



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.01.2020

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P. (MD) No.6389 of 2015

Sahayadolly

... Petitioner

Vs.

1.The Chief Educational Officer,
Kanyakumari District.

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

3.The Correspondent/Headmistress,
Sacred Heart High School,
Kadiapattinam,
Kanyakumari District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, to direct the respondents to give the arrears of salary and other monetary benefits with effect from 04.08.2014 and further direct the 3rd respondent to send the monthly staff grant in the prescribed format before 22nd day of every month as per Annexur-I(ii) of Rule 5 of Tamil Nadu Minority Schools (Recognition and Payment of Grant) Rules, 1977.

For petitioner : Mr.S.Louis

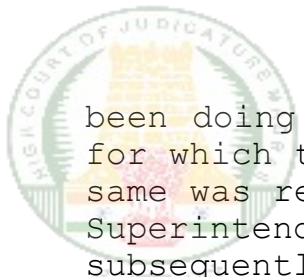
For respondents 1 & 2 : Mr.N.Shanmugaselvan,
Addl. Government Pleader

For 3rd respondent : Mr.P.Muthuvel

O R D E R

This writ petition has been filed by the petitioner seeking to direct the respondents to give the arrears of salary and other monetary benefits with effect from 04.08.2014 and further direct the 3rd respondent to send the monthly staff grant in the prescribed format before 22nd day of every month as per Annexur-I (ii) of Rule 5 of Tamil Nadu Minority Schools (Recognition and Payment of Grant) Rules, 1977.

2. The learned counsel for the petitioner submitted that the petitioner was appointed as Secondary Grade Teacher in the 3rd respondent aided school on 04.09.2000 and she had been receiving salary from the Government. The husband of the petitioner, who had



been doing finance business, delayed the payment to the depositors, for which the depositors had preferred complaint against him and the same was registered in Crime No.11 of 2006 on the file of the Deputy Superintendent of Police, Economic Office Wing-II, Nagercoil and subsequently, the name of the petitioner has been arrayed as accused in the said crime number with ulterior motive. The petitioner took medical leave from 19.12.2006 to 03.06.2007 and when she went to rejoin the school on 04.06.2007, some of the depositors prevented the petitioner from entering the school. Then, on 30.08.2007 the petitioner had entered in the school with Police protection by obtaining order from this Court in CrI.O.P(MD).No.7590 of 2007, but the 3rd respondent Management requested not to attend the school in order to avoid chaos in the school atmosphere and compelled the petitioner to go on leave on loss of pay. Thereafter, the petitioner has filed W.P.(MD).No.1909 of 2008 seeking a direction to the 3rd respondent school to permit her to join duty from 30.08.2007. This Court, by order dated 06.01.2015, has dismissed the writ petition after recording the fact that the petitioner was permitted to join duty by the School on 04.08.2014 and holding that as the petitioner did not join duty due to her family situation, she is not entitled to get salary for the period on which she did not work.

3. The learned counsel for the petitioner would further submit that after allowing the petitioner to join duty and to permit her to work for years together, the 3rd respondent school has not been sending monthly statement for staff grant in respect of the petitioner and hence, the petitioner has been working without salary. The petitioner has already sent a representation to the respondents on 15.04.2015 in this regard, but the same has not been considered by them till date. Hence, the petitioner has come up with this writ petition for the aforesaid prayer. He would further submit that after filing of this writ petition, now the 3rd respondent school has sent a proposal for treating the period of absence of the petitioner as extraordinary leave and for sanctioning of monthly salary with arrears from 04.08.2014, but the first and second respondents are delaying to pay the salary to the petitioner. The right to receive monthly salary is the fundamental as well as constitutional right of the petitioner, because of the arbitrary action of the respondents, the petitioner was constrained to approach this Court again and again. Hence, this court may direct the official respondents to pay the arrears of salary with regular monthly salary to the petitioner within a stipulated time.

4. The learned Special Government Pleader appearing for the 2nd respondent submitted that the third respondent school, on their own volition without informing the official respondents, had allowed the petitioner to rejoin duty from 04.08.2014, though the 3rd respondent had clearly knew that the petitioner had violated Rule 16 (1) which stipulates the code of conduct of teachers and other persons employed in private schools. In addition to that, since the



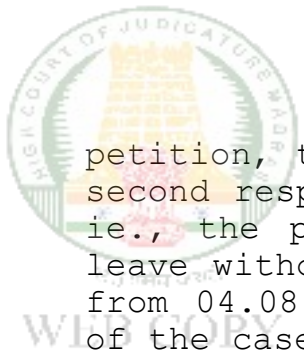
third respondent ought to have imposed a punishment against her like dismissal or removal or termination of service or reduction in rank. On the contrary, the third respondent school allowed the petitioner to rejoin duty from 04.08.2014 without any punishment. Hence, the second respondent had served a show cause notice to the 3rd respondent in this regard. But, till date the 3rd respondent has not sent any reply. Hence, the relief sought for by the petitioner cannot be considered. Thus, he prayed to dismiss this writ petition.

5. The learned counsel appearing for the third respondent school submitted that during the pendency of this writ petition, the proposal for monthly grant in aid in respect of the petitioner has been sent to the respondents 1 and 2 and if the respondents 1 and 2 sanctioned grant in aid, the same would be given to the petitioner.

6. Heard the learned counsel for both sides and perused the records carefully.

7. Admittedly, it is not in dispute that the petitioner has been working in a sanctioned post. It is stated by the first and second respondents that as the petitioner had not worked for the period between 19.12.2006 to 03.08.2014, a punishment ought to have been imposed by the third respondent. But, the fact remains that the petitioner took medical leave from 19.02.2006 to 03.06.2007 and when she attempted to join duty on 04.06.2007, she was restrained from entering the school by the persons those who affected by the act of the husband of the petitioner and thereafter, she filed CrI.O.P. (MD).No.7590 of 2007 before this Court seeking Police protection for entering into the school and attending duty, and the said petition was allowed by this Court on 01.08.2007 and thereafter, when she attempted to joint duty on 30.08.2007 with Police protection, she was compelled by the management to go on leave on loss of pay in order to avoid disturbance to the school atmosphere. Not satisfying with the same, the petitioner approached this Court in W.P.(MD).No.1909 of 2008 seeking a direction to the third respondent to permit her to join duty. During the pendency of the said writ petition, that too after a lapse of six years, the petitioner was allowed to join duty on 04.08.2014 by the 3rd respondent school.

8. The above factum would show that the petitioner had made attempts in joining duty, but it was prevented one way or the other. Therefore, for attempting duty for the period between 19.02.2006 to 03.08.2014, the petitioner cannot be found fault with in entirety. However, considering the fact that the petitioner had not worked during the said period and she was permitted to join duty on 04.08.2014 by the third respondent school, this Court has held in W.P.(MD).No.1909 of 2008 that the petitioner is not entitled for salary for the said period. The petitioner has also accepted the same.



9. It is stated that during the pendency of this writ petition, the third respondent has sent a proposal to the first and second respondents to treat the period of absence of the petitioner ie., the period between 19.12.2006 to 03.08.2014 as extraordinary leave without salary and to pay regular monthly salary with arrears from 04.08.2014. Considering the peculiar facts and circumstances of the case and also considering the fact that the petitioner cannot be fully blamed for not attending the duty during the period 19.12.2006 to 03.08.2014 and the third respondent school has also sent proposal to treat the period of absence of the petitioner as extraordinary leave without salary and to pay regular monthly salary with arrears from 04.08.2014, there cannot be any impediment for the first and second respondents in considering the same favourably.

10. In view of the above, the first and second respondents are directed to approve the proposal submitted by the third respondent for treating the period of absence of the petitioner as extraordinary leave without salary and for paying the regular monthly salary with arrears from 04.08.2014 to till date and to pay regular monthly salary to the petitioner without any default. The above said exercise shall be completed within a period of twelve weeks from the date of receipt of a copy of this order.

11. This writ petition stands disposed of accordingly. No costs.

Sd/-

Assistant Registrar ()

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

gcg

To

1.The Chief Educational Officer,
Kanyakumari District.

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

+1 CC to Mr.S.LOUIS, Advocate (SR-2254[F] dated 21/01/2020)

+1 CC to M/s.ISAAC CHAMBERS, Advocate (SR-2288[F] dated
22/01/2020)

W.P. (MD) No.6389 of 2015

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