



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.10.2020

CORAM:

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

Writ Petition (MD)No.9693 of 2020

and

W.M.P.(MD).No.8700 of 2020

L.Russel Raj

... Petitioner

Vs.

1.The Chief Educational Officer,
Kanyakumari District.

2.The District Educational Officer,
Nagercoil, Kanyakumari District.

3.The Bishop,
CSI Diocese of Kanyakumari,
CSI Diocesan Office,
71-A, Dennis Street,
Nagercoil 629001,
Kanyakumari District.

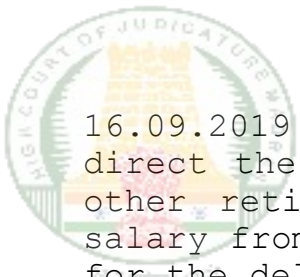
4.The Corporate Manager,
CSI Corporate Schools,
CSI Diocese of Kanyakumari,
No.71 A, Dennis Street,
Nagercoil 629 001,
Kanyakumari District.

5.The Correspondent,
Scott Christian Higher Secondary School,
Nagercoil 629 001,
Kanyakumari District.

6.I.Gospel Siromony,
Correspondent,
Scott Christian Higher Secondary School,
Nagercoil 629 001,
Kanyakumari District.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus directing the fifth respondent to submit necessary pension proposals by regularising service from 04.06.2019 to 15.09.2019 and from



16.09.2019 to 31.01.2020 as qualifying service and consequently direct the respondents herein to sanction and disburse pension and other retirement benefits to the petitioner including arrears of salary from 01.06.2019 to 31.01.2020 along with appropriate interest for the delayed payments of pension and other retiral benefits.

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For Petitioner : Mr.E.V.N.Siva
For R1 & R2 : Mrs.S.Srimathy
Special Government Pleader
For R3 : Mr.F.Deepak

O R D E R

By consent, the writ petition is taken up for final disposal.

2. This writ petition has been filed for a direction to the fifth respondent to submit necessary pension proposals by regularising the petitioner's service from 04.06.2019 to 15.09.2019 and from 16.09.2019 to 31.01.2020 as qualifying service and consequently direct the respondents to sanction and disburse pension and other retirement benefits to the petitioner including arrears of salary from 01.06.2019 to 31.01.2020 along with appropriate interest for the delayed payment of pension and other retiral benefits.

3. The writ petitioner was the B.T.Assistant and Assistant Headmaster in the fifth respondent School and he was on leave for 24 days from 04.06.2019 to 27.06.2019 and thereafter, he reported duty and signed in the attendance register on 28.06.2019. However, when he reported duty on 29.06.2019, the sixth respondent did not allow to sign in the attendance register. Thereafter, the petitioner applied for medical leave for 30 days from 29.06.2019 to 28.07.2019 and later for 25 days from 29.07.2019 to 22.08.2019 and for 29 days from 23.08.2019 to 20.09.2019. Even though the petitioner applied for leave, he repeatedly approached the third respondent Diocese requesting to permit him to join duty. However, the fifth respondent refused to allow the petitioner to report duty from 29.06.2019 onwards, which ultimately resulted in placing the petitioner under suspension on 13.09.2020.

4. Against the suspension order, the petitioner has preferred an appeal before the third respondent Diocese and the third respondent Diocese passed an interim order on 16.09.2019, suspending the suspension order passed by the 5th respondent. During the pendency of the appeal before the third respondent, the petitioner was retired from service on 31.01.2020.

5. The learned counsel appearing for the petitioner would submit that under Section 22 (3) (b) of the Tamil Nadu Private Schools Regulation Act, 1973, any suspension order issued by the fifth respondent will survive only for a period of two months and



after the period of two months, if the enquiry has not been completed, the teacher kept under suspension is deemed to be restored to service as a teacher of the School. In the present case, admittedly, no enquiry was conducted within a period of two months from the date of suspension and hence, after the period of two months, the petitioner is deemed to be restored as a teacher of the fifth respondent School.

6. The learned counsel appearing for the third respondent Diocese would submit that necessary order has been passed to suspend the order of suspension passed by the fifth respondent on 16.09.2019. He would further submit that as contended by the learned counsel for the petitioner, as per Section 22 (3) (b) of the Tamil Nadu Private Schools Regulation Act, a suspension will not have any effect, if the enquiry has not been completed within a period of two months from the date of suspension, and thereafter, he is deemed to be restored as a teacher of the fifth respondent School. Therefore, as on date, the suspension will not have any effect and he is deemed to be restored as a teacher of the fifth respondent School. In such circumstances, he was retired on 31.01.2020 and therefore, he prayed for the retirement benefit and only the fifth respondent alone has to forward all the proposals for the retirement benefit.

7. The learned Special Government Pleader appearing for the respondents 1 and 2 would submit that if any proposal is forwarded by the fifth respondent, they would consider the same, on merits and in accordance with law.

8. The fifth respondent is the School, where the petitioner was working and the suspension order was passed by the sixth respondent/the Correspondent of the fifth respondent School and though the petitioner made an attempt to serve notice, the sixth respondent has refused to receive the same. In this regard, the petitioner has also filed affidavit of service dated 01.09.2020.

9. Even though the respondents 5 and 6 have been served and their names also printed in the cause list, neither the fifth respondent nor any of the counsel entered appearance for the fifth respondent.

10. Heard the learned counsel appearing for the petitioner, the learned Special Government Pleader appearing for the respondents 1 and 2 as well as the learned counsel appearing for the third respondent and perused the materials available on record.

11. It is an admitted fact that the fifth respondent has issued the suspension order to the petitioner on 13.09.2019. At this juncture, it is relevant to extract Section 22 (3)(b) of the Tamil Nadu Private Schools Regulation Act, 1973.



"22(3) (b) No such suspension shall remain in force for more than a period of two months from the date of suspension and if such inquiry is not completed within that period, such teacher or other person shall, without prejudice to the inquiry, be deemed to have been restored as teacher or other employee:

Provided that the competent authority may, for reasons to be recorded in writing, extend the said period of two months, for a further period not exceeding two months, if, in the opinion of such competent authority, the inquiry could not be completed within the said period of two months for reasons directly attributable to such teacher or other person."

12. On a perusal of the above said provision, it is clearly indicated that if any suspension order made by the Private Schools, the enquiry should have been completed within a period of two months time and if no such enquiry has been completed, then the teacher kept under suspension is deemed to be restored as a teacher of the School.

13. The petitioner has also filed an appeal before the third respondent against the suspension order passed by the fifth respondent and the third respondent has also granted stay of the order of suspension, vide proceedings dated 16.09.2019 and he has also filed a counter affidavit stating that as on date, no suspension order is in existence and also referred the provision of Section 22 (3) (b) of the Tamil Nadu Private Schools Regulation Act, 1973 and as per the said provision, the suspension order was revoked and the petitioner was deemed to have been restored as teacher of the fifth respondent School. In such circumstances, this Court is of the view that the suspension order will not survive any more and the petitioner is deemed to be restored as a teacher of the fifth respondent School upon the expiry of two months from the date of suspension.

14. Further, the petitioner reached the superannuation on 31.01.2020 and he was automatically relieved in the fifth respondent School and there is no provision for continuation of service beyond the period 31.01.2020. Immediately after the superannuation, though the petitioner has submitted the pension proposal to get the retirement benefits, so far the fifth respondent has not forwarded any proposal to the respondents 1 and 2.

15. In view of the reasons assigned above, this Court is of the view that there is no material available to sustain the order of suspension issued by the fifth respondent and this Court is unable to trace any justifiable reason as to why the fifth respondent failed to forward the proposal for pension and other retirement benefits to the respondents 1 and 2. In such circumstances, this



Court directs the fifth respondent to forward the proposal for pension as well as the retirement benefits as claimed in the writ petition, within a period of four weeks from the date of receipt of a copy of this order.

16. In the result, the Writ Petition is disposed of. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar ()

// True Copy //

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Sub Assistant Registrar(CS)

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 Chief Educational Officer,
Kanyakumari District.

2.The District Educational Officer,
Nagercoil, Kanyakumari District.

+1 CC to Spl GP (SR-19747[F] dated 12/10/2020)

+1 CC to Mr.F. DEEPAK, Advocate (SR-19536[F] dated 09/10/2020)

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