

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 07.09.2020

CORAM:

THE HON'BLE MR. JUSTICE V.PARTHIBAN

WP No.5475 of 2020
and WMP No.12263 of 2020

V.Mohan
Petitioner

Vs

1. The Chief Educational Officer,
Chennai Central Education District,
Presidency Girls Hr. Sec. School Campus,
Egmore, Chennai – 600 008.

2. The Director of School Education,
DPI Compound,
College Road, Chennai – 600 006.

3. The Secretary,
The Gopalapuram Boys Higher Secondary School,
11, Connon Smith Road,
Gopalapuram, Chennai – 86

4. M.Thirugnanasambandan
Respondents

[R4 impleaded as per the orders of this Court (VPNJ) dated 07.09.2020 in
WMP No.12263 of 2020 in WP No.5475 of 2020]

PRAYER: This Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of Writ of Mandamus, directing the 1st respondent to consider the representation of the petitioner dated 09.11.2019.

For Petitioner : Mr.P.Nagaraju

For Respondents : Mr.P.Raja, (for R1 & R2)

Government Advocate
Mr.K.S.Ravikumar (for

R3)

Standing Counsel
Mr.G.Sankaran (for R4)

ORDER

This matter is taken up today, through Web hearing.

2. The writ petition has been filed seeking for the following prayer:

“for issuance of Writ of Mandamus, directing the 1st respondent to consider the representation of the petitioner dated 09.11.2019.”

3. The case of the petitioner is that he was appointed as B.T.Assistant (Maths) on 26.03.2007 and was promoted to the post of Post Graduate Teacher on 01.06.2010. He is presently working as Post Graduate Teacher (Maths), in the 3rd respondent school, a Government aided institution.

4. The grievance of the petitioner is that his colleague one M.Thirugnanasambandan was appointed as B.T.Assistant (Science) in the same school on 26.03.2008 in the sanctioned post and his appointment was also approved and his probation was declared on 15.12.2008 and 26.03.2010, respectively. On 01.06.2008, one Bhaskaran, who was working as Post Graduate Teacher (Science) promoted as a Headmaster and the post of Post Graduate Teacher (Science) became vacant from 01.06.2008.

5. The said M.Thirugnanasambandan was given promotion to the post of Post Graduate Teacher on 16.03.2009, in the above said vacancy, before declaration of his probation in the lower post and a proposal was sent for approval of his appointment by the District Education Officer, Chennai and eventually approval was also granted on 05.10.2009.

6. The petitioner being aggrieved by the above promotion in the year 2009 appears to have submitted a representation on 03.06.2015 after more than 5 years against the promotion, to the 2nd respondent, as according to the petitioner, the promotion of M.Thirugnanasambandan, was contrary to the

relevant regulation, as there was no action forthcoming, the petitioner approached this Court in W.P.No.26018 of 2015, to consider his representation stating that the promotion of M.Thirugnanasambandan, to the post of Post Graduate Assistant, was illegally granted and approved before his declaration of his probation in the feeder post. The writ petition was however, disposed of, directing the 1st respondent therein, the Director of School Education to consider representation of the petitioner herein dated 03.06.2015 questioning the promotion of the said M.Thirugnanasambandan, within eight weeks by order of this Court dated 21.08.2015. The said M.Thirugnanasambandan though was a party however was not heard as reflected in the order, in view of the limited scope of the final direction itself.

7. In pursuance of the directions passed by this Court in the above said writ petition, the Director of School Education had passed an order on 11.03.2016 holding that the said M.Thirugnanasambandan had not completed the probationary period, at the time when he was promoted as Post Graduate Assistant and ordered cancellation of the promotion. The school committee in the meanwhile appears to have also passed a resolution after discussion with

the Director of School Education on 31.01.2016, before the actual order of cancellation was issued and that revised promotion would be effected, accordingly.

8.Subsequently, it appears that after completion of the Probationary period, the School had forwarded he revised promotion of the said M.Thirugnanasambandan once again on 23.06.2016. In response to the revised proposal, the Authority concerned granted approval by his proceedings dated 11.04.2016. Aggrieved once again, the petitioner herein approached this Court in W.P.No.16082 of 2016 challenging the subsequent approval dated 11.04.2016 approving the appointment of the said M.Thirugnanasambandan as Post Graduate Assistant (Science). This Court initially granted an order of stay on 28.11.2016 in the writ petition and thereafter on behalf of the M.Thirugnanasambandan, a vacate stay petition in W.M.P.No.13885 of 2016 was subsequently filed and the same was heard on 07.03.2018.

9. This Court after hearing the parties has passed final orders in the writ petition itself holding that the grievance of the petitioner herein was completely misplaced, as the promotion of the said M.Thirugnanasambandan was to the

post of Post Graduate Assistant (Physics) and the petitioner promotion was to the post of Post Graduate Assistant (Maths) and such promotion was always effected on the basis of the subject-wise seniority. Therefore, it was eventually held that the petitioner had no locus standi to question the promotion of the said M.Thirugnanasambandan, as he was Teacher from a different subject (Maths) and cannot possibly have any axe to grind against the promotion effected in different subject (Physics).

10. It appears, that as against the said order, the petitioner has filed WA No.1765 of 2018. While entertaining the Writ appeal, the learned Division Bench has originally granted interim order on 23.08.2018 holding that the 4th respondent in the appeal viz., the M.Thirugnanasambandan shall continue in the post i.e Post Graduate Assistant (Physics). However, subsequently, the order came to be revised on 25.02.2019, by another Division Bench and a stay was granted in respect of the approval dated 11.04.2016 granted to the promotion of the said M.Thirugnanasambandan. However, subsequently the same Division Bench, revised its earlier interim order on 02.04.2019 and recalled the order of stay granted on 25.02.2019 and restored the earlier order

dated 23.08.2018 meaning that the M.Thirugnanasambandan would continue as Post Graduate Assistant (Physics). The writ appeal is still pending.

11. While the matter stood thus, the petitioner has come up with this writ petition seeking issuance of writ of mandamus to dispose of his representation dated 09.11.2019, once again complaining to the Education authority about the illegal appointment of the said M.Thirugnanasambandan as P.G.Assistant (Physics) and requesting the authority to cancel his appointment, by considering the representation. Deceitfully, the petitioner has not made the said M.Thirugnanasambandan, as a party in this writ petition. Probably the petitioner thought that he would wrangle a seemingly innocuous direction from this Court with an nefarious view to put the Education Authority under obligation to re-visit the order of approval granted to the promotion of the said M.Thirugnanasambandan and in that process to harass the said Teacher for serving his own ends. After notice in the writ petition, subsequently, on behalf of the said M.Thirugnanasambandan, an impleadment petition was filed and numbered as W.M.P.No.12263 of 2020 in the writ petition.

12. In response to the notice, Mr.P.Raja, learned Government Advocate

appeared for the official respondents 1 and 2. On behalf of the 3rd respondent School, Mr.K.S.Ravikumar, has entered appearance and a counter affidavit has also been filed on behalf of the School.

13. It is clearly averred in the counter affidavit filed on behalf of the 3rd respondent that the petitioner herein cannot have any grievance against the promotion of the said M.Thirugnanasambandan, to the post of Post Graduate Assistant (Physics), in a different subject and the question of further promotion to the post of Head master in future, will be based on merit and ability and the seniority will be considered only if merit and ability is approximately equal, as per the provisions of the Tamil Nadu Recognized Private Schools (Regulation) Rules, 1974.

14. It is also averred in the counter affidavit that in the writ petition, the petitioner has not stated about the earlier order passed by this Court in WP No.16082 of 2016 dated 07.03.2018 and the interim orders passed in the writ appeals. The petitioner herein having failed to convince this Court about the prayer as sought by him in the earlier writ petition has now unnecessarily

embarked upon yet another litigation for the same grievance, which is nothing but a vexacious litigation and abuse of process of law.

15. In fact, in the counter affidavit, it is stated that while dismissing the writ petition filed by the petitioner this Court made a strong observation against the motive of the writ petitioner in its order dated 07.03.2018 in WP No.16082 of 2016. Therefore, the 3rd respondent school prayed for dismissal of the writ petition.

16. Mr.G.Sankaran, learned counsel appearing in the impleading petition, filed by the affected M.Thirugnanasambandan, was also heard.

17. As far as the representation from the petitioner's side, when the matter was listed, atleast on two earlier occasions, neither his advocate nor the petitioner was present. Therefore, this Court was constrained to pass an order on 28.08.2020 as under

“Even today, the learned counsel for the writ petitioner is not present. This Court finds that the writ petitioner has approached this Court without disclosing the earlier writ petition filed by him and dismissal of the same by this Court. Suppressing the same, the present writ petition has been filed with similar prayer. Since this Court does not

find the presence of counsel for the petitioner, is constrained to issue notice directly to the writ petitioner for his personal appearance before this Court, through video conference, on 07.09.2020 and the same shall be served through the School authority. The petitioner is called upon to explain as to why this writ petition should not be dismissed with exemplary costs as this Court deems fit and he is also directed to explain as to why this Court cannot direct the education authorities to take action against him for abusing the process of this Court and for wilful suppression of the material facts before this Court.

List the matter on 7.9.2020.”

18. When the matter was taken up for hearing on 07.09.2020, once again neither the counsel on record was present nor the petitioner appeared through video conferencing, as ordered by this Court. Infact, the learned counsel for the School has submitted as directed by this Court on 28.08.2020, the petitioner was informed of this Court direction for his appearance.

19. However, this Court in the absence of both the counsel as well as the petitioner, heard the submissions of Mr.P.Raja, learned Government Advocate for the official respondents 1 and 2, Mr.K.S.Ravikumar, the learned Standing Counsel for the 3rd respondent School and Mr.G.Sankaran, learned counsel for the impleading petitioner. Since the prayer of the petitioner, is directly connected to the promotion of the said M.Thirugnanasambandan, this Court

orders his impleadment, as he is a proper and necessary party to the litigation. Therefore, WMP No.12263 of 2020 is ordered and the registry is directed to carry out necessary amendment, accordingly.

20. As regards the disposal of the writ petition filed by the petitioner is concerned, this Court finds that being a Post Graduate Teacher, the petitioner appears to be a devious person in repeatedly approaching this Court in order to settle his personal scores with the impleaded respondent. This petitioner originally approached this Court in W.P.No.26018 of 2015 challenging the order of promotion as P.G.Assistant of the impleaded Teacher in March 2009, in 2015 and wrangled a direction on 21.08.2015 from the Court adversely affecting the right of the impleaded respondent.

21. Having achieved his agenda upsetting the promotion of the impleaded respondent in a different subject for which the petitioner had no stakes at all, when the shortcoming of the original promotion of the impleaded respondent was rectified by the efflux of time, the petitioner once again approached this Court in W.P.No.16082/2016, questioning the approval granted to the said respondent M.Thirugnanasambandan, as if he was affected

by such appointment, when the admitted fact was to the contrary. This Court taking note of the circumstances of the case and finding lack of bonafides writ large in the writ petition had passed an order in WP.No.16082 of 2016 on 07.03.2018, wherein this Court has strongly commented on the conduct of the petitioner while dismissing the writ petition as under.

“8. From the facts narrated above, it is clear that the present litigation is not prompted by any genuine consideration of protecting the interest of the institution, but it is obviously for extraneous consideration in order to settle personal grudge against the 4th respondent. This Court is compelled to come to such conclusion in view of the basic admitted fact that the writ petitioner has employed as PG Assistant in Maths subject, cannot possibly have any grouse or grievance against the promotion of the 4th respondent as P.G.Assistant in Physics subject. The entire litigation appears to be lacking in bona fides and without disclosing the proper materials, the petitioner has obtained interim order of stay, staying the promotion of the 4th respondent as P.G.Assistant in Physics. Therefore, this Court does not see justification to continue the interim order dated 29.4.2016 passed in WMP No.13885 of 2016.

9. Accordingly, the present Writ Miscellaneous Petitions filed on behalf of the official respondents 1 to 3 and private respondent No.4, are allowed and the interim stay granted by this Court on 29.4.2016 stands vacated.

10. Since this Court primarily is of the view that the petitioner has no locus standi to maintain the writ petition in regard to the issue raised in the Writ Petition as against the 4th respondent and as the facts as narrated above, have not been disputed by the official respondents, this Court does not see any further issue arises consideration in the writ petition. Therefore, the Writ Petition lacks merit and substance and accordingly, the Writ Petition is also dismissed. No costs.”

22. Admittedly, the promotion of the impleaded respondent was to the post of Post Graduate Assistant (Physics) and the post occupied by the petitioner was the post of Post Graduate Assistant (Maths) and it is not even the case of the petitioner that there is a combined seniority maintained. On the other hand, the admitted position is that the seniority is maintained subject-wise.

23. While that being the case, this Court is aghast as to how the petitioner could take the jurisdiction of this Court for granted and come up with the third writ petition seeking the same prayer. What is more shocking is, being a Post Graduate Teacher, could the petitioner think of that he can play around with this Court, for advancing his malicious intent repeatedly as against the impleaded respondent. Nothing short of insolence or foolhardiness could be seen in the conduct of the petitioner for trifling with this Court's jurisdiction, coming up with an affidavit in support of the writ petition, without disclosing the earlier writ petitions filed by him and the orders passed by learned Single Judges and Division Bench, as stated supra.

24. An affidavit is a bundle of averments made on oath that the deponent of the affidavit shall not deliberately or intentionally suppress any material facts or withhold or conceal any information, in order to obtain favourable orders from Courts. Swearing to the affidavit is not a license to craftily withhold material facts and trapping the Court to passing orders on the basis of veiled misrepresentation. It is everyone's knowledge that writ Courts on many a time are used to passing orders or even final directions at the time of admission, on the facts as disclosed in the affidavit filed in support of the writ petitions. If duplicity is resorted to, to hoodwink the Courts, the Courts would unwittingly become party to the act of subterfuge and machination at the hands of the of the writ petitioners. In that view of the matter, the concealment of his earlier attempts by the petitioner before this Court questioning the promotion of the impleaded respondent is a sordid reflection of temerity shown by the petitioner towards this Court.

25. The petitioner's conduct in filing the affidavit on oath without disclosing the earlier facts of the order passed by this Court dated 07.03.2018 in WP No.16082 of 2016, and also the pending WA No.1765 of 2018, amounted to playing fraud upon this Court by treating the judicial proceeding of this Court with cavalier respect and scant regard.

26. This Court is unable to comprehend as to how could a Post Graduate Teacher file an affidavit bereft of all material facts of the past history of litigation on the subject matter and could get away with his falsehood by seeking a seemingly innocuous prayer. The conduct of the petitioner on the face of the admitted facts on record amounted to committing of fraud and deception on this Court and by such conduct, the petitioner has rendered himself liable to proceeded against for committing an act of perjury.

27. However, de hors the criminal angle to the conduct of the petitioner, this Court, as far as the present writ petition is concerned, has to necessarily dismiss the same, as the subject matter has already been dealt with by a learned Single Judge of this Court and dismissed the claim of the petitioner in its earlier order dated 07.03.2018 in WP No.16082 of 2016. However, the matter is pending in appeal in WA No.1765 of 2018. At the same time, having committed a grave fraud upon this Court and wasting the time of this Court by repeated litigations, for promoting his illegitimate personal agenda, this Court has to necessarily impose exemplary costs on the petitioner.

28. In the above said circumstances, this Court is of the considered view that the petitioner ought to necessarily suffer the consequences of his vile conduct, unbecoming of the position he holds as a Teacher.

29. In these circumstances, the official respondents as well as the school management are directed to initiate appropriate disciplinary action against the petitioner by calling for his explanation for indulging in vexatious pursuit with obsessive mindset to unsettle the promotion of impleaded respondent, unbecoming of Post Graduate Teacher who is supposed to spend his energy and time towards discharge of his pedagogical function and duties, and dissipating his energy by being a Court-bird. Such unbecoming conduct motivated by bad faith, the petitioner not only wasted the judicial time of this Court but also dragged the school and Education Authority to respond to his mischievous and badgering litigious exercise. The disciplinary action is necessary against the petitioner, as a lesson to be learnt by him as a Teacher first, before he taking lessons for his students.

30. Be that as it may, as far as the writ petition is concerned, the same is dismissed with exemplary costs of Rs.50,000/-. The petitioner is directed to

pay the amount of Rs.50,000/- [Rupees Fifty thousand only] within two weeks from the date of receipt of a copy of this order, to the **Chief Minister's Covid-19 Relief Fund** and in case, the amount is not paid within the time stipulated, the District Collector, Madras is directed to initiate action under the Tamil Nadu Revenue Recovery Act against the petitioner for recovery of amount with interest @ 6% after the cost became payable and till the date of realization.

31. Therefore, the writ petition stands dismissed. Consequently, the connected miscellaneous petition stands closed.

07.09.2020

Speaking/Non-speaking order
Index: Yes/No
Internet: Yes

Note to office:

Issue order copy

1. The District Collector, Madras.

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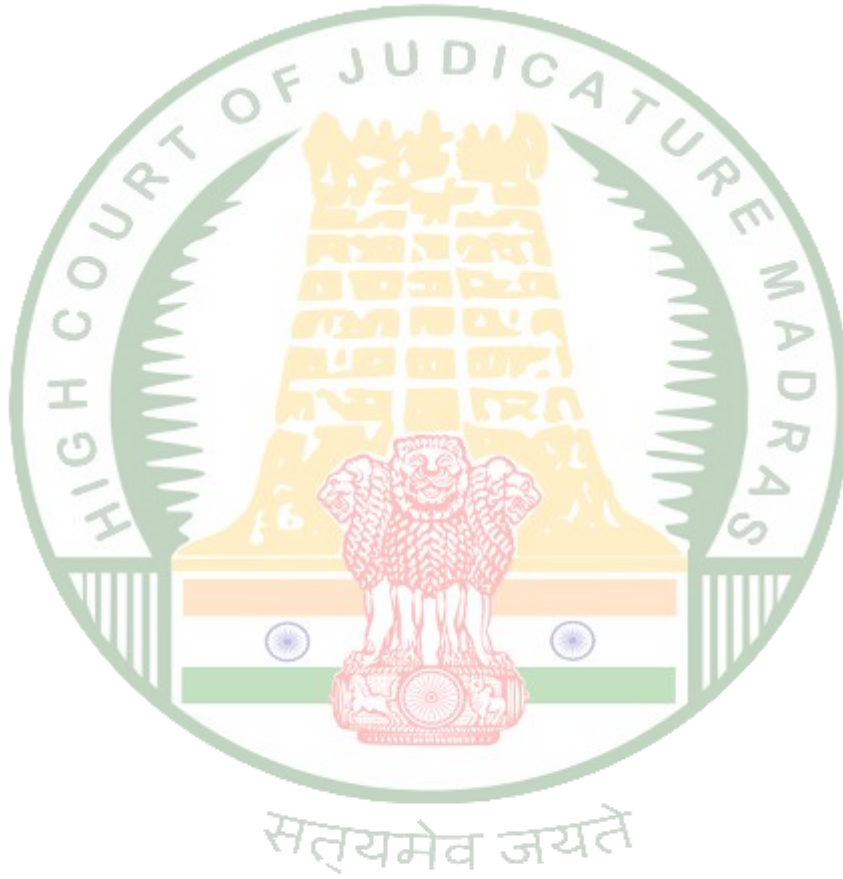
To

1. The Chief Educational Officer,
Chennai Central Education District,
Presidency Girls Hr. Sec. School Campus,

17/18

Egmore, Chennai – 600 008.

2. The Director of School Education,
DPI Compound,
College Road, Chennai – 600 006.



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W.P.No.5475 of 2020

V.PARTHIBAN, J.,

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