



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserving the Judgment	Date of Pronouncing the Judgment
05.09.2019	18.09.2019

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CORAM:

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

**W.A. (MD) No.1249 of 2017
and
C.M.P. (MD) Nos.8742 & 8743 of 2017**

M.Panimaya Suganthi

... Appellant/ Petitioner

-vs-

- 1.The Director of School Education
O/o.the Director of School Education
DPI Campus
Chennai
- 2.The Chief Educational Officer
O/o.the Chief Educational Officer
Tuticorin District
- 3.The District Educational Officer
O/o.the District Educational Officer
Tuticorin District.
- 4.St.Aloysius Girls' Higher Secondary School
rep.by its Correspondent
Tuticorin-628 001
Tuticorin District

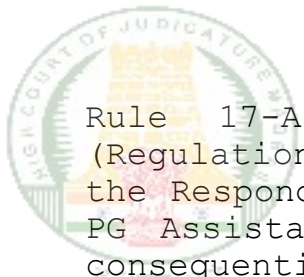
5.Rev.Sister.Lizy

... Respondents/ Respondents

Writ Appeal filed under Clause 15 of Letters Patent to set aside the order, dated 11.07.2017, passed in W.P.(MD) No.12750 of 2017, on the file of this Court.

Prayer in WP(MD). 12750/ 2017 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a writ of Declaration, to declare the appointment of the 5th Respondent in the post of PG Assistant in Chennai District Government School as illegal and violative of



Rule 17-A(6) of the Tamil Nadu Recognized Private Schools (Regulation) Rules, 1974 and consequently for a direction, directing the Respondent No.1 to 4 to reinstate the petitioner in the post of PG Assistant in Chemistry at the 4th Respondent School with all consequential benefits within the time period stipulated by this HC.

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For Appellant : Mr.T.Lajapathi Roy

For Respondents : Mr.A.K.Baskara Pandian
Special Government Pleader for R1 to R3
Mr.Anwar Sameem
for Mr.V.John Kennedy for R4

J U D G M E N T

T.S.SIVAGNANAM, J.,

The writ petitioner is the appellant before us challenging the correctness of the order, dated 11.07.2017, passed in W.P.(MD) No.12750 of 2017.

2. The writ petition was filed by the appellant to declare the appointment of the fifth respondent in the post of P.G.Assistant in Chemistry in the fourth respondent School being in violation of Rule 17-A(6) of the Tamil Nadu Recognized Private Schools (Regulation) Rules, 1974 (hereinafter, referred to as "the Rules") and for a consequential direction to the respondents 1 to 4 to reinstate the appellant in the post of P.G.Assistant in Chemistry in the fourth respondent School with all consequential benefits.

3. The Writ Court dismissed the writ petition, primarily on the ground that as the appellant has not challenged the order of appointment of the fifth respondent, a prayer for declaration cannot be issued. Secondly, the Writ Court referred to the admission of the appellant in her affidavit that she was relieved from the fourth respondent School on 31.03.2015, subsequently, reinstated on 08.06.2015 and again relieved on 22.04.2016 and held that since the relieving order having not been challenged, the prayer sought for in the writ petition cannot be entertained. Challenging the same, the appellant is before us by way of this appeal.

4. Mr.T.Lajapathi Roy, learned counsel appearing for the appellant, contended that the Writ Court ought not to have dismissed the writ petition on a technical ground, since the appellant is not in possession of copy of the appointment order issued to the fifth respondent and precisely, for such a reason, the appellant sought for a declaratory relief and the Court should have considered the prayer sought for and taken a decision on merits.



5. It is further submitted that the order of the fourth respondent School in relieving the appellant and appointing the fifth respondent in her place is arbitrary, illegal and in violation of Rule 17-A(6) of the Rules. In this regard, the learned counsel appearing for the appellant has drawn our attention to Rule 17-A of the Rules.

6. It is further submitted that the respondents 2 and 3 ought to have considered the representation given by the appellant and taken note of Rule 17-A of the Rules and interfered with the decision of the fourth respondent School in appointing the fifth respondent in the place of the appellant. In support of his contention, the learned counsel for the appellant referred to the decision of the learned Single Judge of this Court in **Chettiappan, K. vs. The Chief Educational Officer, Ramanathapuram**, reported in **2000 Writ L.R.300**; the decision in W.P.(MD) No.21250 of 2015, dated 02.02.2018 (**S.Sophi Shavrin Aashicka vs. The Director of Elementary Education and others**) and the Judgment, dated 09.10.2007 in W.A.(MD) No.476 of 2007 (**The Correspondent, Our Lady of Lourdes Girls Higher Secondary School vs. Silva Fernando**).

7. Mr.S.Anwar Sameem, learned counsel representing Mr.V.John Kennedy, learned counsel on record for the fourth respondent, submitted that the appellant was appointed on 02.07.2014 in the fourth respondent School as P.G.Assistant in Chemistry in a vacancy arising out of transfer of one S.Lilly Prabha on 12.06.2014. The proposal for approval of the appointment of the appellant was forwarded to the third respondent on 02.07.2014 itself. However, the same was not approved. In the meantime, the appellant submitted her resignation voluntarily to the fourth respondent School on 31.03.2015. The proposal for approval of the voluntary resignation was sent to the third respondent on 31.03.2015 itself. However, no order was passed approving the voluntary resignation.

8. Subsequently, the appellant approached the fourth respondent requesting to allow her to join in the same post and since the post was lying vacant and bearing in mind the interest of the students as well as the plight of the appellant, an order of appointment was issued in favour of the appellant on 08.06.2015. This order was forwarded for approval to the third respondent on the same day i.e. 08.06.2015. Once again, the appellant submitted a resignation on 20.04.2016, which was fully voluntary and the same was forwarded to the third respondent on the very same day and no orders were passed on such proposal. Faced with this situation, the fourth respondent School submitted representations to the third respondent on 23.03.2017 and 07.12.2017 requesting to grant approval for the appointment and also to approve the voluntary resignation of the appellant. Since the post was lying vacant and approval was not granted and the students were affected on account of the post lying vacant, the fifth respondent, who was a Teacher working in another



School of the same educational agency at Trichy, was transferred to the fourth respondent School. This order of transfer was effected bearing in mind the interest of the students, more particularly, those studying in the higher secondary classes. The educational agency had to take such a decision because from 2014 when the appellant was first appointed, the Management has been requesting for approval and the same was not granted. Subsequently, the fifth respondent voluntarily resigned twice, the papers were forwarded to the Department for approval and no orders were passed and therefore, the Management was left with no other option except to transfer the fifth respondent to the fourth respondent School. After all these events, the third respondent, by order dated 16.03.2017, approved the appointment of the appellant with effect from 02.07.2014, which was communicated to the fourth respondent subsequently. Meanwhile, the fourth respondent had submitted a representation for approval of the appellant for the period from 02.07.2014 to 31.03.2015. After proceedings were issued by the third respondent, salary for the said period has been directly remitted to the Bank account of the appellant on 27.06.2017. It is submitted that the conduct of the appellant that after receiving salary, she has approached the Court and filed the writ petition is to be noted.

9. It is further submitted that the fourth respondent School has not violated the provisions of the Act and it is the third respondent, who kept the proposal pending for about three years without granting approval. Further, the contention that the resignation was not voluntary is absolutely false and if that is so, there is no reason forthcoming as to why the appellant did not question the same in 2015 itself and there is no explanation given by the appellant as to why she has waited for two years to file the writ petition. Furthermore, the conduct of the fourth respondent should also be noted in offering employment to the appellant even though she had resigned. Thus, the contention of the fourth respondent was never to deprive the appellant of her employment, but she wanted to leave the employment on her own volition and the fourth respondent cannot compel the appellant to continue after she has taken such a decision, especially for the second time.

10. Further, it is submitted that the first representation submitted by the appellant was only on 16.05.2017 and this will clearly show that the resignation was voluntarily. It is submitted that even during the period when the appellant was working as Teacher in the fourth respondent School, though grant-in-aid was not sanctioned, a nominal amount was paid to the appellant every month with the expectation that the appellant would return the same as and when she receives the salary from the Government. The original certificates of the appellant are with the third respondent and with the fourth respondent. The fifth respondent was transferred from Trichy on 06.06.2016 and joined the fourth respondent School on 08.06.2016 and after a period of one year, the appellant has



approached the Court to declare the appointment of the fifth respondent as illegal and the writ petition was rightly dismissed by the learned Single Judge and the said order may be confirmed by this Court.

11. We have heard Mr.A.K.Baskara Pandian, learned Special Government Pleader appearing for the respondents 1 to 3.

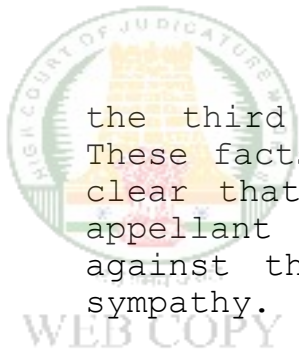
12. The learned counsel appearing for the appellant, by referring to Rule 17-A of the Rules, submitted that the object behind the framing of Rule 17-A of the Rules is to confirm the fact of resignation of the Teacher and other persons employed in the Private Schools in order to safeguard the conditions of services of the Teachers and to explain the scope of enquiry, the decision in the case of **Chettiappan, K** (supra) was referred to.

13. The decision in the case of **the Correspondent, Our Lady of Lourdes Girls Higher Secondary School** (supra) was referred to in order to support the contention that the act of the Management disengaging the appellant from service without getting approval of the Authority concerned is vitiated.

14. The decision in **S.Sophi Shavrin Aashicka** (supra) was relied on to support the same argument.

15. First and foremost we have to examine as to whether the resignation submitted by the appellant was in any manner hit or affected for non-adherence to Rule 17A of the Rules. The Rule provides for enquiry into whether the resignation is voluntary to satisfy the basic rule of fairplay. This is to rule-out as to whether there was any coercion meted out to the Teacher compelling her to resign.

16. In the preceding paragraphs, we have set out the factual matrix as placed before us by the fourth respondent School. On carefully going through the facts, we are fully convinced that the theory now propounded by the appellant that the resignation was not voluntary is a false and frivolous plea and a clear case of afterthought. The appellant had resigned not once, but twice. After accepting her first resignation on 31.03.2015, the fourth respondent promptly forwarded the papers for approval to the third respondent. The third respondent did not take any action on the said proposal, for which, the fourth respondent cannot be blamed. Once again, the appellant was issued a fresh appointment on 08.06.2015. If the plea raised by the appellant before us is true, then obviously the fourth respondent would not have appointed the appellant for the second time on 08.06.2015. This itself will clearly demonstrate the stand of the appellant that the resignation was not voluntary is false. After the second appointment order was issued on 08.06.2015, the proposal seeking approval was forwarded to



the third respondent by the fourth respondent on the same day. These facts had not been denied by the appellant. Therefore, it is clear that only for the purpose of filing the writ petition, the appellant has come forward with the false plea making allegations against the fourth respondent. Thus, the appellant deserves no sympathy.

17. After having been appointed for the second time on 08.06.2015 and after having been functioned for nearly ten months, once again the appellant resigned on 20.04.2016. The fourth respondent sent the proposal for approval of the resignation to the third respondent on the same day. Once again, the third respondent did not act on the proposal. The fourth respondent cannot be blamed for the inaction on the part of the third respondent i.e. from 02.07.2014 when for the first time, the fourth respondent sent the order of appointment of the appellant for approval. In such situation, what would be the prudent action to be done by any School Management, especially when the Teacher was a Post Graduate Teacher in the subject Chemistry to handle the students in the Higher Secondary Classes. There can be no second opinion on this aspect, because if the post continues to remain vacant, the persons, who will be affected, are the students. Therefore, every Institution should bear this in mind and this alone will be the paramount consideration and nothing else. The fourth respondent, who thought on those lines, did not appoint a new Teacher, but transferred the fifth respondent, who was working in Trichy in another School under the same Management to handle classes in the fourth respondent School. The fifth respondent joined the fourth respondent School on 08.06.2016. Obviously the appellant should have been aware of this fact. We note the conduct of the appellant in not raising any objection when she submitted two resignation letters, which were sent for approval to the third respondent. No objection was raised by the appellant when the fifth respondent was transferred and posted to the fourth respondent School and joined duty on 08.06.2016. Therefore, the writ petition itself is a clear afterthought. We examined as to why the appellant had chosen to file the writ petition in 2017 precisely on 05.07.2017 i.e. after one year subsequent to the fifth respondent had joined the fourth respondent School. We need not labour much to find an answer owing to the fact that the third respondent on 16.03.2017 approved the appointment of the appellant with effect from 02.07.2014 and the salary was remitted to the appellant's Bank account on 27.06.2017 for the period from 02.07.2014 to 31.03.2015. After having received the salary, the appellant approached this Court and filed the writ petition on 05.07.2017. Therefore, the appellant has come forward with a false case stating that the resignation was not voluntary and raising a plea that there is infraction of Rule 17A of the Rules. The facts and events clearly show that there is absolutely no bona fide on the part of the appellant in raising such a plea and factually we have found that there was no threat or coercion meted out to the appellant to compel her to resign from service on



31.03.2015. Having come to such a conclusion, we are of the firm view that the appellant requires no indulgence.

18. A plea was putforth that until the resignation is approved, the post cannot be filled-up and in this regard, the decisions in the case of **the Correspondent, Our Lady of Lourdes Girls Higher Secondary School** (supra) and **S.Sophi Shavrin Aashicka** (supra) were referred to. These decisions cannot be applied to the facts of the present case. Unless and until the concerned Teacher disputes at the earliest point of time stating that the resignation was not voluntary, the question of the Management endlessly waiting till the Department takes action does not arise. If such proposition is to be applied to the instant case, then it would amount to indirectly exonerating the welfare of the students. The appellant, at no point of time, raised any objection stating that her resignations were not voluntary. Therefore, the belated plea raised by the appellant after having received the monetary benefits from the Government is a clear afterthought, devoid of *bona fides* and should be outrightly rejected.

19. In the counter affidavit, the fourth respondent has stated that they were under the earnest plea that the appellant would return the nominal amount paid to her by them from their kitty. It is no doubt true that the appellant has now received the Government salary for the very same period. But, however, we opine that the fourth respondent should not insist upon the appellant to repay the nominal amount of salary paid to the appellant forthwith, when she discharged her duties in the fourth respondent School.

20. For the above reasons, we find that the appellant has not made out any case for grant of any relief in this appeal.

21. In the result, the appeal fails and it is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (AD-I)

// True Copy //

Sub Assistant Registrar

To:

1.The Director of School Education,
O/o.the Director of School Education,
DPI Campus, Chennai.



2.The Chief Educational Officer,
O/o.the Chief Educational Officer,
Tuticorin District.

3.The District Educational Officer,
O/o.the District Educational Officer,
Tuticorin District.

+1 CC to M/s.V.JOHN KENNEDY, Advocate (SR-87359[F] dated 18/09/2019

+1 CC to M/s.SPL GP (SR-87934[F] dated 19/09/2019)

+1 CC to M/s.T.LAJAPATHI ROY, Advocate (SR-87855[F]dated 19/09/2019

JUDGMENT IN
W.A. (MD) No.1249 of 2017
and
C.M.P. (MD) Nos.8742 & 8743 of 2017
18.09.2019

KRK
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