



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 25.10.2019

CORAM:

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

W.A. [MD]No.1113 of 2019
and
C.M.P. [MD]No.9952 of 2019

1. The Chief Educational Officer,
Tirunelveli.
2. The District Educational Officer,
Tenkasi, Tirunelveli District. : Appellants/Respondents
Vs.
1. C.Jaya : 1st Respondent/Petitioner
2. The Secretary,
Rayagiri Thbiru.C.P.Athithanar
Girls High School, Rayagiri - 627 764.
Tirunelveli District. : 2nd Respondent/3rd Respondent

PRAYER: Writ Appeal is filed under Clause 15 of the Letters Patent, praying to set aside the order dated 27.11.2018 passed in W.P.[MD]No.3856 of 2011.

Prayer in WP(MD). 3856/ 2011 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records relating to the order passed by the 1st respondent in Na.Ka.No. 5847/AA 2/2010 dated 21/06/2010 and quash the same, as far as it denies the salary from 23/12/2003 to till dated is concerned, and direct the respondents to confer all the consequential benefits .

For Appellant : Mrs.S.Srimathy
Special Government Pleader

For Respondent No.1 : Mr.V.Panneer Selvam

For Respondent No.2 : No appearance



JUDGMENT

[Judgment of the Court was delivered by T.S.SIVAGNANAM, J.]

By consent, the Writ Appeal is taken up for final disposal at the admission stage itself.

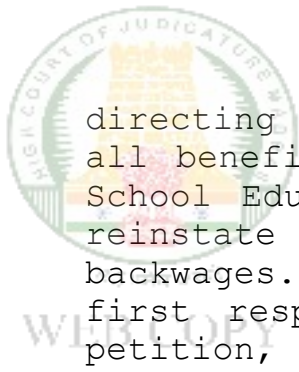
2.Heard Mrs.S.Srimathy, learned Special Government Pleader appearing on behalf of the appellant and Mr.V.Panneer Selvam, learned Counsel appearing on behalf of the first respondent.

3.This appeal by the Chief Educational Officer and the District Educational Officer, Tenkasi Educational District is directed against the order passed in W.P.[MD]No.3856 of 2011 dated 27.11.2018. The said order is a common order in eight writ petitions of which we are concerned only about the writ petition filed by the first respondent Smt.C.Jaya. The said writ petition was filed challenging an order passed by the Chief Educational Officer, Tirunelveli dated 21.06.2010, insofar as it denies salary to the writ petitioner from 23.12.2003, till the date of filing of the writ petition.

4.The first respondent / writ petitioner was appointed as Secondary Grade Teacher in Rayagiri Thiru.C.P.Athithanar Girls High School on 10.02.1992, initially on consolidated pay and subsequently brought into time scale of pay with effect from 01.06.1994. The first respondent husband was running a chit business and defaulted the re-payment. Consequently, criminal cases were registered against the first respondent's husband as well as the first respondent and she was arrested on 23.12.2003. Since the factum of arrest was not informed by the first respondent school management and she availed Earned Leave, the management initiated disciplinary action against her by initially placing her under suspension and subsequently issuing charge memo dated 24.09.2004. The charge proceedings ultimately ended in an order of dismissal from service.

5.The management submitted a proposal dated 25.04.2005 to the first appellant requesting approval. The first appellant rejected the petition and refused to grant approval and aggrieved by the same, the management filed an appeal before the Joint Director of School Education who by order dated 13.09.2007, sustained the order passed by the first appellant who had declined to grant approval to the order of dismissal. This order was put to challenge by the management in W.P.[MD]No.9938 of 2007, which was also heard along with the batch of cases.

6.In the light of the orders passed by the Joint Director of School Education, the first appellant had passed an order



directing the management to reinstate the first respondent with all benefits. Consequent upon the order of the Joint Director of School Education, the first appellant directed the management to reinstate the first respondent teacher in service, however, denied backwages. This was questioned in the writ petition filed by the first respondent / teacher. During the pendency of the writ petition, it appears that the first respondent was willing to give up the claim for backwages and accordingly, the Court considered the correctness of the order passed by the Joint Director confirming the order of the first appellant refusing to grant approval to the order of dismissal passed by the management.

7.The order passed by the Joint Director was upheld by the Court and recording the concession given by the first respondent that she will not claim backwages, direction was issued to reinstate the first respondent with continuity of service but without backwages. This order is assailed by the appellants in this appeal. We fail to understand as to how the appellants are aggrieved by the said order. In fact, but for the concession given by the first respondent, the first respondent was legally entitled to payment of backwages since the order of dismissal passed by the management was not approved by the department. The resultant conclusion is that the order of dismissal is non-est in the eye of law.

8.Be that as it may, the first respondent on her own volition was ready to give up backwages. In such circumstances, the appellants cannot now state that the first respondent would not be entitled to benefits, though she is reinstated in service. The learned Special Government Pleader appearing for the appellants relied on the decision of the Hon'ble Supreme Court in the case of **A.P. SRTC and another Vs. S.Narsagoud** reported in **2003 2 SCC 212**. Learned counsel referred to paragraph No.9 of the said judgment.

9.We find that the said decision can be of no assistance to the appellants because of the factual matrix involved in the said case, wherein the order of punishment passed against the employee was upheld by the writ Court. In the instant case, it is the appellant department which held that the order of dismissal passed by the management is not sustainable therefore, approval was rejected. As pointed out earlier, the natural consequence of such an order would be that the teacher is entitled for reinstatement with full backwages and all attendant benefits. However, in the instant case, since the first respondent has given up backwages, which has been specifically recorded by the learned Writ Court, the appellants cannot now turn around and deny the benefits which is lawfully due to the first respondent.

10.This, for the above reasons, we find that there are no



grounds made out to entertain this Writ Appeal. Accordingly, the Writ Appeal is dismissed. However, there shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

WEB COPY

Sd/-

Assistant Registrar (CO)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

To

1. The Chief Educational Officer,
Tirunelveli.
2. The District Educational Officer,
Tenkasi, Tirunelveli District.

+1 CC to M/s.V.PANNEER SELVAM, Advocate (SR-94944[F] dated 30/10/2019)

Judgment made in
W.A. [MD]No.1113 of 2019
Dated: **25.10.2019**

MR

AE/ (07.01.2020) 4P 4C