

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.08.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

W.P.No.25078 of 2003 and W.M.P.No.30847 of 2003

W.P.No.41208 of 2006 and W.M.P.No.1 of 2006

G.Jean Devakirubai
of 2003

.. Petitioner in W.P.No.25078

Vs.

1. The District Elementary
Educational Officer,
Kancheepuram.

2. The Assistant Elementary
Educational Officer,
Madurantakam,
Kancheepuram District.

3. Church of South India Primary and Middle School,
represented by its Correspondent
Karunguzhi,
Madurantakam Union,
Kancheepuram District.

.. Respondents in W.P.No.25078 of 2003

AND

G.Jean Devakirubai

.. Petitioner in W.P.No.41208 of 2006

Vs.

1. The District Elementary
Educational Officer, Kancheepuram
Kancheepuram District.

2. The Assistant Elementary
Educational Officer,
Madurantakam,
Kancheepuram District.

3. Church of South India Middle School,
represented by its Correspondent,
Karunguzhi,

Madurantakkam Union,
Kancheepuram District.

.. Respondents in W.P.No.41208 of 2006

Prayer in W.P.No.25078 of 2003 : Writ Petition has been filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus to call for the records comprised in the proceedings of the 1st respondent in his Rc.No.1120/A3/2000 dated 14.08.2003 and that of the 3rd respondent in his Letter No.141/2003 dated 19.08.2003, and to quash the proceedings of the 1st and 3rd respondents dated 14.08.2003 and 19.08.2003 respectively and consequently forbearing the respondents from recovering the salary already paid to the petitioner as a Secondary Grade Teacher for the services rendered by her.

Prayer in W.P.No.41208 of 2006 : Writ Petition has been filed under Article 226 of the Constitution of India for issuance of a Writ of Certioarified Mandamus to call for the records of the third respondent herein dated 05.10.2004 and quash the same and consequently directing the third respondent herein to reinstate the petitioner in service as Secondary Grade Assistant in the third respondent school, viz., Church of South India Middle School, Karunkuzhi, Kancheepuram District with all attendant monetary benefits and to permit the petitioner to continue in service as Second Grade Assistant, till the finality is reached in the criminal proceedings by the competent criminal court.

For the petitioner in both WPs. : Mr.T.Senthil Kumar
For the respondents 1 & 2 in both WPs. :

M/s K.Bhuvaneswari
Government Advocate

For the respondent - 3 in both WPs.: Mr.A.Arul Mary

ORDER

This writ petition is preferred by the petitioner against the proceedings of the District Elementary Educational Officer, Kancheepuram / 1st respondent in his R.C.No.1120/A3/2000 dated 14.8.2003 and that of the 3rd respondent in his letter No.141/2003 dated 19.8.2003 and to quash the same.

2.Brief case of the petitioner:

The facts of the case is that the petitioner filed writ petition came up for final hearing on 16th December 2002 and this Hon'ble court allowed the said writ petition and in the operative portion this Hon'ble court held as follows:

"As on date, the investigation is in a fluid state. The

outcome of the investigation may either be against the petitioner or in her favour. Therefore, till such time the investigation comes out with a positive report either way, in my opinion stoppage of salary to the petitioner under the impugned order is not warranted. No departmental enquiry is shown to be pending against the petitioner on any ground. Accordingly the writ petition is allowed setting aside the order under challenge."

3. After the receipt of the copy for the said order the petitioner produced before the 2nd respondent and also the 3rd respondent and requested them to allow her to join duty as secondary grade teacher in the 3rd respondent school. But, in the mean time, the 2nd respondent have filed a writ appeal No.621 of 2003 and obtained stay of the order of this court in the earlier writ petition. Even before the stay was obtained the petitioner moved contempt application No.132 of 2003 this court ordered notice and after the first bench have granted the stay and therefore the contempt application was adjourned till the disposal of the writ appeal referred to above. The aforesaid writ appeal was ultimately disposed of by this court confirmed the order of the learned single judge and dismissed the said Writ Appeal No.621 of 2003. Even thereafter the respondents have not implemented the orders of this Hon'ble court and therefore the contempt application was proceeded by the petitioner. Taking advantage of the observations made in the aforesaid writ appeal that it is open to the educational authorities to direct the management of the school to take disciplinary action against the petitioner, the 1st respondent has now passed the impugned order not only directing the management of the school to take disciplinary action and suspend the petitioner but also directing the Management of the school to recover the entire salary paid to the petitioner for the period she worked as a secondary grade teacher in the 3rd respondent school and to remit the same in Government treasury by his proceedings Rc.No.1120/A3/2000 dated 14.8.2003.

4. Counter objection filed by the 1st respondent:

The petitioner was appointed as Secondary grade teacher in the 3rd respondent school and petitioner produced the SSLC certificate has been referred to the Director of Government examinations, Chennai for verification of genuiness of certificate. The Secretary to Director of Government Examination in his letter No.782/V4(2) 2000 dated 23.8.2002 has informed that the certificate produced by the petitioner do not tally with that of official records and as such the Secretary to Director of Government examinations had declared that the candidate was not eligible to pursue either higher secondary course or teacher training course and further issued

instructions to file criminal case for cheating the management with a view to get appointment as a teacher on a bogus certificate. The 1st respondent has issued orders in Rc.1120/A3/2000 dated 28.8.2002 to stop the salary of the petitioner. Aggrieved by the above orders, the petitioner has filed writ petition and this court setting aside the above orders dated 28.8.2002. Consequently writ appeal was filed by the 1st respondent in W.A. 621 of 2003 and this Hon'ble court passed orders on 24.7.2003. In the circumstances, the writ appeal is disposed of affirming the order of the learned single judge but modifying to the effect that the appellants shall be entitled to address the Management of the school to initiate appropriate disciplinary proceedings against the appellant, and if the management does not comply with the same, then an appellants shall be entitled to initiate appropriate action against the Management.

5. Inturn the 3rd respondent has issued order of suspension of the petitioner from service vide proceedings of the 3rd respondent in Lr.No.114/03 dated 19.8.2003. The 3rd respondent has issued final orders terminating the petitioner from service vide order dated 5.10.2004 on the basis of resolution passed by the elementary board executive committee of the management. The criminal case laid against the petitioner, the Judicial Magistrate court, Chengleput delivered judgment in C.C.No.261/2007 dated 9.6.2015 imposing the fine of Rs.1000/- for each section of crime besides 2 years simple imprisonment. Hence there is no merit on the contention of the petitioner.

6. Heard the arguments on either side and perused the entire materials available on record.

7. In the earlier writ petition the Hon'ble high court have categorically held that only an investigation is pending against the petitioner regarding the falsification of mark sheets in X standard examination and the investigation is at fluid stage and not reached the finality and therefore at the stage the 2nd respondent cannot withhold the salary of the petitioner as a teacher and the said finding of the learned single judge was also confirmed by the first bench of this court in W.A.No.621 of 2003 and even today the investigation is not over and the petitioner was not found guilty and no charge is laid against the petitioner by the police and therefore the respondents cannot now place the petitioner under suspension and also direct the petitioner to pay the entire salary which already received by her as a secondary grade teacher.

8. Even the allegation against the petitioner is not that the petitioner had forged the mark sheets and the only allegation is that the mark sheets found in the hands of the petitioner do not tally with the mark sheets kept in the office of the Director of Government Examinations and there is no positive allegation against the petitioner that she has forged the mark sheets and the investigation is still pending and it has not reached the finality and no charge is laid and therefore the respondents cannot pass the impugned order directing the recovery of the salary already paid to the petitioner.

9. The learned counsel for the petitioner submits that the respondents herein ought to have seen that it is not the case of the respondents that the petitioner's original mark sheets kept by the Director of Government Examinations shows that the petitioner had not passed the X standard examination and on the contrary the allegation is that the marks shown in the mark sheets in the hands of the petitioner do not tally with the marks shown in the original register of the Director of Government examinations and therefore she is not qualified to continue as secondary grade teacher and therefore the respondents cannot proceed against the petitioner to recovery the salary till a finality is reached in the criminal investigation pending against her and they cannot also recovery the salary already received by her for the works she already done as a secondary grade teacher and therefore the impugned proceedings are null and void.

10. The 3rd respondent can place the petitioner under suspension only when the petitioner violates the code of conduct within the meaning of section 22(3)9a) of the Tamil Nadu Private school regulation at and as per the clause (6) of the code of conduct the only obligation of the petitioner is to inform the Management about the pendency of the criminal proceedings and in the instant case the FIR was lodged by the Management of the school on a direction from the 2nd respondent to lodge the FIR and therefore the Management of the school is fully aware of about the launching of the FIR and therefore the question of the petitioner informing about the pendency of the criminal proceedings against her does not arise and the management of the school have not chosen to place her under suspension earlier and taking advantage of the observation of this court in W.A.No.621 of 2003 the 3rd respondent had now chosen to place the petitioner under suspension on a direction from the 1st respondent and therefore there is no independent application of mind by the 3rd respondent in passing the impugned order of suspension.

The learned counsel for the petitioner submits that the 1st and 3rd respondents ought to have seen that even today the investigation is not over and no charge is laid against the petitioner in any competent criminal court and neither the

nor the rules framed there under empower the Management of the 3rd respondent school to place the petitioner under suspension pending investigation and therefore the impugned order of suspension passed by the 3rd respondent on a direction from the 1st respondent taking advantage of the observations made by this Hon'ble court in W.A.No.621 of 2003 cannot be legally sustained since the 3rd respondent has no power or jurisdiction to suspend the petitioner pending investigation.

11.The impugned orders of the 1st respondent directing to recovery of the entire salary paid to the petitioner is also passed without any prior show cause notice to the petitioner and without calling for any explanation from the petitioner and therefore it is violative of the principles of natural justice and the impugned order of the 3rd respondent which is consequential to the direction of the 1st respondent is equally null and void since the same is violative of principles of natural justice, since this Court and the Hon'ble Apex Court in various cases clearly held that without issuing any notice to the employee, the recovery order cannot be passed.

12.The bald allegations against the petitioner is indulged in manipulating the marks were levelled against the petitioner after 17 years of completion of X Std and therefore it is against the principles of natural justice, equity and fair play and that apart the petitioner after completing X std had privately passed the entrance examinations to appear for a degree course in open university and completed the B.A. and then M.A. and then B.Ed, and therefore it is highly inequitable and unjust to say that the petitioner is not qualified to hold the post of secondary Grade Teacher at this juncture and the respondents will be stopped from proceeding against the petitioner at this stage.

13.In the result:

(a) both the writ petitions are allowed;

(b) the impugned orders are set aside by restraining the respondents from making recovery of the petitioner's salary which was already paid to the petitioner as a Secondary Grade Teacher for the services rendered by her. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS)

//True Copy//

Sub Assistant Registrar

To

1. The District Elementary,
Educational Officer,
Kancheepuram.

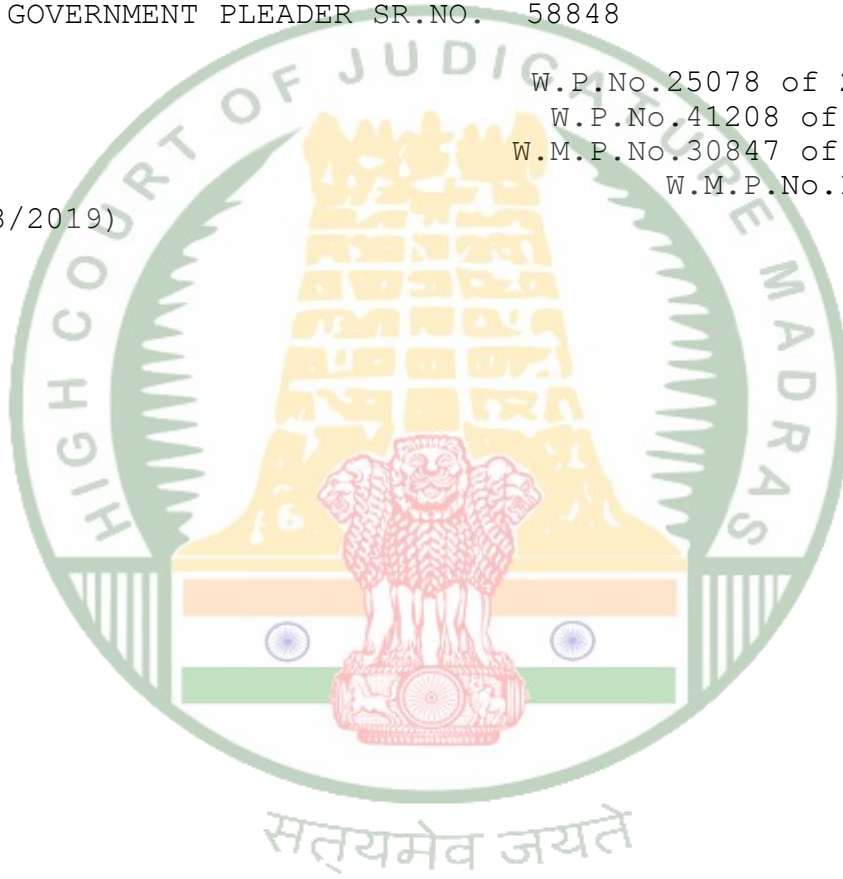
2. The Assistant Elementary,
Educational Officer,
Madurantakam,
Kancheepuram District.

+2ccs to Mr.A.Arul Mary , Advocate SR.No. 59091

+2 CCs TO GOVERNMENT PLEADER SR.NO. 58848

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A.SK(20/03/2019)



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