

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.01.2019

CORAM

THE HON'BLE MR. JUSTICE M.M.SUNDRESH
and
THE HON'BLE MR. JUSTICE KRISHNAN RAMASAMY

W.A.Nos.1885 and 2115 of 2013
and M.P No.1 of 2013

W.A.No.1885 of 2013

V.Rajasekaran Appellant

Vs.

1.The Joint Director of School Education (HS),
Office of the Directorate of School Education,
Chennai-600 006.

2.Thuraiyur Zamindar's Higher Secondary School,
Represented by its Correspondent,
Thuraiyur-621 010.

.... Respondents

W.A.No.2115 of 2013

Thuraiyur Zamindar's Higher Secondary School,
Represented by its Correspondent,
Thuraiyur-621 010.

... Appellant

Vs.

1.V.Rajasekaran

2.The Joint Director of School Education (HS),
Office of the Directorate of School Education,
Chennai-600 006.

... Respondents

Writ Appeals are preferred under Clause 15 of the Letters Patent against the order dated 28.03.2013 made in W.P.No.30120 of 2002.

W.P.No.30120 of 2002

Petition filed under Article 226 of the Constitution of India praying for the issuance a WRIT OF CERTIORARIFIED MANDAMUS to call for the records relating to the order of the 2nd

respondent made in proceedings No.S20:2/94-95 dt. 15.3.95 and the order of the 1st respondent dt. 13.6.2002 made in Na.Ka.No.40259/W7/95 and quash the same and consequently direct the respondents to reinstate the petitioner in the 2nd respondent School as the Headmaster of the said School with all arrears of back wages and attendant benefits.

For Appellant : Mr.Anirudh Krishnan
in WA.1885/2013
and 1st respondent in
WA.2115/2013

For 1st Respondent in : Mr.P.Raja,
WA.1885/2013 & 2nd Government Advocate
respondent in
WA.2115/2013

For 2nd Respondent in : Mr.R.Parthiban
WA.1885/2013 &
appellant in W.A.2115/2013

COMMON JUDGMENT

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

As both the appeals emanated from the same order of the learned single Judge and filed by the parties aggrieved over it, we are disposing them by a common order.

2. For the purpose of brevity, the appellant in W.A.No.2115 of 2013 has been taken as such. Therefore, accordingly, the first respondent/writ petitioner is mentioned as first respondent.

3. Complaints of different nature were made against the first respondent resulting in issuance of a charge memo dated 05.09.1994. These complaints would involve dereliction of duty and misappropriation. The order of suspension passed in the interregnum was put to challenge by way of writ petition, which was subsequently dismissed. Taking umbrage under the pendency of the writ petition and alleging that the documents have not been given, the charges are tainted with mala fides and extraneous consideration and it would not be conducive to conduct the enquiry within the school premises, the first respondent did not attend the enquiry.

4. Preceding the enquiry, two resolutions have been passed by the School Committee. The first resolution was to enquire him and the second was to dismiss him since the first respondent failed to respond the notices sent by the Committee.

5. Accordingly, proceedings were initiated. As stated above, the first respondent did not appear. Based upon the evidence, charges were found to be proved and with the approval of the second respondent, an order of dismissal was passed, confirming the appeal. The learned single Judge was curious to set aside the aforesaid order which has been passed in the pre-determined manner. Consequently, it was held that the request of the first respondent seeking a different place for enquiry was not considered. Challenging the order of remand passed by the learned single Judge, both sides filed the writ appeals.

6. The learned counsel appearing for the appellant would submit that it is a case where the first respondent continuously not co-operating. There are material evidence to substantiate the charges. The approval was also obtained before passing the final order. The charges have been framed based upon the complaints made by different entities. Therefore, the appeal will have to be allowed, particularly, in the light of the wrong factual finding that the approval was also given earlier.

7. The learned counsel appearing for the first respondent submitted that appropriate direction may be given to quantify the amount payable to the first respondent, taking into consideration of the fact that the first respondent is 73 years old. It is further contended that it is not in dispute on fact that the enquiry was conducted only after the resolution though charges have been framed earlier.

8. We find that there is a procedural irregularity on the one hand and there is availability of material though on the prima facie consideration on the other hand. Secondly, the first respondent is also not co-operating with the conduct of the enquiry. Remanding the matter at this stage would be of no use. The first respondent is 73 years old. In any case, he is not going to get reinstatement. Asking the appellant to conduct the enquiry would create a very same situation of predetermination.

9. Therefore, in view of the above, however we find that the procedural violation is too fundamental and thus goes to the root of the matter. Thus, we are of the view that it would be appropriate to mold the relief to put an end to the dispute instead of extending it any further. We may note that the problem started in the year 1994 and the charge memo dated 05.09.1994, remanding the matter at this stage would not be of any help to both sides.

10. The appellant is an aided Institution. Therefore, the post in which, the first respondent was working was a sanctioned post. He has also attained the age of superannuation in the month of June, 2005. He has been under suspension from 1994 onwards. Therefore, considering the facts and circumstances of the case, we are inclined to direct the second respondent to treat the services of the first respondent as one of continuity till the date of superannuation. While the first respondent is not entitled to any actual salary, in view of the fact that no finding has been rendered in his favour coupled with the fact that he was under suspension, the order of the learned single Judge is only remand, for all other purposes, he should be notionally continued to be on service till the date of retirement. Accordingly, the retiral benefits, including pension, if he is otherwise eligible, will have to be fixed by taking into consideration the date of appointment of the first respondent till the date of attaining superannuation. Consequential benefits shall be given to the first respondent by the school authority-the second respondent, within a period of twelve weeks from the date of receipt of a copy of this order. The appellant is directed to send the papers of the first respondent within a period of two weeks from the date of receipt of the order passed for the aforesaid purpose.

11. Both the writ appeals are disposed of accordingly. No costs. Consequently, connected miscellaneous petition stands closed.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

raa
To

1.The Joint Director of School Education (HS),
Office of the Directorate of School Education,
Chennai-600 006.

+1cc to Mr.Anirudh Krishnan, Advocate, S.R.No.5874
+1cc to Mr.R.Parthiban, Advocate, S.R.No.5610
+1cc to the Government Pleader, S.R.No.6041

W.A.Nos.1885 and 2115 of 2013

KS (CO)
GSP (26/02/2019)