



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.08.2019

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

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W.P. (MD)No.1864 of 2016

and

W.M.P. (MD)Nos.1618 and 1619 of 2016

P.Selvanandam

... Petitioner

Vs.

- 1.The District Elementary Educational Officer,
O/o. the District Elementary Educational Officer,
Alli Nagaram,
Theni District.
- 2.The Additional Assistant Elementary Educational Officer,
O/o. the Additional Assistant Elementary Educational Officer,
Alli Nagaram,
Theni District.
- 3.Educational Agency/Kalvi Mugamai,
Tha.Pe.Vai.Velalar Uravinmurai Gurukkal
Middle School,
Chinnamanur,
Theni District,
Rep. by its President K.Velmurugan

4.M.Palanivel

... Respondents

[R4 impleaded vide order dated 08.08.2019, made in
W.M.P. (MD)No.7173 of 2018 in W.P. (MD)No.1864 of
2016]

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, calling for the records of impugned order passed by the first respondent in Na.Ka.No.1170/A5/2012, dated 13.01.2016 and quash the same as illegal.

For Petitioner : Mr.M.C.Swamy

For R1 and R2 : Mrs.S.Srimathy
Special Government Pleader

For R3 : Mr.L.Prabhu

For R4 : Mr.F.Deepak

**ORDER**

This Writ Petition is filed seeking to quash the impugned order passed by the first respondent, in Na.Ka.No.1170/A5/2012, dated 13.01.2016.

2. According to the petitioner, while he was working as Headmaster in the third respondent School, a quarrel arose between him and one K.Hemalatha, who is the relative of the fourth respondent and working as a Handicraft Teacher in the said School. Pursuant to which, both of them made complaints against each other. Based on the complaint given by the said Hemalatha, a case in Crime No.211 of 2011 has been registered against the petitioner under Section 294(b) IPC and Section 4 of Tamil Nadu Prevention of Women Harassment Act, on 09.04.2011 and the petitioner was arrested on 10.04.2011 and released on bail on 12.04.2011. Based on his request, the Secretary of the School has sanctioned earned leave for the above said two days viz., 11.04.2011 and 12.04.2011 and the same was also affirmed by the Assistant Elementary Educational Officer, Chinnamanur.

3. Further, Rule 17(e)(2) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, enables the authority to suspend the Government Servant, who is detained in custody of criminal charges or otherwise, for a period longer than 48 hours, but, in the petitioner's case, he was detained in prison only for 36 hours. Subsequently, on 05.12.2013, the petitioner was acquitted from the above said criminal case by the learned Judicial Magistrate, Uthamapalayam.

4. Further, according to the petitioner, the fourth respondent lodged a complaint to the respondents 1 and 2 on 07.06.2012 and 29.09.2012 against the Secretary of the School and also approached the State Information Commission through the Right to Information Act, which compelled the first respondent to pass the impugned order, to initiate recovery proceedings against the petitioner, after a lapse of four years. Hence, the present Writ Petition.

5. The learned counsel appearing for the petitioner submitted that the first respondent has lost its sight by not considering the judgment passed by the learned Judicial Magistrate, Uthamapalayam, on 05.12.2013, while passing the present impugned order and therefore, the impugned order passed by him is per se illegal and the same is liable to be quashed.

6. The learned Special Government Pleader appearing for the respondents 1 and 2, based on the counter affidavit filed by the first respondent, submitted that without knowing the closure of the complaint preferred by the fourth respondent, the predecessor-in-



office ordered for recovery of salary of the petitioner. Further, the petitioner was acquitted from the criminal case by the learned Judicial Magistrate, Uthamapalayam, and therefore, the Department felt that no further action is necessary on the complaint made by the erstwhile Secretary, viz., the fourth respondent herein.

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7.The learned counsel appearing for the fourth respondent did not dispute the above said facts and submitted that the criminal case registered against the petitioner was ended in acquittal.

8.Considering the above said facts and circumstances of the case and having regard to the submissions made by the learned counsel appearing for the parties, the impugned order passed by the first respondent, dated 13.01.2016, is *per se* illegal, as the same was passed without providing an opportunity of hearing to the petitioner. Further, considering the statement made by the first respondent, in his counter that due to mistake, the impugned order has been passed, this Court has no hesitation to quash the impugned order of the first respondent, dated 13.01.2016. Accordingly, it is quashed and the Writ Petition is allowed. No costs. It is open to the petitioner to approach the authorities for his retirement benefits, in accordance with law. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar

/TRUE COPY/

Sub Assistant Registrar

To

1.The District Elementary Educational Officer,
O/o. the District Elementary Educational Officer,
Alli Nagaram,
Theni District.

2.The Additional Assistant Elementary Educational Officer,
O/o. the Additional Assistant Elementary Educational Officer,
Alli Nagaram,
Theni District.

+1 CC to M/s.M.C.SWAMY, Advocate (SR-80757[F] dated 08/08/2019)

+1 CC to M/s.SPL GP (SR-81162[F] dated 09/08/2019)

W.P (MD)No.1864 of 2016

08.08.2019

SMN2

JM/19.08.2019/3P/5C