

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 11.09.2015

CORAM

THE HON'BLE MR. JUSTICE **M.M.SUNDRESH**

Contempt P.No.247 of 2015
in W.P.No.12772 of 2014 &
Rev.Appln.No.21 of 2015

Contempt P.No.247 of 2015:

S.Sakundala .. Petitioner

Vs.

1. S.Saroja
Principal/Manager
Wiseman Higher Secondary School,
Velrampet, Mudaliarpet,
Puducherry - 605 004.

2. Mr.K.Senthamaraikannan
Headmaster
Wiseman Higher Secondary School,
Velrampet, Mudaliarpet,
Puducherry - 605 004.

.. Respondents

Rev. Appl.No.21 of 2015 :

Wiseman Higher Secondary School,
rep. by its Principal/Manager
Velrampet, Mudaliarpet,
Puducherry - 605 004.

.... Petitioner

-vs-

1. S.Sakundala

2. The Director of School Education
Puducherry.

3. The Headmaster,
Wiseman Higher Secondary School,
Velrampet, Mudaliarpet,
Puducherry - 605 004.

.... Respondents

Prayer in Contempt Petition No.247 of 2015:

This contempt petition has been filed to punish the respondents for willful disobedience and contempt of the order dated 06.11.2014 in W.P.No.12772 of 2014 on the file of this court.

Prayer in Review Appl.No.21 of 2015:

This petition has been filed to review of the order dated 06.11.2014 in W.P.No.12772 of 2014.

For Petitioner in
Contempt Petition and
2nd Respondent in Rev. Petition : Mr. Ilanthirayan for
M/s.Sai, Bharath & Ilan

For Petitioner in
Rev.Appl.No.21 of 2015 and : Mr.D.Baskar
1st respondent in Cont p No 247/15

Mr.A.Tamilvannan
Government Advocate : 2nd respondent in Rev
(Pondicherry) Application 21/15

COMMON ORDER

As the Contempt Petition and the review application are with reference to the same orders passed by this Court on 06.11.2014, they were taken up and disposed of by a common order.

2.The petitioner in contempt petition No.247 of 2015 was the writ petitioner. By the impugned order dated 16.4.2014, unilaterally without affording an opportunity, she was terminated from service. This Court by order dated 06.11.2014 quashed the said proceedings on the sole ground that the petitioner herein has not been heard. At the time of passing the order, the petitioner in the review

application was not represented. It appears that in the name of the counsel for review applicant, namely, Mr. Stalin Abhimanu, the letter 'n' was shown separately after a gap in the cause list. Thus, the learned counsel for the review applicant submitted that for the said reason he could not appear, though vakalat has been filed.

3. The grievance of the contempt petitioner is that the order passed by this Court was not complied with though the impugned order was set aside and the petitioner has not been taken back in to the job. On the question of maintainability, learned counsel relying upon the decision of the Honourable Division Bench of this Court in **John Paulraj A.P. vs. Central Board of Secondary Education** reported in 1999 (III) LLJ 628 Mad., submitted that as there is public duty imposed, a writ would lie.

4. Per contra, learned counsel for the review applicant submitted that the school is partly aided and partly unaided. For the Pre-primary classes, there is no aid granted. The writ petitioner was working as teacher in the Pre-primary classes. Therefore, writ petition is not maintainable and for that purpose reliance has been made in the decision in unreported judgment in **K.Muniswari vs. The Regional Director, Central Board of Secondary Education, Chennai & Oths.** made in W.P.No.16114 of 2011.

5. By way of reply, learned counsel for the contempt petitioner submitted that even for the pre-primary post, the Pondicherry School Education Rules, 1996, would apply. The petitioner has been working for 17 years and notwithstanding the said fact that subsequent teachers have been appointed and the petitioner who was appointed much earlier, was removed unilaterally.

6. Considering the above said submissions, this Court is inclined to take up the writ petition itself once again, as arguments have been heard on that. Considering the question of maintainability, the Division Bench of this

Court in **John Paulraj A.P. vs. Central Board of Secondary Education** reported in **1999 (III) LLJ 628 Mad.**, was pleased to hold in paragraph 16 as follows:

"The learned single Judge has elaborately dealt with case laws on the issue namely;

"Whether a Writ Petition under Article 226 of Constitution of India is maintainable against Unaided Private Educational Institution, by employee of the said institution to enforce the terms of contract of his personal service entered between them."

The difference between private law and public law, private contradiction, statutory contradictions and non-statutory contradiction are to be seen contractually as held by the Apex Court in **Sri Anadi Mukta Sadguru Shree Muktajee Vandajiswami Sarvana Jayanti Mahotsay Samarak Trust and Ors. vs. V.R.Rudani** reported in **1989(2)LLJ 324**. What is important to be seen is the existence of the public duty in all fairness. Admittedly, the respondents 2 and 3 in the writ petition are imparting education. Thus, while dealing with a teacher, public duty is imposed upon them to act fairly. Therefore, the said respondent cannot raise the question of maintainability, more so, when there is no dispute that the petitioner has been terminated unilaterally. Coming to the other issue namely, the respondent school is not an aided school, it appears that it is indeed an aided school though not for pre-primary classes. Thus, the school is an aided school though indeed for subsequent classes. Therefore, the objections raised are technical in nature. This Court has merely set aside the order on the ground of violation of Principle of natural justice. Thus, there is no bar in law for the respondent to initiate action in accordance with law. The

applicability and the violation of the Primary School Education Rule 1990 is a matter to be decided by the respondent school. Law is also quite settled that when an order is set aside in violation of Principles of Natural Justice, will not take away the power of the authority concerned to proceed afresh.

7. With the above said observation, the order passed on 06.11.2014 is re-confirmed. The Contempt Petition and the Review Petition accordingly are closed. Writ petition is ordered. However, it is open to the respondent school to initiate fresh proceedings. In view of the order passed, the writ petitioner will have to be taken back to work as a teacher. Ofcourse, without prejudice to the right of the review petitioner to take appropriate action in accordance with law. The review petitioner will have to take back the petitioner, within a period of four weeks from the date of receipt of a copy this order. No costs.

SD/-

DEPUTY REGISTRAR (CLAA)

//Certified to be true copy//

Dated at Madras this the day of 2015.

COURT OFFICER (O.S.)

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SS/CO/09/10/2015

One CC to The Sr.Govt.Pleader-Cum- Senior Public Prosecutor for Puducherry, High Court, Madras - 104.

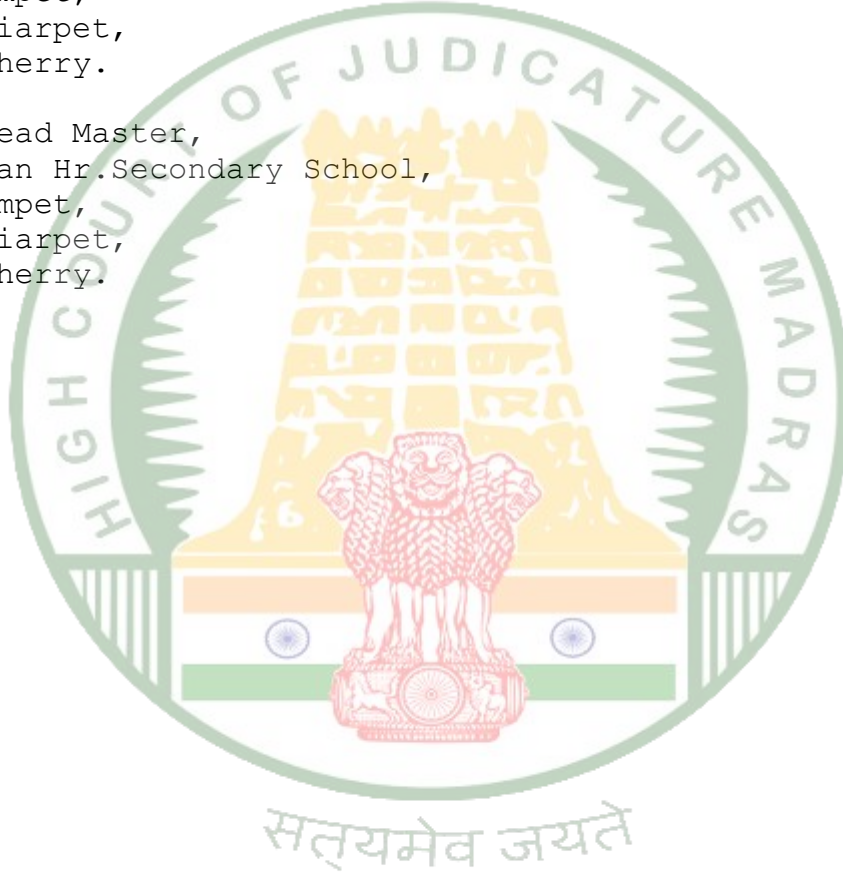
One Cc to M/S Sai, Bharath & Ilan, Advocate, Sr.No.49790/15.

To

1. Director of School Education
Puducherry.

2. The Principal/Manager,
Wiseman Hr. Secondary School,
Velrampet,
Mudaliarpet,
Puducherry.

3. The Head Master,
Wiseman Hr. Secondary School,
Velrampet,
Mudaliarpet,
Puducherry.



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