

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.10.2018

CORAM:

THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.No.14918 of 2008

and

W.M.P.Nos.1 & 2 of 2008

M.Leenu

... Petitioner

Vs.

1.The Director of Elementary Education,
College Road, Chennai - 600 006.

2.The District Elementary Education Officer,
Tirunelveli-1.

3.The Additional Assistant Elementary,
Education Officer, Radhapuram Circule,
Radhapuram, Tirunelveli District.

4.Muslim Primary School,
Rep. by its Correspondent/Secretary,
Thisaiyanvillai,
Tirunelveli District.

...Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified, calling for the records relating to the proceedings of the first respondent made in Na.Ka.14633/G3/2007 dated 02.05.2008 and the consequential proceedings of the second respondent dated 21.05.2008 made in Na.Ka.No.3864/A1/07 and quash the same.

For Petitioner : Mr.S.Elamurugan

For Respondents : Mr.P.Raja
1 to 3 Government Advocate

For Respondent 4 : Mr.M.Devaraj

O R D E R

The relief sought for in this writ petition is to call for the records relating to the proceedings of the first respondent made in Na.Ka.14633/G3/2007 dated 02.05.2008 and the consequential proceedings of the second respondent dated 21.05.2008 made in Na.Ka.No.3864/A1/07 and quash the same.

2. The learned counsel appearing on behalf of the

petitioner made a submission that the fourth respondent school is an Aided Religious Minority School. One Tmt.P.Vijayalakshmi was working as a 'Secondary Grade Teacher' in the fourth respondent school and she attained the age of superannuation on 31.05.2006. Thereafter, the petitioner was appointed as 'Secondary Grade Teacher' in the fourth respondent school with effect from 01.06.2006. Therefore, the petitioner has joined duty on 01.06.2006, as a class teacher for IV standard. The petitioner was duty bound to take pupil attendance every month from joining duty on 01.06.2006 on all working days and the Attendance Register maintained for class IV had been counter signed by the Education Authorities on 31.08.2006 and on 01.11.2006. The second respondent, who is the competent authority of the fourth respondent school has approved the petitioner's appointment on 12.07.2007. However, based on an anonymous call, enquiry was conducted on 01.11.2006. From that enquiry the respondents 1 to 3 have concluded that the petitioner was not in actual employment of the fourth respondent school from 01.06.2006 to 31.12.2006. Consequently, the first respondent has ordered to recovery payment from the petitioner under the provision of the Tamil Nadu Minority Schools (Recognition and Payment of Grant) Rules, 1977.

3. The learned counsel for the petitioner drew my attention to several documents to show that the petitioner was indeed employed by the fourth respondent during the aforesaid period and that the order of recovery of the salary, has been made behind her back in violation of the principal of natural justice.

4. The learned counsel appearing on behalf of the first respondent reiterated the averments contained in the counter affidavit and specifically stated that the petitioner was not appointed by the respondents and she was appointed by the fourth respondent school and the fourth respondent claims salaries for teachers from the department as teaching grant.

5. Therefore, if any irregularity is found the respondents can conduct enquiry with the Head Master of the fourth respondent on the basis of the records of the fourth respondent's school. Hence, there is no necessity to give any opportunity to the petitioner before passing order to recover the amount paid out of grant paid to the fourth respondent. Therefore, the first respondent was justified in passing the impugned order, to recover the salary paid to the petitioner between 01.06.2006 to 31.12.2006.

6. Heard Mr.S.Elamurugan, learned counsel appearing on behalf of the petitioner, Mr.P.Raja, Learned Government Advocate appearing on behalf of the respondents 1 to 3 and Mr.M.Devaraj,

learned counsel for the fourth respondent.

7. The fourth respondent is governed by the Tamil Nadu Minority Schools (Recognition and Payment of Grant) Rules, 1977. As per the Rule 5, pay and allowance of teacher and other persons employed in Minority schools is to be paid in the prescribed manner. The procedure for payment of pay and allowance from State funds to Teachers and other persons employed in Minority schools shall be as in Annexure I appended to these Rules. Consequence of the same, the payment for grant is provided under Rule 6 of the aforesaid Rules. In case of any other payments, which may come to the light of the respondents, after auditing the first respondent, the respondents are entitled to order recovery from the management of the school from other funds. Consequently, if any falsification of account or misuse of the amount of grant paid to any Minority school, Rule 6 (4) (a) and (b) of the said rules can be invoked. However, the respondents 1 to 3 cannot proceed against the teacher, namely the petitioner, in violation of the rules provided for taking action against the petitioner for alleged absence or any dereliction to duly by ordering to withdraw the amount. If there are over payment, amount has to be recovered only from the fourth respondent school as per Rule 6 (3) of the aforesaid Rule and the consequence Rule 6 (4) (a) (b) of the Act will follow. Under these circumstances, the proceedings initiated vide impugned order and the consequent order passed by the second respondent and the fourth respondent are unsustainable.

8. The first to third respondents are at liberty to initiate appropriate proceedings under law to recover the amount from the fourth respondents in accordance with law after following the principle of natural justice.

9. In view of the same, the writ petition stands allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-IX)

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Sub Assistant Registrar

nmm/dss

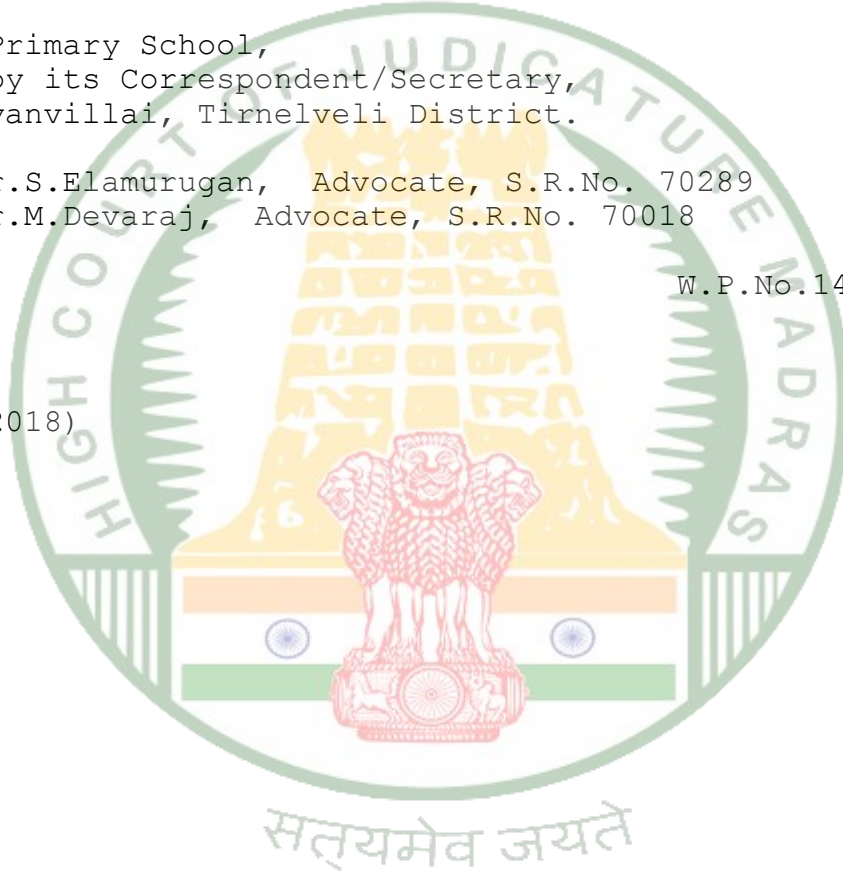
To

- 1.The Director of Elementary Education,
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- 4.Muslim Primary School,
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+lcc to Mr.S.Elamurugan, Advocate, S.R.No. 70289
+lcc to Mr.M.Devaraj, Advocate, S.R.No. 70018

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JP(CO)
GN(27/11/2018)



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