



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.02.2018

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P. (MD) No.21250 of 2015

and

MP (MD) No.1 and 2 of 2015

& WMP (MD) No.1394 of 2016

S.Sophi Shavrin Aashicka
Secondary Grade Teacher,
R.C.Primary School,
Chemparuthivilai, Kanyakumari District.

... Petitioner

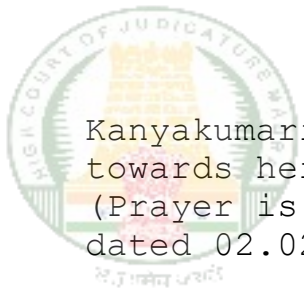
Vs.

1. The Director of Elementary Education,
College Road, Chennai - 600 006.
2. The District Elementary Educational
Officer,
Kanyakumari District, Nagercoil - 629 001.
3. The Assistant Elementary Educational
Officer,
Thuckalay, Kanyakumari District.
4. The Correspondent, RC Primary School,
Chemparuthivilai, Kanyakumari District.
5. The Corporate Manager, Roman Catholic Schools,
"Thedal" 10/8-46 C, Bridge Ward,
Near Fire Station, Kuzhithurai,
Kanyakumari District - 629 163

6.Sr.Maria Salomai

... Respondents

Prayer: This writ petition is filed under Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records relating to the resignation letter dated 04.06.2015 appears to be submitted by the petitioner, and the approval granted by the second respondent District Elementary Educational Officer vide his proceedings in Na.Ka.No.1903/Aa1/2015 dated 07.07.2015, quash the same and further direct the respondents 1 to 5 to permit the petitioner to continuously work as Secondary Grade Teacher in the fourth respondent school namely, R.C.Primary School, Chemparuthivilai,



Kanyakumari District and disburse the petitioner's grant-in-aid towards her salary and all other monetary benefits.

(Prayer is amended as per the Court order dated 02.02.2018 in WMP(MD)No.2957 of 2017)

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For petitioner : Mr.S.Xavier Rajini

For Respondents : Mr.M.Jeyakumar,
Addl., Government Pleader
for R1 to R3

Mr.T.Cibi Chakraborty
for R4 & R5

ORDER

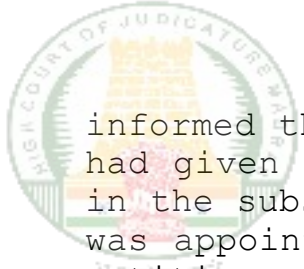
Heard the learned counsel on either side.

2.The petitioner joined as a Nun in the Congregation of Bon Secours, Trichy in the year 1997. She was appointed as a Secondary Grade Teacher in the school run by the congregation on 17.01.2001. She was transferred from one school to another over the years. On 29.03.2014, the petitioner was transferred to R.C.Primary School, Chemparuthivilai, Kanyakumari District. It comes under the corporate management of the fifth respondent.

3.The case of the petitioner is that her parents were seriously ill since 2013 and that on account of her congregational commitments, she could not be with them. The parents died one after other. The petitioner received information that her brother also fell into serious ill. She therefore requested the congregational superiors that she wanted to be relieved as a Christian Nun. So that she could give back to her family of birth.

4.The specific allegation of the petitioner is that the superiors of the congregation obtained signatures from the petitioner in various blank papers and that she was also made to write out her resignation letter. This was on 05.06.2015. The petitioner's only intention was to save her brother's life and after discharging her brother in the hospital, the petitioner returned to the congregation at Chemparuthivilai, Kanyakumari District on 15.06.2015. But, the petitioner was not permitted to re-join in the congregation on the ground that her resignation as a Christian Nun had already been accepted. When the petitioner reported to the fourth respondent to rejoin duty as Second Grade Teacher she was not allowed.

5.According to the petitioner, she met the respondents 2 to 5 on 16.06.2015, 17.06.2015 and 18.06.2015. The petitioner was



informed that she could meet them after two weeks. The petitioner had given specific dates when she met the said respondents 2 to 5 in the subsequent months. In the meanwhile, the sixth respondent was appointed in her place and her appointment was approved. The petitioner originally filed this writ petitions in the nature of writ of mandamus for directing the respondents 1 to 5 not to accept her resignation letter and to permit her to continue to work as Secondary Grade Teacher in the fourth respondent school.

6. Since it is evident from the counter affidavits that not only her resignation letter has been accepted but also the appointment of the sixth respondent has been approved, the petitioner filed WMP(MD)No.2957 of 2017 for amending the prayer. This Court by order dated 02.02.2018 allowed the same. The petitioner now questions not only the acceptance of the resignation letter but also the approval granted in favour of the sixth respondent. Both the official respondents as well as the school management have filed separate counter affidavits. Their stand is that the petitioner voluntarily resigned her post and that her resignation letter was in her own handwriting and that is why, it was accepted. The sixth respondent was qualified to be appointed in the place of the petitioner and approval granted for her appointment cannot be questioned.

7. The core contention of the writ petitioner is that there has been a gross violation of the Rule 17(A) of the Tamil Nadu Recognized Private Schools (Regulation) Rules, 1974. It was held in **2000 Writ L.R.300 (K.Chettiappan Vs. The Chief Educational Officer, Ramanathapuram)** that the said rule is applicable to minority aided schools as well. The said decision was approvingly cited by the Hon'ble Division Bench of this Court in its order dated **09.10.2007 in WA(MD)No.476 of 2007**. The Rule 17(A) of the Tamil Nadu Recognized Private Schools (Regulation) Rules, 1974 reads as under :

"17-A. Educational agencies not to obtain compulsorily resignation letter either at the time of appointment or subsequently from the employees in their school - (1) Whenever a Teacher or other person employed in a private school, tenders his resignation of appointment, he shall inform the fact of his resignation in writing by registered post with acknowledgement due to the District Educational Officer, Inspectress of Girls' School or the Deputy Inspector of Schools concerned.

(2) No Teacher or other person employed in a private school shall give to the educational agencies, at any time, undated or pre-dated resignation letter.

(3) No Educational Agency shall insist or compel any Teacher or other person employed in private school to



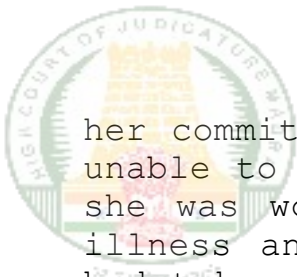
give, at any time, undated or pre-dated resignation letter.

(4) No Teacher or other person employed in a private school shall be relieved from service on the strength of resignation letter. The resignation letter shall, on receipt, be sent to the Chief Educational Officer concerned in respect of Teacher and other persons employed in High Schools, Higher Secondary Schools and Teachers' Training Institutes and to the District Educational Officer concerned in respect of Teacher and other person employed in a Pre-Primary, Primary and Middle Schools. The Chief Educational Officer or District Educational Officer concerned shall, in turn, get the confirmation of the Teacher or other person employed, as the case may be, as to the fact of such resignation and then accord his approval to relieve the Teacher or other person employed, as the case may be, from service.

(5) Entries regarding the date of acceptance of resignation of appointment shall be made by the Secretary of the School Committee, in the Teachers' Service Registers of the Teacher or in the Service Registers of the other persons employed in a private school under proper attestation and duly countersigned by the District Educational Officer or the Inspectress of Girls' Schools, as the case may be.

(6) No substitute shall be appointed in the place of a Teacher or other person employed in a private school who has been relieved on the basis of the resignation letter tendered by him, without obtaining prior approval of the Chief Educational Officer concerned in respect of the Teacher and other person employed in High Schools, Higher Secondary Schools and Teachers' Training Institutions and the District Educational Officers concerned in respect of Teachers and other persons employed in Pre-Primary, Primary and Middle Schools.]

8. Now, it is to be seen, if the mandate set out in the aforesaid rule was scrupulously followed by the official respondents as well as the school management. It is an admitted fact that the petitioner has been a Nun in the Congregation of Bon Secours, Trichy from the year 1997. Due to her personal circumstances, she wanted to quit the organisation as Nun. Any one who has read Bama's "Karukku" easily imagine the immense stress which she would have undergone during the relevant time. The petitioner was torn between her filial obligations and



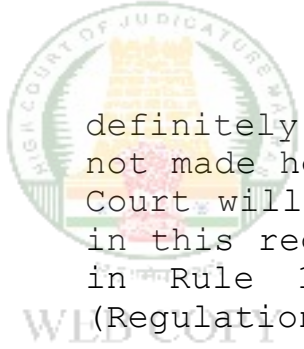
her commitments as a Nun. The petitioner has stated that she was unable to be with her parents when they passed away and that when she was working she received news about her brother's critical illness and that he was admitted in the hospital. The vows she had taken as a Nun prevented her from reaching out to her family of birth.

9. It is a matter of common sense that the petitioner got appointed as a Secondary Grade Teacher in an aided institution only because she was a Nun. Therefore, the congregation obviously wanted the petitioner to quit her job as well when left the congregation. Only then, they can replace her with another Nun from the congregation. This fact is admitted in the counter affidavit filed by the fifth respondent. The sixth respondent is also a Nun hailing from the same congregation. It is quite possible that the said congregation has its own earmarked quota for appointments to be made in the schools run by the fifth respondent corporate management. This is very fairly admitted in Para 2(v) of the counter affidavit of the respondents 4 and 5. The said para reads as under :

"v. As a matter of policy all the appointments in the schools run by the Roman Catholic Diocese are done by the Diocese through the Corporate Manager. However, some of the posts are filled by way of transfer from other Congregations or Dioceses. Such appointments by transfer are done only with Nuns or Religious fathers of other Congregations or Diocese and not by any layman. Though they work in the schools run by this respondent management, their appointment authority are their own Congregation or Diocese."

10. This Court very easily come to the conclusion that when the congregation superiors applied stress on the petitioner, the petitioner succumbed to the same and wrote out her resignation. Such an act of resignation is clearly vitiated by the undue influence. Section 16 of the Indian Contract Act states that a contract is said to be induced by "undue influence" where the relationship subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and uses that position to obtain an unfair advantage over the other. The said principle will apply in the case of obtaining of resignation also. Religious influence is also one of the factors which can constitute undue influence.

11. In the present case, the petitioner had been a congregational nun for well over 18 years. Therefore, when the congregation superiors had told her that she must quit her job as a teacher when she resigned as a nun, the petitioner would have



definitely submitted to the same weekly. The petitioner has not made her congregation as a party respondent and therefore this Court will not be in a position to give an affirmative finding in this regard. But the question is whether the procedure set out in Rule 17(A) of the Tamil Nadu Recognized Private Schools (Regulations) Rules, 1974 was followed or not by the authorities.

12. As already pointed out, no teacher employed in a private school shall be relieved from service on the strength of a resignation letter. No substitute shall be appointed in her place without obtaining prior approval of the competent authority. The Chief Educational Officer concerned shall get the confirmation of the teacher to the fact of such resignation and then accord his approval to relieve the teacher from service. In this case, according to the school management, the petitioner submitted her letter of resignation on 04.06.2015 which was in her own handwriting. The counter affidavit filed by the 4 and 5 respondents states that since it was submitted voluntarily and without any compulsion they had no option but to accept the same. Again, the school management has stated in the affidavit that they are not the competent authority and that they do not have any control over the petitioner. This submission is very strange and that too made on oath. The petitioner has a dual identity. She is a nun attached to the congregation. She is working as a teacher in the fourth respondent school. These are two different identities. But the management has proceeded as if the petitioner is either nun or none.

13. The school management by its counter affidavit has virtually conceded that it is the congregation that has control over the petitioner. The school management forwarded the resignation letter to the second respondent on 07.07.2015. The second respondent approved the resignation of the petitioner vide proceedings dated 07.07.2015. It is thus clear that the second respondent granted approval on the same day when he received the papers. Paragraph No.9 of the counter affidavit filed by the second respondent states that being the competent authority, the second respondent after consideration of the aspects and having ascertained and satisfied with the petitioner's resignation as voluntary granted approval. As per Rule 17(A) (4), the CEO or DEO concerned shall in turn get the confirmation of the teacher as to the fact of such resignation and then accord his approval to relieve the teacher from service.

14. In this case, the second respondent did not get the confirmation of the teacher before he granted his approval. The statute prescribes that accord of approval shall be preceded by getting confirmation of the teacher concerned. In this case, <https://hcservices.ecourts.gov.in/hcservices/> on record to show that such a confirmation was obtained. This was all the more necessary because the person



concerned happened to be a nun. The situation is compounded by the fact that the sixth respondent was appointed on 26.06.2015 by transfer. In Paragraph No.12 of the counter affidavit filed by the respondents 4 and 5, it has been mentioned that the school management appointed the sixth respondent on 26.06.2015 by transfer and that the same was approved on 24.07.2015. In the same paragraph, it is mentioned that the sixth respondent also belongs to the same congregation. Thus, even before approval of the resignation of the petitioner, the sixth respondent was appointed in her place.

15.This Court went through the contents of the proceedings dated 07.07.2015 issued by the second respondent. There is nothing on record to show that there was no application of mind as regards the procedure set out in the statutory rule. Thus, the conduct of the school management as well as all the competent authority is vitiated by failure to adhere to the statutory procedure. The school management has chosen to go by the directive received from the congregation to which the petitioner was originally attached.

16.The competent authority, namely, the second respondent did not bother to hold any enquiry. The second respondent was obliged to have got in touch with the petitioner and only after getting the confirmation of the petitioner should have granted approval. In this case, even before such an exercise could take place, the sixth respondent was appointed by the school management and the same was subsequently approved by the department. The petitioner was relieved from her service even before grant of approval by the second respondent.

17.In view of the gross violation of the statutory mandate set out in Rule 17(A) of the Tamil Nadu Recognized Private Schools (Regulation) Rules, 1974, the order passed by the second respondent granting approval of the resignation of the petitioner is quashed. Since the sixth respondent was appointed by way of transfer only in the resulting vacancy, the order approving her appointment also has to go as a logical consequence.

18.The learned counsel appearing for the petitioner on instructions from the petitioner submitted that if the petitioner is reinstated in service within a period of eight weeks from the date of receipt of a copy of this order, she would not press her claim of backwages and that she would be satisfied with continuity of service and notional benefits alone. This submission is placed on record. The respondents 4 and 5 are directed to reinstate the petitioner in service forthwith. It is made clear that the petitioner shall have the continuity of service. But, she would not be entitled to make any claim for backwages.



19. This writ petition is allowed on these terms. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CO)

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/True Copy/

Sub Assistant Registrar

To

1. The Director of Elementary Education,
College Road, Chennai - 600 006.
2. The District Elementary Educational Officer,
Kanyakumari District, Nagercoil - 629 001.
3. The Assistant Elementary Educational Officer,
Thuckalay, Kanyakumari District.

- + 1 cc TO M/S. Isaac Chambers , Advocate in SR No. 46073
- + 1 cc TO Mr. S. Xavier Rajini , Advocate in SR No. 47159
- + 1 cc TO The Special Government Pleader in SR No. 46551

skm

AE/SKN RSK/SAR3/06.06.2018/8P/7C

**W.P. (MD) No. 21250 of 2015
and
MP (MD) No. 1 and 2 of 2015
& WMP (MD) No. 1394 of 2016
02.02.2018**