



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.08.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P. (MD) No.6608 of 2020

and

W.M.P. (MD) Nos.5955 & 5956 of 2020

WEB COPY

P.Simon Prabhu

... Petitioner

Vs.

1) The District Educational Officer,
Government Higher Secondary School Campus,
Vallioor, Tirunelveli District.

2) The Block Educational Officer-2,
Radhapuram, Radhapuram Taluk,
Tirunelveli District.

3) The Correspondent / Secretary,
Sri.Subramania Mudhaliar Memorial Middle School,
Kottaikarunkulam, Tisayanvillai Taluk,
Tirunelveli District.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records of the impugned order extending the period of suspension for the petitioner passed by the 3rd respondent, dated 08.05.2020 and quash the same as illegal and consequently direct the respondents to pay the subsistence allowance from 01.10.2016 to 31.12.2016 and pay full salary for the subsequent period commencing from 01.01.2017 till the date of reinstatement of the petitioner into the service in the post of Headmaster in the 3rd respondent's school.

For Petitioner : Mr.R.J.Karthick

For RR 1 & 2 : Mrs.S.Srimathy,
Special Government Pleader

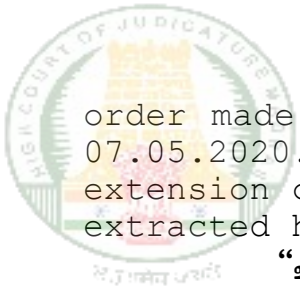
For R-3 : Mr.J.Sankarapandian

O R D E R

The prayer sought for in this writ petition is for a Writ of Certiorarified Mandamus, calling for the records of the impugned order extending the period of suspension for the petitioner passed by the 3rd respondent, dated 08.05.2020 and quash the same and

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<https://hcservices.courts.gov/ie/hcservices/>



order made in the year 2016 for a further period of one month from 07.05.2020. In order to appreciate the content of the latest extension of suspension order, which is impugned herein, the same is extracted hereunder:

“உங்களது தற்காலிக பணியிடை நீக்க காலம் 06.05.2020ல் முடிவடைவதால் மேலும் தொடர்ந்து 07.05.2020 முதல் ஒரு மாதக் காலத்திற்கு நீட்டித்து ஆணை வழங்கப்படுகிறது. உங்கள் மீது முதல் தகவல் அறிக்கை பதிவு செய்யப்பட்டுள்ளது. விசாரணை இன்னும் முடிவடையாத காரணத்தினால் தற்காலிக பணியிடை நீக்கம் நீட்டிக்கப்படுகிறது.”

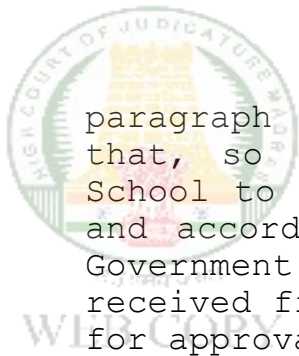
9. On perusal of the impugned order dated 08.05.2020, it could be found out that, the reason for extension of the suspension order is because the criminal case filed against the petitioner, dated 14.11.2016 is still pending, where, enquiry is yet to be over. However, the fact remains that, the Investigating Agency, having completed the investigation, has concluded the same by referring it as 'mistake of fact' as early as on 07.04.2017 itself.

10. Therefore, only in these circumstances, challenging the latest extension of suspension order, dated 08.05.2020, the petitioner has filed this writ petition with the aforesaid prayer.

11. Heard the learned counsel appearing for the petitioner, who would submit that, under Section 22(3) of the Act, beyond two months, period of suspension cannot be extended by the School and if at all further two months extension has to be given, it must be only with a prior approval of the Education Department, which, also according to the petitioner, has not been obtained by the School, however, beyond the two months period, from the date of original suspension, dated 17.08.2016, for the entire period, the petitioner has been put under unlawful suspension. Therefore, the present extension also is equally bad. Hence, it is liable to be interfered with.

12. However, Mr.J.Sankarapandian, learned counsel appearing for the third respondent School would submit that, immediately after placing the petitioner under suspension, disciplinary proceedings were initiated and an Enquiry Officer was appointed, where, enquiry was also completed during the year 2016 itself and on completion of the disciplinary proceedings, punishment has also been awarded against the petitioner and the copy of the punishment has been sent to the official respondents for approval and till date, for the past four years, the official respondents have not given approval for the punishment inflicted against the petitioner. Therefore, it became necessary to extend the suspension order, that has been done through the impugned order dated 08.05.2020.

13. However, quite contrary to the said stand taken by the School, Mrs.S.Srimathy, learned Special Government Pleader appearing for the official respondents, on instructions and by relying upon



paragraph no.3 of the counter affidavit filed herein, would submit that, so far, no request has been made by the third respondent School to the official respondents, seeking extension of suspension and according to the instructions received by the learned Special Government Pleader, no communication or order, whatsoever has been received from the School, as claimed by the School, that they sought for approval for the punishment inflicted on the petitioner.

14. In support of the aforesaid contention, it is pointed out by the learned counsel appearing for the petitioner, by relying upon the averments made in the counter affidavit filed by the official respondents i.e. District Elementary Educational Officer, who is the first respondent in W.P.(MD) No.120 of 2017, which was filed by the petitioner, challenging the disciplinary proceedings, where at paragraph no.5 of the counter affidavit, the official respondent i.e., the District Elementary Educational Officer concerned has stated the following:

"5. Regarding the averment made in para 4 to 11 of the affidavit it is submitted that the third respondent's school is governed by the Act 1973 and Rules 1974. According to Rule 16 of the Rules 1974, the petitioner is governed by code of conduct as specified in Annexure II of the Rules 1974 and he is liable to disciplinary action and punishment if he violates any provision of the code of conduct in Annexure II of the rules and if he violates any one of the standards of conduct defined by the school committee, he is liable for disciplinary action. As per Section 18 of the Act 1973, the school committee of the third respondent's School is competent to take disciplinary action against the headmaster and teachers. As per agreement made between the petitioner and the school Committee of the third respondent's school, the school committee shall take disciplinary action against the petitioner in the manner as prescribed in item no.7 of the agreement in form VII A. The school committee shall place a teacher under suspension as per conditions stipulated in Section 22(3) of the Act per G.O.Ms.No.1228 Education dated 30.12.1994, the School committee of the third respondent's School is bound to obtain prior permission of the first respondent to place the petitioner under suspension and the Joint Director of Elementary Education (aided Schools) is the appellate authority on service matters of all aided school teachers and disciplinary action. As per the well founded Act, Rules and Government order, the school committee of the third respondent's School has initiated disciplinary action against the petitioner. Therefore, the petitioner is required to face the disciplinary action as per law since the first respondent and the second respondent are not competent to interfere with the disciplinary action initiated by the school committee of the third

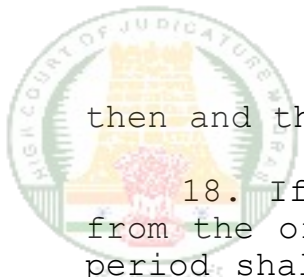


respondent's School. Therefore, no remarks on the averments made in para 4 to 11 of the affidavit by the Government respondent in regard to the disciplinary action against the petitioner. Only at the end of the disciplinary action if any punishment is ordered by the school committee, the petitioner may prefer appeal against such punishment within one month before the Appellate Authority being the Joint Director of Elementary Education (Aided Schools) Chennai. As per G.O.Ms.No.1228 Education dated 30.12.1994, the school committee of the third respondent School ought to have obtained prior permission from the first respondent to place the petitioner under suspension but the school committee violated the government order and decided to place the petitioner under suspension and the third respondent by his order dated 17.08.2016 placed the petitioner under suspension. On this ground, the suspension order dated 17.08.2016 issued by the third respondent is liable to be quashed."

15. By relying upon these averments made in the counter categorically made by the official respondents, in the year 2017 itself, the learned counsel appearing for the petitioner would submit that, when this was the position from the official respondents in the year 2017, the question of receipt of any request from the School, seeking for approval of the punishment already awarded against the petitioner in the year 2016, as claimed by the petitioner School, may not be possible. Therefore, the learned counsel for the petitioner would point out that, the claim now made by the School that, extension of suspension, as well as seeking approval of the punishment inflicted on the petitioner in the year 2016 itself, which was sent to the official respondents for approval, is not supported by any documents. Therefore, it cannot be taken into account for the purpose of deciding the validity of the present extension of the suspension order beyond the statutory period as provided under Section 22(3) of the Act.

16. I have considered the said submissions made by the learned counsel appearing for both the parties and I have perused the materials placed before this Court.

17. First of all, the legal position is very clear and unambiguous, where, number of orders have been passed by the Law Courts and the issue has been well settled that under Section 22(3) of the Act, if at all, an Employee/ Teacher is placed under suspension, by the Private School Management, that suspension can only be made for a period of two months, pending contemplation of enquiry into charges, by way of disciplinary action and beyond the two months period, for want of time to complete the disciplinary proceedings initiated, if the School Management decides to extend the suspension, that has to be done only by the official respondents for approval, for which, request should be made by the School



then and there.

18. If no such approval of extension of suspension is obtained from the officials concerned, even the suspension beyond two months period shall be unlawful and in that case, the suspended Teacher / Employee is entitled to get the salary and service benefits by getting reinstated.

19. Even beyond four months period, assuming that the subsequent two months period is extended with the approval or consent of the officials concerned, at any cost, suspension cannot be extended, this is the mandate issued by the Legislature in Section 22(3) (b) of the said Act.

20. When that being the position, this Court is wondering, as to how, the respondent School is going on extending the suspension made against the petitioner for years together and accordingly, the latest extension made for one more month from 07.05.2020 by order dated 08.05.2020, in the considered opinion of this Court, is absolutely unlawful, therefore, it cannot be sustained for that reason alone.

21. That apart, the claim made by the third respondent School that, proposal was sent for the extension of suspension order beyond two months period was refuted stoutly by the official respondents by relying upon the counter affidavit filed in this regard, not only now, but also in the year 2017 itself.

22. When that being the position, there could not be any communication in the eye of law from the third respondent School to the official respondents, either for the extension of the suspension beyond two months period or for approval of the alleged punishment inflicted on the petitioner after completing the enquiry.

23. Moreover, it is to be noted that, as against the appointment of Enquiry Officer, writ petition has been filed in W.P. (MD) No.120 of 2017, which is pending before this Court, of course, there is no stay in the said proceedings. Therefore, there is no impediment for the third respondent School to complete the enquiry and even assuming that the School has completed the enquiry, without the knowledge of the petitioner, that could not have been done.

24. Therefore, on what basis, the School makes a claim through the learned counsel, that the enquiry was completed, punishment was inflicted in the year 2016 itself and that was sought to be approved by making a request to the official respondents in the year 2016.

25. Without having any supporting documents, without having any basis such a tall claim cannot be made by the School and therefore, this Court has no hesitation to outrightly reject such a contention made by the learned counsel appearing for the respondent School.



26. Therefore, for more than one reason , the impugned order of extension of suspension, dated 08.05.2020, that too, with a reason, that the FIR registered against the petitioner dated 14.11.2016 still is kept pending, is absolutely unjustifiable, because the very FIR having been investigated, ended in reference by way of 'mistake of fact' by the concerned police station as quoted above.

27. Therefore, for all these reasons, the impugned order cannot be sustained. The petitioner ought not to have been kept in suspension beyond the two months period. Now, the petitioner since has been suspended for all these years and out of service, the question that would arise ultimately is that, who has to pay the salary to the petitioner for these period, as the suspension made against the petitioner beyond the statutory two months, is unlawful.

28. However, that issue can be decided only after the completion of the disciplinary proceedings, if the respondent School decides to continue the disciplinary proceedings, if not already concluded, by providing all opportunities to the petitioner in this regard.

29. However, in the immediate consequence, in view of the stand now taken in this writ petition that, the impugned order of suspension cannot be sustained, the petitioner has to be immediately reinstated into service. In the result, this Writ Petition is disposed of with the following order:

(i) that the impugned extension of suspension order, dated 08.05.2020 is wholly unlawful, therefore, it is quashed;

(ii) The petitioner shall be entitled to get reinstatement immediately. Therefore, such an order of reinstatement shall immediately be passed by the third respondent School, which shall be monitored and supervised by the official respondents and if the third respondent School does not issue such a reinstatement order within a period of two weeks from the date of receipt of a copy of this order, necessary directive can be issued by the official respondents, to act upon, by complying with the orders passed by this Court; and

(iii) Insofar as the issue with regard to whether the petitioner is entitled to get the salary beyond the two months period of suspension till his reinstatement is concerned, that issue can be decided later on, depending upon the outcome of the disciplinary proceedings initiated against the petitioner.



30. With all these directions, the Writ Petition is ordered, to the terms indicated above. However there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CO)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

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Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To:

- 1) The District Educational Officer,
Government Higher Secondary School Campus,
Vallioor, Tirunelveli District.
- 2) The Block Educational Officer-2,
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Tirunelveli District.
- 3) The Correspondent / Secretary,
Sri.Subramania Mudhaliar Memorial Middle School,
Kottaikarunkulam, Tisayanvillai Taluk,
Tirunelveli District.

+1 CC to M/s.GP (SR-14855[F] dated 25/08/2020)

+1 CC to M/s.R.J. KARTHICK, Advocate (SR-14729[F] dated 24/08/2020)

Order made in
W.P. (MD) No. 6608 of 2020

Dated:
21.08.2020

AC (CO)
AP (01/10/2020) 8P 6C