



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.02.2018

CORAM:

THE HONOURABLE Mr.JUSTICE T.S.SIVAGNANAM
AND
THE HONOURABLE Mrs.JUSTICE R.THARANI

Rev. Applc.(MD)No.6 of 2018

S.Thirugnanasambandam

... Petitioner

Vs.

1. State of Tamilnadu,
Represented by its Education Secretary,
Ministry of Education, Chennai-09.
2. The Director or School Education,
Directorate of School Education,
Chennai-06.
3. The Chief Education Officer,
Chief Education Officer,
Thallakulam, Madurai-02.
4. The District Education Officer,
District Education Office,
Thallakulam, Madurai-625 002.
5. The Secretary,
M.A.V.M.M.Hr.Sec.School,
7-10, East Vaddampokki Street,
Yanaikal, Madurai-01.
6. Director,
Educational Consultants Indian Ltd,
(A Government of India Enterprise),
18-A, Sector-16A Noida-201 301,
Ph: 009-120-2515281.

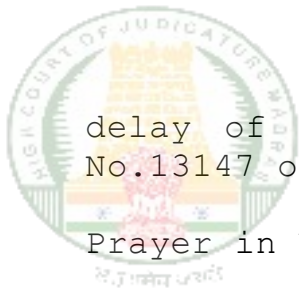
... Respondents

PRAYER: This application is filed under Order 47 Rule 1 & 2 CPC r/w 114 CPC, to set aside the order passed in C.M.P(MD).No.5353 of 2016 in W.A.(MD).No.SR21071 of 2016 dated 07.10.2016 on the file of this Court.

Prayer in CMP(MD)No.5353/ 2016 :

<https://hcservices.ecourts.gov.in/hcservices/>

This Civil Miscellaneous Petition filed to condone the



delay of 537 days in filing W.A. against the order of W.P(MD) No.13147 of 2014.

Prayer in WA(MD) Sr.No.21071 of 2016:

Allow this Appeal and set aside the order passed in WP(MD) in WP(MD)No. 13147 of 2014 dated 28th day of November 2014.

Prayer in WP(MD). 13147/ 2014 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned termination of the petitioner dated 16/12/2009 issued by the M.A.V.M.M. Hr. Sec. School and CEO permission letter copy no 13255/E5/93 dated 26.05.1994 on the file of respondents 3& 5 and the quash the same as illegal and consequently directing the respondents to re- instate the petitioner as a full time vocation teacher at once, and direct the respondents to consider the petitioner service would be taken from 1993 April till this date

For Petitioner : Mr.S.Thirugnanasambandam
(Party-in-person)

For Respondents 1 to 4 : Mr.D.Muruganandam
Additional Government Pleader

For Respondent No. 5 : Mr.J.Barathan

ORDER

(Order of the Court was made by **T.S.SIVAGNANAM, J**)

Heard Mr.S.Thirugnanasambandam, petitioner appearing as party-in-person and Mr.D.Muruganandam, learned Additional Government Pleader appearing for the respondents 1 to 4 and Mr.J.Barathan, learned counsel appearing for the fifth respondent.

2.This review application has been filed challenging the order passed by the Division Bench in C.M.P.(MD)No.5353 of 2016 in W.A.(MD)No.SR.21071 of 2016 on 07.10.2016. The said petition was filed by the petitioner herein to condone the delay of 537 days in filing the writ appeal against the order made in W.P.(MD)No.13147 of 2014 dated 28.11.2014.

3.The learned counsels appearing for the respondents strenuously contended that there is absolutely no explanation for the inordinate delay not only in approaching the Writ Court as well as for approaching the Division Bench. The learned counsels pointed out various aspects to substantiate their stands that the challenge made by the petitioner is hopelessly bared by the delay and latches. The submissions made by Mr.D.Bharathan was supported

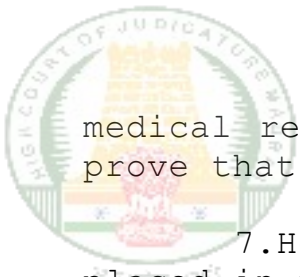


by the learned Additional Government Pleader appearing for the official respondents.

4. The petitioner approached the Division Bench seeking for condonation of delay. After setting out the factual matrix, the petitioner submits that none of the representation given by the petitioner was considered by the Department wherein, he requested for reinstatement in the post of Vocational Instructor on the ground that termination of his service stating that he has deserted the post is incorrect. The petitioner submitted that, he was chosen as one among the 39 candidates by the Government of India, namely, Educational Consultants India Limited (A Government of India Enterprise) for contract assignment to work as teacher in Botswana. The petitioner would proudly say that he is the only teacher selected in the State of Tamil Nadu who went to Botswana to comply with the assignment offered to him by the Government. We find from the communication dated 16.12.2009 addressed by the Management to Chief Educational Officer, Madurai that the services of the petitioner was terminated with effect from 15.04.1993 on the ground that he has not reported for duty for a period of one year. He further submit that he could not approach the Division Bench earlier on account of heart ailment and hospitalisation and till the end of May 2015, he was advised bed rest and thereafter, when the petitioner was travelling in his car, he met with an accident and was once again hospitalised in Vadamalayan Hospital, Madurai, and advised bed rest from October till December 2015.

5. The Division Bench, while considering the petition for condonation of delay observed that the petitioner, after exhausting his employment in Botswana, thought it fit to challenge the termination order that too not immediately but, after several years and his conduct in filing the writ petition after 20 years of termination order would indicate that the petitioner is not sincere in prosecuting the matter and has come to the Court according to his whims and fancies. With regard to the ailment faced by the petitioner, the Hon'ble Division Bench observed that the petitioner did not produce any medical records. Further, since the petitioner, who has appeared in person, touched upon the merits of the matter, passing reference has been made by the Division Bench in the impugned order that there is no dispute that without taking prior permission, the petitioner deserted the service and went to foreign country and got employment and enjoyed the fruits for many years, for which reasons, he was terminated and the employer/management was right in so terminating the petitioner from service because in gross violation of the service conditions and the rules, he has deserted the job for several years.

6. Before us, the petitioner has produced medical records covered by <https://hccasescourts.gov.in/hccases/> Vadamalayan Hospital Private Limited, Madurai, to substantiate that he was inpatient suffering from Bilateral Leg Cellulitis in both legs. We do not wish to dwell further upon the



medical report, but we find that there was some records shown to prove that the petitioner was hospitalised.

7. However, one crucial fact which we find has not been placed in proper prescriptive before the earlier Division Bench is that the petitioner, while working in the respondent School was selected under Government of India scheme and given an assignment to work in Botswana as a teacher. There can be no dispute to the fact that the petitioner did not leave the country in search of private employment, but the contract assignment was on account of an agreement between India and the Government of Botswana. The terms and conditions of appointment as mentioned in the appointment letter dated 19.03.1993 speaks for itself.

8. Therefore, the question would be as to whether the petitioner deserted his employment and went to foreign country to make money and enjoy the fruits for many years of such employment and then came back to Madurai and seeks to continue his employment in the School. *Prima facie* we find that the case is not one of the desertion but an employment on account of assignment which was given to the petitioner. The questions now would be whether the petitioner straight away left the country, whether the petitioner addressed the management/department informing about the same and whether he took permission from the department or whether prior permission of the department is required? There can be no denial to the fact that the petitioner had secured employment in Botswana pursuant to the Government of India scheme. It would be a very hard proposition to believe that the Management was not informed of the nature of employment. On perusal of the pleading in the case, we find that the language adopted by the petitioner is not appreciated. Therefore, we have advised him that he should be temperate while he speaks and while he writes.

9. The Division Bench having made certain observation on the merits of termination which we *prima facie* find is not fully in tune with the factual situation we deem it appropriate that the prayer sought for the petitioner before the Writ Court requires to be adjudicated on merits and only then the petitioner would be vindicated, and would know as to what is the result of the challenge made by him in W.P.(MD)No.13147 of 2015. We may point out the Division Bench while dismissing the application for condonation of delay need not have gone into the merits of the matter which was never adjudicated by the Writ Court. We are of the considered opinion that the matter requires to be adjudicated on merits.

10. Thus, for the above reasons, the review application is allowed and the order passed in C.M.P.(MD)No.5353 of 2016 is set aside. The delay in filing the Writ Appeal is condoned. The Registry is directed to number the appeal and list the same for admission. The Registry is also directed to print the names of



D.Muruganantham, as learned Additional Government Pleader for the respondents 1 to 4 and Mr.J.Barathan, as learned counsel for the fifth respondent in the cause list.

Sd/-

Assistant Registrar(CO)

WEB COPY

/True Copy/

Sub Assistant Registrar

To

1. The Secretary to Government Tamilnadu,
Education Department,
Chennai-09.
2. The Director or School Education,
Directorate of School Education,
Chennai-06.
3. The Chief Education Officer,
Chief Education Officer,
Thallakulam, Madurai-02.
4. The District Education Officer,
District Education Office,
Thallakulam, Madurai-625 002.

Copy to

The Section Officer,
Judicial Section,
Madurai Bench of Madras High court,
Madurai.

+1cc to The Spl. Government Pleader Sr.51587
+1cc to T.R.Jeyapalam, Advocate Sr.No.51418

MRN/RMK

VB/SKN/RSK/SAR3/06.03.2018/5P/8C

Rev. Aplc.(MD)No.6 of 2018
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