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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 14.06.2016
CORAM :
THE HONOURABLE MR.JUSTICE **NOOTY.RAMAMOHANA RAO**
and
THE HONOURABLE MR.JUSTICE **S.S.SUNDAR**

Writ Appeal (MD) No.25 of 2016
& C.M.P(MD)No.127 of 2016

- 1.The Joint Director of Education,
College Road,
Chennai - 6.
 - 2.The Chief Educational Officer,
Thoothukudi District,
Thoothukudi.
- ... Appellants/Respondents

-Vs-.

- 1.E.Sankaranarayanan,
S/o.Eswaramoorthy,
Tamil Teacher,
6/23, Pottalurani,
Srivaikuntam Taluk,
Thoothukudi District.
 - 2.The Headmaster,
Government High School,
Sekaraikudi & Post,
Srivaikuntam Taluk,
Thoothukudi District.
- ... Respondent/Writ Petitioner
- ... Respondent/Respondent

Appeal filed under Clause 15 of Letters Patent praying to set aside the order dated 10.03.2015 in W.P.(MD)No.8546 of 2009.
Prayer in WP(MD)No.8546/2009:

Writ petition in filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus directing the respondents to regularized the service of the petitioner and pay the salary for the break up period from 01/11/2004 to 09/02/2007 and to grant such or further relief as this Honourable Court may deem fit.

For Appellants : Mr.VR.Shanmuganathan
Special Government Pleader
For Respondent 1 : Mr.T.Selvan

JUDGMENT

(Judgment of the Court was delivered
by **NOOTY.RAMAMOHANA RAO, J**)

This Writ Appeal is preferred by the Joint Director of Education and another, who are respondents 1 and 2 to the Writ Petition in turn came to be instituted seeking directions to the respondents to regularise the service of the writ petitioner and

to pay the salary for the break up period from 01.11.2004 upto 09th February, 2007.

2.The necessity to seek such relief has arisen in the following circumstances. The petitioner was working as a School Assistant in Tamil, in a particular Higher Secondary School, run by the Government at Senkottai in Tirunelveli District. He was unjustly placed under suspension on 09.11.2004 by the Chief Educational Officer of Thoothukudi District. That gave rise to the institution of W.P.(MD)No.3677 of 2004. On 25.11.2004 finding merit in the claim of the writ petitioner, this Court granted an interim direction and subsequently, the interim order was also made absolute on 15th February, 2005. When the writ petitioner sought to report to duty pursuant to the interlocutory order passed by this Court on 25.11.2004, he was not allowed to join the school/duty and only on 10th of January, 2005, an order revoking the order of suspension was passed. Simultaneously, the second respondent has also passed an order transferring the writ petitioner to another school at Ariyanayagipuram in Tirunelveli District. The choice of this school was such that the writ petitioner could never accomplish or perform his duties there inasmuch as there is no vacancy available at that school at Ariyanayagipuram. Consequently, the second respondent has recalled his earlier orders transferring the writ petitioner and passed another order on 20th May, 2005, cancelling the transfer order to Ariyanayagipuram, dated 10.01.2005 and this time around transferred the writ petitioner and posted him at a school at Senkottai. Once again, the writ petitioner has approached this Court by instituting W.P.(MD)No.6005 of 2005. On 26th July, 2005, an interim order was granted by this Court staying the order of transfer. In spite of the repeated representations submitted by the writ petitioner, no posting order was issued to the writ petitioner. On 5th February, 2007, the first respondent transferred the writ petitioner to the Government High School at Munneerpallam, Tirunelveli District. Promptly, the writ petitioner joined the service in the said school. Thus upto 05th February, 2007, it is the second respondent who dragged on the issue by not allowing the writ petitioner to function at one place or the other. The writ petitioner has shown his *bona fides* by promptly joining the last of those places pursuant to the order of transfer passed by the first respondent / first appellant herein on 05.02.2007. Thus, the period from 09.11.2004, upto 09th February, 2007, is required to be regularised. Since the writ petitioner is not at fault, in not being allowed to perform his duties and it is all because of one unsustainable order or the other passed by the second respondent / second appellant herein, the writ petitioner cannot be penalised. Hence, we see no merit in this Writ Appeal and accordingly, it is dismissed.

3.However, we hasten to add that liberty is preserved to the State Government to fix accountability for all these acts on the appropriate officer and recover the money from the said officer, more with a view to hold every one responsible for what he does



and also for what he does not do. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(AE)

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Sub Assistant Registrar

To

The Headmaster,
Government High School,
Sekaraikudi & Post,
Srivaikuntam Taluk,
Thoothukudi District.

+1cc to M/S.THE SPECIAL GOVERNMENT PLEADER, SR NO: 30585

+1cc to M/S.T.Selvan,Advocate, SR NO: 30280

SRM

JA-DB/29.06.2016/3P:4C

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