



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON:23.04.2018
DELIVERED ON:.28.04.2018

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CORAM:

THE HONOURABLE MR.JUSTICE M.DURAI SWAMY
and
THE HONOURABLE DR.JUSTICE ANITA SUMANTH

W.A. (MD) No.377 of 2018
against
W.P. (MD) No.13147 of 2014

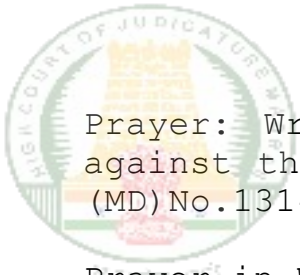
S.Thirugnanasambandam

... Appellant/Petitioner

Vs.

1. State of Tamilnadu,
represented by its Education Secretary,
Ministry of Education,
Chennai-600 009.
2. The Director of School Education,
Directorate of School Education,
Chennai-600 006.
3. The Chief Education Officer,
Chief Education Office,
Thallakulam,
Madurai - 625 002.
4. The District Education Officer,
District Education Officer,
Thallakulam,
Madurai - 625 002.
5. The Secretary,
M.A.V.M.M.Hr.Sec.School,
7-10, East Vaddampokki Street,
Yanikal, Madurai-625 001.

6. The Director,
Educational Consultants India Ltd.,
(A Government of India Enterprise),
18-A, Sector-16 A, Noida-201301. ... Respondents/Respondents



Prayer: Writ Appeal filed under Clause 15 of the Letter Patent against the order, dated 28.11.2014, passed by this Court in W.P. (MD)No.13147 of 2014.

Prayer in WP(MD). 13147/ 2014 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned termination of the petitioner dated 16/12/2009 issued by the M.A.V.M.M. Hr. Sec. School and CEO permission letter copy no 13255/E5/93 dated 26.05.1994 on the file of respondents 3& 5 and the quash the same as illegal and consequently directing the respondents to re- instate the petitioner as a full time vocation teacher at once, and direct the respondents to consider the petitioner service would be taken from 1993 April till this date.

For Appellant : Mr.S.Thirugnanasambandam
Party-in-person

For Respondents : Mr.R.Murugan
Additional Government Pleader
for R.1 to R.4
: Mr.J.Barathan
for R.5
: M/s AL.Ganthimathi
for R.6

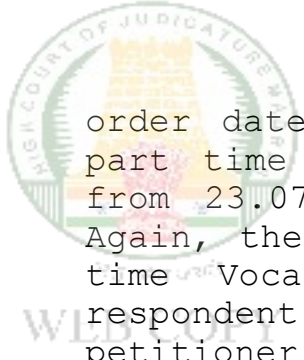
JUDGMENT

M. DURAISWAMY, J.

Challenging the order passed in W.P.(MD)No.13147 of 2014, the appellant/writ petitioner has filed the above writ appeal.

2. The appellant/writ petitioner filed the writ petition to issue a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned termination of the petitioner, dated 16.12.2009, issued by the M.A.V.M.M. Higher Secondary School and the permission letter dated 26.05.1994 issued by the Chief Educational Officer, on the file of the respondents 3 and 5 and quash the same and consequently directing the respondents to re-instate the petitioner as a full time vocation teacher at once and direct the respondents to consider the petitioner's service continuously from April 1993 till this date.

3. It is the case of the appellant/writ petitioner that he joined the service of the fifth respondent School as a single part time Vocational Instructor with effect from 26.11.1984 and his appointment was approved by the third respondent, Chief Educational Officer, Madurai with effect from the same date, by an



order dated 02.02.1985. Thereafter, he was appointed as double part time Vocational Instructor in the same school with effect from 23.07.1986 on consolidated pay purely on temporary basis. Again, the appellant/writ petitioner's appointment in double part time Vocational Instructor post was approved by the third respondent by order dated 01.10.1986. Subsequently, the petitioner was appointed as full time Vocational Instructor with effect from 01.04.1990 on the following conditions:

- (i) The appointment was purely on temporary basis;
- (ii) The services will be regularised according to the rules to be framed by the Government; and
- (iii) A physical fitness certificate should be produced by the teacher and pasted in the service book to be opened in future.

4. Further the appellant/writ petitioner contended that his appointment in the time scale of pay was also approved by the third respondent by order dated 08.06.1991. Pursuant to the said order, the appellant/writ petitioner and the fifth respondent entered into an agreement dated 04.04.1991 and after two years, the appellant/writ petitioner gave a letter on 27.03.1993 to the fifth respondent school management stating that he has been selected for working as a teacher in Botswana by the Educational Consultant India Ltd. After completion of the employment, when he returned from Botswana, he was not allowed to join the employment. On enquiry, he was informed that his services were terminated with effect from 15.04.1993. Challenging the order of termination dated 16.12.2009 and the permission granted on 26.05.1994 by the third respondent for terminating the appellant/writ petitioner, the appellant/writ petitioner filed the writ petition in the year 2014.

5. The fourth respondent in his counter affidavit submitted that when the appellant/writ petitioner was appointed as a single part time Vocational Instructor with effect from 26.11.1984 in the fifth respondent school, his appointment was approved by the third respondent with effect from 02.02.1985 and subsequently he was again appointed as a double part time Vocational Instructor with effect from 23.07.1986 and this was also approved by the third respondent by order dated 01.10.1986. Further the fourth respondent has stated that the appellant/writ petitioner became full time Vocational Instructor with effect from 01.04.1990. But after three years, he had left the fifth respondent School to Botswana and before leaving for Botswana he had not obtained any written permission from the fifth respondent. Therefore, the termination order was passed on 15.04.1993.

6. The learned single Judge, taking note of the fact that the appellant/writ petitioner has not challenged the order of termination dated 15.04.1993 and has challenged the order passed by the third respondent on 26.05.1994, after a lapse of 20 years, declined to entertain the prayer sought for by the appellant and



dismissed the writ petition. Challenging this order, the appellant/writ petitioner has filed the above appeal.

7. Heard the appellant, who appeared as party-in-person, Mr.R.Murugan, learned Additional Government Pleader appearing for the respondents 1 to 4, Mr.J.Bharathan, learned Counsel appearing for the fifth respondent and M/s.AL.Ganthimathi, learned Counsel appearing for the sixth respondent.

8. The appellant/writ petitioner submitted that he was wrongfully terminated for the reason that he had applied for leave periodically, however, the same was not sanctioned by the Authorities. Therefore, the order of termination passed by the fifth respondent is legally not sustainable.

9. In support of his contention, the appellant/writ petitioner relied upon a judgment in **C.Marianandam Vs. The Government of Tamil Nadu and Others** reported in (1989)1 LLJ 269, Madras, wherein this Court held as follows:

"17. The reasoning of the Supreme Court appears to be that the Court could grant specific relief when the termination of service is by way of disciplinary action or when the order of termination is in contravention of any statutory provision or regulation or procedural rule. In the present case, there is a clear violation of the relevant rules as the procedure prescribed in clause 7 of the agreement has not been followed. As there is an infraction of the statutory rule, the Court is entitled to declare the order of termination of service to be illegal. The natural consequence is that the petitioner should be deemed to continue in service without any break therein."

10. Countering the submissions made by the appellant/writ petitioner, Mr.J.Bharathan, learned Counsel appearing for the fifth respondent school submitted that the appellant/writ petitioner has challenged the impugned orders after a lapse of nearly 20 years and therefore, the learned Single Judge has rightly dismissed the writ petition. Further the learned Counsel submitted that even without obtaining the permission from the fifth respondent, the appellant/writ petitioner had gone to Botswana in the year 1993 and returned back only in the year 2011. That apart, the learned Counsel also submitted that after a full knowledge about the order of termination passed on 15.04.1993 as early as in the year 1993 itself, inspite of the same, he chose to file the writ petition only in the year 2014. Therefore, the learned Counsel sought for dismissal of the writ appeal.

<https://hcservices.ecourts.gov.in/hcservices/> In support of his contention, the learned Counsel relied upon a judgment in **C.Jacob Vs. Director of Geology and**



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Mining and another reported in **(2008)10 Supreme Court Cases 115**, wherein the Honourable Supreme Court held as follows:

8. Let us take the hypothetical case of an employee who is terminated from service in 1980. He does not challenge the termination. But nearly two decades later, say in the year 2000, he decides to challenge the termination. He is aware that any such challenge would be rejected at the threshold on the ground of delay (if the application is made before Tribunal) or on the ground of delay and laches (if a writ petition is filed before a High Court). Therefore, instead of challenging the termination, he gives a representation requesting that he may be taken back to service. Normally, there will be considerable delay in replying such representations relating to old matters. Taking advantage of this position, the ex-employee files an application/writ petition before the Tribunal/High Court seeking a direction to the employer to consider and dispose of his representation. The Tribunals/High Courts routinely allow or dispose of such applications/petitions (many a time even without notice to the other side), without examining the matter on merits, with a direction to consider and dispose of the representation.

9. The courts/tribunals proceed on the assumption, that every citizen deserves a reply to his representation. Secondly they assume that a mere direction to consider and dispose of the representation does not involve any 'decision' on rights and obligations of parties. Little do they realize the consequences of such a direction to 'consider'. If the representation is considered and accepted, the ex-employee gets a relief, which he would not have got on account of the long delay, all by reason of the direction to 'consider'. If the representation is considered and rejected, the ex-employee files an application/writ petition, not with reference to the original cause of action of 1982, but by treating the rejection of the representation given in 2000, as the cause of action. A prayer is made for quashing the rejection of representation and for grant of the relief claimed in the representation. The Tribunals/High Courts routinely entertain such applications/petitions ignoring the huge delay preceding the representation, and proceed to examine the claim on merits and grant relief. In this manner, the bar of limitation or the laches gets obliterated or ignored.



10. Every representation to the government for relief, may not be replied on merits. Representations relating to matters which have become stale or barred by limitation, can be rejected on that ground alone, without examining the merits of the claim. In regard to representations unrelated to the department, the reply may be only to inform that the matter did not concern the department or to inform the appropriate department. Representations with incomplete particulars may be replied by seeking relevant particulars. The replies to such representations, cannot furnish a fresh cause of action or revive a stale or dead claim.

11. When a direction is issued by a court/tribunal to consider or deal with the representation, usually the directee (person directed) examines the matter on merits, being under the impression that failure to do may amount to disobedience. When an order is passed considering and rejecting the claim or representation, in compliance with direction of the court or tribunal, such an order does not revive the stale claim, nor amount to some kind of 'acknowledgment of a jural relationship' to give rise to a fresh cause of action.

12. When a government servant abandons service to take up alternative employment or to attend to personal affairs, and does not bother to send any letter seeking leave or letter of resignation or letter of voluntary retirement, and the records do not show that he is treated as being in service, he cannot after two decades, represent that he should be taken back to duty. Nor can such employee be treated as having continued in service, thereby deeming the entire period as qualifying service for purpose of pension. That will be a travesty of justice.

13. Where an employee unauthorizedly absents himself and suddenly appears after 20 years and demands that he should be taken back and approaches court, the department naturally will not or may not have any record relating to the employee at that distance of time. In such cases, when the employer fails to produce the records of the enquiry and the order of dismissal/removal, court cannot draw an adverse inference against the employer for not producing records, nor direct reinstatement with back-wages for

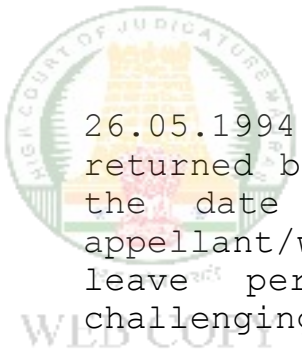


20 years, ignoring the cessation of service or the lucrative alternative employment of the employee. Misplaced sympathy in such matters will encourage indiscipline, lead to unjust enrichment of the employee at fault and result in drain of public exchequer. Many a time there is also no application of mind as to the extent of financial burden, as a result of a routine order for back-wages.

14. We are constrained to refer to the several facets of the issue only to emphasize the need for circumspection and care in issuing directions for 'consideration'. If the representation is on the face of it is stale, or does not

contain particulars to show that it is regarding a live claim, courts should desist from directing 'consideration' of such claims.

15. The present case is a typical example of 'representation and relief'. The petitioner keeps quiet for 18 years after the termination. A stage is reached when no record is available regarding his previous service. In the representations which he makes in 2000, he claims that he should be taken back to service. But on rejection of the said representation by order dated 9.4.2002, he filed a writ petition claiming service benefits, by referring the said order of rejection as the cause of action. As noticed above, the learned Single Judge examined the claim, as if it was a live claim made in time, finds fault with the respondents for not producing material to show that termination was preceded by due enquiry and declares the termination as illegal. But as the appellant has already reached the age of superannuation, the learned Single Judge grants the relief of pension with effect from 18.7.1982, by deeming that he was retired from service on that day. We fail to understand how the learned Single Judge could declare a termination in 1982 as illegal in a writ petition filed in 2005. We fail to understand how the learned Single Judge could find fault with the department of Mines and Geology, for failing to prove that a termination made in 1982, was preceded by an enquiry in a proceedings initiated after 22 years, when the department in which appellant had worked had been wound up as long back as 1983 itself and the new department had no records of his service.



26.05.1994. The appellant/writ petitioner submitted that he returned back to India in the year 2008 ie., after 15 years from the date of leaving the school in the year 1993. The appellant/writ petitioner contended that since he applied for leave periodically, he did not initiate any proceedings challenging the order dated 26.05.1994.

14. Though the appellant/writ petitioner contended that the order of termination was not duly communicated to him, the materials available on record would establish that the appellant/writ petitioner had complete knowledge about the order of termination dated 15.04.1993 in the year 1993 itself. He has challenged the action of the respondents only in the year 2014 ie., after a lapse of 20 years. Admittedly, the appellant/writ petitioner has not taken prior permission from the concerned Authorities, before leaving the country to Botswana for employment. Therefore, it is clear that for atleast 15 years, he enjoyed the employment in the said country and he thought it fit to challenge the termination order after a lapse of 20 years. Further, the petitioner in fact, has opted for lucrative private employment between the period from September 2008 to January, 2011 in Botswana itself, choosing to return to India only thereafter. Though the appellant/writ petitioner had returned to India in the year 2011, he chose to file the writ petition only in the year 2014. When the appellant/writ petitioner unauthorizedly absent himself and suddenly files the writ petition after 20 years and demands that he should be taken back, in such cases, misplaced sympathy will encourage indiscipline, lead to unjust enrichment of employee at fault and result in drain of public exchequer.

15. When the appellant/writ petitioner had deserted the service without getting any prior permission from the Authorities and went to Botswana and got employment and enjoyed the fruits for many years, he was rightly terminated from the service. The ratio laid down in the judgment in **C. Jacob Vs. Director of Geology and Mining and another** reported in **(2008)10 Supreme Court Cases 115**, squarely applies to the present case. The learned Single Judge, considering all these aspects, has rightly dismissed the writ petition. We do not find any merits in the writ appeal. The writ appeal is liable to be dismissed. Accordingly, the same is dismissed. In the facts and circumstances, we are of the unambiguous view that the conduct of the petitioner, is unbecoming of a Teacher. We thus impose a symbolic cost of an amount of Rs.5,000/- (Rupees Five Thousand only) to be paid equally to the respondents 3 and 5.

Sd/-

Assistant Registrar (CS-I)

/True Copy/



1. The Education Secretary,
State of Tamilnadu,
Ministry of Education,
Chennai-600 009.

2. The Director of School Education,
Directorate of School Education,
Chennai-600 006.

3. The Chief Education Officer,
Chief Education Office,
Thallakulam,
Madurai - 625 002.

4. The District Education Officer,
District Education Officer,
Thallakulam,
Madurai - 625 002.

+ 1 cc TO Mr.T.R.Jeyapalam , Advocate in SR No. 64828
+ 1 cc TO Mr.AL.Gandhimathi , Advocate in SR No. 64329

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JUDGMENT MADE IN
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