

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.07.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.Nos.9003, 11776 and 8155 of 2018
and

W.M.P.Nos.13745, 13746 and 10140 of 2018

Mr.K.Nandhakumar .. Petitioner in W.P.Nos.9003 and
8155 of 2018

Mr.K.Thirumaran .. Petitioner in W.P.No.11776 of 2018

Vs.

1. The Director of Elementary Education,
DPI Campus, Nungambakkam,
Chennai-600 008.
 2. The District Elementary Educational Officer,
Vellore Fort Campus,
Vellore District-632 004.
 3. The Additional Assistant Elementary Educational Officer,
Assistant Elementary Educational Office,
Gudiyatham-632 602.
- ... Respondents in W.P.No.9003 of 2018

1. The Director of Elementary Educational Officer,
The Tamil Nadu Elementary Educational Office,
D.P.I. Campus, Nungambakkam,
Chennai-600 008.
2. The District Elementary Educational Officer,
District Elementary Educational Office,
Vellore Fort Campus,
Vellore District - 632 602.
3. The Additional Assistant Elementary Educational Officer,
Assistant Elementary Educational Office,
Gudiyatham-632 602, Vellore District.
4. Mr.K.Nandhakumar .. Respondents in W.P.No.11776 of 2018

1. The Director of Elementary Education,
The Tamil Nadu Elementary Educational Officer,
D.P.I. Campus, Nungambakkam, Chennai-600 006.
2. The District Elementary Educational Officer,
District Elementary Educational Office,
Vellore Fort Campus,
Vellore District - 632 004.
3. The Additional Assistant Elementary Educational Officer,
Assistant Elementary Educational Officer,
Gudiyatham-632 602, Vellore District.
4. Mr.K.Thirumaran,
Secretary,
Kalaivani Aided Elementary School,
Dharnampet, Gudiyatham,
Vellore District. .. Respondents in W.P.No.8155 of 2018

Writ Petition No.9003 of 2018 filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus to direct the second respondent to consider and pass order on the representation of the petitioner dated 17.11.2014 and 28.02.2018, with regard to approval of petitioner as Educational Agency of Kalaivani aided Primary School, Dharnampet, Gudiyatham.

Writ Petition No.11776 of 2018 filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus to call for the entire records connected with the impugned order passed by the second respondent in Na.Ka.No.3417/A2/2017, dated 24.04.2018, served on 25.04.2018 and quash the same, thereby direct the respondents to implement the order of this Court passed in W.P.No.22947 of 2010, dated 25.04.2013.

Writ Petition No.8155 of 2018 filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari to call for the entire records connected with the impugned order passed by the second respondent in Na.Ka.No.864/A2/2018, dated 23.03.2018, signed on 27.03.2018, approving the fourth respondent as the Secretary of Kalaivani Aided Elementary School, Dharnampet, Gudiyatham and quash the same.

For Petitioner: Mr.S.N.Ravichandran in W.P.Nos.9003
and 8155 of 2018
Mr.K.Mohanamurali in W.P.No.11776 of 2018

For Respondents : Mrs.V.Annalakshmi, Government Advocate
for RR-1 to 3
in all the Writ Petitions

Mr.S.N.Ravichandran for R-4 in
W.P.No.11776 of 2018
Mr.K.Mohanamurali for R-4 in
W.P.No.8155 of 2018

ORDER

Writ Petition No.9003 of 2018 is filed praying for issuance of a Writ of Mandamus to direct the second respondent to consider and pass order on the representations of the petitioner dated 17.11.2014 and 28.02.2018, with regard to approval of petitioner as Educational Agency of Kalaivani aided Primary School, Dharnampet, Gudiyatham.

2. Writ Petition No.11776 of 2018 filed praying for issuance of a Writ of Certiorarified Mandamus to call for the entire records connected with the impugned order passed by the second respondent in Na.Ka.No.3417/A2/2017, dated 24.04.2018, served on 25.04.2018 and quash the same, thereby direct the respondents to implement the order of this Court passed in W.P.No.22947 of 2010, dated 25.04.2013.

3. Writ Petition No.8155 of 2018 is filed praying for issuance of a Writ of Certiorari to call for the entire records connected with the impugned order passed by the second respondent in Na.Ka.No.864/A2/2018, dated 23.03.2018, signed on 27.03.2018, approving the fourth respondent as the Secretary of Kalaivani Aided Elementary School, Dharnampet, Gudiyatham and quash the same.

4. The sum and substance of the issue on hand is that K.Thirumaran, who is the petitioner in W.P.No.11776 of 2018, and who is the fourth respondent in W.P.No.8155 of 2018, has earlier filed W.P.No.16063 of 2011 before this Court for quashing the order passed by the District Elementary Educational Officer, Vellore, in Na.Ka.No.566/A4/2010, dated 08.12.2010 and to direct the respondents therein to accept the School Committee Resolution dated 13.12.2007 and appoint him as a Secretary-cum-Manager as per the School Committee and to cancel the direct payment and the said W.P.No.16063 of 2011 was dismissed on 25.04.2013.

5. It is contended by the petitioner-Nandhakumar that the said Thirumaran is not entitled to be the Secretary or hold any post and in case he wants to run the School in the premises that has been partitioned in favour of K.Nandhakumar, who is the petitioner in W.P.Nos.8155 and 9003 of 2018, he can take the

School away from the premises and that as long as the Educational Agency with regard to Kalaivani Aided Elementary School, is approved, the said Thirumaran has no right to claim any relief with regard to any post or a share with regard to the property which he is otherwise not eligible to take.

6. Learned counsel for the petitioner-Thirumaran contended that there was a partition suit and that several items of properties have been partitioned and that the Court, while deciding the partition, has not dealt with item No.9, namely the land in which the said School exist, which is nothing but the School building which is functioning in the name and style of Kalaivani Aided Elementary School and also the right of management. It is further submitted that in the present Writ Petition filed by the said Thirumaran in W.P.No.11776 of 2018, he has questioned the act of Nandhakumar, who is the petitioner in W.P.No.9003 and 8155 of 2018 and also the direct payment system of salary to staff, etc. Earlier, the said Nandhakumar also filed W.P.No.22947 of 2010 to issue a Writ of Mandamus to direct the respondents 1 to 3 therein to appoint him and his brother, namely K.Thirumaran, as Educational Agency of Kalaivani Aided Elementary School and approve them as Secretary on rotational basis for every three years and revoke the order of direct payment passed by the second respondent therein by proceedings in Na.Ka.No.7550/A3/2006, dated 28.12.2006 on the basis of the representation dated 03.07.2010. This Court, by order dated 25.04.2013 while disposing of W.P.No.16063 of 2011 filed by Thirumaran and W.P.No.22947 of 2010 filed by Nandhakumar, held in paragraph 13 as follows:

"13. In the circumstances, while granting partial relief in W.P.No.22947 of 2010 in respect of making the petitioner and his brother, fourth respondent to act as a Secretary of the Educational Agency of the Kalaivani Aided Elementary School on rotational basis once in every three years, the prayer in respect of direct payment stands dismissed. The prayer in W.P.No.16063 of 2011 also stands dismissed. No costs. Consequently, connected MP is closed."

7. It is not in dispute that the Educational Agency has got to be there for the purpose of deciding the administration. The Government has not taken any decision in that regard and is sleeping over the matter. When the matter is taken up for hearing today, learned Government Advocate appearing for the official respondents submitted that the decision with regard to the Educational Agency, would be taken and communicated to the writ petitioners herein. Mr.K.Mohanamurali, learned counsel for the petitioner-Thirumaran in W.P.No.11776 of 2018 and who is the

fourth respondent in W.P.No.8155 of 2018, vehemently contended that the direct payment system of dealing with the financial transactions, etc., should be discontinued and both these petitioners have lost their relief in the earlier round of litigations in W.P.Nos.22947 of 2010 and 16063 of 2011, as discussed supra, and that the School is being run in the premises, which according to Mr.Nandhakumar, belongs to him and devolved upon him by means of partition, which is a question that will have to be decided from the documents produced before this Court by the Government and that there is no partition with regard to item No.9 of the suit schedule property mentioned in O.S.No.12 of 2011 on the file of the First Additional District Court, Vellore, in which final decree was passed on 02.08.2016.

8. Without going into the merits of the matter, leaving it open that the above issue and the other issues connected with regard to the property, as an interim measure, till a decision is taken with regard to the Educational Agency, the said Mr.Thirumaran shall continue as Secretary and the direct payment system which is in existence, shall continue, as rightly contended by Mr.Nandhakumar, which would not be disturbed. The decision with regard to the Educational Agency shall be taken by the Government in accordance with law, within a period of three weeks from the date of receipt of a copy of this order, after affording an opportunity of hearing to both the petitioners and others who are likely to be affected and if there is no legal impediment for considering the said issue. Till such time a decision is taken with regard to the Educational Agency by the Government, the interim measure as stated above, shall continue. There has also been no objection or proposal given by Mr.Nandhakuamr and Mr.Thirumaran and the issue will have to be considered by the Government in accordance with law, as directed supra. If a decision as directed supra is not taken by the authority concerned, instead of relegating the parties to file Contempt Petition, this Court is of the view that the official concerned shall be divested of the post and posted in a non-sensitive post.

9. With the above observations, all the three Writ Petitions are disposed of. No costs. Consequently, W.M.Ps. are closed.

Sd/-

Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

CS

To

1. The Director of Elementary Education,
DPI Campus, Nungambakkam,
Chennai-600 008.
2. The District Elementary Educational Officer,
Vellore Fort Campus,
Vellore District-632 004.
3. The Additional Assistant Elementary Educational Officer,
Assistant Elementary Educational Office,
Gudiyatham-632 602.

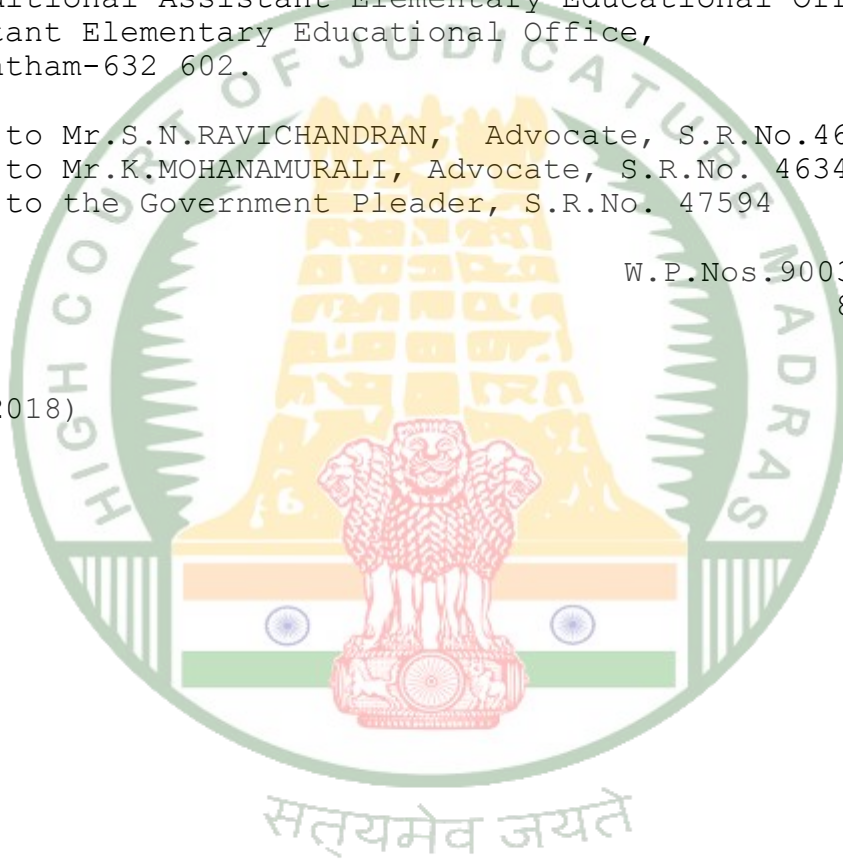
+2cc to Mr.S.N.RAVICHANDRAN, Advocate, S.R.No.46740

+2cc to Mr.K.MOHANAMURALI, Advocate, S.R.No. 46343 & 46344

+1cc to the Government Pleader, S.R.No. 47594

W.P.Nos.9003, 11776 and
8155 of 2018

SPD(CO)
TR(01/08/2018)



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