

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.10.2020

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.6490 of 2013

N.Sabapathi

...Petitioner

vs.

1. The Secretary to Government of Tamil Nadu,
Education Department,
Fort St. George,
Chennai 600 009.
 2. The District Elementary Education Officer,
Nagapattinam.
 3. The Assistant Commissioner of
Hindu Religious and Charitable Endowment cum
Secretary to Thiru Arjuvathamman Girls High School,
Office of the Hindu Religious and
Charitable Endowment,
Nagapattinam.
- ...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records (i) on the file of the 3rd Respondent in connection with his letter dated 14.07.2010 (ii) on the file of the 1st Respondent in connection with G.O.(4D) No.7 Edn. (D2) Department, dated 23.02.2012 insofar as it restricts salary; and (iii) on the file of the 2nd Respondent in connection with Na.Ka.No.8658/A4/2007, dated 20.07.2012 and quash the same and consequently direct the Respondents to sanction and pay all arrears of salary and other monetary benefits from 11.11.2008 to 13.09.2011 and pass other order based on the recommendation of the 3rd Respondent dated 23.05.2012.

For Petitioner : Mrs.T.Aananthi

For Respondents 1 & 2 : Mr.S.Suresh Kumar,
Government Advocate

For 3rd Respondent : Mr.R.P.Prathap, GA

O R D E R

Petitioner has come up with this Writ Petition challenging the proceedings of the 3rd Respondent in connection with his letter dated 14.07.2010 and the proceedings in G.O.(4D) No.7 Edn. (D2) Department, dated 23.02.2012, insofar as it restricts salary, and the proceedings of the 2nd Respondent in connection with Na.Ka.No.8658/A4/2007, dated 20.07.2012 and for a consequential direction to the Respondents to sanction and pay all arrears of salary and other monetary benefits from 11.11.2008 to 30.09.2011, based on the 3rd Respondent's recommendation, dated 23.05.2012.

2. According to the Petitioner, he was appointed as Watchman in the School Education Department on 21.03.2002 and his appointment was approved by G.O.(4D) No.7 School Education (D2) Department, dated 23.02.2012. It is his grievance that, he ought to have been granted salary from the date of his appointment till the date of his superannuation, i.e. 30.09.2011.

3. It is stated by the Petitioner that, when the earlier Writ Petition was pending before this Court, the 3rd Respondent prevented him from performing his duties from 15.07.2010, based on the 2nd Respondent's order of rejection of approval dated 18.06.2009 and, by an order dated 14.07.2010, the 3rd Respondent ousted the Petitioner from service. It is his grievance that, the order dated 14.07.2010 was not served on him and that, he could obtain the same only under the Right to Information Act.

4. It is the case of the Petitioner that, when the order of rejection of approval dated 18.06.2009 was set aside by this Court by an order dated 11.04.2011 made in W.P.No.14724 of 2009, the subsequent ousting order dated 14.07.2010 also becomes invalid and the said fact is fairly admitted by the 3rd Respondent in his recommendation dated 23.05.2012 forwarded to the 1st Respondent.

5. Based on the proposal of the 3rd Respondent, the Education Department also sanctioned salary in G.O.No.7 Education Department, dated 23.02.2012 only for the restricted period from 21.03.2002 to 10.11.2008, excluding the period till the date of the Petitioner's superannuation, i.e. till 30.09.2011. The grievance of the Petitioner is that, he is entitled to salary from 11.11.2008 to 14.07.2010, for the period during which he actually worked and that, he was forcibly prevented to work from 15.07.2010 till his superannuation, i.e. on 30.09.2011.

6. Learned counsel for the Petitioner contended that, the act of the Respondents in infringing the fundamental right to pay salary to the Petitioner for the period when he actually worked from 11.11.2008 to 14.07.2010 and preventing him from signing the Attendance Register from 15.07.2010 till 30.09.2011, is violative of the principles of natural justice.

7. In reply, learned counsel appearing for the 3rd Respondent submitted that, there is a dispute with regard to the period of work and the Petitioner cannot claim salary for the period, during which he did not work. He drew the attention of this Court to paragraphs 4, 5 and 6 of the counter filed by the 3rd Respondent, which reads as under:

"4. I state that, the Petitioner aggrieved by the rejection order had filed a Writ Petition No.14724 of 2009 and the same was allowed on 11.04.2011 with a direction to the 2nd Respondent to approve the appointment of the Petitioner in this Respondent School with effect from 21.03.2002. I state that, the Petitioner's service was taken into account and his salary was fixed.

5. I state that, after fixing of the salary, now the Petitioner is aggrieved for the period of days he had worked and I state that, the Petitioner's service date will be from 21.03.2002 and he had signed in the Attendance Register till 11.11.2008 and he had not come to work and his allegation that, he was not allowed to sign in the Attendance Register is totally false and the 3rd Respondent had properly calculated the salary and period of work and had sent the same to the 1st Respondent and based on that, the 1st Respondent had calculated the period of his work.

6. I state that during the pendency of W.P.No.14724/2009, his appointment was cancelled on 14.07.2010 was communicated to him and the order was refused many times by the Petitioner and the same was sent through RPAD and the RPAD was refused by the Petitioner."

8. Heard the learned counsel on either side and perused the material documents available on record.

9. The issue raised in this Writ Petition is as to whether the Petitioner is entitled to receive salary from 11.11.2008 till the date of his superannuation, i.e. 30.09.2011.

10. It is seen that, the Petitioner was appointed on 21.03.2002 as Watchman in the third Respondent aided School. By an order dated 18.06.2009 passed by the 2nd Respondent, the Petitioner's appointment was rejected. Challenging the same, he filed a Writ Petition in W.P.No.14724 of 2009 on 21.07.2009 and for a direction to approve his appointment as 'Watchman' with effect from 21.03.2002 with all benefits. By an order dated 11.04.2011, the said Writ Petition was allowed and the impugned order dated 18.06.2009 passed by the 2nd Respondent was set aside with a direction to the 2nd Respondent/District Elementary Educational Officer, Nagapattinam to approve the appointment of the Petitioner as 'Watchman' in the 3rd Respondent aided School with effect from 21.03.2002, with all benefits and with a further direction to the 2nd Respondent to pass necessary orders within a period of four weeks from the date of receipt of a copy of the order and pay arrears of salary within a period of four weeks thereafter.

11. As the said order passed in the Writ Petition was not complied with, the Petitioner filed Contempt Petition No.1812 of 2011 and by an order dated 25.07.2012, the Contempt Petition was closed with the following observation:

"2. After the said order, the Petitioner was sanctioned and a sum of Rs.4,28,653/- was paid towards salary payable from 21.03.2002 to 10.11.2008 and when proposal was submitted by the second Respondent, the District Elementary Education Officer, Nagapattinam through his proceedings dated 20.07.2012 gave a reply to the second Respondent stating that the Petitioner has not attended the School from 11.11.2008 and therefore, the proposal for the sanction of salary beyond 11.11.2008 cannot be sent to the Government. If the Petitioner is aggrieved about the said order, it is open to the Petitioner to challenge the same in a separate Writ Petition and the said issue as to whether the Petitioner attended the School after 11.11.2008 upto 30.09.2011 cannot be decided in this Contempt Petition.

3. In such circumstances, the Contempt Petition was closed, granting liberty to the Petitioner to challenge the same in a separate proceeding."

12. When it is stated that, the Petitioner has not attended duty from 11.11.2008, there is no need for the 2nd Respondent to wait for a long period till 14.07.2010 to oust him from service.

Admittedly, the order dated 18.06.2009 passed by the 2nd Respondent, rejecting the approval of the Petitioner's appointment, was set aside by this Court in W.P.No.14724 of 2009 and the subsequent order of ousting dated 14.07.2010, becomes invalid. On a perusal of the 3rd Respondent's recommendation dated 23.05.2012 forwarded to the 1st Respondent, it is seen that, the 3rd Respondent has recommended payment of monetary benefits to the Petitioner for the period from 11.11.2008 till the date of his superannuation, i.e. 30.09.2011, based on the order dated 11.04.2011 passed by this Court in Writ Petition No.14724 of 2009. But, the Government has sanctioned salary to the Petitioner vide G.O.(4D) No.7, Education (D2) Department, dated 23.02.2012 only for the restricted period from 21.03.2002 to 10.11.2008, excluding the period till the date of his superannuation, i.e. 30.09.2011.

13. When the 3rd Respondent aided School has fairly admitted in their recommendation dated 23.05.2012 forwarded to the 1st Respondent that, the Petitioner is entitled for payment of salary for the period from 11.11.2008 till 30.09.2011, it goes without saying that, the Petitioner has attended duty during the said period. In such circumstances, the Respondent-Education Department cannot take a contrary stand that, the Petitioner is not entitled for salary during the period from 11.11.2008 till 30.09.2011.

14. In view of the above, to secure the ends of justice, impugned orders passed by the Official Respondents are set aside and the Respondents are directed to sanction and pay all arrears of salary and other monetary benefits from 11.11.2008 to 30.09.2011, based on the recommendation of the 3rd Respondent dated 23.05.2012, within a period of three months from the date of receipt of a copy of this order.

The Writ Petition is allowed with the aforesaid direction. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To:

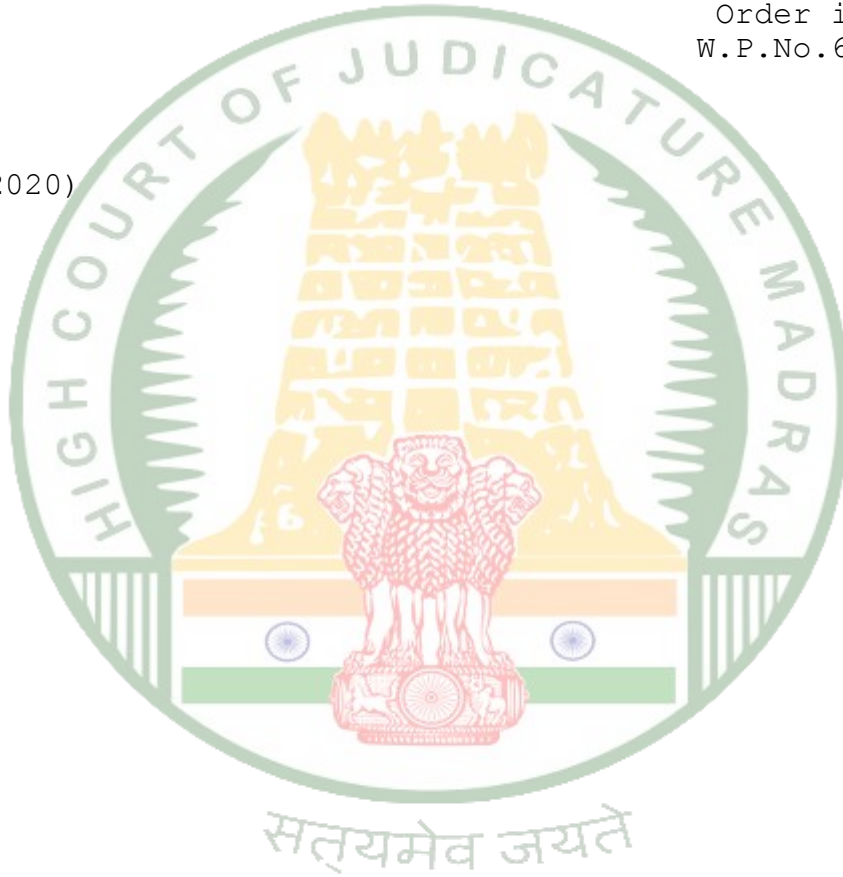
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+2cc to the Government Pleader, S.R.No.33868, 34202

Order in
W.P.No.6490 of 2013

VG-II(CO)
RV(01/12/2020)



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