

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.3.2018

CORAM

THE HONOURABLE MR.JUSTICE HULUVADI G.RAMESH
AND
THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

W.A.No.68 of 2018
and
C.M.P.Nos.3476 and 583 of 2018

The Correspondent,
Sri.V.D.S.Jain Higher Secondary School,
Tiruvannamalai 606 601.
Tiruvannamalai District. .. Appellant/2nd Respondent

Versus

1. N.Mahadevan .. 1st Respondent/Writ
Petitioner
2. The Joint Director of School Education
(Higher Secondary)
College Road, Chennai 600 006. .. 2nd Respondent/
1st Respondent

Prayer: Writ Appeal filed filed under Clause 15 of the Letters
Patent against the order dated 1.11.2017 passed in W.P.No.23266
of 2008 on the file of this court.

W.P.No.23266 of 2008:-

Filed under Article 226 of the Constitution of India to
issue a Writ of Certiorarified Mandamus, calling for the records
on the file of the 2nd respondent regarding termination of
petitioners service by proceedings No.001/c/06 dt 16.4.2006 and
quash the same and consequently directing the 2nd respondent to
reinstate the petitioner in to service with all back wages.

For appellant : Mr.AR.L.Sundaresan, Senior Counsel for
Mrs.AL.Ganthimathi

For R1 : Mr.P.Wilson, Senior Counsel for
Mr.J.Selvarajan

For R2 : Mrs.V.Annalakshmi, Government Advocate

JUDGMENT

(Judgment of the court was made by HULUVADI G.RAMESH, J.)

Heard the learned Senior Counsels appearing for the parties and the learned Government Advocate appearing for the official respondent.

2. The writ appeal is filed by the School Management, challenging the order passed by the learned Single Judge allowing the writ petition and thereby directing for reinstatement of the writ petitioner into service with all monetary benefits.

3. The allegation against the writ petitioner-a Post Graduate Assistant (Chemistry) at Sri.V.D.S.Jain Higher Secondary School, Tiruvannamalai is that he was sexually harassing the +1 and +2 girl students in the Chemistry Lab and in the class room.

4. The learned Senior Counsel appearing for the first respondent would contend that neither copy of the complaint nor the statement of the victim girl had been furnished to the first respondent/writ petitioner and furthermore, the alleged victim girls had not been examined in the presence of the delinquent which amounts to violation of principles of natural justice.

5. Per contra, the learned Government Advocate appearing for the appellant relied upon the decision in C.PARTHIBAN v. DR.K.MEENA (2007 (2) LLN 678) wherein it has been held that in respect of sexual harassment held as under:-

"Vice-Chancellor is free to change the mode of enquiry by virtue of powers under the Statute and in order to protect the modesty of the girl students and to prevent unnecessary exposure to the enquiry committee, the complainants are exempted from appearing and deposing before the enquiry committee and it is for the University to provide the necessary documents to the enquiry officer."

6. The above decision was sought to be relied upon by the learned Senior Counsel appearing for the appellant-School Management to contend that in the interest of the victim girls, dispensing with furnishing of copy of the documents and the statement of the victims to the writ petitioner was done and therefore, it is not open for judicial review.

7. We have given our anxious consideration to the contentions of the learned counsel appearing for the parties. It is not in dispute that the School Management has not only dispensed with the presence of the delinquent while examining the victim girl, but also, has not furnished the documents and statement of the victim girl, despite the representation submitted by the writ petitioner thrice. When the statement of the victim was not furnished, we are of the considered view that there is violation of natural justice compelling us to hold that the order of dismissal passed by the appellant herein is a disproportionate one. However, taking note of the fact that the writ petitioner has completed 19 years of service, and he was placed on suspension in 2007 and is due to retire by 30.3.2018, we are of the view that in the interest of justice it would be fair if the order passed by the learned Single Judge is modified to the extent that instead of reinstatement of the writ petitioner into service, the punishment would be a compulsory retirement with continuity of service, but, without backwages.

Accordingly, the writ appeal is allowed in part. No costs. The connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

ssk.

To:

1. The Joint Director of School Education
(Higher Secondary)
College Road, Chennai 600 006.
2. The Correspondent,
Sri.V.D.S.Jain Higher Secondary School,
Tiruvannamalai 606 601.
Tiruvannamalai District.

+1cc to Mrs.AL.Ganthimathi, Advocate, S.R.No.24510
+1cc to Mr.M.Vijaya Raghavan, Advocate, S.R.No.23998
+1cc to Mr.J.Selvarajan, Advocate, S.R.No.24352

W.A.No.68 of 2018

PVS (CO)

CS/25/04/18