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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.08.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH

and

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.A. (MD) No.1063 of 2018

and

CMP (MD) No.7378 of 2018

1.The Chief Educational Officer,
Trichy District, Trichy.

2.The District Educational Officer,
Lalgudi, Trichy District.

3.The Headmaster,
Government Higher Secondary School,
Karattampatti,
Trichy District.

... Appellants/Respondents

vs.

Gomathi

... Respondent/Petitioner

Appeal filed under Clause 15 of the Letter Patent Act against the order passed by the Honourable Court made in W.P. (MD) No.17457 of 2016 dated 28.03.2018.

Prayer in WP (MD) .17457/2016 :

Writ Petition is filed under Article 226 of the Constitution of India, Praying this Court To issue a Ceteriorarified Mandamus call for the records pertaining to the impugned order of the 1st respondent dated 02.09.2016 vide his proceedings in Naka.No.4857/Aa3/2016 and quash the same as illegal and violation of principles of natural justice, consequently directing the respondents to drop all further proceedings pertaining to the allegations levelled against the petitioner in the impugned order.

For Appellants : Mrs.S.Srimathy

For Respondent : M/s.M.Sakundala Devi

**JUDGMENT**

[Judgment of the Court was delivered by M.M.SUNDRESH, J.]

This Writ Appeal has been preferred against the order of the learned Single Judge, who was pleased to set aside the order of transfer passed on the ground that it has been passed by way of punishment.

2.The learned counsel appearing for the appellants would submit that the order was passed by way of administrative exigencies and therefore, it cannot be termed as punishment. It is the case where no departmental proceedings have been initiated against the respondent/writ petitioner. Thus, the order of the learned Single Judge requires interference.

3.The learned counsel appearing for the respondent/writ petitioner would submit that inasmuch as the order was passed on the ground that the writ petitioner has committed certain irregularities, the same cannot be sustained in the eye of law. Reference has been made on the judgment of the Hon'ble Supreme Court reported in (2009) 3 MLJ 727 (SC) [Somesh Tiwari Vs. Union of India and others].

4.We are of the view that the order passed by the learned Single Judge required to be interfered with. If an order of transfer is passed on extraneous consideration, then certainly the same cannot be sustained in the eye of law. To put it differently, where in a case, malice is seen either on fact or on law, then the Court has to necessarily interfere with the order passed. In the case on hand, a perusal of the impugned order passed by the appellants would show that an enquiry was conducted and thereafter instead of going with the departmental proceedings and in the interest of administration, the order of transfer was made. This was also done pursuant to the enquiry conducted by the District Educational Officer. Therefore, this order cannot be termed as stigmatic. We also make it clear that the order of transfer cannot be construed as stigmatic as against the respondent/writ petitioner.

5.We do not find neither malice in law or fact in the impugned order. Certainly, the impugned order was not passed on extraneous consideration. Similarly, there is no personal reason for the appellants to pass the impugned order against the respondent/writ petitioner. Therefore, there is no malice in fact or law in the case on hand.

6.Thus, we are inclined to set aside the order of the learned Single Judge. The judgment relied upon by the learned counsel appearing for the respondent/writ petitioner also may not have any application to the case on hand.



7. The learned counsel appearing for the respondent/writ petitioner would submit that in view of the on-going proceedings, the respondent was unable to join. Therefore, no action has to be taken for the aforesaid period. It is further submitted that the respondent did not even receive any salary for the same. Incidentally, one more submission has been made that the reason assigned in the impugned order should lead to any departmental proceedings.

8. Considering the submissions made, we permit the respondent/writ petitioner to join in the transferred place within a period of two weeks from the date of receipt of a copy of this order. This is, we are of the view that the appellants were in fact helping the respondent/writ petitioner in avoiding departmental proceedings, though an enquiry was conducted. However, the observations made in the impugned order are to be meant only for exercising an administration acting, involving the exercise of power of transfer and not otherwise. Insofar as non payment of salary is concerned, it appears that the respondent did obtain an order of interim stay. Ultimately, the learned Single Judge was pleased to allow the writ petition. Therefore, not attending the work is neither wilful nor deliberate. In such view of the matter, we deem it fit to direct the appellants to pay 50% of the salary to the respondent/writ petitioner within a period of two weeks from the date of receipt of a copy of this order.

9. Accordingly, the Writ Appeal is allowed and the order of the learned single Judge, dated 28.03.2018 is set aside. No costs. Consequently, CMP(MD)No.7378 of 2018 is closed.

Sd/-

Assistant Registrar(Crl.Side)

/True Copy/

Sub Assistant Registrar

mj
To

1. The Chief Educational Officer,
Tiruchy District.

2. The District Educational Officer,
Lalgudi,
Tiruchy District.



3.The Headmaster,
Government Higher Secondary School,
Karattampatti,
Tiruchy District.

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+1cc to N.Balakrishnan, Advocate in SR No.78377

+1cc to Spl Government Pleader SR No.78502

W.A. (MD) No.1063 of 2018

NM/SV/SAR 4/24.09.18/4P/6C