

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.09.2017

CORAM

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

W.P.No.23169 of 2012
and M.P.Nos.1 & 2 of 2012

V.Subramanian

.. Petitioner

vs

1.Secretary to Government,
Government of Tamil Nadu,
School Education (B2) Department,
Fort St. George,
Chennai - 600 009.

2.Director of School Education,
(Elementary Education),
DPI Compound, College Road,
Chennai - 600 006.

3.Principal Accountant General of Tamil Nadu,
361, Anna Salai,
Chennai - 600 018.

4.The Correspondent,
Neelakonda Hindu Elementary School,
Pathai (via) Kalakadu Saragam,
Tirunelveli District,
Pin - 627 501

.. Respondents

(Respondent No.4 impleaded as per the
order dated 05.02.2013 in M.P.No.1 of 2013)

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a writ of Certiorarified Mandamus calling for the records from the first respondent relating to the impugned order bearing G.O.(2D)No.11, School Education (B2) Department, dated 11.03.2010 and quash the order dated 11.03.2010 and direct the respondents 1 to 4 to pay the petitioner the back wages based on the revised scale of pay with effect from 19.10.1993 to 30.12.1999 which comes to Rs.8 lakhs with interest at the rate of 12% per annum till the date of disbursement and award cost.

For Petitioner : Mr.S.Ayyathurai

For Respondents :Mr.R.Govindasamy (for R1 & R2)
Special Government Pleader

M/s.Hema Muralikrishnan (for
R3)

No Appearance (for R4)

ORDER

This writ petition has been filed seeking issuance of a writ of Certiorarified Mandamus to call for the records from the first respondent relating to the impugned order bearing G.O.(2D) No.11, School Education (B2) Department, dated 11.3.2010, to quash the same and to direct respondents 1 to 4 to pay the petitioner the backwages based on the revised scale of pay with effect from 19.10.1993 to 30.12.1999 which comes to Rs.8 lakhs with interest at the rate of 12% per annum till the date of disbursement.

2. The facts in a nutshell are as under:

The petitioner was working as Secondary Grade Teacher in Neelakandan Hindu Elementary School, Pathai Kalakkad Range, Tirunelveli District, which is an aided school from 21.10.1961 and he was discharging his duties diligently. While so, the management placed the petitioner under suspension with effect from 23.11.1990 and dismissed from service on 06.08.1992.

3. Aggrieved by the order of dismissal, the petitioner filed an appeal to the Chief Educational Officer, Tirunelveli and the Chief Educational Officer, by an order dated 18.10.1993, set aside the order of dismissal and directed reinstatement with continuity of service and backwages to be paid by the management themselves without aid from the Government.

4. Aggrieved by the order of the Chief Educational Officer, the management had filed an appeal before the Educational Tribunal (Principal Sub Court), Tirunelveli. The Appellate Tribunal, by its order dated 18.07.1995, modified the order of the Chief Educational Officer by ordering stoppage of one increment for one year and directing payment of backwages by the authority, as usual, in vogue for the relevant period by the Government.

5. Against the order of the Appellate Tribunal, the management had filed writ petition, being W.P.No.14596 of 1995.

This Court, vide order dated 25.02.1997, granted interim stay subject to the condition that the management pays salary to the petitioner from 01.02.1997 onwards pending disposal of the writ petition. Thereafter, the writ petition was dismissed for default on 13.09.2002 and the order of Appellate Tribunal had become final.

6. On 28.12.1999, the second respondent reinstated the petitioner and transferred him along with the post to the Hindu Middle School, Mavadi, Kalakkadu Range, Tirunelveli District. The petitioner joined in the said school on 31.12.1999 and worked up to 31.05.2000 and retired from service on the said date.

7. The case of the petitioner is that since he was not paid any backwages and pension after retirement, he sent a petition to the District Collector, Tirunelveli for backwages and pension. During enquiry before the District Collector, the District Educational Officer appeared and stated that the Government alone had to pass an order for payment of backwages and he had recommended to the Government for the same. Since no order has been received from the Government, the petitioner approached the Tamil Nadu State Legal Services Authority for legal assistance and the Tamil Nadu State Legal Services Authority referred the petitioner's petition to the Lok Adalat. According to the petitioner, before the Lok Adalat, the Government dragged the matter for five years and during pendency of the petition before the Lok Adalat, the first respondent hurriedly passed the impugned order. Thereafter, when the petition came up before the Lok Adalat, the second respondent appeared and filed his remarks stating that salary could not be paid for the period from 19.10.1993 to 30.12.1999.

8. Further case of the petitioner is that as per the interim order in W.P.No.14596 of 1995, he was paid salary for 18 months. Moreover, during pendency of the aforesaid writ petition, the petitioner's pay scale were revised on the basis of IV Pay Commission and V Pay Commission, but he was not paid the salary based on the revised pay scale. According to the petitioner, he is entitled to get salary for the period from 19.10.1993 to 30.12.1999 on the basis of the revised pay scales.

9. According to the petitioner, pension has been fixed and paid based on the revised scale of pay. Thereafter, taking note of the receipt of payment, Lok Adalat closed the case by an order dated 05.07.2011. Since the issue of backwages was not settled, the petitioner filed another petition before the Lok Adalat. The Lok Adalat closed the case of the petitioner, however, directed the petitioner to approach the concerned Court for contempt, if the order of this Court has not been complied

with. Aggrieved by the order of the first respondent, denying backwages for the period from 19.10.1993 to 30.12.1999, the petitioner has filed the present writ petition.

10. Denying the averments in the writ petition, the second respondent filed the counter stating that under Section 17(3) (iii) of the Tamil Nadu Recognised Private Schools (Regulation) Act (hereinafter referred to as "the said Act"), if the dismissal is held irregular by the Appellate Authority, the management of the school should reinstate the teacher with all backwages for the period of dismissal within one month from the date of the order of the Appellate Authority, failing which apart from resumption of the post, recognition shall be withdrawn. Therefore, it is obvious that payment of salary for the dismissal period is to be paid by the management and the term "as usual in vogue by the authority paying the amount" as found in the order of the Tribunal, denotes the management of the school and not the Government, and, therefore, no fault could be attributed to the Government. It is further averred in the counter that for the illegal order of dismissal by the management of the school, there is no provision to penalise the Government to pay the salaries for the dismissal period.

11. The case of the second respondent is that the Secretary of the School Committee alone could reinstate the petitioner and the respondent Government is not conferred with power to reinstate a teacher of a private school who was placed under suspension or dismissal from service. Since W.P.No.14596 of 1995 was dismissed for default, the petitioner is not entitled to any salary in the revised scale of pay. Since the Government had not suspended/dismissed the petitioner from service, the petitioner had to claim the salary only from the management of the school as per usual manner in vogue as specified in Section 17(3)(iii) of the said Act. According to the second respondent, in the impugned order, the Government treated the unemployed period from 06.08.1992 till 18.10.1993, the day on which the Chief Educational Officer cancelled the order dismissing the petitioner from service and the period of non-duty from 19.10.1993 to 30.12.1999 shall be counted as duty without claiming any arrears from the Government only for the purpose of receiving pensionary benefits. Since the Government had not placed the petitioner under suspension and had not dismissed the petitioner from service, the impugned order is legal and valid. Therefore, the respondent No.2 prays for dismissal of the petition.

12. I heard Mr.S.Ayyathurai, learned counsel appearing for the petitioner; Mr.R.Govindasamy, learned Special Government Pleader appearing for respondents 1 and 2; Ms.Hema Muralikrishnan, learned counsel appearing for the 3rd respondent

and there is no representation for the 4th respondent and perused the records.

13. The learned counsel for the petitioner submits that in all fairness the Government should have passed orders ordering payment of backwages, instead, the Government had passed the impugned order denying backwages. He would further submit that the action of the Government in passing the order impugned amounts to nullifying the order of this Court in W.P.No.14596 of 1995 dated 13.09.2002, which confirmed the order of the Tribunal for payment of backwages by the Government. Learned counsel further submits that the first respondent while passing the impugned order had considered only the letters of the second respondent dated 04.01.2006 and 27.03.2007 and not the letter of the second respondent dated 07.07.2008 wherein he has recommended compliance with the order of the Tribunal for payment of backwages. Therefore, the impugned order suffers from non-application of mind.

14. The learned Special Government Pleader appearing for respondents 1 and 2 submitted that order of dismissal was passed by the Secretary of the School Committee and not the Government. He would submit that as per the provisions of the said Act, which is in vogue, the management of the school is under obligation to reinstate the petitioner with all backwages and the management of the school alone is the authority to pay backwages for the period of dismissal. Therefore, the impugned order is legally valid and prays for upholding of the same.

15. There is no dispute with regard to the following aspects:

- (i) Suspension of the petitioner with effect from 23.11.1990
- (ii) Dismissal from service on 06.08.1992.
- (iii) Appeal before the Chief Educational Officer, Tirunelveli by the petitioner against the order of dismissal and the Chief Educational Officer, by an order dated 18.10.1993, set aside the order of dismissal and directed reinstatement of the petitioner with continuity of service and backwages.
- (iv) The school management had filed an appeal against the order of the Chief Educational Officer, Tirunelveli, before the Principal Sub Court, Tirunelveli (Educational Tribunal) and the Tribunal by its order dated 18.07.1995, modified the order of the Chief Educational Officer, Tirunelveli, by ordering stoppage of one year increment only in the ensuing increment and directing

payment of backwages by the authority paying the amount as usual in vogue for the relevant period.

(v) Against the order of the Tribunal, the school management filed W.P.No.14596 of 1995 before the High Court, wherein by an interim order dated 25.02.1997, the High Court granted interim stay of the order of the Tribunal on condition that the writ petitioner (school management) therein to pay the salary to the petitioner herein from 01.02.1997 onwards.

(vi) W.P.No.14596 of 1995 was dismissed for default on 13.09.2002.

(vii) The petitioner was reinstated as per the order of the Director of School Education (Elementary) and transferred along with the post to the Hindu Middle School, Mavadi, Kalakkadu Range, Tirunelveli District.

(viii) Petitioner joined in the Hindu Middle School, Mavadi, Kalakkadu Range, Tirunelveli District on 31.12.1999 and worked and retired from service on 31.05.2000.

16. It is pertinent to point out that as against the order of the Educational Tribunal in C.M.A.No.1 of 1994, the Chief Educational Officer, Tirunelveli, had not filed any writ petition.

17. It appears that despite receipt of notice in the present writ petition, the fourth respondent school had failed to appear before this Court. Further, the fourth respondent school allowed the writ petition (W.P.No.14596 of 1995) filed by them to be dismissed on 13.09.2002 for default.

18. In the letter dated 28.10.2005 addressed by the District Elementary Educational Officer, Tirunelveli to the Director of Elementary Education, Chennai, it has been stated that the period of dismissal from 06.08.1992 to 30.12.1999 has to be regularised and Government Order to pay salaries for the above said period has to be obtained. Thereafter, on 03.06.2008, the Joint Secretary to Government addressed a letter to the Director of Elementary Education, wherein it has been stated that the individual is eligible for payment of all amounts as usual for the period stated in the proceedings of Chief Educational Officer, dated 18.10.1993. Therefore, the said period of dismissal, stated in the proceedings of Chief Educational Officer cannot be treated as leave without pay.

19. From the above, it is clear that the Government accepted

its liability to pay backwages by stating that the period of dismissal cannot be treated as leave without pay and directed the Director of Elementary Education to examine the case and send his report.

20. Accordingly, on 07.07.2008, the second respondent/Director of Elementary Education has sent a report to the Secretary, School Education Department. The said report reads as follows:

"With reference to the Government letter cited I submit herewith the report as follows:

The Educational Tribunal of the Private School (Principal Subordinate Judge, Tirunelveli) has passed order on 18.7.95 in C.M.A.No.1/94 as follows:-

"In the result, the order of the 1st respondent is set aside without cost and the order in respect of salary and all amounts to the 2nd respondent for the period stated in the order of 1st respondent is ordered to be paid as usual in vogue by authority paying the amount and the sentence imposed by the appellant modified by ordering the stoppage of one year increment in the ensuing increment."

Upto 1995 the posts of District Elementary Educational Officers were not formed and the respective Chief Educational Officers were designated as Appellate Authority in respect of the Appeals made by the aggrieved Teachers or Managers. In the month of January 95 the District Elementary Educational Officers were newly formed and the powers vested with the Chief Educational Officers have been transferred to District Elementary Educational Officers.

The Educational Tribunal has passed orders to the effect that the salary for the period from 6.8.92 to 30.12.99 have to be paid by the competent authority paying the amount. It seems that the Chief Educational Officer has not challenged the orders of the Tribunal till date. If the Chief Educational Officer had challenged the orders in the appropriate court and obtained stay orders against the orders of the Tribunal, the present situation would have been avoided.

Normally, no salary is payable for the period for which the individual has not served. Even the pension is payable only for the

services rendered by the Government servant or a teacher in a sanctioned post and the salary should have been paid from the consolidated fund of the Government of Tamil Nadu.

In this case, in the absence of challenging the orders of the Tribunal and not setting aside the orders, there is no other go except to comply with the orders of this Educational Tribunal.

It is not possible in the appeal against the orders of the Tribunal now as the delay for condonation for appeal is more than 13 years. In the above circumstances, the order passed by the Tribunal may be implemented.

Therefore, it is submitted that in view of the pendency of the case in the Lok Adalat, and the Lok Adalat is pressing for settlement of arrears in terms of the judgment passed by the Educational Tribunal, I request the Government may kindly pass suitable orders in this regard in order to comply with the orders of the Educational Tribunal as the case is posted on 3.7.2008 for hearing." (emphasis supplied)

21. Consequent to the same, after participating in the Lok Adalat proceedings, the issue was dragged for several years, and on 11.03.2010, the first respondent had passed the impugned order, regularising the period from 19.10.1993 to 30.12.1999 for pensionary benefits alone, however, declined backwages.

22. It is seen that while passing the impugned order, the first respondent has not considered the letter of the second respondent dated 07.07.2008 (supra), wherein the second respondent has recommended compliance with the order of the Tribunal for payment of backwages. Therefore, it is to be presumed that the first respondent has passed the impugned order without application of mind and on that score, the impugned order suffers with regard to denial of backwages.

23. As rightly pointed out by the learned counsel for the petitioner, the action of the Government in passing the impugned order amounts to setting aside the order of this Court in W.P.No.14596 of 1995. It appears that based on the interim order granted in W.P.No.14596 of 1995, the petitioner was paid salary from 07.05.1997 to 02.11.1998. The said fact has not been denied by the first respondent.

24. The main contention of the first respondent is that the fourth respondent school alone has to pay the backwages and the Government is not the authority to pay backwages as claimed by

the petitioner. As stated supra, the impugned order has been passed by the first respondent without application of mind and without considering the relevant facts. Hence, the impugned order is liable to be quashed and as such the petitioner is entitled to get backwages for the period 19.10.1993 to 30.12.1999.

25. Now coming to the point, as to who is liable to pay the backwages, it is to be noted that the petitioner retired from service way back on 31.05.2000. Thereafter, the petitioner addressed several letters to the Government authorities seeking backwages. Since the petitioner has been denied with backwages by the impugned order, he has filed the present writ petition on 21.08.2012. The Government authorities after taking so many adjournments, finally filed the counter on 06.09.2017 nearly after 5 years. It is seen that at the time of filing of the writ petition, the petitioner was aged 70 years. Now the petitioner is aged 75 years. The fourth respondent school though served, had not entered appearance either knowingly or unknowingly. The petitioner has been dragged from pillar to post. In this situation, considering the age of the petitioner and the facts and circumstances of the case, it is appropriate to direct the first respondent to first pay the backwages for the period from 19.10.1993 to 31.12.1999 to the petitioner and then recover the same from the fourth respondent school.

26. In the result:

(a) the writ petition is allowed and the impugned order bearing G.O.(2D) No.11, School Education (B2) Department, dated 11.03.2010, with regard to denial of payment of backwages is set aside;

(b) the first respondent is directed to pay the backwages with interest at the rate of 6% per annum for the period from 19.10.1993 to 31.12.1999 to the petitioner within a period of twelve weeks from the date of receipt of a copy of this order;

(c) the first respondent is given liberty to recover the amount paid to the petitioner from the fourth respondent school. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

vs

To

1.The Secretary to Government,
Government of Tamil Nadu,
School Education (B2) Department,
Fort St. George, Chennai - 600 009.

2.The Director of School Education,
(Elementary Education),
DPI Compound, College Road,
Chennai - 600 006.

3.The Principal Accountant General of Tamil Nadu,
361, Anna Salai,
Chennai - 600 018.

Copy to:

The Correspondent,
Neelakonda Hindu Elementary School,
Pathai (via) Kalakadu Saragam,
Tirunelveli District, Pin - 627 501.

+1cc to Ms.Hema MuraliKrishnan, Advocate, S.R.No.64712

+1cc to Mr.S.Ayyathurai, Advocate, S.R.No.64358

+1cc to the Government Pleader, S.R.No.64947

W.P.No.23169 of 2012
and M.P.Nos.1 & 2 of 2012

RRK(03/01/2018)

सत्यमेव जयते
WEB COPY