

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :07.09.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

W.P.No.15899 of 2011

and

M.P.No.1 of 2011

Tmt.K.Kanchana ... Petitioner

Vs

1.The Director of Elementary Education,
College Road,
Chennai - 600 006.

2.The District Elementary Educational Officer,
Kancheepuram.

3.The Additional Assistant Elementary Educational Officer,
Kancheepuram.

4.Sri Krishna Aided Middle School,
Rep by its Correspondent Mr.Rajagopal,
92-92A, South Mada Street,
Little Kancheepuram,
Kancheepuram.

Respondents

Prayer: Writ Petition filed under Article 226 of the
Constitution of India to issue a Writ of Certiorari, to call
for the records made in the impugned order dated 27.01.2011, on
the file of the fourth respondent and quash the same.

For Petitioner :M/s.S.N.Ravichandran

For Respondents :Mr.R.Govindasamy
Special Government Pleader
for R1 to R3
Mr.S.V.Rama Murthy for R4

ORDER

The Writ Petition is filed challenging the order of the fourth respondent dated 27.01.2011, in and by which, it is stated that instead of submitting reply and explanation for the Final Memo dated 23.12.2010, the petitioner has submitted a reply dated 27.12.2010, which was not accepted by the fourth respondent. Therefore, as stated in the Final Memo dated 23.12.2010, annual increment was stopped and the same was recorded in the service register of the petitioner and the same was also informed by the respondent Department to the petitioner.

2. The case of the petitioner is that the 4th respondent school was started as a Primary school by one C.Kalyanakodi Sundara Varadachari in 1931 and upgraded as middle school in 1955 which was managed by him. Subsequently, his son Narasimhachari and thereafter Parthasarathi Iyengar managed the school. In 1985 the management was transferred to the present Correspondent who worked as Teacher and retired as Headmaster on 31.05.2007.

3. The petitioner also states that she is working as a Teacher in the 4th respondent school in the sanctioned permanent post since 25.10.1999 and her appointment was duly approved by the educational authorities with effect from the date of her appointment. The petitioner further states that there are 16 Teachers post vacant in the school including one Headmaster. The Correspondent of the 4th respondent school had demanded money from the petitioner and other 15 Teachers for the approval of their appointment from the education authorities to a sum of Rs.3.5 lakhs, as calculated. Further, every month 10% of salary of all the Teachers have been deducted by the 4th respondent and all D.A arrears, Provident Fund, Loan amount, Encasement of surrender leave and any Pay Commission Arrears, the 4th respondent deducted 10% to 50% of the same from every Teacher. When it was objected to the same, the 4th respondent/Correspondent threatened all the teachers with dire consequences including issuing the order of termination. Therefore, due to the family circumstances, the petitioner and 15 Teachers were not raise out voice against the 4th respondent.

4. The petitioner also states that all the women Teachers were subjected to sexual harassment by the 4th respondent to promote his daughter as Headmistress of the school. He forced two eligible teachers to submit letter of relinquishment of their promotion, at the time of appointment itself and furthermore he obtained all their original educational and technical certificates and service registers to

prevent them to do their further studies. The petitioner further submitted that due to unbearable and untold sufferings and since it crossed the level of tolerance, they were made several representations to the authorities and on the intervention of the Human Rights Commission (Non Governmental Organisation) and based on their complaint dated 31.12.2009, the 3rd respondent visited the school on 31.12.2009 and on enquiry, the 3rd respondent forwarded the report to the Director of Elementary Education enclosing their complaint. Thereafter, the Teachers made complaint to the Deputy Superintendent of Police on 04.01.2010 against the Correspondent Thiru.Rajagopal and his daughter Tmt.Sudha, Headmistress in-charge of the school. On the basis of the police complaint, B2 Vishnu Kanchi Police Station registered a First Information Report against the Correspondent and his daughter under Sections 294(b), 354, 501 (1) and 109 I.P.C and later on, charge sheet was also framed against the fourth respondent and his daughter. Therefore, the respondents 2 and 3 visited the school on 04.01.2010 and conducted an enquiry. After conducting a spot enquiry, the 2nd respondent by proceedings in Mu.Mu.No.0002/B4/2010 dated 04.01.2010, passed the order of direct payment. As against the order of direct payment, the 4th respondent filed a writ petition in W.P.No.1538 of 2010 and obtained an order of stay.

5. The petitioner and others have sent a representation dated 11.05.2010 to the 1st respondent and the respondents 2 and 3 by registered posts including the Chief Minister Cell and the Minister of Education, requesting to take appropriate action against the Correspondent and the Headmistress in-charge of the 4th respondent school for committing sexual harassment and further requested to protect the education of the children and employment of the teachers and to take over the school by the Government, but no action was taken. Therefore all the teachers were constrained to approach this Court by filing a writ petition in W.P.No.11059 of 2010 and this Court by an order dated 27.05.2010 made in M.P.No.4 of 2010, directed the committee which is constituted by the Government as per Visaka Case, to conduct enquiry with regard to sexual harassment in the working place, on the basis of their complaint dated 31.12.2009 and 11.05.2010 and directed to submit report within three months. The committee also stated that on due enquiry it is found that the petitioner and other 15 teachers grievances and complaints are true and submitted a report accordingly.

6. The 4th respondent and the Headmistress had distributed more than 300 transfer certificates to the students to reduce strength of students to one way or other to close the school or send the teachers from out of employment. Further,

the 4th respondent/Correspondent school had taken all their original educational and technical certificates and service registers and refused to return the same and they also taken action through department also proved futile.

7. It is further stated that as against the 4th respondent/Correspondent a criminal case in Crime No.6 of 2010 was registered on the ground of moral turpitude and as per rule 12(5)(c) of the Tamil Nadu Private Schools Regulations Act 1973, he could not continue as a Correspondent of the 4th respondent school. As against the Headmistress in-charge also, a criminal case is registered and as per rule 16 of the Tamil Nadu Private Schools Regulations Act 1973 and the code of conduct of the teachers, the educational authorities have failed to take action. In the mean time, the charge memo dated 16.09.2010 were issued to all the 15 teachers. The explanation was also given by the petitioner on 22.09.2010. Again this was followed by a memo dated 23.12.2010 proposing punishment of stoppage of increment for two years with cumulative effect, reply for the same was given by the petitioner on 27.12.2010, but without considering the same, the 4th respondent passed the impugned order of punishment of stoppage of increment without even mentioning the periods. The manner in which the charges were framed, the explanations were rejected, the show cause notice was issued and the final order of punishment was passed, the entire act was done by the 4th respondent is bad. Challenging the said order, the present writ petition has been filed.

8. A counter affidavit has been filed by the 4th respondent/Correspondent and he denied the the entire allegations set out in the affidavit and the complaint given by the petitioner and other teachers is totally against the interest of the school.

9. The 4th respondent also states that it is admitted fact that the case has been registered in Crime No.6 of 2010, but without giving any opportunity to the 4th respondent teachers namely Headmistress, the Criminal case was lodged. Challenging the said crime No.6 of 2010, the petitioner has moved this Court and obtained an order of interim stay since, the District Elementary Educational Officer, has enquired the teachers only but not giving any opportunity to the 4th respondent.

10. The 4th respondent also states that the maintenance of the school is done out of the own fund of the 4th respondent and hence the show cause notice was issued. But, the petitioner and other teachers have not given any reply to the

show cause notice. The 4th respondent passed the final order dated 27.10.2011 by passing order of punishment the increment of two years were cut off and also informed the petitioner stating that the same would be endorsed in the teachers service register and the same would be informed to the Educational Department Officers. Therefore, the 4th respondent says that the order under challenge does not warrant any interference by this court.

11. I heard Mr.S.N.Ravichandran, learned counsel appearing for the petitioner and Mr.R.Govindasamy, Special Government Pleader, for respondents 1 to 3 and Mr.S.V.Rama Murthy for 4th respondent.

12. Today, when the matter is taken up, the Special Government Pleader has produced the memo dated 10.12.2012, which states that based on the request made by the petitioner and other teachers, direct payment and increment was ordered and directed the Additional Assistant Elementary Officer to pay the increments from 2010. Accordingly, the Additional Assistant Elementary Educational Officer also paid the increment. To that effect, the document was also produced by the learned Special Government Pleader. Therefore, he prayed that the impugned order passed by the 4th respondent is against the law. Therefore, the Special Government Pleader is supporting the petitioner's case.

13. Admittedly, the endorsement made by the 4th respondent in the service register is totally against the law. Since as per the proceedings of the District Elementary Educational Officer order dated 10.12.2012, the petitioner and other teachers salary and the increment were permitted to be given from 2010 onwards and accordingly, the same was given to this petitioner and other 15 teachers. Therefore, as per the orders of the District Elementary Educational Officer and subsequent order of Additional Elementary Education Officer, in respect of payment of increment to the petitioner and the other teachers and the endorsement made by the 4th respondent by way of the impugned order is totally illegal and without non application of mind. Therefore, when the two earlier increment was granted by the 2nd respondent dated 04.01.2010 and paid to the petitioner and other teachers which is against the order passed by the fourth respondent dated 27.01.2011 and the endorsement also made in the service register is totally not maintainable. Therefore, this Court is of the view that the order passed by the 4th respondent dated 27.01.2011 i.e., an endorsement to the service register warrants interference. Accordingly, the same is liable to be set aside.

14. Considering the facts and circumstances of the case,

I am inclined to allow this writ petition by setting aside the order dated 27.01.2011. Accordingly, the Writ Petition is allowed and the order of 4th respondent dated 27.01.2011 is liable to be set aside.

15. In the result,

(a) The writ petition is allowed and the impugned order dated 27.01.2011 is set aside;

(b) The 4th respondent is hereby directed to remove the endorsement made in the petitioner's Service Register;

(c) The 4th respondent should complete the said exercise within a period of four weeks from the date of receipt of a copy of this order. Consequently, connected miscellaneous petition is closed.

-Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar

To

1.The Director of Elementary Education,
College Road,
Nungambakkam,
Chennai - 600 006.

2.The District Elementary Educational Officer,
Kancheepuram.

3.The Additional Assistant Elementary Educational Officer,
Kancheepuram.

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Little Kancheepuram,
Kancheepuram.

+ 1 cc to Mr.S.N.Ravichandran, Advocate Sr.No.65581
+ 1 cc to The Government Pleader, Sr.No.65418

W.P.No.15899 of 2011

CO(AD)
RRI 28/10/2017



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