

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 09.12.2015

Coram :

The Hon'ble Mr.Justice K.KALYANASUNDARAM

W.P.Nos.33302 & 35071 of 2015

and

M.P.Nos.1 and 2 of 2015

WP No.33302 of 2015

R.Illavenil

... Petitioner

Vs

1.District Elementary Educational Officer,
Nagapattinam,
Nagapattinam District.

2.Assistant Elementary Educational Officer,
Vedaranyam,
Nagapattinam District.

3.Secretary,
Ambal Aided Primary School,
Mudukkuveli,
Thethakudi South,
Vedaranyam Taluk,
Nagapattinam District.

... Respondents

Writ Petition is filed under Article 226 of the Constitution of India for the issue of a Writ of Certiorarified Mandamus calling for the records pertaining to the order passed by the 3rd respondent in his letter No.112/2015 dated 22.05.2015 and quash the same and direct the respondents to confer all the consequential benefits to the petitioner.

WP No.35071 of 2015

The Secretary,
Ambal Aided Elementary School,
Mudukkuveli, Thethakudi South,
Vedaranyam Taluk,
Nagapattinam District.

... Petitioner

vs

1.The Director of Elementary Education,
DPI Complex, Nungambakkam,
College Road, Chennai.

2.The District Elementary Educational Officer,
Nagapattinam.

3.The Assistant Elementary Educational Officer,
Vedaranyam, Nagapattinam District.

4.The Personal Assistant to
District Elementary Educational Officer,
O/o The District Education Officer,
Nagapattinam.

5.R.Ilavenil

... Respondents

Writ Petition is filed under Article 226 of the Constitution of India for the issue of a Writ of Certiorarified Mandamus calling for the records on the file of the 2nd respondent in connection with his proceedings in Na.Ka.No.2616/A5/2015 dated 13.10.2015, quash the same, and consequently direct the respondents 1 to 4 to approve the order of suspension dated 22.05.2015 w.e.f 03.05.2015, sanction the Subsistence Allowance payable to the 5th respondent and further allow the petitioner to proceed further with the disciplinary action against the 5th respondent based on the Crime No.72 of 2015.

For Petitioner : Mr.C.Selvaraj,
in WP 33302/2015 Senior Counsel for
& 5th Respondent M/s.C.S.Associates
in WP 35071/2015

For Respondents : Mr.S.Gunasekaran
Govt. Advocate
for R1 to R2 in
WP No.33302 of 2015
and R1 to R4 in
WP No.35071 of 2015

Ms.T.Aananthi
for R3 in WP 33302/2015
& Petitioner in WP 35071/2015

COMMON ORDER

Since both these writ petitions are inter connected, they are taken up together and disposed of by this common order.

2. The brief facts of the case are as follows -

Ambal Aided Primary School, Mudukkuveli, Thethakudi South, Vedaranyam Taluk, Nagapattinam District [3rd respondent in WP 3302 of 2015 & petitioner in WP 35071 of 2015] is sanctioned

with three teachers. One post of secondary school teacher felt vacant on 31.05.2011 due to retirement. The Aided School called for applications for appointment to the post of secondary grade teacher. Mr.R.Illavenil (petitioner in WP 33302 of 2015 & 5th Respondent in WP 35071 of 2015) was found eligible and appointed in that post which was also approved by the District Elementary Educational Officer (DEEO), Nagapattinam. The Secretary of the school lodged a complaint alleging that he was attacked by the said Illavenil with the assistance of his father and brother on 02.05.2015 at 7.45 a.m. when he was in a tea stall in the Mudukkuveli market. In the attack, the Secretary sustained grievous injuries, for which he had taken treatment as inpatient from 03.05.2015 to 14.05.2015 at the Government Hospital, Nagapattinam.

3. A criminal case was registered against the said R.Illavenil on 03.05.2015 in Crime No.200 of 2015 for the offences punishable under sections 294 (b), 342, 324 and 506 (ii) IPC. The police, after investigation, laid charge sheet against him which was taken on file in C.C.No.72 of 2015. Hence, the school committee had taken a decision to suspend the said R.Illavenil w.e.f. 03.05.2015 vide order dated 22.05.2015 and the Secretary of the school forwarded the decision to the District Elementary Educational Officer, Nagapattinam for his approval.

4. The District Elementary Educational Officer, Nagapattinam called for enquiry on 04.08.2015 and after discussion and mediation, R.Illavenil agreed to move out from the Ambal Aided Primary School to some other school and the same was reduced in writing and signed by the parties. Since there was a delay in approving the order of suspension dated 22.05.2015 w.e.f. 03.05.2015, a representation was made by Secretary of the School on 09.10.2015 for payment of subsistence allowance to R.Illavenil and also permission to proceed with the disciplinary action against him. The DEEO, Nagapattinam, vide order dated 13.10.2015 refused to approve the order of suspension of the School Management and directed them to pay the subsistence allowance to the said R.Illavenil.

5. Challenging the order of suspension dated 22.05.2015, the said R.Illavenil filed WP No.33302 of 2015 contending that as per Section 22 of the Tamil Nadu Recognised Private Schools (Regulations) Act, the Management can suspend a teacher only for a period of two months, which can be extended with the permission of Educational Authorities for another period of two months and therefore the prolonged suspension beyond four months is liable to be set aside.

6. Challenging the order of the District Elementary Educational Officer, Nagapattinam dated 13.10.2015, WP No.35071

of 2015 has been filed by the Secretary of the School on the ground that the Tamil Nadu Recognised Private Schools (Regulation) Act 1973 and the rules made thereunder enables and empowers the Secretary of the School Management to take disciplinary action against the defaulting teachers and the reason assigned by the DEEO, Nagapattinam that until the delinquent is convicted on the criminal charges, his suspension by the Secretary cannot be approved, is against law.

7. In the counter affidavit filed by R.Illavenil, it is stated that the police complaint was given against him only to place him under suspension and the Correspondent of the petitioner school had overstayed in the hospital with the help of this relatives. It is further stated that if the attendance register maintained by the School Management is perused, it would be evident that not only himself, but also the other teachers come late to school. He has denied the allegation that he assaulted the correspondent and on the other hand alleged that the correspondent assaulted him for the reason that he was not doing the assignment given by the Head Mistress. He would further state that during enquiry, when the educational authorities insisted him to go for some other school, he signed in the mediation paper having no other option and his efforts to joint other school was also scuttled by the correspondent of the school. It is further stated in the counter that the approval of suspension order sought for by the School was rightly rejected by the DEECO, Nagapattinam, which is in adherence to the statutory provisions of the Act.

8. In the counter affidavit by the Secretary of the School, it is stated that R.Illavenil was appointed on 12.03.2012 as secondary grade teacher with certain conditions. In G.O.Ms.No.264 School Education Department dated 06.07.2012, the Government of Tamilnadu has given instructions to train the students in a practical way before and after lunch time i.e. between 12.40 p.m to 2.00 p.m. but R.Illavenil, without getting permission from the Management, used to go out by 12.45 p.m and come back by 2.00 to 2.40 p.m. according to his whims and fancies. It is further stated that he used to report to school belatedly by 15 to 45 minutes and was often using his cell phone during school hours, without concentrating on the students. It is also stated in the affidavit that the Secretary and the members of the school committee severely warned R.Illavenil the last week of April 2015. So, in order to wreak vengeance, he, in connivance with his brother and father, assaulted the Secretary of the School with wooden log in the open market, in the midst of public, causing grievous injuries and resulting in registration of a case against him in Crime No.200 of 2015. In the above circumstances, the school committee had unanimously taken a decision to suspend the petitioner with effect from 03.05.2015.

9. Heard Mr.C.Selvaraj, learned Senior Counsel for Mr.R.Illavenil, Ms.T.Aananthi, learned counsel for Ambal Aided School, Mr.S.Gunasekaran, learned Govt. Advocate and perused the materials placed before this Court.

10. Mr.C.Selvaraju, learned Senior Counsel appearing for the petitioner in WP No.33302 of 2015, relying upon the decisions reported in 2001 (1) CTC 292 [G.Anbarasan v. District Educational Officer, Cuddalore] and 2006 Writ L.R. 417 [The Correspondent, Little Flower Primary School, Chinnalapatti v. G.Jothi & 2 others] would contend that the order of suspension in any case cannot go beyond a period of four months in view of Section 22 (c) of the Act and delinquent would be entitled for the fully salary.

11. The appointment of R.Illavenil in the Ambal Aided Primary school as secondary grade teacher on 12.03.2012 and the criminal case filed against him on 03.05.2015 in Crime No.200 of 2015 for the alleged assault of the correspondent of the school are not disputed. As per the decision of the school committee, R.Illavenil was placed under suspension w.e.f. 03.05.2015 and the suspension had to be approved by the DEEO, Nagapattinam, as per the provisions of the Tamil Nadu Private Schools Regulation Act. However, the DEEO, Nagapattinam rejected the request on the sole ground that unless a delinquent person is convicted in the criminal case, he cannot be placed under suspension.

12. Though Mr.R.Illavenil and the Secretary of the School have made allegations and counter allegations in the affidavit and counter affidavit respectively, the disputed facts cannot be decided in these writ petitions. The allegations against R.Illavenil could be decided only in the disciplinary proceedings.

13. It would be useful to refer the relevant provision of Section 22 (3) (a) of Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 which is extracted hereunder -

"22. Dismissal. Removal or Reduction In Rank or Suspension of Teachers or other Persons Employed In Private Schools--

(1)

(2)

(3) (a) No teacher or other person employed in any private school shall be placed under suspension, except when an inquiry into the gross misconduct, within the meaning of the Code of Conduct prescribed under sub-section

(1) of Section 21 of such teacher or other person is contemplated.

(b) No such suspension shall remain in force for more than a period of two months from the date of suspension and if such inquiry is not completed within that period, such teacher or other person shall, without prejudice to the inquiry be deemed to have been restored as teacher or other employee.

Provided that the competent authority may, for reasons to be recorded in writing extend the said period of two months, for a further period not exceeding two months, if in the opinion of such competent authority, the inquiry could not be completed within the said period of two months for reasons directly attributable to such teacher or other person."

14. In 1999 (3) SCC 679 [M.Paul Anthony v. Bharat Gold Mines Ltd.), the Division Bench of the Hon'ble Supreme Court has observed as follows -

To place an employee under suspension is an unqualified right of the employer. This right is conceded to the employer in service jurisprudence everywhere. It has even received statutory recognition under service rules framed by various authorities, including Govt. of India and the State Governments. (See: for example, Rule 10 of Central Civil Services (Classification, Control & Appeal) Rules. Even under the General Clauses Act, this right is conceded to the employer by Section 16 which, inter alia, provides that power to appoint includes power to suspend or dismiss.

15. It is settled law that the employer has got power to place the employee under suspension pending criminal case. In 2001 (1) CTC 292 [G.Anbarasan v. District Educational Officer, Cuddalore], this court had an occasion to consider whether a teacher in the aided school can be kept for prolonged suspension and whether the school committee has got power to suspend a teacher in the absence of a specific provisions in the Act. The Hon'ble Judge, relying upon the decisions of the Hon'ble Supreme Court reported in AIR 1959 SC 1342 [Hotel Imperial v. Hotel Workes Union], AIR 1968 SC 800 [B.R.Patel v. State of Maharashtra], AIR 1987 SC 1210 [Y.Theclamma v. Union of India] and AIR 1970 SC 1494 [V.P.Gindroniya v. State of M.P] has held as follows -

27. Though the statutory provisions of the Tamil Nadu Recognised Private Schools (Regulation) Act and the Rules framed thereunder do not make a provision for placing a teacher or other person employed in a school under suspension pending investigation or the crime or a complaint or pending a criminal case, the employer of such a teacher could very well place him under suspension even when the statutory provision do not provide for such a contingency, by exercise of its powers of suspension, but the employer has to pay the salary.

29. One other incidental question that has been raised is whether the suspension could be continued beyond two months or the extend the period as provided in Section 20 (3) of the Act. The statutory provision provides the period of suspension to be confined to two months at the first instance and an extension for identical period shall be by appropriate authority. The object of the statutory provision being that there shall not be any delay in the disciplinary proceedings against a teacher working in a private school. Merely because a restriction is imposed, it cannot be held that beyond the said period the teacher cannot be placed under suspension. However if a teacher is kept under suspension beyond the period stipulated in Section 20(3), the employer namely the School Management has to pay full salary for any period beyond the period stipulated by the statutory provisions or extended under the proviso to Section 20(3) from its funds.

31. . In the present case, as against the petitioner for offences under sections 147, 323, 341 and 506(ii) of the Indian Penal Code a crime has been registered and criminal investigation is under progress. The alleged criminal complaint against the petitioner involves moral turpitude and it is likely to embarrass him besides the second respondent, being a school where number of young children are attending classes and as continuance of the petitioner during the investigation of a serious crime in the locality would also

demoralize and/or have a effect on the psychology of the school going children, this Court is of the considered view that the second respondent-school is well justified in placing the petitioner under suspension.

33. In the circumstances, the writ petition fails. But insofar as the order of suspension in the present case not falling under Section 20(3) of the Act or the Rules made thereunder, the second respondent-school has to pay full salary for the period of suspension.

34. While dismissing the writ petition, the following directions are issued :-

(i) The second respondent-school shall pay full salary for the period of suspension;

(ii) The second respondent-school shall ascertain the progress of the criminal case from the investigating officer and receive a report, review the suspension without delay while taking note of the fact that the petitioner had already been enlarged on bail and the criminal investigation is under progress. Such review shall be undertaken within a period of two months from today; and

(iii) So long as the petitioner is kept under suspension, the second respondent-school shall pay full salary for the period of suspension.

16. In the judgment reported in 2006 Writ L.R. 417 [The Correspondent, Little Flower Primary School, Chinnalapatti v. G.Jothi & 2 others], the Hon'ble Division Bench of this Court has observed as under -

11. It is not in dispute that the writ petitioner was suspended on 29.01.2001. As per Section 22(3)(b) of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973, the maximum period, a teacher can

be kept under suspension, is four months. Accordingly, the suspension period came to an end by 29.05.2001. It is the grievance of the writ petitioner that except the subsistence allowance for a period four months, she was not paid any amount in spite of representations / direction of the educational authorities as well as the order of the learned single Judge of this Court.

12. It is an admitted fact that the decision taken by the Management was not approved by the District Educational Officer and even the appeal filed by the Management is rejected by Joint Director, Elementary Education. No doubt, the School Management has filed writ petition in W.P.No.28146 of 2005 challenging the said order and the same is pending. As rightly pointed out, even if the said writ petition is allowed, it is not in dispute that the approval cannot take effect from the date on which the Management sought for approval from the educational authorities. In the light of the same and in view of the assertion of the writ petitioner that she was not paid salary as Headmistress except for four months, we are of the view that the direction of the learned Judge cannot be faulted with.

17. In the light of the decisions referred supra, the reason assigned by the District Elementary Educational Officer, Nagapattinam that R.Illavenil could be placed under suspension only after his conviction in a criminal case cannot be countenanced. Hence, it is liable to be set aside and the same is accordingly set aside. While confirming the order of suspension, this court issues the following directions -

(i) The school shall pay full salary for the period of suspension to Mr.R.Illavenil ;

(ii) So long as Mr.R.Illavenil is kept under suspension, the school shall pay full salary for the period of suspension and

(iii) The Secretary, Ambal Aided School is permitted to initiate disciplinary action against R.Illavenil, based on Crime No.72 of 2015.

18. Accordingly, the writ petitions are disposed of. However there is no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

rgr

-s/d-

Assistant Registrar (CS-VII)

True Copy

Sub-Assistant Registrar

To

1. The Director of Elementary Education,
DPI Complex, Nungambakkam,
College Road, Chennai.
2. The District Elementary Educational Officer,
Nagapattinam.
3. The Assistant Elementary Educational Officer,
Vedaranyam, Nagapattinam District.
4. The Personal Assistant to
District Elementary Educational Officer,
O/o The District Education Officer,
Nagapattinam.

+ 1 cc to M/s.T.Vasugi, Advocate SR 66060

+ 1 cc to M/s.T.Aananthi, Advocate SR 66059

+ 1 cc to M/s.C.S.Associates Advocate SR 66180

+ 1 cc to M/s.C.S.Assosicates, Advocate SR 66181

svs (co)
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W.P.Nos.33302 & 35071 of 2015

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