IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 27.04.2019

CORAM

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

W.P.No.5236 of 2012
and
W.M.P.No.1 & 2 of 2012

S.A.Sherfuddin ...Petitioner

Versus

1. The Director of Elementary Education,
   DPI Complex,
   College Road,
   Nungambakkam
   Chennai - 600 034.

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

3. The Assistant Elementary Educational Officer,
   Kadayanallur,
   Tirunelveli District.

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

...Respondents

PRAYER:Petition filed under Article 226 of the Constitution of India, praying to issue of a Writ of Mandamus, directing the 1st respondent to issue necessary orders forbearing the 2nd respondent from acting in any manner arbitrarily or enemically towards the Darusalam Elementary School, Kadayanallur, Tirunelveli District.

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For Petitioner :: Mr.S.Y.Masood

For RR1 to 4 :: Mr.K.Karthikeyan,
Govt. Advocate, Education.

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ORDER

The writ petition had been filed seeking direction in the nature of Writ of Mandamus, directing the first respondent, the Director of Elementary Education, Chennai, to issue necessary orders forbearing the second respondent, the District Elementary Educational Officer, Tirunelveli, from passing any orders which the petitioner feels would be enemicable or adverse to him with respect to the Darusalam Elementary School, Kadayanallur, Tirunelveli District.

2. In the affidavit filed in support of the said writ petition, the writ petitioner had claimed to be the Manager of the Darusalam School. He claimed to be appointed as Manager by order dated 25.08.2009. Thereafter, he claimed that there were some dispute among the management and consequently, he had filed O.S.No.79 of 2009, on the file of the Principal Subordinate Judge, Tenkasi, restraining Mohammed Mohideen, whom he claimed to create trouble in the management from interfering with the management of the School.

3. Unfortunately, the said Mohammed Mohideen also died in February, 2010. It was stated that though there were no complaints about the school or its Management from any quarters, the second respondent might pass orders adversely affecting the rights of the writ petitioner. It is under these circumstances that the writ petition has been filed for the direction against the first respondent to issue necessary orders prohibiting the second respondent from passing any order with respect to the continuity of the service of the writ petitioner as Manager of Darusalam Primary School, Tenkasi.

4. A counter affidavit has been filed by the second respondent. The learned counsel for the second respondent stated that the writ petition preventing an officer from passing an order would not be maintainable. Quite, apart from that, in the counter affidavit, it has been stated that one Abdul Wahab had filed O.S.No.78 of 2009 and the writ petitioner had filed O.S.No.79 of 2009 and both sought had an order of interim injunction against S.A.Mohammed Mohideen, from interfering with the Management of the school. It was stated that originally interim injunction was granted but the same was vacated on 30.12.2009.

5. It was stated that S.A.Mohammed Mohideen filed W.P.(MD) No.379 of 2010 and W.P.(MD)No.380 of 2010 before the Madurai Bench of Madras High Court seeking direction to the District Educational Officer, Tenkasi to pass suitable orders permitting him to function as Manager of Darusalam School, in view of the

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vacate stay order of the First Additional District Court, Tirunelveli. The Madurai Bench of Madras High Court had passed separate identical orders directing the second respondent herein to consider the representation of S.A.Mohammed Mohideen. Thereafter, the petitioner had filed W.A.No.58 of 2010 and S.A.Mohammed Mohideen had filed W.A.No.57 of 2010. By common judgment, the Madurai Bench of Madras High Court passed an order that the second and third respondents in the writ appeal shall consider and dispose of the representation of S.A.Mohammed Mohideen, after affording opportunity to the said S.A.Mohammed Mohideen and also to the petitioner and to S.A.Abdul Wahab. S.A.Mohammed Mohideen also filed W.P.(MD)No.2668 of 2010, but unfortunately died on 22.02.2011 leaving behind his wife, Ummu Salma and two daughters and two sons as legal representatives. It was further stated that O.S.No.79 of 2009 was dismissed by the Additional Sub Court, Tenkasi on 04.01.2012, on the ground that the petitioner had abandoned the cause of action. It was further stated that Ummu Salma, the legal representative/wife of S.A.Mohammed Mohideen had represented to the second respondent to place her in charge as Manager of Darusalam Primary School, Kadayanallur. It was stated that the second respondent had passed an affirming order on 15.03.2012 and she had assumed charge as Manager of Darusalam Primary School, Kadayanallur, with effect from 04.01.2012, the date on which O.S.No.79 of 2009 was dismissed subject to final decision in W.P.Nos.1865 of 2010, 2688 of 2010 and 4218 of 2010. It was categorically stated in the counter affidavit that the petitioner is not the legal Manager of Darusalam Primary School, Kadayanallur. In the mean while, Ummu Salma had also filed M.P.No.2 of 2012 seeking to implead herself as respondent No.5. Her learned counsel is also present.

6.It is seen from the facts that the petitioner had initially filed a suit before the Sub Court, Tenkasi and had also filed the present writ petition in the Principal Bench of Madras High Court. They have also filed writ petitions before the Madurai Bench of Madras High Court relating to the same issue namely to decide the status of the writ petitioner and/or Mohammed Mohideen as Manager of Darusalam Primary School, Kadayanallur, Tirunelveli District. It is also evident that the writ petitioner had been hopping from one court to another and this certainly is a case of re-agitating the same issue.

7.This practice of re-agitation and re-litigating the same issue before two different forums has been very strongly commented by the Honourable Supreme Court reported in AIR 1977 SC 2421 1 (T.Arivanandam Vs. T.V.Satyapal), wherein the father had contested the eviction proceedings, lost it, appealed against it, lost again, moved a revision, suffered rejection of the revision petition and after that, his son re-litigated by

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filing a suit seeking that the eviction order has been obtained by fraud and collusion. In the said decision, the Honourable Supreme Court had stated as follows:-

> "2. Here is an audacious application by a determined engineer of fake litigations asking for special leave to appeal against an order of the High Court on an interlocutory application for injunction. The sharp practice or legal legerdemain of the petitioner, who is the son of the 2nd respondent, stultifies the court process and makes a decree with judicial seals brutum fulmen. The long arm of the law must throttle such litigative caricatures if the confidence and credibility of the community in the judicature is to survive. .."

8. In 1998-3-SCC-573 (K.K.Modi Vs. K.N.Modi), the Honourable Supreme Court had stated as follows:-

> " 44. One of the examples cited as an abuse of the process of the court is re litigation. It is an abuse of the process of the court and contrary to justice and public policy for a party to re litigate the same issue which has already been tried and decided earlier against him. The re agitation may or may not be barred as res judicata. But if the same issue is sought to be re-agitated, it also amounts to an abuse of the process of the court. A proceeding being filed for a collateral purpose, or a spurious claim being made in litigation may also in a given set of facts amount to an abuse of the process of the court. Frivolous or vexatious proceedings may also amount to an abuse of the process of the court especially where the proceedings are absolutely groundless. The court then has the power to stop such proceedings summarily and prevent the time of the public and the court from being wasted. Undoubtedly, it is a matter of the court's discretion whether such proceedings should be stopped or not; and this discretion has to be exercised with circumspection. It is a jurisdiction which should be sparingly exercised, and exercised only in special cases. The court should also be satisfied that there is no chance of the suit succeeding."

9. In all the above cases, the Honourable Supreme Court had categorically stated if there is the case of reagitation, then the Court should not permit the judicial proceedings to continue and must put it down at the earliest. Even otherwise, the prayer in the writ petition is that the first respondent must be

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directed to issue necessary directions to the second respondent, not to pass any adverse orders against the writ petitioner. Such an order prohibiting an Officer from passing orders cannot be issued by this Court under Article 226 of the Constitution of India. It is seen that Ms. Ummu Salma is now functioning as Manager of the Darusalam Primary School, Kadayanallur, Tirunelveli District. That issue has not been challenged in this Court. No orders has been passed in M.P.No.2 of 2012 which is the petition filed to implead herself as respondent No.5. It is made clear, if at all that any further proceedings are initiated by the writ petitioner, she must be made a necessary party to the said judicial proceedings, so that she can also assert her right to continue as Manager of the Darusalam Primary School, Kadayanallur, Tirunelveli District. Holding that the prayer in the writ petition is not maintainable and that it is a clear case of re-agitating the same issue again, I find no merits in the writ petition. Accordingly, the writ petition is dismissed. No costs. Consequently, connected writ miscellaneous petitions are also closed.

Sd/-
Assistant Registrar(CS V)

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Sub Assistant Registrar

To,

1. The Director of Elementary Education,
   DPI Complex,
   College Road,
   Nungambakkam
   Chennai - 600 034.

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

3. The Assistant Elementary Educational Officer,
   Kadayanallur,
   Tirunelveli District.

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

+1cc to the Government Pleader Sr.42526

W.P.No.5236 of 2012
and
W.M.P.No.1 & 2 of 2012

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