



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.11.2018

CORAM :

THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN

W.P. (MD) No. 3856 of 2011 and 15206 of 2011

&

W.P. (MD) No. 9574 of 2010 and 9938 of 2007

and

M.P. (MD) 1 of 2010 and 1 and 1 of 2011

W.P. (MD) No. 3856 of 2011:

C. Jaya

... Petitioner

/Vs./

1. The Chief Educational Officer,
Tirunelveli.

2. The District Educational Officer,
Tenkasi, Tirunelveli District.

3. The Secretary,
Rayagiri Thiru. C. P. Athithanar Girls High School,
Rayagiri 627 764,
Tirunelveli District.

... Respondents

W.P. (MD) No. 15206 of 2011 and 9574 of 2010:

Rayagiri Thiru. C. P. Athithanar Girls High School,
Represented by its Secretary,
Sangu Nadar, S/o. Chinna Madasamy, Girls High School,
Rayagiri 627 764,
Tirunelveli District.

... Petitioner

/Vs./

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

2. The District Educational Officer,
Tenkasi, Tirunelveli District.

3. C. Jaya

... Respondents

[Sangu Nadar substituted as the petitioner vide Order dated
01.10.2018 in W.M.P. (MD) No. 17897 of 2018 in W.P. (MD) No. 15206 of
2011]

[[Sangu Nadar substituted as the petitioner vide Order dated

<https://hcservices.ecourts.gov.in/hcservices/>
01.10.2018 in W.M.P. (MD) No. 17896 of 2018 in W.P. (MD) No. 9574 of 2010]

W.P.(MD)No.9938 of 2007:

Rayagiri Thiru.C.P.Athithanar Girls High School,
Represented by its Secretary,
A.Esaki Raja,
Rayagiri 627 764,
Tirunelveli District.

... Petitioner

/Vs./

1.The Joint Director of School Education (Secondary),
Directorate of School Education,
College Road, Chennai - 6.

2.The Chief Educational Officer,
Tirunelveli District.

3.The District Educational Officer,
Tenkasi, Tirunelveli District.

4.C.Jaya

... Respondents

[Substituted name of the petitioner as per the order dated 04.02.2014 in M.P.No.1 of 2014]

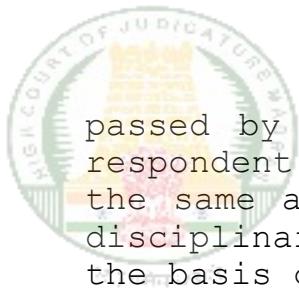
[R-4 impleaded as per order dated 13.12.2007 in M.P.No.1 of 2007]

Prayer in W.P.(MD)No.3856 of 2011:: Writ Petition - filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the order passed by the 1st respondent in Na.Ka.No.5847/Aaa 2/2010 dated 21/06/2010 and quash the same, as far as it denies the salary from 23/12/2003 to till dated is concerned, and direct the respondents to confer all the consequential benefits.

Prayer in W.P.(MD)No.15206 of 2011:: Writ Petition - 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 1st respondent in Na.Ka.No.5847/Aa 3/2011 dated 11.10.2011 and quash the same as illegal, invalid, contrary to law laid down by this Court and has violated the principles of natural justice.

Prayer in W.P.(MD)No.9574 of 2010:: Writ Petition - filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records of the 1st Respondent issued in his proceedings Na.Ka.No.5847/B2/2010 dated 21-06-2010 and quash the same.

Prayer in W.P.(MD)No.9938 of 2007:: Writ Petition - filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the entire records connected with the impugned order in Na.Ka.No.32215/G2/E1/07 dated 13.9.2007



passed by the 1st respondent and confirming the order of the 2nd respondent passed in Na.Ka.No.3349/A2/05 dated 03.04.2007 and quash the same and directing the respondents to grant permission for the disciplinary action to dismiss Tmt.Jaya Secondary Grade Teacher on the basis of the petitioner's proposal dated 25.4.2005.

WEB COPY

For Petitioner : Mr.V.Paneer Selvam
for C.S.Associates
For R-1 & R-2 : Mrs.S.Srimathy,
Special Government Pleader
For R-3 : Mr.P.Arun Jayatram
(in W.P.(MD)No.3856 of 2011)

For Petitioner : Mr.J.Barathan
for M/s.T.R.Jeyapalam
For R-1 & R-2 : Mrs.S.Srimathy,
Special Government Pleader
For R-3 : Mr.V.Paneer Selvam
for C.S.Associates
(in W.P.(MD)No.15206 of 2011 and 9574 of 2010)

For Petitioner :Mr.J.Barathan
for M/s.T.R.Jeyapalam
For R-1,R-2 & R-3 : Mrs.S.Srimathy,
Special Government Pleader
For R-4 : Mr.V.Paneer Selvam
for C.S.Associates
(in W.P.(MD)No.9938 of 2007)

COMMON ORDER

One C.Jaya was appointed as Secondary Grade Teacher in Rayagiri Thiru.C.P.Athithanar Girls High School on 10.02.1992 on consolidated day. She was brought into time scale with effect from 01.06.1994. Her husband namely Kallakondan appeared to have conducted chit business in the name of his wife, namely C.Jaya. He had contracted debts and was unable to honour the obligations. Hence, a criminal case was registered not only against Kallakondan, but also against his wife, namely C.Jaya. She was arrested on 23.12.2003. She, however, did not inform the School Management about her implication in the criminal case or her arrest immediately. Instead, she wanted to avail earned leave.

2. The School Management received a written complaint from some of the parents of the school children that the teacher namely C.Jaya had compelled them to get enrolled in the chit scheme being run by her family. Taking note of the adverse developments, the School Management issued a charge memo dated 24.09.2004. The crux of the charge is that the teacher namely C.Jaya had breached Clauses 2,3 and 6 of the Code of Conduct for teachers and other persons employed in a private school. The School Management constituted an enquiry committee and called upon the teacher to appear. She denied the allegation in writing. But she did not choose to take part in



the enquiry. While the stand of the Management appears to be that the teacher chose to remain willfully and deliberately exparte, the defence of the teacher is that the Management prevented her from appearing before the Enquiry Committee.

3. Be that as it may, exparte enquiry report finding the teacher guilty of all the charges framed against her was accepted by the Management. The Management called upon the petitioner to give her further representation. But, no such representation was received from the teacher. Therefore, the Management proposed to dismiss her from service. Since School is a private institution, prior permission of the competent authority was required. Therefore, the proposal dated 25.04.2005 was submitted to the Chief Educational Officer, Tirunelveli for approval. The competent authority, however, by order dated 03.04.2007 declined to grant approval.

4. This order declining to approval was assailed by the Management by filing an appeal before the Joint Director of School Education, Chennai, and by order dated 13.09.2007, the appellate authority sustained the order passed by the Chief Educational Officer, Tirunelveli. These orders are assailed by the School Management in W.P.(MD)No.9938 of 2007.

5. There was no scope for securing any interim relief in the said writ petition. The Management, however, did not choose to permit the teacher namely C.Jaya to rejoin duty. This gave rise to further proceedings. The teacher complained to the Chief Educational Officer, Tirunelveli in this regard. The Chief Educational Officer, Tirunelveli, directed the reinstatement of the teacher, however without backwages. This order dated 21.06.2010 made both the parties feel aggrieved. The teacher felt aggrieved by the denial of the backwages and the Management felt aggrieved by the order of reinstatement, Notwithstanding the pendency of W.P.(MD) No.9938 of 2007, two more writ petitions namely, W.P.(MD)No.3856 of 2011 and W.P.(MD)No.9574 of 2010 were filed by the teacher and the School Management respectively. As the Education Department directed the transfer of C.Jaya from the above said School to some other institution along with the post, the Management filed W.P.(MD) No.15206 of 2011. Since all these four writ petitions are inter linked, they are taken up together for disposal by a common order.

6. Heard Mr.J.Barathan, learned counsel for the School Management and Mr.Paneer Selvam, learned counsel for the School Teacher namely C.Jaya and Mrs.S.Srimathy, Special Government Pleader appearing for the official respondents.

7. Certain facts are beyond dispute. The Competent authority denied approval to the proposal seeking to dismiss the teacher namely C.Jaya from service for the simple reason that there was no duly constituted school committee. Of course, as Mr.J.Barathan, learned counsel appearing for the School Management pointed out, by



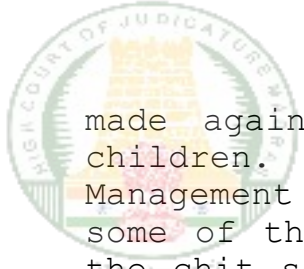
an order dated 30.05.2003, the District Educational Officer, Tenkasi had approved the constitution of the School Committee. But then, the School Committee, as per Rule 12 of the Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974, must comprise not only the representative from the Educational Agency, but also the School Headmaster as well as the Senior most Teachers and the Parent Teacher Association Nominee.

8. This Court called upon the learned counsel appearing for the School Management to make available the list of School Committee members. Unfortunately, the School Management is not in a position to make available the said list. Only if the said list is made available, this Court can test whether the Committee was formed in terms of the statutory rule or not. This Court will not be swayed by the fact that an order dated 30.05.2003 was passed by the District Educational officer, Tenkasi, granting approval to the constitution of the School Committee. This Court also wanted to know if a properly constituted School Committee was a party to the decision taken to initiate the disciplinary action against the petitioner. No such resolution could be made available.

9. There is one other illegality. Enquiry was conducted by some of the members of the School Administrative Committee and the very same committee also accepted the exparte enquiry report. This is a brazen violation of the principles of natural justice. In other words, the Committee which initiated disciplinary action against the delinquent was also the enquiry committee. The report given by the said committee was approved by the very same committee and proposal for dismissing the teacher was submitted to the department for approval. The entire sequence of events is offensive to the elementary notions of fairness and justice. I therefore sustain the order passed by the competent authority in not granting approval to the proposal given by the School Management for dismissing the petitioner from service. But then the consequence can be only one. I will have to necessarily remand the matter to the file of the School Management for taking appropriate action in accordance with law.

10. In this case, the petitioner was arrested for a serious offence by the police. The learned counsel appearing for the Teacher namely C.Jaya claimed that she was subsequently acquitted from the criminal case. But then, the mere acquittal of employee by the criminal Court need not come in the way of the employer from initiating independent disciplinary action against the delinquent. This power of School Management cannot be fettered. In this case, there is absolutely no material to show that the School Teacher informed the School Management about her arrest in the criminal case.

11. The learned counsel appearing for the Teacher namely C.Jaya would claim that she informed the School Management orally. There is no material to support this claim. There are allegations



made against the teacher by some of the parents of the school children. In fact, Mr.J.Barathan, learned counsel appearing for the Management has placed before me convincing materials to show that some of the parents of the school children come to be enrolled in the chit scheme run by the Teacher's husband. I therefore have no doubt in my mind that if the matter goes back to the school Management, the result is a foregone conclusion. Therefore, this Court suggested to either counsel to find a middle path.

12. The learned counsel appearing for the School Management submitted that they shall reinstate the teacher in service forthwith without any delay. They also give an undertaking that the issue can be given a quietus. The events date back to the year 2003. More than 15 years have gone by. The teacher must have suffered considerably. In the meanwhile, the husband is said to have filed an insolvency petition. This Court makes it clear that there will not be any revival of disciplinary action against the teacher namely C.Jaya. The gesture shown by the School has been reciprocated by the teacher namely C.Jaya, who informs the Court that she will not have any claim for backwages. It is specifically stated that the continuity of service from the date of her suspension till the date of her reinstatement will be counted for the purpose of terminal benefits and other purposes. There is no question of payment of backwages.

13. The order impugned in W.P.(MD)No.9938 of 2007 is sustained and accordingly, W.P.(MD)No.9938 of 2007 is dismissed. The order impugned in W.P.(MD)No.15206 of 2011 is set aside and accordingly, W.P.(MD)No.15206 of 2011 is allowed. The orders impugned in W.P.(MD)No.3856 of 2011 and 9574 of 2010 are modified and accordingly, W.P.(MD)No.3856 of 2011 and 9574 of 2010 are disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(AD-II)

/True Copy/

Sub Assistant Registrar(CS-I)

To

- 1.The Joint Director of School Education (Secondary),
Directorate of School Education, College Road, Chennai - 6.
- 2.The Chief Educational Officer,
Tirunelveli District.
- 3.The District Educational Officer,
Tenkasi,
Tirunelveli District.



+4ccs to MR.R.JEYAPALAM, ADVOCATE IN SR.NO.97499.

• 1 CC TO Mr.V.PANNEER SELVAM , ADVOCATE IN SR No.97457.

• த.ஜ.பாலசுப்பிரமணியன்

+1 cc to Special Government Pleader, SR.Nos.97634,97636,97635,97637.

SM

DS RSK SAR1 07 12 2018 7P 10C

Order made in
W.P.(MD)No.3856 of 2011
27.11.2018