



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :02.08.2016

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WEB COPY

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

W.P(MD) .No.12581 of 2013

and

M.P. (MD) .No.1 of 2013

S.Akbar Ali

.. Petitioner

Vs.

1.The Director of School Education,
Office of Directorate of School Education,
Chennai.

2.The Joint Director of School Education,
(Secondary) cum appeal,
College Road, Chennai.

3.The District Educational Officer,
Sivagangai,
Sivagangai District.

4.The Correspondent,
Ilayangudi Higher Secondary School,
Ilayangudi,
Sivagangai District.

..Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for the issuance of a Writ of Certiorarified Mandamus, to call for the records on the file of the 4th respondent pertaining to its proceedings in Na.Ka.No.1/A2/2004, dated 07.08.2005 and the consequential order passed by the second respondent pertaining to its appeal proceedings in Mu.Mu.No.100323/G2/E1/2003, dated 20.12.2011 and to quash the same and consequently direct the respondents to disburse and pay the monetary benefits to the petitioner with effect from 08.08.2005 to 31.01.2010 and to pay the pensionary benefits there from to the petitioner.

For petitioner : Mr.S.C.Herold Singh

For Respondent : Mr.Aayiram K Selvakumar

Additional Government Pleader

For RR 1 to 3

Mr.R.Devaraj, For R4

**ORDER**

This writ petition is filed for issuance of Certiorari Mandamus, to call for the records pertaining to its proceedings in Na.Ka.No.1/A2/2004, dated 07.08.2005 and the consequential order passed by the second respondent pertaining to its appeal proceedings in Mu.Mu.No.100323/G2/E1/2003, dated 20.12.2011 and to quash the same and consequently direct the respondents to disburse and pay the monetary benefits to the petitioner with effect from 08.08.2005 to 31.01.2010 and to pay the pensionary benefits there from to the petitioner.

2.The petitioner was appointed as Second Grade Teacher in a private school on 06.11.1978, and further appointed to another School as B.T. Assistant on 02.01.1980. Thereafter, the petitioner joined in the fourth respondent school on 04.06.1987 as Tamil Pandit. Thereafter, the petitioner was terminated from service by the fourth respondent by an order dated 10.02.2004. However, in the writ petition filed by the petitioner, in W.P.No.5396 of 2004, this Court has granted stay of the impugned order. Once again, the fourth respondent issued a charge memo on 03.07.2004 and based on the same the petitioner was again terminated from service by the fourth respondent, by an order dated 07.08.2005.

3.Though the petitioner challenged the said order of termination in W.P.(MD).No.9520 of 2005, unfortunately, this Court, even after finding that the provisions of Tamilnadu Recognised Private Schools (Regulation) Act, 1974, particularly, the provisions of the Act, namely, Section 21(2), 22 to 26 are not applicable to minority institutions, dismissed the writ petition by order dated 07.07.2011, on the ground that the petitioner has an alternative statutory remedy as against the order of termination. Thereafter, it appears that the petitioner has approached the Appellate Authority namely the second respondent as against the order of termination dated 07.08.2005. The Appellate Authority has passed the impugned order dated 20.12.2011, stating that the appeal against the order of termination is not maintainable, as the fourth respondent is a minority institution, relying upon some of the judgments of this Court regarding the inapplicability of the relevant provisions under the Tamilnadu Recognised Private Schools (Regulation) Act, 1974, for filing appeal. It is not in dispute that the order of the second respondent is perfectly in order and that no appeal is maintainable as provided under Section 22 of Tamilnadu Recognised Private Schools (Regulation) Act, 1974, in respect of minority institutions. Since the appeal is not maintainable, I have no hesitation, but to concur with the view expressed by the second respondent.



4. The learned counsel for the petitioner referred to the judgement of this Court in W.P.(MD)No.9520 of 2005 dated 07.07.2011 and contended that the appeal which has been filed, pursuant to the direction of this Court, to the petitioner to seek remedy, only by way of an appeal, the impugned order is not sustainable. It is conceded before this Court that the judgment of this Court made in W.P.(MD)No.9520 of 2005 is contrary to the settled position of law and to the judgments of this Court as well as the Hon'ble Supreme Court. Now, the appeal is dismissed only on the ground of lack of jurisdiction to entertain the appeal.

5. The learned counsel appearing for the fourth respondent made a submission that the order was passed long back and that no direction can be given for re-opening the issue. He further submitted that the petitioner may be given liberty to approach the Labour court to work out his remedy.

6. I have heard the submissions of both counsels and perused the materials available on record.

7. Considering the rival submissions of the learned counsel for the petitioner as well as the respondent, I am of the view that the order passed by this Court in W.P.(MD)No.9520 of 2005, directing the petitioner to avail alternative remedy is not in tune with the declaration of law that the provisions relating to filing of appeal are not applicable to minority institutions. This cannot be faulted.

8. The order impugned in the present writ petition was passed accepting lack of jurisdiction, as settled earlier by this Court. The petitioner ought to have filed an appeal as against the judgement in W.P.(MD)No.9520 of 2005 dated 07.07.2011. Though the petitioner has taken considerable time in filing the appeal and the present writ petition, he is entitled to exclude the time taken by him pursuing alternative remedy on the basis of the direction issued by this Court in W.P.(MD)No.9520 of 2005.

9. Hence, the writ petition is dismissed. However liberty is given to the petitioner to seek remedy by way of preferring an appeal against the order dated 07.07.2011 in W.P.(MD).No.9520 of 2015. Consequently, connected miscellaneous petition is closed. No Costs.

sd/-

Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar



PJL

To

1.The Director of School Education,
Office of Directorate of School Education,
Chennai.

2.The Joint Director of School Education,
(Secondary) cum appeal,
College Road, Chennai.

3.The District Educational Officer,
Sivagangai,Sivagangai District.

+1CC to Mr.S.C.Herold Singh, Advocate Sr.No.41373

+1CC to Mr.R.Devaraj, Advocate Sr.No.41578

GJM/SS2/15.9.16-2p-6c

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