

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.06.2016

CORAM:

THE HON'BLE MR.JUSTICE B.RAJENDRAN

W.P.No.28645 of 2012 and
M.P.Nos.1 and 2 of 2012

N.Kalaiselvi

... Petitioner

Vs.

1. The Director,
Elementary School Education,
DPI Campus, College Road,
Chennai - 600 006.
2. The District Elementary School Officer,
Office of the District Elementary
School Office, Salem - 1.
3. The Assistant Elementary School Officer,
Office of the District Elementary
School Office, Salem - 1.

... Respondents

Writ petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of certiorarified mandamus, to call for the records pertaining to the order dated 28.11.2011 made in R.C.No.1581/A.3/2011 on the file of the 2nd Respondent and quash the same consequentially direct the 1st respondent to dispose the statutory appeal dated 09.12.2011 filed by the petitioner.

For petitioner : Mr.B.Kumarasamy

For respondents : Mr.A.Kumar,
Special Government Pleader

ORDER

This writ petition has been filed praying for the issuance of a writ of certiorarified mandamus, to call for the records pertaining to the order dated 28.11.2011 made in R.C.No.1581/A.3/2011 on the file of the 2nd Respondent, to quash the same and consequently, direct the 1st respondent to dispose the statutory appeal dated 09.12.2011 filed by the petitioner.

2. The case of the petitioner is as follows:

(i) The petitioner was originally appointed as Secondary Grade Teacher on 03.10.1986 and posted at Panchayat Union Middle School, Kannaththeri of Magudanchavadi Union, Salem District, by proceedings of the District Educational Officer, Sankagiri, dated 03.10.1986 made in Na.Ka.No.11070/P2/86 and she was subsequently promoted as Headmistress and posted at Panchayat Union School, Kappaththranpatti of Nangavalli Union of Salem District, by proceedings of the 2nd respondent dated 06.07.2005 made in Na.Ka.No.3161/A3/2005. The Government of Tamil Nadu announced a scheme called "Sarva Shiksha Abiyan" to construct a resident school of needy people in the Panchayat Union Area and allotted funds to the Panchayat Union Area of Salem District, which was maintained by the Headmistress of the concerned School along with the President of Town Panchayat of the concerned Panchayat, in whose names a joint account was being operated. Under the said scheme, a sum of Rs.5,00,000/- was allotted on 28.05.2008 for the construction of residential school at Nangavalli Panchayat Union Middle School, Nangavalli Union, Salem District and Rs.10,00,000/- was allotted on 23.09.2008 and Rs.1,50,000/- was allotted on 18.05.2009. By using the said funds, a pacca residential school was constructed at Nangavalli Union of Salem District and it was opened on 28.06.2009 and the students are now studying in that school.

(ii) While so, the 2nd respondent, by proceedings No.Na.Ka.No.1581/A3/2010, dated 22.06.2010, issued 17(B) notice contemplated under the Tamil Nadu Civil Service (Disciplinary and Appeal) Rules 1955, alleging that the petitioner has misappropriated the funds allotted by the Government under the Scheme "Sarva Shiksha Abiyan Scheme Fund" to the Panchayat Union Middle School, Nangavalli Union, for which, the petitioner herein filed a detailed written reply before the 2nd respondent and a copy has also been marked to the 1st respondent also.

(iii) Based on the report sent by the 3rd respondent to the 2nd respondent, the 2nd respondent passed the impugned order, suspending the petitioner under Rule 17(e) of the Tamil Nadu Civil Services (Disciplinary and Appeal) Rules. After passing the impugned order, the petitioner filed an appeal before the first respondent as early as on 09.12.2011, seeking revocation of the suspension order, which was passed illegally and seeking subsistence allowance and dearness allowance for the suspension period as admissible under Fundamental Rules 53(1), but, till now, neither order has been passed on the said appeal nor subsistence allowance has been paid to the petitioner. Hence, the present writ petition has been filed.

3. The learned counsel appearing for the petitioner submitted that the petitioner has served unblemished service for the past 26 years and she has maintained the account for the expenditure incurred with regard to the construction of

residential school. Even though the appeal was filed in the year 2011, the petitioner has been kept under suspension for the past four years without even passing orders on the appeal filed by the petitioner and without paying the subsistence allowance. The learned counsel for the petitioner further submitted that the petitioner has maintained the account for the expenditure, but, the 2nd respondent passed the impugned order without perusing the same and without giving an opportunity to the petitioner. Therefore, the suspension order is to be revoked. As per the decision of the Apex Court in the case of Ajay Kumar Choudhary vs. Union of India through its Secretary and another passed in Civil Appeal No.1912 of 2015 dated 16.02.2015, the issuance of suspension order cannot be prolonged continuously for long time.

Therefore, the Authority has to pass a final order on the appeal filed by the petitioner, within a period of three months. In spite of the same, no order has been passed and no subsistence allowance has been paid to the petitioner. Therefore, he prayed for revoking the suspension order and also prayed for ordering subsistence allowance to be paid to the petitioner.

4. Counter has been filed by the second respondent.

5. The learned Special Government Pleader appearing for the respondents submitted that as per the letter dated 17.03.2010 received from the Supervisor, Nangavalli Block Resource Centre, the building constructed under the scheme was not electrified and compound wall was also not constructed. In the said letter, it is further alleged that a sum of Rs.1,50,000/- was drawn and utilized by the petitioner for her own use and deposited in the account after two months and also utilized the interest allotted by bank for the deposit of the above amount for her own use. He further submitted that the suspension order has been passed after calling explanation from the petitioner. However, no orders have been passed on the appeal so far and it would be passed within 15 days.

6. Heard both sides.

7. As rightly contended by the learned counsel for the petitioner, the authority should have passed orders on the appeal filed by the petitioner against the suspension order, within a period of three months, as per the Ajay Kumar Choudhary's case and further, the petitioner has been kept under suspension for the past four years without giving any subsistence allowance for the suspension period and without passing orders on the appeal filed by the petitioner.

8. Therefore, this Court directs the first respondent to pass orders, after taking into consideration the Judgment in the case of Ajay Kumar Choudhary vs. Union of India (cited

supra), within a period of 15 days from the date of receipt of a copy of this order. It is needless to say that the entire eligible subsistence allowance should be paid to the petitioner, within a period of 15 days from the date of receipt of a copy of this order.

9. With the above direction, the writ petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

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s/d-

Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

To

1. The Director,
Elementary School Education,
DPI Campus, College Road,
Chennai - 600 006.
2. The District Elementary School Officer,
Office of the District Elementary
School Office, Salem - 1.
3. The Assistant Elementary School Officer,
Office of the District Elementary
School Office, Salem - 1.

+ 1 cc to Mr.B.Kumarasamy, Advocate SR 30999

+ 1 cc to Govt.Pleader SR 31253

nm(co)
prk13/6

W.P.No.28645 of 2012

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