

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Order Reserved on : 01..04..2016
Order Pronounced on : 03..06..2016

CORAM

THE HONOURABLE Mr.JUSTICE S.NAGAMUTHU

Writ Petition No.22367 of 2002
and W.P.M.P.No.681 of 2008

The Management of Papanasam Labour
Welfare Association Higher Secondary School,
Rep. By its Secretary,
Vickramasingapuram. ... Petitioner

-versus-

1.The District Educational Officer,
Cheranmahadevi at Tirunelveli,
Tirunelveli District.

2.The Chief Educational Officer,
Tirunelveli, Tirunelveli District.

3.Joseph Dharmasekaran ... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari calling for the records of the 1st respondent relating to proceedings bearing No.Na.Ka.No.2881/A3/2096 dated 31.05.2002 and to quash the same.

For Petitioner : Mr.S.Jayaraman

For Respondents : Mr.P.Sanjai Gandhi,
AGP [Education] for R1 & R2
Mr.K.M.Vijayan,
Senior Counsel for
Mrs.R.T.Shyamala for R3

ORDER

The 3rd respondent was working as a Junior Assistant in the petitioner School, which is an aided school, governed by The Tamil Nadu Recognized Private Schools [Regulation] Act, 1973. In contemplation of certain charges relating to financial regularities, the Management of the School placed the 3rd respondent under suspension by order dated 20.07.2001 w.e.f.

21.07.2001. Challenging the said order of suspension, the 3rd respondent filed a writ petition in W.P.No.13541 of 2001 before this court. Initially, this court had passed an order of interim stay of the order of suspension. In pursuance of the same, the 3rd respondent joined duty on 06.08.2001. Finally, the said writ petition was disposed of by order dated 28.04.2003. Without going into the merits of the case, this court, simply issued a direction to the respondents therein to take into account the representations of the 3rd respondent herein and also after hearing him to dispose of the same on merits within a period of four weeks from the date of receipt of a copy of the said order. In pursuance of the said direction, the District Educational Officer, Cheranmahadevi, by his proceedings in Na.Ka.No.2881/A3/95 dated 31.05.2002 issued a direction to the school management to claim salary arrears for the 3rd respondent for the period between 12.03.1996 and 25.05.1996, that is, the period of suspension and also to continue to pay salary as per the revised scale of pay. Challenging the above said order, the management is now before this court with this writ petition.

2. It is brought to my notice, that pending the said writ petition, the school management issued a charge memorandum to the 3rd respondent on 20.07.2007, levelling as many as three charges. According to the first charge, as authorized by the school committee for the academic year 1998-99, the 3rd respondent collected a sum of Rs.49,450/- from the students towards special fees and tuition fees for English medium. But, without remitting the same in to the Government account, he misappropriated the said amount; the second charge was that in respect of the amount paid towards the retirement benefits to one former Teacher by name Sri.M.Navaneetha Krishnan, there was an audit objection, according to which, a sum of Rs.3,630/- had been paid in excess to Sr.Navaneetha Krishnan. Based on such audit objection, the said Sri.Navaneetha Krishnan paid Rs.3,630/- to the 3rd respondent so as to remit the same in to the government account. But, the 3rd respondent having collected the same from the retired employee, did not remit the same into the government account and thus misappropriated the same; and the third charge was that on 11.06.1998, the 3rd respondent received a cheque from the school management for a sum of Rs.11,00,00/- for the purpose of collection and paying the same to the teachers towards their four months salary for the month of July, 1997 to September, 1997. Having encashed the said amount from the State Bank of India, the 3rd respondent paid to the teachers only a sum of Rs.10,90,991/- and the 3rd respondent did not remit back the balance of Rs.9009/- to the management and misappropriated the same. But, the 3rd respondent, without submitting any explanation for the charges, asked for certain documents from the school committee. Though he was informed by the school committee permitting him to peruse the records, he did not turn up. Therefore, according to the management, he was

set ex parte and it was held that all the three charges had been proved against him. Based on the same, the school management has passed an order dated 06.08.2003 removing the 3rd respondent from service. The said order was communicated by the Secretary of the School Committee to the 3rd respondent. Challenging the said order of removal, he has come up with the writ petition in W.P.No.4436 of 2004.

3. We have heard the learned counsel for the petitioner; the learned senior counsel appearing for the 3rd respondent and the learned Additional Government Pleader appearing for the respondents 1 and 2 and also perused the records carefully.

4. The main ground upon which this writ petition has been filed is that without giving any notice to the petitioner/management and without hearing them, the first respondent has passed the impugned order. It is true, but, in my considered view, the failure of the 1st respondent to afford opportunity before passing the impugned order has not caused any prejudice to the management. This court, by order dated 25.02.2002 made in W.P.No.4953 of 2002 had directed the official respondents to pass appropriate order on the representation of the 3rd respondent wherein he had asked for regularization of his service from 12.03.1996 onwards as duty period. The DEO has found that since the 3rd respondent was reinstated in service and having found that the suspension itself was not proper, has directed regularization of service and he set aside the order of suspension and directed payment of salary arrears. I do not find any infirmity in the same warranting interference at the hands of this court. Further, today, this court has allowed the writ petition filed by the 3rd respondent herein in W.P.No.4436 of 2004 and has set aside the order of removal of the 3rd respondent from service. Therefore, the 3rd respondent is entitled for arrears of salary for the period of suspension and also to have the period of suspension regularized as duty period. Thus, I do not find any merit in the writ petition and the same deserves only to be dismissed.

5. In the result, the writ petition is dismissed. No costs. Consequently, connected WPMP is closed.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

kmk

To

1.The Chief Educational Officer,
Cheranmahadevi at Tirunelveli,
Tirunelveli District.

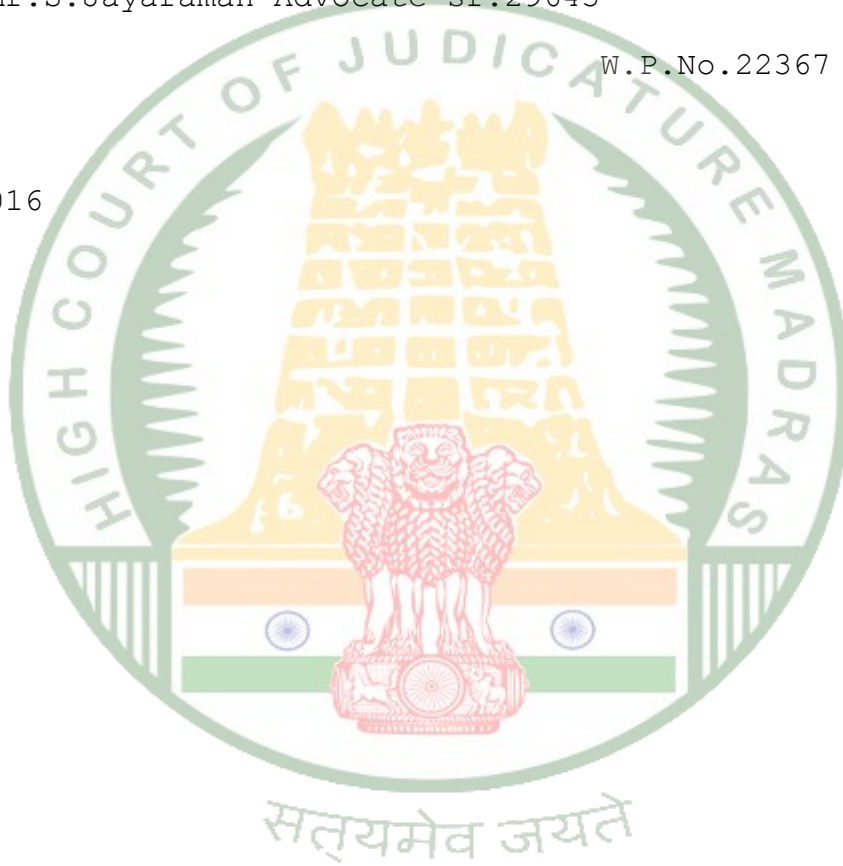
2.The District Educational Officer,
Cheranmahadevi at
Tirunelveli, Tirunelveli District.

+1 cc to Mrs.R.T.Shyamala Advocate sr.29641

+1 cc to Mr.S.Jayaraman Advocate sr.29643

W.P.No.22367 of 2002

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