



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.03.2017

CORAM :

THE HONOURABLE MR. JUSTICE R. SUBRAMANIAN

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Writ Petition(MD)No.9603 of 2013

and

M.P(MD)Nos.1 to 3 of 2013, 1 of 2014, 2 of 2015
and W.M.P. (MD)No.606 of 2017

F.Regis Durairaj ... Petitioner

Vs.

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

2.The Additional Assistant Elementary Educational
Officer, Madurai West, Anaiyur, Madurai 628 017,
Madurai District.

3.The Correspondent,
St., Joseph's Primary School,
Samayanallur 625 402,
Arch Bishop's House,
K.Pudur, Madurai 625 007.

4.Rev.Father. Edward Francis,
Superintendent of R.C.Schools,
Nobili Pastoral Centre Campus,
Bishop House,
Madurai 625 007

5.The Superintendent of R.C.Schools,
Nobili Pastoral Centre Campus,
Bishop House,
Madurai 625 007
(R-5 impleaded vide order dated
23.02.2015 in M.P(MD)No.1 of 2015)

6.The District Elementary Educational Officer,
Dindigul District.

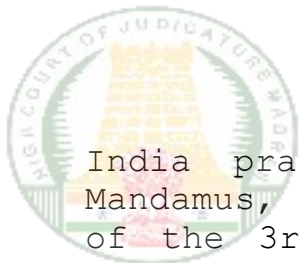
7.The Assistant Elementary Educational Officer,
Nilakottai, Dindigul District.

8.The Correspondent,
RC Primary School, Kullalagundu,
Dindigul District.
(R 6-8 impleaded vide order

<https://hcservices.courts.gov.in/hcservices> dated 16.03.2017 in

W.M.P(MD)No.605 of 2017)

... Respondents



Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records of the impugned relieving order of the 3rd Respondent and impugned order of the 5th respondent dated 10.06.2013 and quash the same and direct the respondents 3 to 5 to allow the petitioner to continue in the post of Head Master of the St.Joseph's Primary School, Samayanallur with all attendant monetary benefits including back wages. (Prayer amended as per order dated 16.03.2017 in M.P(MD)No.3 of 2015)

For Petitioner : Mr.N.Dilipkumar
For Respondents 1,2,6&7 : Mr.S.Satheeshkumar
Additional Government Pleader
For Respondents 3,4,5&8 :Mr.S.Anwar Sameem
for Mr.Xavier Arulraj

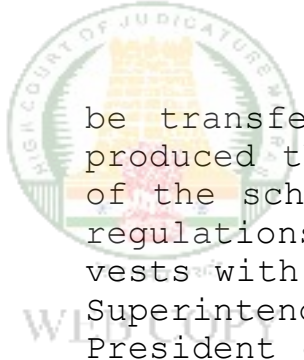
ORDER

The prayer in the writ petition reads as follows:-

"The writ petition has been filed for the issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the impugned relieving order of the third respondent and the order of the fifth respondent dated 10.06.2013 and quash the same and direct the respondents 3 to 5 to allow the petitioner to continue in the post of Head Master of the St.Joseph's Primary School, Samayanallur with all attendant monetary benefits including back wages."

2.The petitioner challenges an order of transfer. The petitioner has originally joined as a Secondary Grade Teacher on 14.07.1993 in R.C. Middle School at Sholavandan. Thereafter, he was promoted as Headmaster and posted at St.Joseph's Primary School, Samayanallur on 15.06.2007. The petitioner was relieved from the services of St.Joseph's Primary School, Samayanallur on 10.06.2013. Challenging the same, the petitioner has filed the present writ petition on 13.06.2013. Originally, the petitioner sought for Writ of Certiorari, to call for the proceedings of the third respondent in respect of the impugned relieving order dated 10.06.2013. Subsequently, the prayer of the writ petition has been amended into Writ of Certiorarified Mandamus to quash the impugned relieving order, dated 10.06.2013 and direct the respondents 3 to 5 to allow the petitioner to continue in the post of Headmaster of St.Joseph's Primary School, Samayanallur with all attendant monetary benefits including all back-wages.

3.According to the petitioner, the third respondent namely the Correspondent of St.Joseph's Primary School, Samayanallur or the fifth respondent, namely, the Superintendent of R.C. Schools, have no power to transfer, since the schools under the management of the Diocese are separate units and the teachers are in one single unit insofar as the services are concerned and they cannot



be transferred from one unit to other. The petitioner has also produced the rules and regulations relating to the administration of the schools coming under the R.C.Diocese of Madurai. Under the regulations adopted on 21.03.1999, the administration of schools vests with the Board of Education headed by the Archbishop and the Superintendent of these schools appointed by the Archbishop is the President of the Board of Education of the said institutions. The Superintendent of schools becomes the general administrator of all the diocesan schools and acts on behalf of Archbishop executing his orders.

4.It is not in dispute that the petitioner was appointed only by the fifth respondent in his capacity as Superintendent of schools and the petitioner was also promoted as Headmaster on 15.06.2007 by an order of the fifth respondent in his capacity as the Superintendent of schools. Thereafter, the petitioner has also accepted the said promotion and transfer and joined in the St.Joseph's Primary School, at Samayanallur as Headmaster. The petitioner who had accepted the said order of the Superintendent of schools, when he was transferred with promotion has now chosen to challenge the order of transfer. On 10.06.2013, the Superintendent of Schools had issued an order of transfer by which the petitioner has been transferred from St.Joseph's Primary School, Samayanallur, Madurai to R.C. Primary School, Kullalagundu and he has been requested to assume charge at Kullalagundu on 11.06.2013. While so, the petitioner has filed this writ petition on 13.06.2013 and this Court, while entertaining this writ petition, by an order dated 17.06.2013, has granted status quo. Thereafter, the petitioner was not allowed to continue to work in St.Joseph's Primary School, Samayanallur since he was relieved on 10.06.2013 itself and Mrs.Fathima Mary, who was the senior most teacher was directed to assume charge as Headmistress in charge. Aggrieved by the action of the respondent management not allowing him to work pursuant to the interim order of status quo, the petitioner had filed a contempt petition in Cont.P(MD)No.735 of 2013 and this Court, by an order dated 06.11.2013 dismissed the contempt petition holding that the petitioner has already been relieved from St.Joseph's Primary School, Samayanallur. Despite the dismissal of the contempt petition, the petitioner did not join in the transferred school at Kullalagundu.

5.It is now claimed by the learned counsel for the petitioner that no order of appointment was issued to him to enable him to join duty. However, the petitioner filed an application in WMP(MD)No.11113 of 2016, seeking issuance of interim direction to the respondents to permit the petitioner to join duty forthwith as Headmaster in St., Joseph Primary School, Samayanallur or in R.C. Primary School, Kullalagundu without prejudice to his contention in the main writ petition.



6. In the counter affidavit to the said petition, the respondent management had expressed that he can join duty at any time.

7. It is not in dispute that the petitioner has joined as the Headmaster of the R.C. Primary School, Kullalagundu, on 19.09.2016. Hence, by an order, dated 16.03.2017, dismissed the said W.M.P(MD) No.11116 of 2016, as having become infructuous.

8. It is, in this background, the petitioner would contend that the school under the management of the Diocese in Madurai District as well as in Dindigul District does not come as one common unit and hence, transfer from one unit to other is not permissible. As regards, the rules and regulations governing the schools that have been produced by the petitioner, it is claimed that they are not valid as they have not been approved by the competent authority.

9. It should be borne in mind that as regards the schools belonging to the religious minority, the powers of the authorities in respect of disciplinary proceedings, transfers or in respect of internal management are very limited. A religious minority enjoys absolute freedom of administration of the institutions. Therefore, there is no question of rules being rendered invalid merely because they are not approved by the educational authorities. In fact, there is no provision for such prior approval by the educational authorities.

10. A reading of the rules would clearly show that all the schools under the management of the Diocese have been treated as single unit and the rules also provide for transfers and promotions, treating the schools as a single unit.

11. Mr. N. Dilipkumar, learned counsel for the petitioner would however contend that there is no common seniority list and hence, the question of schools coming within the one corporate management does not arise.

12. I am unable to agree with the said contention of the learned counsel for the petitioner. Even at the risk of repetition, it should be pointed out that the petitioner who was working as the Secondary Grade Teacher, accepted promotion to the post of Headmaster by the very same Superintendent of schools on 11.06.2007 and joined in the St., Joseph's Primary School at Samayanallur as Headmaster. Having accepted a beneficial transfer in the year 2007, now it is not open to the petitioner to contend that there cannot be transfer among the teachers working in the schools under the management of the Diocese. Even otherwise, the rules that have been produced regarding the management of the schools belonging to the Diocese are very clear and they permit transfer, appointments, fixation of seniority, selection and



recruitment of teaching staff and non teaching staff in all the schools. When the rules are comprehensive in nature and the petitioner has also accepted his appointment and promotion in the schools under the said rules, the petitioner cannot claim that those rules do not apply to him. Therefore, I do not find any illegality or infirmity in the order of transfer of the petitioner from St., Joseph's Primary School, Samayanallur to R.C.Primary School, Kullalagundu. However, the learned counsel for the petitioner would contend that he should be given pay protection.

13.The fact that the petitioner was transferred on 10.06.2013 and eventually joined duty as Headmaster in the transferee school on 19.09.2016. This conduct of the petitioner is despite the fact that his application for contempt of Court was rejected by this Court on 16.03.2017 itself. The petitioner has to be blamed for his own conduct in not joining at the new place. Even W.M.P(MD)No.11113 of 2016 was filed by the petitioner only on 12.08.2016. Therefore, I do not think that the petitioner is entitled to any pay protection. If at all, the petitioner is entitled to pay protection, it would be granted only from the date on which he had filed an application in W.M.P(MD) No.11113 of 2016 ie., 12.08.2016.

14.Learned counsel for the petitioner would submit that the petitioner has not been paid salary even the period for which he has worked on the ground that there is no appointment order.

15.Learned counsel for the respondent management would submit that the petitioner is retaining his service records and in the absence of the same, they were not able to claim grant from the Government.

16.In view of the same, the petitioner is directed to surrender his service register to the Correspondent of the R.C.Primary School, Kullalagundu forthwith and the respondent management shall process his claim for grant from 12.08.2016. The respondents (*) 6 and 7 are directed to pass orders on the claim for grant made by the (*)Eighth respondent management within a period of six weeks from the date of receipt of the request made by the (*)Eighth respondent. It is needless to state that the petitioner will be entitled to continuity of service.

17.The writ petition is accordingly disposed of. No costs. M.P(MD)Nos.1 to 3 of 2013, 1 of 2014, 2 of 2015 and W.M.P. (MD)No.606 of 2017 are closed.

Sd/-

Assistant Registrar

**(*) AMENDED AS PER THE ORDER OF
THIS COURT DATED 19.4.2017**

<https://hcservices.ecourts.gov.in/hcservices/> /True Copy/

Sub Assistant Registrar



To

(*) TO BE SUBSTITUTED THE ORDER ALREADY DESPATCHED ON 7.4.2017

- 1.The District Elementary Educational Officer,
Madurai District, Madurai.
- 2.The Additional Assistant Elementary Educational
Officer, Madurai West, Anaiyur, Madurai 628 017,
Madurai District.
- 3.The District Elementary Educational Officer,
Dindigul.
- 4.The Assistant Elementary Educational officer,
Nilakkottai Dindigul District.

+1cc to SPECIAL GOVERNMENT PLEADER in SR. No.16654
+1cc to M/s. JOHN KENNEDY Advocate in SR. No.15983
+1cc to M/s.N.DILIP KUMAR Advocate in SR. No.15868

SMS

JS/JC/SAR.2/6/04/2017/6P-8C

RL/MR/8C/6p/SARCO/4.5.2017

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