



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.11.2017

CORAM :

WEB COPY

THE HONOURABLE MR.JUSTICE P.D.AUDIKESAVALU

W.P(MD)No.6316 of 2011
and M.P.(MD) No.1 of 2011

S.Xavier Joseph Regis

... Petitioner

vs.

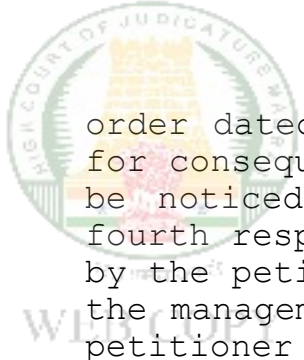
- 1.The State of Tamil Nadu,
rep. by its Secretary,
Department of School Education,
Fort St. George,
Chennai - 600 009.
- 2.The Chief Educational Officer,
Sivagangai District,
Sivagangai.
- 3.The District Educational Officer,
Devakottai.
- 4.The Correspondent,
St. Joseph Hr. Sec. School,
Sekkakudi - 630 408,
Thiruvegampatti via,
Sivagangai District.

... Respondents

Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records from the file of the 4th respondent with respect to the dismissal order dated 07.04.2011 made on the file of the 4th respondent and quash the same and further directing the respondents to reinstate the petitioner in the school as a teacher and give all benefits from the date of dismissal.

For Petitioner	: Mr.A.John Vincent
For Respondents 1 to 3	: Mr.S.Sathesh Kumar Additional Government Pleader
For 4 th Respondent	: Mr.M.P.Senthil

ORDER



order dated 07.04.2011, terminating him from service and has sought for consequential relief of reinstatement in service. It requires to be noticed here that it is an admitted position that though the fourth respondent is an aided private school, the post that was held by the petitioner in that school was not paid out of State funds and the management of that school had met the expenses incurred for the petitioner through their own sources.

2. Heard Mr.A.John Vincent, the learned counsel appearing for the petitioner, Mr.S.Sadesh Kumar, the learned Additional Government Pleader appearing for the respondents 1 to 3 and Mr.M.P.Senthil, the learned counsel appearing for the fourth respondent.

3. The question, whether the relief of reinstatement in service pursuant to any wrongful termination could be granted, has been considered in a catena of decisions of the Hon'ble Supreme Court of India and suffice here to refer to contents of para 11 in **State Bank of India and Others v. S.N.Goyal [(2008) 8 SCC 92]**, wherein it has been held as follows:-

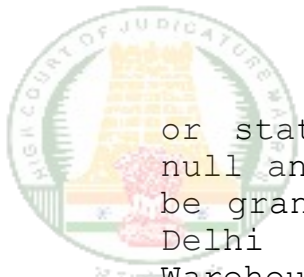
"11. Where the relationship of master and servant is purely contractual, it is well settled that a contract of personal service is not specifically enforceable, having regard to the bar contained in section 14 of the Specific Relief Act, 1963. Even if the termination of the contract of employment (by dismissal or otherwise) is found to be illegal or in breach, the remedy of the employee is only to seek damages and not specific performance. Courts will neither declare such termination to be a nullity nor declare that the contract of employment subsists nor grant the consequential relief of reinstatement. The three well recognized exceptions to this rule are:

(i) where a civil servant is removed from service in contravention of the provisions of Article 311 of the Constitution of India (or any law made under Article 309);

(ii) where a workman having the protection of Industrial Disputes Act, 1947 is wrongly terminated from service; and

(iii) where an employee of a statutory body is terminated from service in breach or violation of any mandatory provision of a statute or statutory rules.

There is thus a clear distinction between public employment governed by statutory rules and private employment governed purely by contract. The test for deciding the nature of relief damages or reinstatement with consequential reliefs is whether the employment is governed purely by contract or by a statute or statutory rules. Even where the employer is a statutory body, where the relationship is purely governed by contract with no element of statutory governance, the contract of personal service will not be specifically enforceable. Conversely, where the employer is a non-statutory body, but the employment is governed by a statute



or statutory rules, a declaration that the termination is null and void and that the employee should be reinstated can be granted by courts. (Vide : Dr. S. Dutt vs. University of Delhi [AIR 1958 SC 1050]; Executive Committee of UP State Warehousing Corporation Ltd. Vs. Chandra Kiran Tyagi [1970 (2) SCR 250]; Sirsi Municipality vs. Cecelia Kom Francies Tellis [1973 (3) SCR 348]; Executive Committee of Vaish Degree College vs. Lakshmi Narain [1976 (2) SCR 1006]; Smt. J. Tiwari vs. Smt. Jawala Devi Vidya Mandir AIR 1981 SC 122; and Dipak Kumar Biswas vs. Director of Public Instruction AIR 1987 SC 1422)."

4. In this case, admittedly the employment of the petitioner, which is not governed by statutory provisions, does not fall under any of the aforesaid excepted categories for which the relief of reinstatement in service could be granted. Hence, the Writ Petition seeking such relief against the fourth respondent cannot be entertained and accordingly, the same is dismissed. It is made clear that no views on the merits of the factual controversies between the parties have been expressed by this Court and the rejection of this Writ Petition for the aforesaid reason would not stand in the way for the petitioner to work out his remedies for the eligible relief before the proper forum in the manner recognized by law. No costs. Consequently, connected Miscellaneous Petition is also dismissed.

Sd/-

Assistant Registrar (CS-II)

/True Copy/

Sub Assistant Registrar

To

1. The Secretary,
Department of School Education,
State of Tamil Nadu,
Fort St. George,
Chennai - 600 009.
2. The Chief Educational Officer,
Sivagangai District, Sivagangai.
3. The District Educational Officer,
Devakottai.

+ 1 CC TO Mr. A. JOHN VINCENT, ADVOCATE IN SR No. 90326

+ 1 CC TO Mr. M. P. SENTHIL, ADVOCATE IN SR No. 90362

SJ

TE/SV-MMS/SAR-4 : 21/12/2017 : 3P/6C