

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.07.2017

CORAM

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

W.P.Nos.13691, 18510 of 2014 & 29678 of 2016
&
W.M.P.Nos.1, 1 & 2 of 2014, 25688 & 25689 of 2016
&
W.V.C.M.P.Nos.38654 of 2016 & 5311 of 2017

W.P.No.13691 of 2014

R.Abdul Kareem,
 Head Master,
 Sultanpet Aided Muslim Primary School,
 Thiruvannamalai. ... Petitioner

Vs.

- 1.The Manager,
 Sultanpet Aided Muslim Primary School,
 Thiruvannamalai.
- 2.Tmt.R.Noorjahan,
 Manager,
 Sultanpet Aided Muslim Primary School,
 Thiruvannamalai.
- 3.The District Elementary Educational Officer,
 Thiruvannamalai. ... Respondents

PRAYER in W.P.No.13691 of 2014: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the entire records connected with the impugned charge sheet in Na.Ka.No.6/2013 dated 24.12.2013 issued by the first respondent and quash the same.

For Petitioner : Mr.S.N.Ravichandran

For Respondents : Mr.V.Anandhamurthy for R3
Additional Government Pleader

Mrs.Dakshayini Reddy for R1 & R2

W.P.No.18510 of 2014

R.Abdul Kareem,
Head Master,
Sultanpet Aided Muslim Primary School,
Thiruvannamalai. Petitioner

Vs.

- 1.The Manager,
Sultanpet Aided Muslim Primary School,
Thiruvannamalai.
- 2.The Enquiry Officer,
Sultanpet Aided Muslim Primary School,
Thiruvannamalai.
- 3.The District Elementary Educational Officer,
Thiruvannamalai. ... Respondents

PRAYER in W.P.No.18510 of 2014: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the entire records connected with the impugned order in Letter No.1/2013 dated 23.06.2014 issued by the first respondent and quash the same and direct the first respondent to appoint new and independent enquiry officer.

For Petitioner : Mr.S.N.Ravichandran

For Respondents : Mr.V.Anandhamurthy for R3
Additional Government Pleader

Mrs.Dakshayini Reddy for R1

W.P.No.29678 of 2016

Sultanpet Aided Muslim Primary School,
Rep. by its Manager,
Thiruvannamalai.

... Petitioner

Vs.

- 1.The Chief Educational Officer,
Tiruvannamalai.
- 2.The District Elementary Educational Officer,
Tiruvannamalai.
- 3.The Assistant Elementary Educational Officer,
Tiruvannamalai.
- 4.R.Abdul Kareem,
Headmaster,
Sultanpet Aided Muslim Primary School,
Tiruvannamalai.
(Impleaded as per order dated 28.11.2016
in W.M.P.No.31583 of 2016 in
W.P.No.29678 of 2016)

... Respondents

PRAYER in W.P.No.29678 of 2016: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records of the second respondent in Na.Ka.No.2061/A4/2016 dated 04.07.2016 and quash the same as arbitrary and tainted with *mala fide*.

For Petitioner : Mrs.Dakshayini Reddy

For Respondents : Mr.V.Anandhamurthy for R1 to R3
Additional Government Pleader

Mr.S.N.Ravichandran for R4

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COMMON ORDER

The petitioner is the Headmaster of Sultanpet Aided Muslim Primary School, Thiruvannamalai, having been appointed on 03.01.1988 as Secondary Grade Teacher and subsequently promoted as Headmaster on 01.06.1988. Thereafter, the petitioner was reverted from the post of Headmaster to the post of Secondary Grade Teacher on 01.12.2003, which was challenged in W.P.No.39031 of 2003, wherein the order of reversion was set aside and the matter was remanded to the first respondent. Even after remand, proceedings were initiated against the petitioner which was challenged before this Court in W.P.No.11650 of 2011 and the said Writ Petition is pending before this Court.

2. Meanwhile, the petitioner was issued with a memo on 10.10.2013, on the ground that without conducting the meeting with regard to the first semester examination, the petitioner had submitted a report. A reply was given by the petitioner on 11.10.2013. Again, the first respondent was issued with memos on 03.11.2013 and 04.11.2013 for which the petitioner submitted his explanation on 05.11.2013 and 11.11.2013. On 05.12.2013, another memo was

issued alleging certain allegations against the petitioner, for which the petitioner submitted his explanation on 06.12.2013. Finally, a charge memo dated 24.12.2013 was issued consolidating all the allegations made in the earlier charge memos. The said charge memo is being challenged before this Court in W.P.No.13691 of 2014.

3.For the said charge memo, a reply was given by the writ petitioner on 08.01.2014. Being unsatisfied with the explanation, an enquiry officer was appointed by the first respondent. The said officer, according to the petitioner, is putting leading questions to the witnesses with an intention to help the first respondent school. Alleging bias, the petitioner has filed the writ petition in W.P.No.18510 of 2014.

4.Meanwhile, the third respondent has effected direct payment to the staff of the first respondent school, on the ground of non-payment of Subsistence Allowance to the petitioner and deficiency in the infrastructure. The said impugned order passed by the third respondent is being challenged by the management by way of W.P.No.29678 of 2016.

5.All the three writ petitions have been heard together and the following common order is passed.

6.Heard the parties and perused the records. It is seen that a number of charge memos have been issued against the petitioner, who is working as Headmaster. The charge memo dated 24.12.2013 has been replied by the petitioner and an enquiry officer has been appointed. Further, the petitioner has also participated in the enquiry. Therefore, the question of going into the validity of the charge memo does not arise. Hence, the **W.P.No.13691 of 2014 is dismissed as infructuous.**

7.As far as the bias against the officer concerned, it is the case of the petitioner that the officer has been helping the management by putting leading questions. However, Mrs.Dhakshayini Reddy, learned counsel appearing for the management would deny such bias. In any event, when the charged officer apprehends that the enquiry officer is bias and he would not get fair opportunity in the enquiry, it is appropriate to set aside the appointment of the said officer and direct the first respondent management to appoint a new enquiry officer within a period of one week from the date of receipt of a copy of this

order. The Officer, who is to be appointed afresh, has to continue the enquiry from the day of his appointment. Therefore, **W.P.No.18510 of 2014 is allowed and the matter is remanded to the new enquiry officer.** The new enquiry officer is directed to issue notice to the petitioner and the enquiry officer is also directed to conclude the enquiry and file the enquiry report within a period of eighteen weeks from the date of receipt of a copy of this order.

8.The management has filed the last writ petition in W.P.No.29678 of 2016, questioning the direct payment on the ground of non-payment of subsistence allowance to the petitioner/Headmaster and for lack of proper infrastructure in the school. Since, it has been submitted by Mr.S.N.Ravichandran, learned counsel for the petitioner that there is only one toilet which cannot be used by both the girls and boys students, to ascertain the correct position, this Court appointed Mrs.P.Kavitha as Advocate Commissioner to visit the premises of the school and file a report with regard to the number of toilets in the School. The Advocate Commissioner filed a report stating that two toilets are in existence and they are cleanly maintained. Even the CCTV camera and the RO System have been installed in the school. The photographs filed by the Advocate Commissioner also would

fortify the statement made by the Commissioner. Though Mr.S.N.Ravichandran would submit that the infrastructure available is insufficient, the Advocate Commissioner's report would support the case of the management. Therefore, it is appropriate to set aside the order of direct payment and remand the matter to the third respondent. Accordingly, while setting aside the impugned order and remanding the matter, since the petitioner/Headmaster has got some reservation against the third respondent Officer, it is appropriate to direct any other officer to inspect the school. Hence, after remand, the new officer, the District Elementary Educational Officer, who is working in Thiruvannamalai should make an inspection afresh regarding the infrastructure available in the school based on which a decision will have to be taken within a period of eight weeks.

9.The petitioner was suspended on 10.03.2014. The said suspension order was challenged in W.P.No.7810 of 2014 and this Court by an order dated 05.03.2015 had disposed of the said writ petition by directing the first respondent/management to review the order of suspension dated 10.03.2014. The first respondent/management rejected to review the order of suspension and hence, the petitioner was constrained to file a complaint before

the Human Rights Commission which was forwarded to the Joint Director of Elementary Education and by letter dated 24.08.2016, the Chief Educational Officer and the petitioner was called for personal hearing on 02.09.2016, subsequent to which the Chief Educational Officer passed an order dated 06.09.2016 revoking the suspension of the petitioner. Thereafter, the petitioner was reinstated on 07.09.2016. The learned counsel for the petitioner would submit that during the period of suspension, the petitioner is entitled to subsistence allowance as per Section 22(3) of the Tamil Nadu Recognized Private Schools (Regulation) Act, 1993, however, the same has not been paid. Therefore, the first respondent is directed to pay the full salary to the petitioner for the entire period of suspension, except the initial period of four months of suspension, as stipulated under Section 22(3) of the Act. The said exercise has to be carried out within a period of four weeks from the date of receipt of a copy of this order.

10.As far as the payment of salary is concerned, it is alleged that even though the petitioner was reinstated by an order dated 06.09.2016, the management has not sent the pay bills to the third respondent. Therefore, the management is directed to send the pay

bills of the petitioner to the third respondent, within a period of one week from the date of receipt of a copy of this order, if the pay bills have not been sent already. On such receipt of pay bills sent by the management to the third respondent, the third respondent shall process the same and make the payment within a period of four weeks, thereafter.

11. In the result,

i) W.P.No.13691 of 2014 is dismissed as infructuous.

ii) W.P.No.18510 of 2014 is allowed and the matter is remanded to the new enquiry officer who shall complete the enquiry within eighteen weeks from the date of receipt of a copy of this order.

iii) W.P.No.29678 of 2016 is allowed.

Consequently, connected Miscellaneous Petitions are closed. No costs.

27.07.2017

Speaking order/Non-speaking order

Index: Yes/No

Internet: Yes/No

ah/mm

Note: Issue order copy on 07.12.2017.

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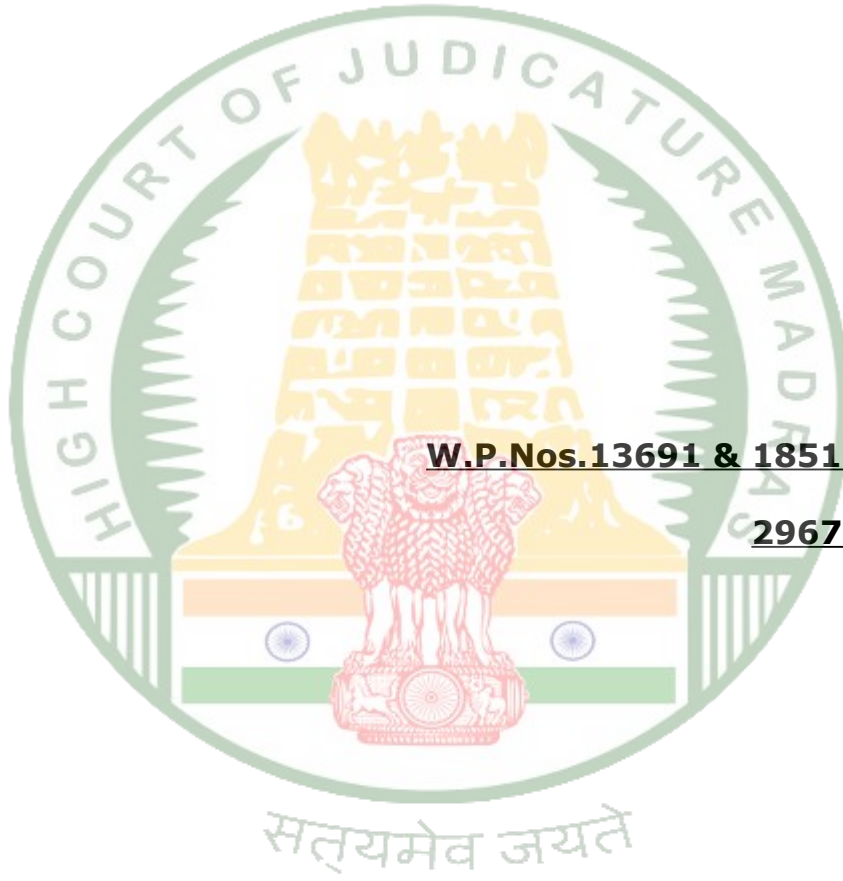
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- 6.The Assistant Elementary Educational Officer,
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- 7.R.Abdul Kareem,
Headmaster,
Sultanpet Aided Muslim Primary School,
Thiruvannamalai.

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N.KIRUBAKARAN, J.

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