined duty on 06.06.2022 without prejudice to the disciplinary action to be taken against them. As the result of which, the petitioners were transferred to various schools. The petitioners involved in agitation by instigating other Teachers, while students were preparing for 12th standard examination and while revision examination of 11th standard was going on. They also used loud speakers causing great disturbance to the studies of the students of Government Boys Higher

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Secondary School, Kulithalai and the petitioners were responsible for creating law and order problem in Trichy Highway road using unparliamentary and filthy words against the Officers of Education Department in the guise of Teachers Federation and they involved in such activities preventing the Government officials from doing their duties in office at the time of agitation on 11.04.2022. Since all the allegations are grave in nature warranting action under Rule of 17(b) of Tamil Nadu Civil Service (Discipline and Appeal) Rules, 1955, the impugned charge memos were issued as against the petitioners. Since the action of the petitioners in going on agitation as against the authorities of the School Education Department was considered as something as against the welfare of the students and their education justified the issuance of charge memos as against the petitioners.

5.3. That apart he further submitted that the law well settled by the Hon'ble Apex Court in the case of ***Union of India and another v. Kunisetty Satyanarayana*** that “*the issuance of charge memo is not averse order as against the petitioner unless the same culminated into a final order by imposing the punishment. In such circumstances, no cause of action will*

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arise to question the charge memo by invoking the extraordinary Special
Original Jurisdiction under Article 226 of Constitution of India.”

5.4.He further submitted that the Hon'ble Supreme Court in the judgment in the case of **Secretary, Ministry of Defence and Ors. v. Prabhash Chandra Mirdha** reported in **2012 (11) SCC 565**, has similarly held by referring to various earlier judgments including the judgment in the case of Brahm Datt Sharma. On that basis, pressed for dismissal of the writ petitions.

6.Analysis:-

6.1.The Government has issued guidelines for deciding whether charges may be framed under Rule 17(b) and the same is extracted is as follows:-

“Without prejudice to the generality of situations involving indiscipline, moral turpitude, corruption, etc., charges under Rule 17(b) have to be framed in the following types of cases for imposing any one of the major penalties:

(1)Cases in which there is reasonable ground to believe that

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a penal offence has been committed by a Government servant but the evidence forthcoming is not sufficient for prosecution in a Court of Law, e.g.

(a)possession of assets disproportionate to the known sources of income;

(b)obtaining or attempting to obtain illegal gratification;

(c)misappropriation of Government property, money or shares;

(d)obtaining or attempting to obtain any valuable thing or pecuniary advantage without consideration or for a consideration which is not adequate, etc;

(2)Falsification of Government records.

(3)Irregularity or negligence in the discharge of official duties with a dishonest motive.

(4)Misuse of official position for personal gain.

(5)Disclosure of secret or confidential information even though it does not fall strictly within the scope of the Official Secrets Act.

(6)Misappropriation of Government funds false claims of Travelling Allowance, reimbursement of false medical bills, etc.,

Unless a major punishment is really warranted namely, dismissal from service, removal from service, compulsory

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retirement or reduction to a lower rank in the seniority list or to a lower post or time scale, framing of charges under rule 17(b) is not necessary and should be avoided.”

6.2.A critical perusal of the aforesaid guidelines would clearly reveal that the second respondent has issued the impugned charge memos on the petitioners without scrupulously following the guidelines extracted supra. Obviously the petitioners have neither indulged in any penal offence nor in falsification of Government records nor had been irregular or negligent in the discharge of official duties nor misused their official position for personal gain nor disclosed the secret or confidential information within the scope of Official Secrets Act nor misappropriated the Government funds.

6.3.On the other hand, all the petitioners duly availed casual leave on 11.04.2022 and after duly informing the respondents for not heeding to their requests, submitted on behalf of the Teachers Federation vide representation dated 04.04.2022 with respect to the illegal suspension of one of the member one Thiru.Mohan had organized a waiting agitation in accordance with law before the office of the District Educational Office, Kulithalai and had

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conducted an agitation in a peaceful manner. Though the respondents vehemently contended that the said agitation resulted in law and order problem in Trichy Highway road, such a contention is liable to be rejected outrightly, in the absence of any police intervention on the date of agitation on 11.04.2022 in the venue of waiting agitation. Had the contention of the respondents been true, no doubt they would have filed a criminal complaint as against the petitioners for their illegal action. Hence, this Court dismisses the possibilities of any law and order problem, which is alleged to have been created by the petitioners in the agitation site.

6.4.Holding peaceful demonstration ventilates the grievance against the illegal and unruly exercise of power by the Officers of Department of Education of Karur District and to see them heard in relevant quarters is the fundamental right of the petitioners. It is needless to say that the suspension as against the petitioners and the aforesaid Thiru.Mohan was actually revoked and they were reinstated into service on 06.06.2022, after being suspended, only on the intervention of the said Teachers Federation. Hence, the right of the petitioners as the members of the Teachers Federation is an unrestricted right to protest peacefully without arms as guaranteed under

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Article 19(1)(a) and 19(1)(b) of our Constitution. To be more specific Article 19(1)(b) confers right to the petitioners to assemble and protest peacefully without arms and such a right is the significant feature of a democratic country likewise ours. Constraining the space for legitimate dissent arbitrarily by suspending the petitioners and issuing them with charge memos under Rule 17(b) of Tamil Nadu Civil Service (Discipline and Appeal) Rules, scuttling down the democratic value system guaranteed by our Constitution has to be undermined with iron hands. The right to protest is an inherent part of speech and inherent facet of right to live guaranteed under Article 21 of our Constitution

6.5.The Hon'ble Apex Court in the case of ***Bimal Gurung v. Union of India and others in Writ Petition (Criminal) No.182 of 2017***, has dealt with a similar case and relevant portion of the said case is extracted as follows:-

“28. Article 19 of the Constitution of India guarantees some of most important fundamental rights to the citizens. Article 19 protects important attributes of personal liberty. Right to freedom of speech and expression as guaranteed under Article 19(1)(a) and the right to assemble peaceably and without arms as protected by Article 19(1)(b) are the rights which in reference to

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the present case have importance. The right of freedom of speech and expression coupled with right to assemble peaceably and without arms are rights expression of which are reflected in carrying demonstration on several occasions. Freedom to air one's view is the life line of any democratic institution. The word freedom of speech must be broadly construed to include right to circulate one's view by word or mouth or through audio visual instrument. Right of public speech is one form of expression which is also a part of freedom of speech and expression. Demonstrations are also a mode of expression of the rights guaranteed under Article 19(1)(a). Demonstrations whether political, religious or social or other demonstrations which create public disturbances or operate as nuisances, or create or manifestly threaten some tangible public or private mischief, are not covered by protection under Article 19(1). A demonstration might take the form of an assembly and even then the intention is to convey to the person or authority to whom the communication is intended the feelings of the group which assembles. From the very nature of things a demonstration may take various forms; "it may be noisy and disorderly", for instance stone-throwing by a crowd may be cited as an example of a violent and disorderly demonstration and this would not obviously be within Article 19(1)(a) or (b). We in the present case are concerned with the demonstrations and the bandh call given by GJM."

6.6.In another case in *Iftekhar Zakes Shaiker v. State of Maharashtra and others* reported in *2020 SCC Online Bom 244*, the Hon'ble Division Bench of Bombay High Court has dealt with similar case and the portion relevant to this case is extracted as follows:-

“8.India got freedom due to agitations which were non-violent and this path of non-violence is followed by the people of this country till this date. We are fortunate that most of the people of this country still believe in non-violence. In the present matter also the petitioners and companions want to agitate peacefully to show their protest. In British period our ancestors fought for freedom and also for the human rights and due to the philosophy behind the agitations, we created our constitution. It can be said that it is unfortunate but the people are required to agitate against their own Government now but only on that ground the agitation cannot be suppressed.”

6.7.In every democratic Society, holding peaceful and orderly demonstrations through protests are the privileges so ensured to the citizens. Democracy amount to visible manifestation of the sentiments of a group. In the instant case, a group of 70 Teachers who are members of the Teacher's

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Federation having properly represented to the respondents who are the Officers of the Educational Department, Karur District bringing to their notice the illegal/irregular suspension of one of the member Thiru.Mohan had properly requested to undo the unfair exercise of administrative power as against the said Thiru.Mohan. Since their request was not heeded to by the authorities autocratically after due permission having promptly availed casual leave on 11.04.2022, 70 Teachers of the Teacher's Federation along with the petitioners herein as informed, organized and conducted an agitation in the name of "waiting agitation" (fhj;jpUg;G Nghuhl;lk;) before the District Educational Office, Kulithalai, on the said day without any hindrance to the public or students or Office Bearers of the said office. The fact that the said agitation was organized peacefully without hindrance to any quarter could be understood from the absence of any untoward reported incident from the site of protest by the petitioners. I reiterate holding peaceful demonstrations for conveying legitimate grievances is a fundamental right enshrined in our Constitution, so is the right to assemble peacefully without arms and conduct peaceful agitations and thus the agitations conducted by the petitioners on 11.04.2022 is protected by Article 19(1)(a) and 19(1)(b) of Constitution of India.

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6.8.Since dialogue, dissent and deliberation are imperative in a democracy, the right to demonstrate by the petitioners, on behalf of the Teachers Federation against the arbitrary exercise of power by the respondents for suspending one of the members of Teachers Federation is protected under Article 19(1)(a) and 19(1)(b) of Constitution of India. That apart having suspended the petitioners from the date of agitation on 11.04.2022 and reinstated the petitioners back to service on the intervention of said Teachers Federation on 06.06.2022, the second respondent ought not to have visited the petitioners with the impugned charge memos dated 06.06.2022 under Rule 17(b) of Tamil Civil Service (Discipline and Appeal) Rules, 1955. The reason is simple that the petitioners who have ventilated their grievances by organizing an agitation lawfully as against the respondents should not be punished by the issuance of impugned charge memos and allegations set forth by the impugned charge memos has emanated from lapse of application of mind of the respondents and not covered by the various guidelines framed by the Government of Tamil Nadu as discussed supra.

6.9.In view of the same, I am inclined to quash the proceedings in

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Na.Ka.No.2469/A3/2022,

Na.Ka.No.1901/B3/2022,

Na.Ka.No.2469/A3/2022,

Na.Ka.No.1901/B3/2022,

Na.Ka.No.2470/B3/2022,

Na.Ka.No.2469/A3/2022,

Na.Ka.No.1901/B3/2022, dated 06.06.2022 respectively. Accordingly, all the

Writ Petitions stand allowed. There shall be no order as to costs.

Consequently, connected miscellaneous petitions are closed.

17.11.2023

NCC : Yes / No

Index : Yes / No

Internet : Yes

Mrn

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To

- 1.The Chief Educational Officer,
Karur, Karur District.
- 2.The District Educational Officer,
Karur, Karur District.
- 3.The Block Educational Officer,
Karur, Karur District.

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L.VICTORIA GOWRI, J.

Mrn

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17.11.2023