



C.R.P.(MD)No.256 of 2021

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 19.10.2024

PRONOUNCED ON : 29.11.2024

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

C.R.P.(MD)No.256 of 2021

J.Ponnammal

... Petitioner

Vs.

1.The Secretary,
School Committee / Village Peoples Committee,
St.Marys Higher Secondary School,
Kesavanpuththan Thurai,
Dharmapuram Village,
Agastheeswaram Taluk,
Kanyakumari District.

2.The Correspondent,
St.Marys Higher Secondary School,
Kesavanpuththan Thurai,
Dharmapuram Village,
Agastheeswaram Taluk,
Kanyakumari District.

3.The Director of School Education,
College Road, Chennai-600 006.

4.The Chief Educational Officer,
Nagercoil, Kanyakumari District.



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5.The District Educational Officer,
Thucklay,
Thucklay Educational District.

... Respondents

PRAYER : Civil Revision Petition is filed under Section 115 of C.P.C., against the order, dated 23.12.2016, passed E.P.No.307 of 2004 in O.S.No.144 of 1990 on the file of the I Additional District Munsif Court, Nagercoil.

For Petitioner : Mr.G.Aravinthan
For R1 and R2 : Mr.S.C.Herold Singh
For R3 to R5 : Mr.V.Om Prakash
Government Advocate

ORDER

The present civil revision petition is filed by the plaintiff in the suit against the order, dated 23.12.2016, passed E.P.No.307 of 2004 in O.S.No.144 of 1990 on the file of the I Additional District Munsif Court, Nagercoil.

2. The plaintiff in the suit is the revision petitioner herein and the defendants in the suit are the respondents herein. For the sake of convenience, the parties are referred as plaintiff and defendants as per the ranking in the suit.



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3. The suit is filed for declaration to declare that the plaintiff is in service as Secondary Grade Teacher ignoring the order of the 1st defendant, dated 28.02.1989, wherein through the order the plaintiff was removed from her service from the school namely St.Marys Middle School, Kesavanputhenthurani, as null and void and not binding the plaintiff, consequential mandatory injunction directing the defendants 1 and 2 to reinstate the plaintiff with all back wages, continuity of service in the said school and mandatory injunction directing defendants 1 to 5 to pay all retirement benefits such as pension, gratuity and the provident fund, etc., on the basis of the plaintiff's entire service record from the date of appointment till the date of retirement.

4. The brief facts are that the plaintiff was appointed as Secondary Grade Teacher in the year 1968 in St.Marys Middle School, Kesavanputhenthurani, a minority school, established and administered by village peoples committee. The school was upgraded as High School in the year 1973 and the plaintiff was working for the past 20 years. The contention of the plaintiff is that the Secretary of the School illegally suspended the plaintiff from 19.02.1981 to 14.04.1981.



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The plaintiff made an appeal to 4th defendant on 12.10.1981 and the 4th defendant allowed the appeal and held that the suspension was illegal and directed the management to pay full salary for the said period, vide proceedings, Memo.Mu.No.9058-B5/81, dated 28.12.1981, but the defendants 1 and 2 failed to pay the salary. Further, from 1985 onwards, the plaintiff was not paid annual increments, hence the plaintiff submitted representation. The 4th defendant directed the 2nd defendant to take speedy steps to sanction the plaintiff's salary and increment. Annoyed over the same, the defendants attempted to terminate the plaintiff from service and by an order dated 27.02.1989 the plaintiff was removed from service with effect from 01.03.1989. The above termination is illegal, since no charge memo was served on the plaintiff and no show cause notice was served before passing the order of termination. Infact the plaintiff was regularly attending the school till 28.02.1989 and the defendants 1 and 2 did not serve any charge memo. However, in the removal order, the defendants 1 and 2 have stated that the 2nd defendant was issued show cause notice on 09.10.1987 and a charge memo on 25.11.1987 and 1st defendant has issued enquiry notice on 11.02.1989 and a show cause notice on 24.02.1989. But according to the plaintiff, no notice show cause



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notice or any charge memo was ever served on the plaintiff either in person or through post at any point of time. In the removal order, it is alleged that the enquiry officer report, dated 24.02.1989 held the plaintiff as guilty of seven charges, then the management had considered the report and also considered independently and had concluded the plaintiff as guilty. The removal order further states that full opportunity was given to the plaintiff along with the relevant records and also states that the Chief Educational Officer, Nagercoil, District Educational Officer, Thucklay, M.P., M.L.A., other teaching and non-teaching staff were called for to attend the enquiry. It is also stated that the plaintiff refused to receive the postal covers and failed to avail the opportunity. Thereafter also the defendants 1 and 2 did not furnish any copy of enquiry report along with order of punishment. Hence, there is violation of principles of natural justice. The order of punishment alone was furnished to the plaintiff which was refused by the plaintiff and if at all any other memo or show cause notice had been served, the plaintiff would have received the same. The then Secretary of the School Committee “Bethelle” was the Postmaster in charge of Kesavanputhenthurani Post Office who was not giving the postal covers to the plaintiff or her husband and the



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same was reported to the Postal Department Officials and the Governor of Tamil Nadu as early as 26.10.1988. It was informed to the Secretary Bethelle on 31.01.1983 and 23.06.1984 and therefore even if the memo and other papers were posted to the plaintiff it has not been served to the plaintiff due to the illegal connivance as the postmaster in-charge, who is none other than the secretary himself. With malafide intention with ulterior motive the defendants failed to follow any rule of law and the service of the plaintiff was put an end abruptly. Even in the order of punishment, it is not stated what are the charges levelled against the plaintiff and the alleged report was not enclosed. Thus, the procedure followed by defendants 1 and 2 are arbitrary and suspicious and they have committed fraud by manipulating the records to take vengeance against the plaintiff. In fact, the issue of non-service of notice was challenged in W.P.No. 15523 of 1989, after hearing the case, on 21.12.1989, the writ petition was dismissed with a liberty to approach the Civil Court. The defendants 3 to 5 are formal parties and they are not necessary parties and there is no cause of action. The plaintiff had attained the age of retirement during the pendency of suit, hence the plaintiff is entitled to retirement benefits such as gratuity, pension and



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provident fund and the benefits ought to be paid by the defendants 1 and 5 and for the said purpose the defendants 2 to 5 were impleaded as parties.

5. The defendants 1 and 2 had filed written statement stating the school was not upgraded as Middle School in the year 1973, but the school was started by village people in the year 1971 as High School and the plaintiff had served in the said school for long years, hence she is aware of the said fact. Because of the poor conduct of the plaintiff (கெட்ட நடத்தை) she was suspended, then she sought forgiveness, hence suspension was revoked and she was allowed to join. Thereafter, the plaintiff has made the 4th defendant Chief Educational Officer to pass an order in favour of the plaintiff, which is illegal. Since the 1st and 2nd defendants are minority institutions and the 4th defendant cannot interfere in the administration of minority institutions, hence the order, dated 28.12.1981, passed by the 4th defendant will not bind on the defendants 1 and 2. The plaintiff had approached the official respondents without submitting any request to grant salary during the suspended period. Thereafter, the plaintiff was terminated from service on 01.03.1989, prior to that show cause notice was issued on 09.10.1987, charge



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memo on 25.11.1987, enquiry notice dated 11.02.1987, notice for the proposed punishment dated 11.02.1987 was issued through post and was served in person. As usual the plaintiff refused to receive the same. Infact the plaintiff had never received any notice whenever the school had issued notice, she refused to receive the same. The management had followed all procedures, but the plaintiff had missed the bus and now the plaintiff cannot challenge the same. The allegation against the postmaster was not proved, hence no action was taken against him. The writ petition filed by the plaintiff was also dismissed and the allegations were not proved before the Court. The show cause notice was issued to the plaintiff as well as the School Headmaster Vijayarathnam. The plaintiff had refused but the said Vijayarathnam had received and had submitted a evasive reply on 16.10.1987. The notice dated 14.10.1987 seeking explanation was issued to the plaintiff. The plaintiff had never followed the rules of the school, any action against the plaintiff had not rectified the plaintiff. Hence an advocate was appointed as enquiry officer. The enquiry officer had issued notice of enquiry dated 12.02.1989, again another notice dated 16.02.1989 was issued. The plaintiff refused to cooperate with the enquiry. Again on 20.02.1989 enquiry was



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conducted wherein 10 witness had appeared, 36 documents were marked. Thereafter the enquiry officer had submitted a report dated 24.02.1989 wherein it was held the charges are proved. The reported was published in the Malaimuru newspaper. Then also the plaintiff had not submitted any explanation, hence in the interest of school the plaintiff was dismissed from service on 27.02.1989. The management had decided to grant the increased salary to the plaintiff from 1985 onwards. Thereafter the increased salary and other benefits were prepared, the plaintiff had affixed her signature and the said bill was submitted to the Educational Authorities. The present suit is filed deliberately to defame the management and the school. The management has every right to punish the erring employee and the present action against the plaintiff is appropriate. The school is a minority institution, the Secretary of School Managing Committee is appropriate and necessary party, hence the suit is bad for non-joinder of necessary party. The defendants 3 to 5 are not necessary party. There is no cause of action, the prayer sought in the suit cannot be granted and hence the defendants prayed to dismiss the suit.



6. The 5th respondent had filed written statement and the defendants 3 and 4 had adopted the same, wherein it is stated that when the complaint was submitted for non-issuance of salary for the suspension period, the official respondent had considered the same and passed an order directing the institute to pay the salary. The payment of salary is the responsibility of the school. The official respondents have no right to interfere in the internal affairs of the minority institutions. The official respondents are not necessary parties and prayed to dismiss the suit.

7. Pending the suit the plaintiff and the defendants 1 and 2 had entered into compromise on 23.08.2002, wherein the school agreed to pay Rs.2,60,000/- as subsistence allowance for the suspended period and then the management would take steps to get the retirement benefits to the plaintiff. The said compromise is extracted hereunder:

“Dr.T.John Bellarmin, B.Com.,
Parish Priest

Church of Immaculate
Heart of Mary
Kesavanputhenthurani
Kanniyakumari District.

Date:- 23.08.2002



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சமாதான ஒப்பந்தம்

பல வருடங்களாக நடைபெற்று வந்த திருமதி.பொன்னம்மா ஆசிரியையின் வேலை நீக்கம் சம்பந்தமான வழக்கினை தற்போதைய ஊர் நிர்வாகமும் பெரியவர்களும் பங்குதந்தையின் முன்னிலையில் சமாதானமாக முடிக்க சம்மதிக்கப்பட்டது.

இதனால் இருதரப்பினரும் தங்கள் வழக்குகளை சமாதானமாக முடிக்கவும். இதற்கு உதவித்தொகையாக ரூ.2,60,000/- திருமதி.பொன்னம்மா ஆசிரியைக்கு கேசவன்புத்தான் துறை ஊர் நிர்வாகம் கொடுப்பதாகவும் சம்மதம் தெரிவிக்கப்பட்டது.

மேலும் திருமதி.பொன்னம்மா ஆசிரியை வந்து சேர வேண்டிய Refairment benefits யை பெற்றுக் கொடுப்பதற்கும் ஊர் நிர்வாகம் பொறுப்பேற்றுக் கொள்கிறது.

திருமதி.பொன்னம்மா Teacher

சாட்சிகள்:-

M.A.இருதயராஜ்,

A.Philip

S.பிரகாசம்”

8. Based on the aforesaid compromise the suit was allowed vide judgment and decree dated 11.02.2003 wherein it was held that based on the compromise the plaintiff was considered as deemed to be in service until her superannuation dated 31.03.2000, for which the defendants 1 and 2 had paid salary for the said



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period and the defendants 3 to 5 agreed to pay the salary for the said period. Further the government had not dismissed the plaintiff from service, hence there is no impediment to pay the salary for the subsequent period by the government. The defendants 1 and 2 alone had dismissed the plaintiff from service and hence the defendants 3 to 5 ought to pay the pension, gratuity, PF by calculating the service until superannuation on 31.03.2000, hence the Trial Court directed the defendants 3 to 5 to grant pension, gratuity, provident fund from 31.03.2000. The relevant portion of the judgment is extracted hereunder:

“கூடுதல் எழுவினா எண். 1: வாதி 28.02.1989 முதல் பணியிலிருந்து நீக்கம் செய்யப்பட்டுள்ளார். அவரை நீக்கிய உத்தரவு 1 ஆம் பிரதிவாதியால் வழங்கப்பட்டுள்ளது. அது வாதி தரப்பு சான்றாவணங்கள் 14, 15 ஆக தாக்கல் செய்யப்பட்டுள்ளது. அதன் பிறகு தற்போது வாதி பிரதிவாதிகளுக்கிடையே சமாதானம் ஏற்பட்டுள்ளது. அதன்படி வாதி 1989-ல் பணியிலிருந்து நீக்கப்பட்டாலும் அவர் 31.03.2000 வரை பணியில் இருந்ததாக கணக்கிட்டு அவருடைய சம்பள பாக்கியை 1,2 பிரதிவாதிகள் வழங்கியுள்ளனர். இந்நிலையில் சமாதான ஒப்பந்தத்தை ஆராய்ந்து பார்க்கும்பொழுது 31.03.2000-ம் வரை பணியிலிருந்ததாக தெரிகிறது. வாதியை 1,2 பிரதிவாதிகள் பணியிலிருந்து நீக்கி பாக்கியை அவர் பணிமுடியும் காலம் வரை 31.03.2000 வரை கொடுத்துவிட்டனர். 3,4,5



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பிரதிவாதிகள் கொடுக்க 1,2 பிரதிவாதிகள் சம்மதிப்பதாகவும், அதற்கு தாங்கள் எந்தவிதத்திலும் இடையூறு செய்ய மாட்டோம் என்று தெரிவித்துள்ளனர். இருவரும் செய்து கொண்ட ஒப்பந்தத்தின் அடிப்படையில் 31.03.2000 வரை வாதி பணியிலிருந்ததாகவே கணக்கிடப்பட்டுள்ளது. மேலும் வாதியை பணியிலிருந்து அரசு தரப்பில் நீக்கவில்லை. தற்போதைய நிலையில் அரசு தரப்பில் வாதிக்குண்டான பணிக்கு பிந்தைய பிரதிவாதிகள் கொடுப்பதில் எந்த தடையும் இல்லை. ஏனெனில் அவர்கள் வாதியை பணி நீக்கம் செய்து உத்தரவு பிறப்பிக்கவில்லை. பணியிலிருந்து 1,2 பிரதிவாதிகள் நீக்கியுள்ளனர். தற்போது வாதி பணிமுடியும் காலம் வரை 31.03.2000 வரை 1,2 பிரதிவாதிகள் சம்பளம் கொடுத்துள்ளார். 31.03.2000 காலத்திற்கு பிந்தைய தொகைகளை ஒய்வுதியம், பணிக்கொடை, சேமநலவைப்பு நிதி அனைத்தையும் 3 முதல் 5 பிரதிவாதிகள் கொடுக்கவேண்டுமென்று செயல் உறுத்துக்கட்டளை பரிகாரம் வழங்கி இவ்வெழுவினாவிற்கு தீர்வு காணப்படுகிறது. ”

9. Based on the decree, the plaintiff had preferred E.P.No.307 of 2004 and the said execution petition was dismissed. Against the same, the plaintiff has preferred the present civil revision petition before this Court.



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10. The contention of the revision petitioner is that the Executing Court ought to execute the decree passed by the Trial Court and it cannot go beyond the decree, hence execution Court ought to have attached the properties belonging to the respondents 1 and 2 in order to pay the gratuity and other statutory payments which the plaintiff is entitled to. If not paid then the defendants ought to be arrested. The contention of the management school is that based on the decree passed by the Trial Court they had already submitted the proposal on 14.08.2003 and in the proposal, the school has requested the respondents 3 to 5 to calculate the service until 31.03.2000 and grant the monetary benefits to the plaintiff.

11. The contention of the official respondents 3 to 5 is that the plaintiff was terminated from service on 01.03.1989 and then from 01.03.1989 until the superannuation 31.03.2000, the plaintiff never ever served in the school for the said period, further the school had not approached the official respondents for disbursement of any salary for the period. The period for which the plaintiff had received the salary from the government alone can be taken for calculating the period of service. Without making the official defendants as one of the party to



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the compromise was executed and the same is not binding on the official defendants. Therefore the compromise between the plaintiff and the defendants 1 and 2 to pay the terminal benefits by calculating the period from 01.03.1989 to 31.03.2000 is against the provision of law. Hence vide proceedings in O.Mu.No. 5997 / Aa3/ 03, dated 01.06.2004 the same was declined and the same is extracted hereunder:

“அனுப்புநர்

திருமதி.சி.நாடாச்சி, எம்.ஏ., எம்.எட்.,
மாவட்டக்கல்வி அலுவலர்,
தக்கலை.

பெறுநர்

தாளாளர்,
புனித மேரி உயர்நிலைப் பள்ளி,
கேசவன்புத்தன்துறை.

ஒ.மு.எண்.5997/ஆ3/03, நாள்.1.6.04.

ஐயா,

பொருள்: ஓய்வூதியம் - திருமதி.ஜே.பொன்னம்மாள், இடைநிலை ஆசிரியை, புனித மேரி உயர்நிலைப் பள்ளி, கேசவன்புத்தன்துறை - சார்பு.

பார்வை: கேசவன்புத்தன்துறை, புனித மேரி உயர்நிலைப் பள்ளித் தாளாளரில் கடித எண்.17/03, நாள் 14.8.03.

கேசவன்புத்தன்துறை புனித மேரி உயர்நிலைப் பள்ளி இடைநிலை ஆசிரியை திருமதி.ஜே.பொன்னம்மாள் என்பவரை



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பள்ளி நிர்வாகம் 1.3.89 முதல் பணி நீக்கம் செய்யப்பட்டு ஓய்வு பெற வேண்டிய 31.3.2000 அன்று வரை பணியில் சேர்க்கவில்லை. மேற்படி காலத்திற்கு இலாகா வழி ஊதியமும் வழங்கவில்லை. அரசால் ஊதியம் வழங்கப்பட்ட காலம் தான் ஓய்வூதிய அனுமதிக்காக கணக்கிட இயலும். மேற்படி ஆசிரியைக்கு 1.3.1989 முதல் 31.3.2000 வரை பணிபுரியாத காலத்திற்கு பள்ளி நிர்வாகம் சமரச அடிப்படையில் ஊதியம் வழங்கப்பட்டது என்பதன் அடிப்படையில் ஓய்வூதியம் அனுமதிக்க விதிகளில் இடம் இல்லை என்பதனை தெரிவித்து அன்னாரின் பணிப்பதிவேடு தங்களுக்கு அன்புடன் திருப்பி அனுப்பி வைக்கப்படுகிறது.

இணைப்பு: பணிப்பதிவேடு

/உ.ந.உ.ப/

(ஓம்) சி.நாடாச்சி,
மாவட்டக் கல்வி அலுவலர் (பொ)
தக்கலை

(ஓம்)

Personal Assistant,
O/o the District Educational Officer,
Thuckalay.

// உண்மை நகல் //

12. By another proceedings in O.Mu.No.5138/Aa3/2024, dated 24.09.2024, the defendants 3 to 5 had stated that for terminating the service of the plaintiff, the



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school has not submitted any proposal for approving the punishment. Again in the same order, it is repeatedly stated that from 01.03.1989 to 31.03.2000, the plaintiff was never in service. For the said period the government had not paid any salary and hence the said period cannot be taken to calculate pension, provident fund and gratuity, hence the proposal dated 09.09.2024, submitted by the school along with the pension proposal submitted by the plaintiff was returned.

13. After hearing the rival submissions this Court had given its anxious consideration. It is seen that the decree only states to grant pension, gratuity and PF for the period after 31.03.2000. The decree is not specifically stating to calculate the period of service from the date of appointment till date of superannuation. The decree is extracted hereunder:

“1. வாதிக்கு 31.3.2000 காலத்திற்கு பிந்தைய தொகைகளான ஓய்வூதியம், பணிக்கொடை, சேமநல வைப்பு நிதி ஆகிய தொகைகளை 3 முதல் 5 பிரதிவாதிகள் கொடுக்க வேண்டுமென்று செயல் உறுத்துக்கட்டளை பரிகாரம் வழங்கி தீர்ப்பாணை பிறப்பிக்கின்றது.



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2. வழக்கில் தன்மையை கருத்திற்கொண்டு அவரவர் செலவுத்தொகைகளை அவரவர் ஏற்றுக் கொள்ள வேண்டுமென உத்தரவிடுகின்றது.

3. சமாதான ஒப்பந்தம் தீர்ப்பின் ஒரு பாகமாக கருதப்பட வேண்டுமென உத்தரவிடுகின்றது.”

When the Trial Court had granted decree to grant pension after 31.03.2000, the claim of the plaintiff to grant pension for the period from 1968 until superannuation dated 31.03.2000 cannot be sustained. Therefore, this Court is of the considered opinion that the Execution Court is right in dismissing the Execution Petition.

14. Even if the contention of the plaintiff ought to be considered on merits, then the same would be illegal, since it is seen that the government had not paid any salary for the period from the date of dismissal 01.03.1989 till the date of superannuation 31.03.2000. Further the plaintiff was not in service at all during the said period. In order to put an end to the issue the plaintiff and the



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management had entered into compromise, wherein the management had paid less salary for a lesser period and the details are as under:

“The salary for the period from 28.02.1999 to 31.03.2000 was calculated as Rs.7,60,420/-, but the management had paid Rs. 2,60,000/- on 23.08.2002 as full and final settlement regarding salary”

It is to be noted that the salary was not calculated from 01.03.1989, the date of dismissal. In such circumstances, the said period either from 01.03.1989 or from 28.02.1999 cannot be taken for calculating the pension and other benefits. Further in the said compromise the official respondents are not a party and hence the said compromise is not binding on the official respondents. Even if the official respondents had entered into such compromise the same is against law, hence such compromise cannot be sought to implemented. Hence, for such illegal compromise, sanctity cannot be granted by the court of law.



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15. The salary ought to be paid only for the period where the employee had worked. Under “No Work No Pay” principle, the salary cannot be paid to the plaintiff and it is an admitted fact by the school as well as by the plaintiff that the plaintiff was never reinstated from 1989 onwards. In such circumstances, arriving at a compromise without the knowledge of the official respondents is illegal. It is pertinent to note that this kind of situation is repeatedly happening in the aided schools, wherein the Government is being treated as paymaster alone and all other terms of agreement and contract is executed between the parties without impleading the official respondents and without the knowledge of the official respondents, thereby causing loss to the government. Therefore the same can never be permitted. Hence the prayer for arrest cannot be sustained.

16. However the plaintiff is entitled to pension and other benefits for the period from 1968 until the dismissal from service in 1989. The plaintiff is not entitled to any benefits from the official respondents after dismissal from service in the year 1989 until superannuation 2000. When the plaintiff and the defendants 1 & 2 had submitted pension proposal by including the period from 1989 to 2000,



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which is illegal, hence the Execution Court has rightly dismissed the same and there is no illegality.

17. It is seen that the plaintiff and the management had compromised the issue and the management had paid salary to the subsequent period. In such circumstances, the punishment order ought to be modified as voluntary retirement and the period of service would be from 1968 till 1989. Hence, the plaintiff is entitled to pension, gratuity and PF from the date of approval of appointment till the date of voluntary retirement i.e. 01.03.1989. If the plaintiff and defendants 1 and 2 are submitting any such proposal claiming pension, gratuity and PF for the period from the date of approval of appointment till the date of voluntary retirement i.e. 01.03.1989, then the official defendants may process the same as per law.

18. For the reasons stated above this Court is passing the following orders:



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- i. The Civil Revision Petition is dismissed confirming the order, dated 23.12.2016, passed E.P.No.307 of 2004 in O.S.No.144 of 1990 on the file of the I Additional District Munsif Court, Nagercoil.
- ii. The management shall pass an order modifying the punishment as voluntary retirement fixing the date as 01.03.1989 for the purpose of pension, gratuity, provident fund.
- iii. Thereafter the management shall submit the proposal for getting pension, gratuity, provident fund for the period of service from the date of approval of appointment in the year 1968 till the date of voluntary retirement dated 01.03.1989.



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iv. The said exercise shall be completed within a period of two months from the date of receipt of copy of this order. No costs.

29.11.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes

Tmg

To

1. I Additional District Munsif Court,
Nagercoil.
2. The Director of School Education,
College Road, Chennai-600 006.
3. The Chief Educational Officer,
Nagercoil, Kanyakumari District.
4. The District Educational Officer,
Thucklay,
Thucklay Educational District.
5. The Section Officer,
Vernacular Records Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SRIMATHY, J.

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29.11.2024