

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 06.07.2018

DELIVERED ON : 26.07.2018

CORAM

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.P.NO.22362 OF 2013

G.Prabakaran

... Petitioner

Vs

1. The Secretary to Government,
Education Department,
Fort St.George, Chennai.
2. The Director of School Education,
College Road, Chennai-6.
3. The Chief Educational Officer,
Thanjavur District.
4. The District Educational Officer,
Thanjavur District.

.... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Mandamus, to direct the respondents to grant subsistence allowance to the petitioner for the period 2004 till 01.03.2008 and from 23.06.2009 onwards till he is reinstated and grant him benefit of reinstatement on par with other teachers by appropriately refixing his pay with reference to the past service rendered by him.

For Petitioner : Mr.V.Vijay Shankar

For Respondents : Mr.C.Munusamy,
Special Government Pleader

O R D E R

Heard Mr.V.Vijay Shankar, learned counsel for the petitioner and Mr.C.Munusamy, learned Special Government Pleader appearing for the respondents.

2. The petitioner has approached this Court, seeking the following relief:-

"To issue a writ of Mandamus, to direct the respondents to grant subsistence allowance to the petitioner for the period 2004 till 01.03.2008 and from 23.06.2009 onwards till he is reinstated and grant him benefit of reinstatement on par with other teachers by appropriately refixing his pay with reference to the past service rendered by him."

3. The case of the petitioner is as follows:-

The petitioner was appointed as Headmaster in Sri Krishna Girls Higher Secondary School, which is an aided institution, on 01.06.1993. On 16.07.2004, there was a major fire accident engulfed the school premises, in which, several young students died. According to the petitioner, he was absent on that day as he was on casual leave. In view of the death of several students, many authorities like District Educational Officer, Chief Educational Officer, Assistant Educational Officer, Headmaster, Correspondent and few Teachers of the School, were arrested and proceeded with criminal action. The petitioner was one of the persons who was arrested. The School was also closed and the service of the petitioner and many others was discontinued.

4. Subsequent to the arrest of the petitioner, he was released on bail in January 2005 and in the further investigation, it was found that there was no involvement of the petitioner in being negligent or responsible for the death of the students. Therefore, his name was dropped from the charge sheet and simultaneously, he has been shown as a prosecution witness by the criminal investigation. A charge sheet was also filed on 05.07.2005 in Crime No.261 of 2004, against 24 persons and the petitioner was not shown as accused. On closure of the School, subsequently, vide G.O.2(D).No.49 dated 28.09.2006, teaching staff who were not shown as accused, were accommodated in other Schools. However, the petitioner was not provided with the benefit of the above said Government Order. This was probably because, the petitioner was arrested during the initial period of investigation and was detained in police custody for more than 48 hours. Therefore, he was deemed to have been suspended from service in December 2004, when the arrest was made.

5. The petitioner also earlier, approached this Court in W.P.No.4783 of 2008, for payment of subsistence allowance during the period of suspension. Finally, after orders of this Court, he was paid subsistence allowance for the period from 01.03.2008 till 23.06.2009. In 2011, in pursuance of the direction passed by this Court, the petitioner submitted a representation, seeking for reinstatement and other benefits and in response to the same, certain particulars were asked for and the same was

also provided by the petitioner. Thereafter, nothing came through. In the meanwhile, the petitioner came to be appointed by way of direct recruitment as P.G.Assistant selected by Tamil Nadu Teachers Recruitment Board for the year 2010-11 and was appointed on 15.09.2012. The grievance of the petitioner is that despite the fact, number of teachers were accommodated in other Schools with all benefits and he alone was left out by not providing him alternative employment. In fact, subsequently, according to the petitioner, even some of the teachers who were accused in the criminal case, had also been accommodated.

6. The learned counsel for the petitioner would contend that once a decision is taken by the Government in 2006, which was conveyed by a Government Order on 28.09.2006, the denial of the same benefit to the petitioner is discriminatory and unreasonable, since admittedly, the petitioner was not shown as accused in the criminal case and in fact, he was shown as a prosecution witness. Further, he would submit that as per the provisions of the Tamil Nadu Private Schools Regulation Act, no teaching staff can be placed under suspension for more than four months. In the present case, although there was a deemed suspension on the ground that the petitioner was detained in custody for more than 48 hours, but, no specific order of suspension was passed and the petitioner was continuously kept out of employment till 14.09.2012, for no valid reasons.

7. In fact, according to the learned counsel for the petitioner, even assuming that the petitioner was placed under continuous suspension, no subsistence allowance was paid for entire period, it was paid only for brief period i.e., from 01.03.2008 till 23.06.2009. Therefore, according to the learned counsel for the petitioner, he is either entitled to subsistence allowance in case his non-employment was assumed to be one of suspension or he ought to have been paid salary for the period, as the suspension beyond four months period was invalid in the eye of law. Therefore, he was entitled to salary for the period from December 2004 till 14.09.2012, since the petitioner came to be re-appointed as P.G.Assistant by direct recruitment only on 15.09.2012 and also appears to have retired from service.

8. Upon notice, learned Special Government Pleader appearing for the respondents, entered appearance and filed a detailed counter affidavit.

9. The learned Special Government Pleader would reiterate the contents contained in the counter affidavit. In the counter affidavit, it is admitted that the Government has issued an order on 28.09.2006, wherein, 9 teachers were accommodated in other Schools. The learned Special Government Pleader would

submit that the petitioner was sanctioned with the subsistence allowance to the tune of Rs.1,15,293/-, with effect from 01.03.2008 till 23.06.2009, pending disposal of W.P.No.4783 of 2008. However, ultimately, the said writ petition was dismissed on 07.06.2011, directing the petitioner to make a fresh representation to the authority concerned with all supporting materials. Since the petitioner got selected by direct recruitment by Tamil Nadu Teachers Recruitment Board as P.G.Assistant and posted in Government Boys high School, Koothanallur, Thiruvarur District, the question of considering any relief in the form of subsistence allowance or salary did not arise at all. The learned Special Government Pleader would submit that in any event, the petitioner was not entitled to any relief as claimed by him.

10. The point for consideration before this Court is whether the petitioner is entitled to any relief at all in the first place and if so, to what relief. It is an admitted position that the petitioner was not one of the accused in the criminal case and in fact, he was shown only as a prosecution witness. Since he was not facing any departmental or criminal action, this Court does not see on what basis, the petitioner could be denied either employment or salary for the period of his non-employment. The provision of the Tamil Nadu Private Schools Regulation Act provides a ceiling that the maximum period of suspension of a teaching staff could be four months and beyond that continuous suspension would become invalid in law. In which event, the petitioner was deemed to have restored to service as no further departmental action had been taken and also no order of suspension was passed.

11. This is a very peculiar case that the authority had neither passed an order of suspension nor passed any order for continuously denying the petitioner, his employment from 2004 till 14.09.2012. Moreover, when the Government has issued G.O.2D.No.49 dated 28.09.2006, providing alternative employment to nine teachers who were not shown as accused, this Court is unable to see as to how the claim of the petitioner could be treated differently by not providing him employment. In any event, today, the question of providing employment to the petitioner does not arise, since he came to be directly recruited as P.G.Assistant and appointed on 15.09.2012.

12. However, the period of non-employment of the petitioner from 2004 had to be regulated one way or the other, as such non-employment of the petitioner ought to be legally supported. In the circumstances of the case, this Court is unable to see as to how the petitioner could be forced to remain non employed from December 2004, without any kind of orders passed by the authority concerned. In the said circumstances, this Court has

no other option except to declare the period of his non-employment from December 2004 till 14.09.2012, is untenable and unsustainable in law.

13. As rightly contended by the learned counsel for the petitioner that when the benefit is extended to all the teachers of erstwhile Sri Krishna Girls Higher Secondary School, the same benefit has to be extended to the Headmaster of the School viz., the petitioner herein. He was admittedly identically placed like the other teachers who were covered by G.O.2D.No.49 dated 28.09.2006. The staff of the Government aided School, cannot be kept out of employment without any form of formal action taken against him and deny the benefit of his rightful earnings for that period.

14. In the instant case, there appears to be no action taken against the petitioner departmentally and criminally and in which case, this Court does not understand on what basis, the petitioner could be denied employment and other consequential benefits of such forced non-employment. No matter whatever be the gravity of situation, the right of the petitioner could not suffer indefinite negation without any legal solution for enforcing such valuable right for continuance of employment.

15. For all the above said reasons, this Court is of the considered view that the petitioner is also entitled to the benefit as provided to nine teachers who were covered under G.O.2D.No.49 dated 28.09.2006, till his re-employment on 15.09.2012 and in terms of the monetary benefits as provided to the other said teachers, since the question of grant of employment to the petitioner, at this point of time, does not arise. Therefore, this Court in the fitness of things, directs the respondents to pay salary for the period of his non-employment on par with the teachers who were granted the benefit under G.O.2D.No.49 dated 28.09.2006, commensurate to the position of the petitioner as Headmaster of the erstwhile School after making necessary adjustment of the subsistence allowance already paid to him for certain period as aforementioned. The respondents are directed to pass appropriate orders in this regard, within a period of three months from the date of receipt of a copy of this order.

16. With the above direction, the writ petition stands disposed of. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//
Sub Assistant Registrar

gsk

To

1. The Secretary to Government,
Education Department,
Fort St.George, Chennai.
2. The Director of School Education,
College Road, Chennai-6.
3. The Chief Educational Officer,
Thanjavur District.
4. The District Educational Officer,
Thanjavur District.

+lcc to Mr.V.Vijay Shankar, Advocate, S.R.No.50670

W.P.No.22362 of 2013

GHII (CO)
CS/21/08/18



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