

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 17.07.2018

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

CONT.P.No.396/2017 & WP.No.27881/2016 & WMP.Nos.24046 &
24047/2016 & 18991/2017

Cont.P.No.396/2017:-

R.Manivannan

..Petitioner

Versus

Mr.Kannappan

The Director of School Education,
DPI Campus, College Road
Chennai 600 006.

...Respondent

Contempt petition filed under section 11 of the
Contempt of Courts Act, 1971, to punish the
contemnor/respondent in accordance with law for his
willful/wanton disobedience by not complying with the orders
of this Court passed in WMP.No.24046/2016 in
WP.No.27881/2016 dated 10.08.2016.

सत्यमेव जयते

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For Petitioner : Mr.R.Ganesh Kumar

For Respondent : Mr.C.Munusamy, Spl.GP

WP.No.27881/2016:-

R.Manivannan

.. Petitioner

Versus

1.The Director of School Education,
DPI Campus, College Road
Chennai 600 006.

2.The Joint Director of School Education,
DPI Campus, College Road,
Chennai 600 006.

3.The Chief Educational Officer
Manajakuppam, Cuddalore District.

4.The District Educational Officer
Manajakuppam, Cuddalore District.

5.The Government Model Higher Secondary School
Kadambuliur, Cuddalore District.

.. Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus calling upon the records of the 1st respondent vide proceedings Na.Ka.No.87921/W1/C2/2015 dated 02.08.2016 and quash the same and consequently direct the respondents 1 to 5 to allow the petitioner to continue as Headmaster at the 5th respondent School with all service benefits.

For Petitioner : Mr.R.Ganesh Kumar

For Respondents : Mr.C.Munusamy, Spl.GP

सत्यमेव जयते
COMMON ORDER

The petitioner claims that he is having qualifications, viz., M.Sc., M.Ed. and M.Phil and prior to the joining in the Tamil Nadu Education Services, he was associated with Ramakrishna Mission Educational activities and he has also served as a teacher in remote areas in Arunachal Pradesh and Mizoram for very many years and also developed a fond

3 The petitioner would further aver that on 28.11.1990, he joined as P.G.Assistant [Botany] in the Government Higher Secondary School, Kalambur, at Tiruvannamalai District, wherein he had served for 5 ½ years and thereafter, he was transferred and served for about 2 ½ years in Bhuvanagiri Boys Higher Secondary School in Cuddalore District and thereafter, put in 18 years of service in Kurinjipaadi. It is the claim of the petitioner that his entire career as a teacher is an unblemished one and he is always committed and interested in furthering the career prospects of the students and he was also given promotion as Headmaster and was posted at the Government Boys Higher Secondary School, Pudupettai, wherein he had served for two years.

4 The petitioner avers that in the meanwhile, the Central Government has formulated a scheme, viz., "Rashtriya Madyamic Siksha Abiyan Scheme" and opened a Model School at Kadambuliur at Cuddalore District and as per the scheme, the administration of the school rests with the School Education Department of the Government of Tamil Nadu and it is imparting education in English Medium for the classes commencing from 6th to 12th Standard. The petitioner was transferred as the Headmaster to the said School on 19.07.2014 and once again, he has put up a hard and blemishless service to improve the academic

performance of the students. The petitioner would further aver that in the said School, the teacher by name Mrs. Queen Isabella was working and was taking classes in Maths subject to the students in 10th Standard and on numerous occasions, without properly taking classes, she was found chatting with the 12th Standard students and also skipped School prayers on very many occasions and taking note of the said lapse on her part, the petitioner in his capacity as the Headmaster, had also issued a Memo, calling upon the explanation from her. The said teacher, in response to the Memo, has also submitted her written response on 23.10.2015. Thereafter, she was submitted a false complaint directly to the 2nd respondent by making wild allegations against the petitioner and it was forwarded to the 3rd respondent, who has also called for explanation from the petitioner for which he has submitted a detailed response on 21.01.2016. The petitioner, in the interregnum, has also received numerous complaints about the performance of the said teacher from the parents as well as from the students and infuriated by the same, the said teacher had lodged false complaints and since it was not registered, she also filed CrI.OP.No.6456/2016 praying for appropriate direction, directing the Inspector of Police, Kadampuliyur Police Station, to register a case on her complaint and it was disposed of by this Court on 23.03.2016, by directing the respondent police to register

a case provided any *prima facie* case is made out and take up the investigation and the said complaint, after investigation, has been closed as ''Mistake of Fact''.

5 The petitioner, to his shock and surprise, was issued with the impugned order of transfer dated 02.08.2016 by the 1st respondent alleging dispute between the petitioner and Tmt. Queen Isabella and taking into consideration the interest of the Institution and welfare of the students, had administratively transferred him to Iraambakkam Government High School at Villupuram and challenging the legality of the same, the petitioner has filed the present writ petition.

6 This writ petition was entertained and vide interim order dated 10.08.2016 made in WP.No.27881/2016 and WMP.No.24046/2016, and order of interim stay was granted for a period of two weeks.

7 The petitioner, alleging that the said order has been willfully and wantonly disobeyed, came forward to file the petition for contempt in Cont.P.No.391/2016.

8 The learned counsel for the petitioner would submit that despite the interim order is in operation, the petitioner has not been allowed to join the earlier place

of post and in all fairness, the petitioner should have been accommodated in the earlier place of post and for nearly two years, he has not been given any joining order and since the respondent/contemnor has willfully disobeyed the interim orders passed by this Court, he is liable to be proceeded with under the provisions of the Contempt of Courts Act.

9 Per contra, Mr.C.Munusamy, learned Special Government Pleader appearing for the contemnor/respondents in the writ petition would submit that the interim order has not been extended and since the petitioner did not join the transferred post, the students are suffering very much and would further add that in the facts and circumstances, it cannot be said that the respondent had willfully violated the orders passed by this Court.

10 The petitioner has also filed an affidavit dated 12.07.2018 expressing his willingness to join the transferred post without prejudice to his rights, contentions and the prayer sought for in the writ petition as well as in the contempt petition.

11 The primordial submission of the learned counsel for the petitioner is that since the impugned order of transfer is punitive and without taking into consideration

the past record of the petitioner, it is liable to be interfered with and would further add that though the teacher by name Tmt. Queen Isabella who had made a complaint against the petitioner, was transferred, she has also obtained interim orders and pursuant to the same, she has been accommodated in the very same school ; whereas the petitioner has not been accommodated and it is *per se* contempt of the interim orders passed by this Court and prays for appropriate orders.

12 Mr.C.Munusamy, learned Special Government Pleader appearing for the contemnors/respondents in the writ petition would submit that pending contempt petition, the said post has been kept vacant and now, the petitioner will be accommodated as Headmaster in the Government Boys Higher Secondary School at Karuveppilangurichi.

13 The Court has considered the rival submissions and also perused the materials placed before it.

14 The judicial review of transfer of an employee came up for consideration before the Hon'ble Supreme Court of India in the judgment reported in 2011 [12] SCC 137 : 2011 [10] SCALE 606 [*The Registrar General, High Court of Judicature at Madras Vs. R.Perachi and others*]. The facts of the case would disclose among other things that the 1st

respondent therein who was a Sherishtadar working in the Court of the Principal District Judge, Thoothukudi, has been transferred outside the District on administrative grounds and he made a challenge to the said order by filing a writ petition contending that the impugned order of transfer is punitive and also affects her seniority and promotional chances and the said writ petition was allowed by a Division Bench of this Court and challenging the same, the Registrar General of this Court has filed a Special Leave Petition and it was entertained and subsequently, converted as Civil Appeal No.7936/2011. The Hon'ble Apex Court, has taken into consideration various decisions rendered by it and observed as follows:-

29 The Full Court of the Madras High Court had passed a resolution way back in the year 1993 to retain the subject of 'Vigilance Cell' with the Chief Justice. Therefore, it was fully within the authority of the then Chief Justice to take the decision to transfer the appellant outside the District Thoothukudi. The transfer was particularly necessary in view of the complaint that was pending against him. The Division Bench has observed that the complaint was an anonymous one. Even so, the same had been looked into by the Vigilance Cell, and the District Judge had reported that departmental enquiries were pending against the appellant and the other employees against whom the complaint had been made. The District Judge had also opined that it was undesirable to retain the appellant in his district from the point of view of the administration of that district. In view of all these factors, the Chief Justice had to take the necessary decision. It is therefore, difficult to

accept the view of the Division Bench that the Chief Justice unilaterally transferred the appellant outside the District, and the decision ought to have been taken by the Full Court or a Committee appointed by the Full Court. In view of what is pointed out above, there was no reason for the Division Bench to take such a view in the facts of the present matter.

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34 The first respondent was contending that his transfer was punitive only because his promotional chances were affected. This controversy is no longer res-integra. In *Paresh Chandra Nandi Vs. Controller of Stores, N.F. Railway* [AIR 1971 SC 359], the situation was almost similar though the grievance of the appellant was that on account of transfer of respondents 4 to 8 into his department along with their lien, his chances for promotion were materially affected. The appellant was working in the stores department of the North East Frontier Railway. This Court, however, noted that the transfer was effected under the relevant rules on administrative grounds and it did not affect his pay in any way. The Court held that the transfer of a permanent employee along with the consequent transfer of his lien cannot be challenged when the transfer is to a permanent post in the same cadre not carrying less pay, even if such transfer materially affects the chances for promotion. In the present case the pay, position and seniority of the first respondent was not affected by the impugned transfer and therefore, the same could not be said to be punitive merely because his promotional chances got affected due to the transfer. Hence, there was no question of providing him any opportunity of hearing at that stage before effecting the transfer and the order of transfer could not be faulted on that count as well.

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39 We cannot ignore that the integrity of the officers functioning in the administration is of utmost importance to retain the confidence of the litigants in the fairness of the judicial system. If there is any complaint in this behalf, the Chief Justice is expected to act on behalf of the High Court to see to it that the stream of justice does not get polluted at any level. We are pained to observe but we must state that the decisions on the judicial side such as the one in the present case create unnecessary difficulties for the High Court Administration."

15 In the light of the said judgment coupled with the reasons assigned in the impugned order, this Court is of the considered view that the impugned order of transfer cannot said to be a punitive one and the contents of the impugned order would also read that there was complaints and counter complaints against the petitioner as well as the teacher, vzi., Tmt.Queen Isabella and both of them were summoned for enquiry by Kadambuliur Police Station and both of them also appeared before the police and the teachers working in the said Institution also lodged complaints/representations and taking into consideration, the interest of the Institution and welfare of the students, had transferred the petitioner as well as Tmt.Queen Isabella.

16 In the considered opinion of the Court, the contents of the impugned order cannot said to be casting any aspersions or stigma insofar as the services rendered by the petitioner and it was effected purely on administrative grounds by taking into consideration the interest of the Institution in general and the welfare of the students, in particular.

17 Therefore, the reasons assigned in the impugned order are perfectly justifiable and this Court finds no tenable grounds in interfering with the same. Hence, the writ petition is dismissed. No costs. Consequently, the connected miscellaneous petitions are also dismissed.

18 Insofar as the contempt petition is concerned, on account of the subsistence of the interim order, the petitioner was hopeful to get the posting order in the very same school from which he was transferred and now, he has been accommodated as the Headmaster in the Government Boys Higher Secondary School at Karuveppilangurichi and he is going to join the said post.

19 The petitioner is at liberty to join the said post at the earliest and it is also open to him to submit a representation as to the continuity of service and payment of salary and as and when such a representation through

proper channel is made, the concerned official respondents are directed to consider the said representation on merits and in accordance with law and pass appropriate orders as expeditiously as possible and not later than four weeks from the date of receipt of the said representation and communicate the decision taken, to the petitioner.

20 The contempt petition is closed subject to the above observations.

SD/-

ASSISTANT REGISTRAR (COMM.CASES)

//CERTIFIED TO BE TRUE COPY//

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DATED AT MADRAS THIS THE DAY OF 2018.

COURT OFFICER (O.S.)

FROM 25TH DAY OF SEPTEMBER 2008 THE REGISTRY IS ISSUING CERTIFIED COPIES OF THE ORDERS/JUDGMENTS/DECREES IN THIS FORMAT.

SS/31/07/2018

One CC to Government Pleader, High Court, Sr.No.10044

One CC to Mr.R.Ganesh Kumar, High Court, Sr.No.9921

To

1.The Director of School Education,
DPI Campus, College Road
Chennai 600 006.

2.The Joint Director of School Education,
DPI Campus, College Road,
Chennai 600 006.

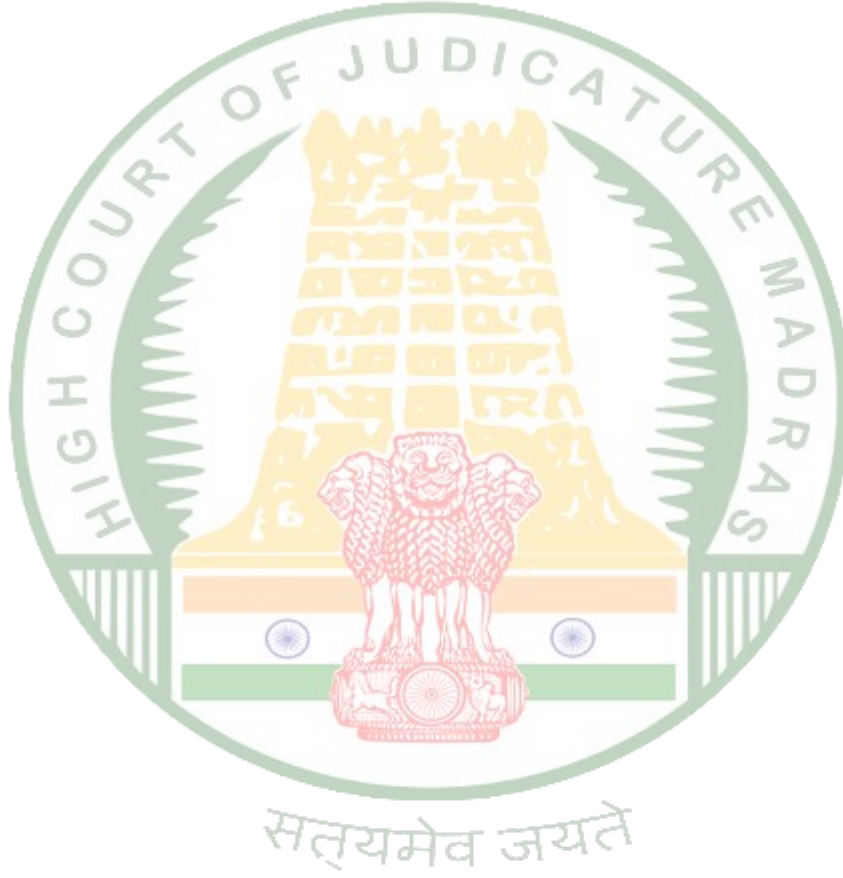
3.The Chief Educational Officer
Mamasaipalam, Cuddalore District.

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

4.The District Educational Officer

Manajakuppam, Cuddalore District.

5.The Government Model Higher Secondary School
Kadambuliur, Cuddalore District.



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