



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.04.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE S.S.SUNDAR

W.A(MD)No.648 of 2016
and
C.M.P(MD)No.4260 of 2016

Pettai Muslim High School,
Rep. By its Manager and Correspondent,
Kadayanallur,
Tenkasi Taluk,
Tirunelveli District. ... Appellant/2nd Respondent

Vs.

1.K.S.Basheer Ahamed ... 1st Respondent/Petitioner

2.The District Educational Officer,
Tenkasi,
Tirunelveli District. ... 2nd Respondent/1st Respondent

Prayer:- Writ Appeal is filed under Clause 15 of Letters Patent against the order, dated 01.04.2015 passed in Writ Petition(MD) No.8376 of 2008 on the file of this Court.

Prayer in WP(MD). 8376/ 2008 :

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, to call for the records of the 2nd respondents order dated 19/06/2008 to dismiss the petitioner from the service and quash the same and direct the resondnets to reinstate the petitionier in the 2nd respondent school as Junior assistant with all service and montary benefits.

For Appellant : Mr.M.P.Senthil

For R - 1 : Mr.Ananth C.Rajesh

For R - 2 : Mr.A.K.Baskara Pandian
Special Government Pleader

**JUDGMENT**

(Judgment of the Court was delivered by
S.MANIKUMAR, J.)

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Being aggrieved, Pettai Muslim High School, represented by its Manager and Correspondent, Kadayanallur, has filed the Writ Appeal quashing the order made in W.P(MD)No.8376 of 2008, dated 01.04.2015, by which the Writ Court has set aside the order of the appellant, terminating the services of the first respondent.

2. The appellant is a recognized private Higher Secondary school, but aid is being granted only upto Standard V. According to the appellant, with nominal fees on self-finance basis, School is running classes from Standard VI to XII and engaged teaching and other non-teaching staff.

3. Though the Writ Petition has been filed in the year 2008, challenging the order of termination, it came to be disposed of on 01.04.2015 and during the interregnum period, the first respondent, who was employed as a junior assistant, had attained the age of superannuation on 31.07.2014. Though there is no order for payment of backwages, the first respondent has now made a demand for Rs.14,00,000/- as backwages.

4. Inviting the attention of this Court to the acquittance register for payment of salary of teaching and non-teaching staff, Mr.M.P.Senthil, learned counsel appearing for the appellant submitted that before termination, the first respondent was paid only a sum of Rs.1,250/- per month. According to the learned counsel for the appellant, had the first respondent continued in service, he would have worked for the remaining period of 62 months and that the salary which he would have received, had he not been terminated, would be around Rs.77,500/-. He also added that teachers employed in the School were paid Rs.2,000/- only per month and that post of junior assistant was also not sanctioned. He further submitted that the demand made by the first respondent towards backwages, is exorbitant.

5. On the merits of the challenge, Mr.M.P.Senthil, learned counsel appearing for the appellant, submitted that Writ against an un-aided private school is not maintainable. The abovesaid contention cannot be countenanced in view of the Judgment of this Court in **A.Pavadai Vs. The Revenue Divisional Officer and others in W.P.No.37980 of 2003**. Material on record discloses that without issuing a charge-memo and without conducting an enquiry, the first respondent has been terminated. Courts have consistently held that if there is violation of principles of natural justice, writ can be entertained. Reference can be made to a decision of Full Bench



of this Court in **Marappan Vs. Deputy Registrar of Co-operative society**, reported in **2006(4) CTC 689**. Violation of principles of natural justice is *per se* apparent on the face of record. Therefore, we are not inclined to accept the contention of the appellant, as regards maintainability of the Writ Petition.

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6. The next contention raised by the learned counsel for the appellant is that when the Writ Court had only set aside the order of termination, dated 19.06.2008 and when there was no direction for backwages, taking advantage of the fact of the Writ is allowed, the first respondent has made a huge claim.

7. As we have already observed from the perusal of the acquittance register that during service, the first respondent has been paid only Rs.1,250/- per month along with other non-teaching staff.

8. Prayer in the Writ Petition is to set aside the order, dated 19.06.2008 of the Management and Correspondent, Pettai Muslim High School, Kadayanallur. The first respondent has also prayed for a direction to reinstate him in service with all attendant and monetary benefits. Ultimately, while setting aside the order, dated 19.06.2008, the Writ Court has ordered as hereunder:-

"In the result, the Writ Petition is allowed and the impugned order of the second respondent, dated 19.06.2008 is set aside."

9. Though the Writ Court has not stated, specifically about the entitlement for backwages, when the order of termination, dated 19.06.2008, is set aside, it should be construed that the first respondent is restored to original place ie., to the post of junior assistant and as a consequence thereof, he is eligible for backwages.

10. Now, the question is how much backwages should be paid. Considering the nature of institution, a self-financed institution from VI to XII and the quantum of payments made to teaching and non-teaching staff, both the learned counsel for the parties agreed that a sum of Rs.1,00,000/- be paid as full and final quit towards backwages, and other attendant benefits to the first respondent. Submission is placed on record.

11. Taking note of the financial constraint in mobilizing the aforesaid amount and payment in one lumpsum, Mr.M.P.Senthil, learned counsel appearing for the appellant submitted that permission be granted to pay the backwages in two equal installments, at Rs.50,000/- per installment. He further submitted that the first installment would be paid within eight weeks from



the date of receipt of a copy of this order and the second installment of Rs.50,000/- will be paid within a period of eight weeks thereafter.

12. Though Mr. Ananth C. Rajesh, learned counsel appearing for the first respondent, expressed difficulty in giving consent to the above said mode of payment, considering the plea of appellant, we deem it fit, it would be appropriate to permit the appellant-Pettai Muslim High School, represented by its Manager and Correspondent, Kadayanallur, to make the aforesaid payment in two equal installments. Accordingly, the appellant-Pettai Muslim High School, represented by its Manager and Correspondent, Kadayanallur, is directed to pay a sum of Rs.50,000/- to the first respondent, as first installment within a period of eight weeks from today and the second installment of Rs.50,000/- within eight weeks thereafter.

13. With the above directions, this Writ Appeal is disposed of. No costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-
Assistant Registrar (AE)

/True Copy/

Sub Assistant Registrar

ps
To
The District Educational Officer,
Tenkasi,
Tirunelveli District.

+1CC to Mr. Ananth C. Rajesh Advocate Sr.No.24027
+1CC to Mr. M. P. Senthil, Advocate Sr.No.24445
+1CC to Spl. Government Pleader Sr.No.24220

GJM/GSV/PM/19.5.16-4p-5C

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