



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.11.2019

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MRS.JUSTICE R.THARANI

W.A. (MD)No.1153 of 2019
and
C.M.P. (MD)No.10251 of 2019
in
WP (MD)No.8181 of 2018

1.Manal Matha Higher Secondary School,
Rep. by its Correspondent,
Sokkenkudieruppu,
Tuticorin District.

2.The Manager,
R.C.Shools,
Boshop's Hous, Tuticorin,
Tuticorin District.

3.The Tuticorin Diocesan Association,
Tuticorin, Tuticorin District.

... Appellants/ 5, 4 & 3
Respondents

Vs.

1.M.Jeyasing Cruz Aungelus

... 1st Respondent/Petitioner

2.The Chief Educational Officer,
Tuticorin District, Tuticorin.

3.The District Educational Officer,
Tuticorin, Tuticorin District.

..Respondents 2 & 3
..Respondents 1 & 2

PRAYER: Writ Appeal is filed under Clause 15 of the Letter Patent Act, to allow the appeal by setting aside the order of this Court dated 28.02.2019 made in W.P.(MD)No.8181 of 2018.

Prayer in WP(MD). 8181/ 2018 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a writ of Mandamus directing the Respondents to disburse the retirement benefits with all other attendant benefits and to pay monthly



pension payable to the petitioner with effect from 01.07.2017 by taking into consideration of the petitioners retirement on 30.06.2017.

WEB COPY

For Appellant : Mr.Father Xavier Arul Raj
Senior Counsel for
M/s.Father Xavier Associates

For R1 : Mr.G.Prabhu Rajadurai
for Mr.J.Ashok
For R2 and R3 : Mrs.S.Srimathy
Special Government Pleader

JUDGMENT

[Judgment of this Court was made by **T.S.SIVAGNANAM, J.**]

Heard Mr.Father Xavier Arul Raj, learned Senior Counsel for the appellant, Mr.G.Prabhu Rajadurai, learned counsel for Mr.J.Ashok, learned counsel appearing for the first respondent and Mrs.S.Srimathy, learned Special Government Pleader for the second and third respondents. By consent on either side, this writ appeal is taken up for final disposal.

2. This appeal of the Management is directed against the order in W.P.(MD)No.8181 of 2018 dated 28.02.2019.

3. The first respondent filed the said writ petition to direct the official respondents as well as the appellants to disburse the retirement benefits with all other attendant benefits and to pay monthly pension payable to the petitioner with effect from 01.07.2017, by considering the retirement of the petitioner, dated 30.06.2017. The writ petition was allowed by issuing positive directions by directing the appellants and the official respondents to follow the decision made in W.P.(MD)No.20107 of 2018 dated 28.02.2019 and pay the retirement benefits to the first respondent / writ petitioner and also pay the interest at the rate of 8% per annum for the delayed payment, which was directed to be released within the time frame, failing which penal interest has to be paid at 18% per annum.

4. On going through the order impugned before us, we were initially under the impression that W.P.(MD)No.20107, dated 28.02.2019 was an order passed in a writ petition filed by the first respondent / writ petitioner as it appears that the first respondent / writ petitioner had filed several writ petitions before this court concerning his service matter. However, we are informed that the said writ petition was not filed by the first respondent, but pertains to some other case, which would have no relevance to the case on hand. It is not clear, upon perusal of the impugned order,



as to how the order in W.P.(MD)No.20107 of 2018 dated 28.02.2019 would apply to the first respondent's case. Apart from that, the writ petition has been disposed of without counter affidavit by the appellants nor the official respondents.

5. The learned Senior counsel for the appellants submitted that there is a very serious allegation against the first respondent, which has resulted in surcharge proceedings being initiated and at every point of time, the first respondent has been interdicting the proceedings by approaching this Court. The learned Senior Counsel also refers to the judgment passed in W.A.(MD)Nos.159 and 160 of 2017, which has been filed by the first respondent / writ petitioner.

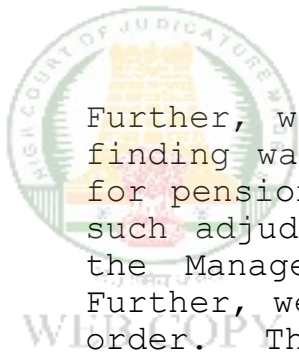
6. The learned counsel for the first respondent would submit that the case on hand is a clear case of escapement by the Management and the first respondent is innocent and the enquiry conducted by the Education Department as well as the Police Officials clearly show that the allegations, based on which, charge memo was framed was entirely false and foisted in order to penalise the first respondent. The learned counsel for the first respondent further submitted that the first respondent retired from service on 30.06.2017.

7. By way of reply submission, the learned Senior counsel submitted that the Management is unnecessarily harassed by the Officials of the Education Department, more particularly, the third respondent herein, who has addressed the District Collector, pursuant to which, notice has been issued to the Management to appear for enquiry before the District Collector on 08.11.2019.

8. It is submitted that it is not clear as to under what jurisdiction, the District Educational Officer can direct the petitioner to appear for enquiry before the District Collector especially when they have not been informed as to what is the scope of the notice. It is further submitted that the District Collector would have no jurisdiction to conduct an enquiry as to whether the first respondent / writ petitioner is entitled for retirement benefits, especially when there are substantive litigations are pending before this Court.

9. Further the learned Senior counsel for the appellants submit that the District Elementary Educational Officer has unauthorizedly stopped the payment of grant to the other teachers of the Institution, which is wholly illegal, as a result of which the other Teachers, who are discharging duties efficiently are put to irreparable hardship.

10. As pointed out by us earlier, the learned writ Court followed the order passed in W.P.(MD)No.20107 of 2018, dated 28.02.2019, which has absolutely no relevance to the case on hand.



Further, we find that there has been no adjudication on merits, no finding was rendered that whether the first respondent is entitled for pensional benefits and other relevance. Thus in the absence of such adjudication, issuing direction to the authorities as well as the Management to pay the retirement benefits is not tenable. Further, we find that the order impugned before us is not a reasoned order. Thus we are inclined to interfere with the impugned order and to restore the writ petition to the file of writ Court to be heard and disposed of after filing of counter affidavit by the appellants / Management as well as the respondents.

11. In the result, the writ appeal is allowed and the order impugned is set aside and the writ petition is restored to the file of the writ Court and the appellants are directed to file their counter affidavit in the writ petition within a period of two weeks from today (i.e., 07.11.2019). The official respondents are also directed to file their counter affidavit to the writ petition within the said period. On pleadings being completed, the Registry is directed to list the writ petition before the appropriate Single Bench for the hearing in the week commencing from 16 December 2019.

12. With regard to the statement of the learned Senior Counsel that the salary to the other Teacher have been stopped that too by oral direction, the learned Special Government Pleader does not have any instructions on the said point. However, if the said statement is correct, then, it is wholly illegal. If the appointment of other Teachers, who are working in the appellant Management, have been approved and they have been paid salary, there has been no valid reason for the District Elementary Educational Officer, Tuticorin District to stop the payment that too by a oral order. Therefore, we direct that no such oral order can be issued and all the Teachers worked in the appellant Management, whose appointment have been approved, shall be paid the salary as was paid to them. The payment for the period on which the salary was not paid by an oral order, should also be credited to their account through ECS, along with the salary for the Month of November, 2019. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (co)

// True Copy //

Sub Assistant Registrar(CS)

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To

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

2.The District Educational Officer,
Tuticorin, Tuticorin District.

+1 CC to M/s.FATHER XAVIER ASSOCIATES, Advocate (SR-96618[F] dated 07/11/2019)

+1 CC to Mr.J.ASHOK, Advocate (SR-96749[F] dated 07/11/2019)

+1 CC to M/s.SPL GP (SR-96933[F] dated 08/11/2019)

ORDER MADE IN
W.A. (MD)No.1153 of 2019
07.11.2019

VB(15.11.2019) 5P 6C