

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.07.2016

CORAM:

THE HONOURABLE MR.JUSTICE B.RAJENDRAN

WP.No.26149 of 2016

K.Srinivasan

Petitioner

Vs

1.The Director, Directorate
of Elementary Education
College Road, Chennai

2.The Joint Director,
Directorate of Elementary Education
College Road, Chennai

3.The District Collector, Dharmapuri

4.The District Chief Educational Officer
Chief Education Office, Dharmapuri

5.Kumar

Respondents

Prayer:- This Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Mandamus to direct the Respondents 1 to 4 to consider the representation of the Petitioner dated 16.7.2016 requesting to uphold the provident fund and gratuity of the 5th Respondent pending disposal of STC.No.40 of 2015 on the file of the FTC, Dharmapuri.

For Petitioner : Mr.V.Sakkarapani

For Respondents : Mr.Ravi Selvam, AGP

ORDER

This Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Mandamus to direct the Respondents 1 to 4 to consider the representation of the Petitioner dated 16.7.2016 requesting to uphold the provident fund and gratuity of the 5th Respondent pending disposal of STC.No.40 of 2015 on the file of the FTC, Dharmapuri.

2. This court heard the learned counsel on either side and also perused the materials placed on record.

3. The Petitioner is the complainant in the criminal case filed against the 5th Respondent herein relating to cheque amount, which is pending and he is aggrieved over the said case not being conducted and there is also NBW issued against the 5th Respondent pending and in spite of time being granted, the case was not conducted. In the mean while, the 5th Respondent is due to retire on 31.7.2016. In view of the same, the Petitioner has now made a representation dated 16.7.2016 to the concerned authority not to grant the terminal benefits to the 5th Respondent, till the disposal of the said criminal case and the said representation was acknowledged on 18.7.2016. Since the 5th Respondent is retiring on 31.7.2016, the present Writ Petition has been filed with the prayer as stated above.

4. At the out set, such a prayer cannot be granted, since the Petitioner's adjudication is pending until the Petitioner gets an order from the criminal court, the question of getting money does not arise. Only when the Petitioner succeeds in the said case, he will get the cheque amount or the court may order arrest. Until it is decided, he will not get any benefit out of the cheque amount. Further, how can a person ask for a direction not to grant terminal benefits to a person till the disposal of a case filed against him by a third party. Hence, such a prayer cannot be granted and accordingly, the prayer for considering the representation will also not arise, in view of the decision of the Honourable this court reported in 2010 2 LW 785 (M.Ingaci Vs. The Commissioner, Devakottai Municipality and others), wherein the decision of the Honourable Supreme Court reported in 2006 3 SCC 674 (APSRTC Vs. G.Srinivas Reddy), was relied upon and it has been held in paragraphs 19 and 20 as under:-

"19. There are also several instances where unscrupulous petitioners with the connivance of "pliable" authorities have misused the direction "to consider" issued by court. We may illustrate by an example. A claim, which is stale, time-barred or untenable, is put forth in the form of a representation. On the ground that the authority has not disposed of the representation within a reasonable time, the person making the representation approaches the High Court with an innocuous prayer to direct the authority to "consider" and dispose of the representation. When the court disposes of the petition with a direction to "consider", the authority grants the relief, taking shelter under the order of the court directing him to "consider" the grant of relief. Instances are also not wanting where authorities, unfamiliar with the process and practice relating to writ proceedings and the nuances of judicial review, have interpreted or understood the order "to consider" as directing grant of relief sought

in the representation and consequently granting reliefs which otherwise could not have been granted. Thus, action of the authorities granting undeserving relief, in pursuance of orders to "consider", may be on account of ignorance, or on account of bona fide belief that they should grant relief in view of the court's direction to "consider" the claim, or on account of collusion/connivance between the person making the representation and the authority deciding it. Representations of daily-wagers seeking regularisation/ absorption into regular service is a species of cases, where there has been a large-scale misuse of the orders "to consider".

20. Therefore, while disposing of the writ petitions with a direction to "consider", there is a need for the High Court to make the direction clear and specific. The order should clearly indicate whether the High Court is recording any finding about the entitlement of the petitioner to the relief or whether the petition is being disposed of without examining the claim on merits. The court should also normally fix a time-frame for consideration and decision. If no time-frame is fixed and if the authority does not decide the matter, the direction of the court becomes virtually infructuous as the aggrieved petitioner will have to come again to court with a fresh writ petition or file an application for fixing time for deciding the matter."

5. In view of the above said decision, this Writ Petition is not maintainable. However, this order will not preclude the Petitioner from conducting the said criminal case in accordance with law and the 5th Respondent is also directed to cooperate for the smooth conduct of the case and he should not evade service of summons as stated by the Petitioner.

6. With the above directions, this Writ Petition is disposed of. No costs.

Sd/-
Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

Srcm

To:

1.The Director, Directorate of Elementary Education
College Road, Chennai

2.The Joint Director, Directorate of
Elementary Education
College Road, Chennai

3.The District Collector, Dharmapuri

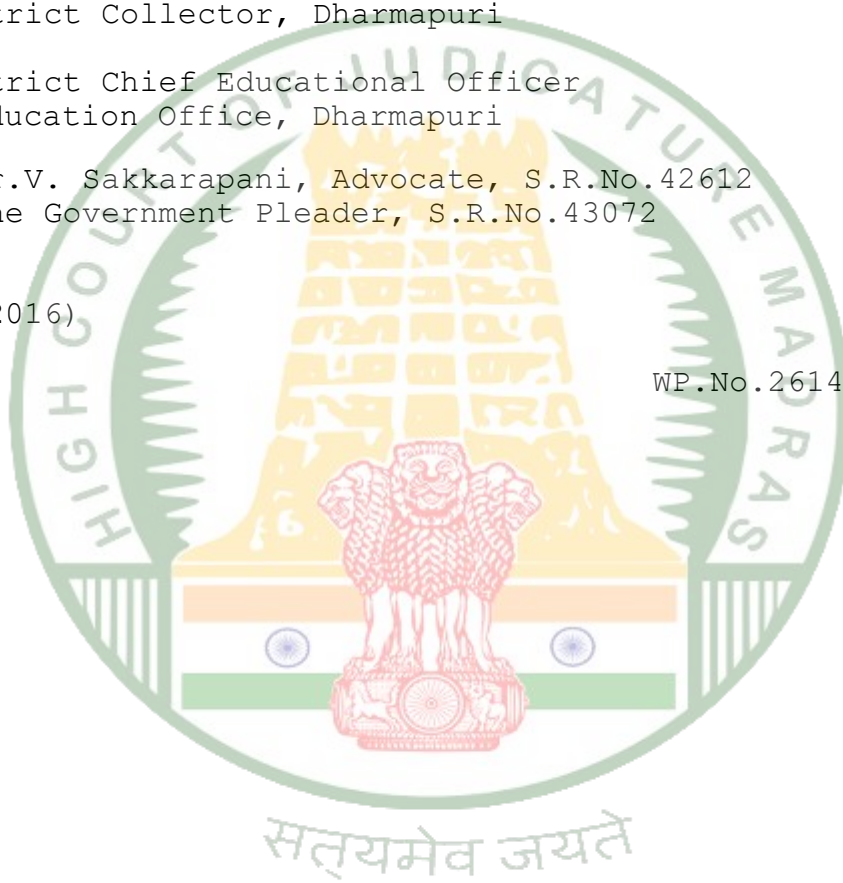
4.The District Chief Educational Officer
Chief Education Office, Dharmapuri

+1cc to Mr.V. Sakkarapani, Advocate, S.R.No.42612

+1cc to the Government Pleader, S.R.No.43072

SK(CO)
EU(29/09/2016)

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