

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 08.10.2018

CORAM

THE HONOURABLE MR. JUSTICE M.V.MURALIDARAN

WP.No.1394 of 2012

V.Sakthivel Pandian

.. Petitioner

-Vs-

- 1.The Director of School Education,
D.P.I. Compound,
College Road,
Chennai - 600 006.
 - 2.The Joint Director of School Education,
D.P.I. Compound,
College Road,
Chennai - 600 006.
 - 3.The Chief Educational Officer,
Saidapet, Chennai - 600 015.
 - 4.The District Educational Officer (Chennai North),
Egmore, Chennai - 600 006.
 - 5.Tarun Ghai
School Secretary,
Sir M.Ct.M.Boys Higher Secondary School Committee,
No.23, Raja Annamalai Road,
Purasawalkam, Chennai - 600 084.
 - 6.The Headmaster,
Sir M.Ct.M. Boys Higher Secondary School,
No.23, Raja Annamalai Road,
Purasawalkam, Chennai - 600 084.
- .. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the 3rd, 4th and 5th respondents to do all needful and to disperse arrears of salary due to the petitioner for the period beginning from 06.09.2011 ending 31.12.2011, less whatever paid towards subsistence allowance i.e., Rs.13,840/- + Rs.16,484/- treating the entire period of suspension i.e., from 06.09.2011 till

17.11.2011 as period on duty and consequently effect periodical prompt payments without interruption on par with other teachers.

For Petitioner : Mr.C.Johnson

For Respondents :Mr.R.Govindasamy (for R1 to R4)
Special Government Pleader

Mr.Najeeb Usman Khan (for R5)

No Appearance (for R6)

ORDER

The case of the petitioner is that he was appointed as a Vocational Teacher on 02.12.1996, at 5th respondent school vide proceeding made in R.C.No.400145 dated 02.12.1996. The petitioner further states that he has passed B.Sc., (Computer Science), PGDCA (Post Graduate Diploma in Computer Application), M.Sc., (Computer Science) and B.Ed., degrees. The petitioner further claimed that he is fully qualified to be appointed as a Vocational Teacher from the date of his appointment. His further claim is that he has secured 100% result in computer science in all the years. To his credit he further claimed that few of his students secured centum marks in computer science in public examination.

2.The petitioner further states that his services were regularized as Grade-I Vocational Teacher with effect from 09.02.2007, being the date of G.O.Ms.No.35 and he was granted with regular time scale of pay as applicable to Vocational Grade-I Teachers. Thus the petitioner's services were regularized with the 5th respondent school and he is working as such continuously, which is an Aided Non-minority Private Recognized Higher Secondary School. It is also states that the 5th respondent school is being run by a Public Charitable Trust.

3.The petitioner further states that the present Secretary of the School one Mr.Tarun Ghai abused his position as a Trustee as well as Secretary. It seems that serious allegations were raised against the said secretary and even it is alleged that steps were taken by the 5th respondent to close down the school apart from using the premises for commercial ventures, which virtually run counter to the very objective of Trust. The petitioner also narrated sequence of events in an attempt to fortify his allegations. The filing of writ petition in W.P.No.26054 of 2011 before this Court by the petitioner resulted in execution of an undertaking by the 5th respondent agreeing not to use the school premises for any other purpose

except running school as mandated by the founding fathers. All these factual matrix without doubt reveals the factum that there is a tug of war between the teachers lead by the writ petitioner on the one side and the 5th respondent on the other side. Thus the writ petitioner is trying to substantiate the fact that the 5th respondent and himself are in inimical terms.

4.However, in the meantime on 06.09.2011, the petitioner was placed under suspension by the 5th respondent for his 'Anti-Management Activities' as detailed in the said suspension order. The petitioner contended that the suspension is illegal as the 5th respondent secretary failed to get approval from school committee apart from other grounds. It is also evident that all the teachers submitted Memorandum dated 10.09.2011 and 20.09.2011 to the respondents 1 to 4 with a request to withdraw the suspension order dated 06.09.2011, issued against the writ petitioner. It is also seen that 5 members of the school committee supported the view of the teachers. It is also seen that the respondents 2 to 4 visited the 5th respondent school to enquire into the same and found that there is some substance in the allegations of the teachers.

5.It is also seen that consequent to the enquiry that the 3rd respondent requested the 5th respondent to withdraw the suspension order issued against the writ petitioner. The 5th respondent it seems, sought for extension of suspension for further period of two months. The 3rd respondent in his proceeding dated 17.11.2011, refused to extend the suspension order saying that the charges levelled against the petitioner are vague and generic in nature taking clue from the report of the 4th respondent District Educational Officer with reference to other materials on record. Immediately thereafter the 3rd respondent Chief Educational Officer passed an order refusing to extent the period of suspension as requested by the 5th respondent and consequently the writ petitioner joined duty on 18.11.2011 and gave report of joining to the Secretary through the 6th respondent. Thus ever since the date of joining the writ petitioner is working continuously as a Vocational Teacher by taking classes as allotted.

6.It seems that subsistence allowance was paid for the period from 06.09.2011 upto 30.11.2011, to the writ petitioner. The writ petitioner claimed full salary for the period from 06.09.2011 till 31.12.2011, after adjusting whatever paid by way of subsistence allowance. As the arrears, as claimed by the petitioner was not paid, various representations were made, seeking payment of such arrears for the said period. As the same was not paid the present writ petition was filed seeking for the reliefs as sought for in the writ petition.

7.I heard Mr.C.Johnson, learned counsel for the petitioner, Mr.R.Govindasamy, learned counsel for the respondents 1 to 4 and Mr.Najeeb Usmankhan, learned counsel for the 5th respondent and perused the entire materials available on record. No representation on behalf of the 6th respondent.

8.Refuting the allegations of the writ petitioner, the respondents 4 and 5 filed detailed counter. On behalf of the official respondents, the 4th respondent filed counter, supporting the stand of the 5th respondent. The careful scrutiny of the counter affidavit categorically reveals the fact that the most part of the counter affidavit is virtually against the stand taken by the then officials beginning from Director of School Education upto the District Educational Officer. The allegations of the 4th respondent seems to be against materials on record and factual finding of his predecessor officers.

9.The 5th respondent also filed counter in an elaborate manner setting various reasons justifying the suspension of the 5th respondent and non-regularization of suspension period and non-payment of arrears due to him. The 5th respondent totally ignored and lost sight of the statutory provisions which dealt with situation as happened to the writ petitioner.

10.On the other hand, the 5th respondent goes on levelling allegations against allegations upon the writ petitioner as if he is capable of stalling everything unmindful of mighty management and powered official respondents. This Court is not intending to traverse upon such stories and rather would satisfy itself whether the act of the 5th respondent school i.e., non-payment of arrears of salary is justifiable in terms of Private School Regulation Act and Rules framed thereunder. Further in view of the provisions of the Private Regulation Act and Rules made thereunder the respective parties are governed by the said Rules being a special rule which hold the field.

11.The interpretation of the 5th respondent that in view of the Fundamental Rules the petitioner is not entitled for any such claim is untenable on the face of it, as the relevant statutory provisions on its plain meaning make it clear that the writ petitioner is entitled for arrears as the officials respondent found no reason to extent the suspension order dated 06.09.2011 beyond the said period of two months as contemplated under the act. Therefore, the suspension order dated 06.09.2011 of the 5th respondent automatically gets lapsed on the expiry of the statutory period.

12.The finding of the official respondents that there are no reasons or grounds for extension of such suspension obviously made it sure that on the face it such suspension is legally

unsustainable. Once such an request for extension is denied by officials respondent on reasons, it only meant that the whole exercises on such enquiry is bad-in-law and as such the enquiry itself deemed to be lapsed in terms of law as it lacks merit.

13. With reference to materials on record and upon the points raised in the arguments by the respective counsel, this Court conclude that the petitioner is entitled for the arrears of the salary for the period beginning from 06.09.2011 till 31.12.2011, as if he has served for the whole period treating suspension period as period on duty. It is further to be noted that for the fault of the 5th respondent, the petitioner cannot be penalized.

14. In view of the facts and circumstances involved in the case and also the discussion made above, this Court has no hesitation to allow the writ petition.

15. In the result:

- (a) this writ petition is allowed;
- (b) the respondents 1 to 5 are directed to pass orders regularizing the period from 06.09.2011 to till 17.11.2011 of the petitioner as period on duty and effect payment of arrears after adjusting the payments if any already made for the period either as subsistence allowance or otherwise to the petitioner;
- (c) the said exercise shall be commenced and completed within a period of eight weeks from the date of receipt of a copy of this order. No costs.

Sd/-

Assistant Registrar (CO)

//True Copy//

Sub Assistant Registrar

vs

To

1.The Director of School Education,
D.P.I. Compound,
College Road,
Chennai - 600 006.

2.The Joint Director of School Education,
D.P.I. Compound,
College Road,
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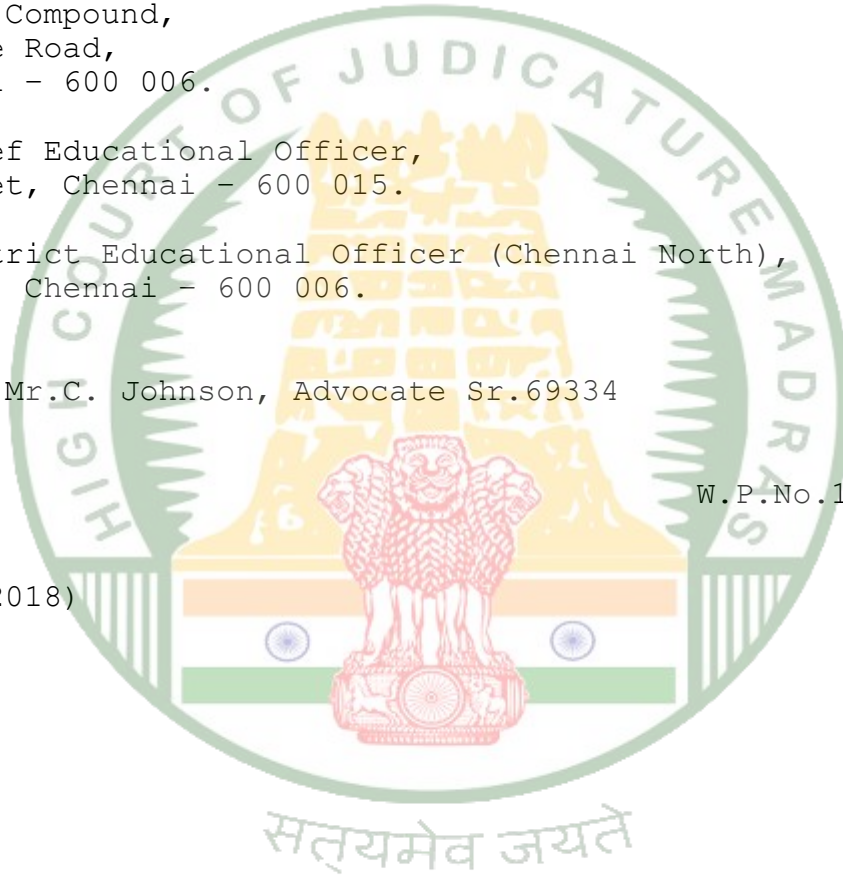
3.The Chief Educational Officer,
Saidapet, Chennai - 600 015.

4.The District Educational Officer (Chennai North),
Egmore, Chennai - 600 006.

+ 1 cc to Mr.C. Johnson, Advocate Sr.69334

W.P.No.1394 of 2012

PP(CO)
EU(25/10/2018)



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