

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 25.01.2019

Coram
The Hon'ble Mr. Justice M.M.SUNDRESH
and
The Hon'ble Mr. Justice KRISHNAN RAMASAMY

W.A.Nos. 1992 of 2011 and
830 of 2013

G. Suresh

... Appellant
in both WAs

Vs

1. The District Educational Officer,
Tirupattur, Vellore District.

2. The Hindu Higher Secondary School,
Rep. By its Secretary,
Ambur, Vellore District

... Respondents
in WA No. 1992/11
... 2nd and 3rd respondents
in WA No. 830/2013

1. The Joint Director(Higher Secondary),
DPI Campus,
College Road, Chennai - 6

.. 1st respondent in
WA No. 830 of 2013

Appeals filed under Clause 15 of the Letters Patent against
the orders dated 21.02.2011 and 28.08.2009 passed in W.P.No.3988
of 2011 and W.P.No.20873 of 2008 respectively.

Prayer in WP.No.3988 of 2011:

Writ Petition file under Article 226 of the Constitution of
India seeking to issuance a Writ of Certiorarified Mandamus
calling for the records pertaining to the orders dt 15.7.2010
issued by the 1st respondent in Na. Ka. No. 20703/Aa3/2010 and
the consequential order dt 19.7.2010 issued by the 2nd
respondent in proceedings No.Nil 2009-10, quash the same and
consequently direct the 2nd respondent to send a fresh proposal
to the 1st respondent requesting to regularize the period of
suspension from 19.2.2007 to 18.5.2007 and the period of non -
employment from 19.5.2006 to 9.10.2007 as duty and also to grant

annual increments for the said periods and to grant selection grade with effect from 19.2.2006 and incentive increment from 01.10.2007 with all arrears and consequential benefits and the 1st respondent to sanction forthwith all the attendant benefits, award costs.

Prayer in WP.No.20873 of 2008:

Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus to direct the third respondent to pay the petitioner backwages including the wages for the period of suspension pursuant to the order of the first respondent dated 5.9.2007 as per rule 17(3)(iii) of the Tamilnadu Recognized Private School (Regulation) Rules, 1974.

For Appellant
in both W.As .. Mr. V. Ajoy Khose

For Respondents
in both W.As .. Mr. P. Raja, Govt. Advocate for R1
in W.A.No.1992 of 2011 and RR1 &
RR2 in W.A.No.830 of 2013

No appearance for R2 in
W.A.1992 of 2011 and R3 in
W.A.830 of 2013

COMMON JUDGMENT

(Judgment of the Court was delivered by M.M.SUNDRESH, J.)

As the subject matter of both appeals are overlapping, they have been taken up together and disposed by way of this common order.

2.The appellant was proceeded with by the respondent management after framing charges. Prior approval was obtained and after having found that the charges are proved, the order of dismissal was passed. In the appeal filed by the appellant, the aforesaid order was set aside on the premise that it is disproportionate to the charges framed. Accordingly, the punishment of censure was imposed. However, the appellant was not granted the payment for the period of suspension and non-employment. The proposal sent was returned by the official respondents stating that it can be sent again after deducting the leave accrued to the credit of the appellant. Aggrieved over the same, two writ petitions have been filed by the appellant, claiming payment for the period of suspension and non-employment and challenging the decision of the official respondents.

3.The learned single Judge ordered 50% of backwages while declining to consider the request of the appellant to treat the period as one on duty and grant annual increment apart from selection grade. Challenging the above, the present writ appeals have been filed.

4.Learned counsel appearing for the appellant would submit that as per Rule 17 (3) (iii) of the Tamil Nadu Recognized Private Schools (Regulations) Rules, 1974, the appellant is entitled for the benefits. Inasmuch as the punishment is only for censure, the period of suspension and non employment has to be treated as duty period. Accordingly, the order would require interference.

5.Learned Government Advocate appearing for the official respondents submitted that Rule 17 (3) (iii) of the Tamil Nadu Recognized Private Schools (Regulations) Rules, 1974 has got no application to the case where the punishment is imposed subsequently. Inasmuch as the appellant had not worked, he is not entitled for the relief sought for.

6.On the application of Rule 17 (3) (iii) of the Tamil Nadu Recognized Private Schools (Regulations) Rules, 1974, we are not inclined to accept the submission of the learned counsel for the appellant. Certainly, the said Rule will have an application to the case on hand where the charges are prior approved but it was only held that the punishment was disproportionate. However, we find force in the submission made by the learned counsel appearing for the appellant that the order of the learned single Judge directing the respondents to pay 50% of the backwages has become final. When once that order has become final and given effect to, it does not lie in the mouth of the respondents to contend that the appellant is entitled for counting the period of suspension and non employment. Merely because the appellant has not challenged the order of censure, he cannot be made to suffer more for not considering his entitlement during the period of suspension and non employment. Therefore, while holding that the appellant is not entitled for backwages in the light of the order of the learned single Judge, which has become final inter se parties, we are of the view that notionally the aforesaid period will have to be taken for the purpose of payment of increment and selection grade pay. We may note that the period of suspension and non employment was because of the wrong order passed, for which, the appellant cannot be made to suffer. Therefore, looking from any perspective, we are of the view that the appellant is entitled to count the aforesaid period of suspension and non employment for the purpose of annual increment, incentive increment and selection grade pay, if he is otherwise entitled to, apart from other consequential benefits. This we do so while declining the contention of the appellant with respect to the payment of backwages and salary

for the period of suspension and non employment. We make it clear that he is not entitled to the said benefit, as we fix the entire entitlement notionally.

7.In the light of the above discussion, needful will have to be done within a period of twelve weeks from the date of receipt of a copy of this order. Accordingly, W.A.No.830 of 2013 stands dismissed. The other writ appeal in W.A.No.1992 of 2011 is ordered as indicated above. We make it clear that the period of suspension and non employment will have to be counted for all other purposes as aforesaid. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

mmi

To

- 1.The District Educational Officer,
Tirupattur, Vellore District.
- 2.The Joint Director(Higher Secondary),
DPI Campus,
College Road, Chennai - 6.

+lcc to Mr.V.Ajay Khose, Advocate, S.R.No.5911
+lcc to the Government Pleader, S.R.No.6499

W.A.Nos. 1992 of 2011
and 830 of 2013

KJ(CO)

rrs 25/02/2019

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