



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.01.2021

CORAM:

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

A.S.No.23 of 1994

and

C.M.P.Nos.569 & 6867 of 1994

The Correspondent,
Singaram Pillai Girls Higher
Secondary School,
Villivakkam, Madras-49

...Appellant/1st Defendant

Vs.

V.S.Swarnambal

...Respondent/Plaintiff

PRAYER: Appeal Suit is filed under Section 96 of C.P.C against the judgment and decree dated 28.02.1991 passed in O.S.No.7259 of 1988 on the file of VI Assistant City Civil Court, Madras.

For Appellant	: No appearance
For Respondent	: Mr.B.Dinesh Kumar for Mr.P.M.Bhaskaran

J U D G M E N T

This appeal suit is filed by the 1st defendant in the money suit preferred by the respondent V.S.Swarnambal.

2. The brief facts of the case as found in the plaint and in the written statement are as below:-

The respondent herein was employed by the appellant's school in the year January 1975 as a clerk. When the new correspondent to the appellant's school by name Mr.Pinaga Pani took charge, he in order to accommodate his own relatives by replacing the existing staff. So the staff members of the school were harassed and false charges were framed against them. As against the respondent herein Swarnambal, charge of misappropriation was levelled and enquiry was conducted. Without affording reasonable opportunity, she was put under suspension on 29.01.1981, later she was also dismissed from service. Challenging the dismissal order, appeal was filed before the statutory authority, the Joint Director of School Education, who



is the 2nd respondent herein. By order dated 23.10.1982, he allowed the appeal and reinstatement with back wages and continue of service was ordered by setting aside the order of dismissal. The School Management refused to implement the order passed by the Appellate Authority.

3. In spite of several representations, the plaintiff was not reinstated and back wages was not paid as per the statement of arrears of salary annexed to the plaint in the suit for recovery of Rs.46,167/- with interest at the rate of 8%. The defendant herein, without complying the order of the Joint Director, School Education/Appellate Authority, preferred writ petition challenging the order of the Appellate Authority. The said writ petition came to be dismissed. Meanwhile, the plaintiff was reinstated in service on 29.07.1985, after direction of this Court in the writ petition preferred by the respondent. However the notional increment and arrears of other attendant benefits were not paid. Hence the suit for recovery of Rs.46,167/- with interest was filed as per statement of accounts annexed to the plaint after causing notice under Section 80 of C.P.C, .

4. The management contested the suit by filing the written statement. Wherein, they specifically claimed that the plaintiff is not entitled for any relief as against the Management. The annexure A to the plaint is not inconsonance with her service record. The suspension of the plaintiff pending enquiry and subsequent termination of service, later reinstatement were done in accordance of law and for those period she is not entitled for any salary, payment of DA, TA and other increments.

5. The 2nd respondent-Joint Director filed written statement stating that, the termination order passed by the Management was challenged by the plaintiff before him as an Appellate Authority under the statute. The said appeal was heard and order was passed in favour of the plaintiff directing the School Management to reinstate and to pay the due to her from the date of termination till the date of reinstatement from its own fund. Since it is a private school governed by the Tamil Nadu Recognised Private Schools (Regulating) Act 1973 and Rules 1974, for the mismanagement of the school committee, State cannot be held responsible. Taking note of the fact that her reinstatement order was not complied by the Management, the State has accommodated the plaintiff to another institute to continue her service. The claim for back wages has to be made only against the Management.



6. The trial Court on considering the pleadings, framed the following issues:-

" Whether the plaintiff is entitled for the money claim under the suit and what other relief the plaintiff is entitled?"

7. Before the trial Court, the plaintiff was examined as PW.1. 5 exhibits were marked. On behalf of the defendant, no witnesses were examined. The G.O., dated 04.09.1978 was marked as Ex.B-1 on behalf of the defendant.

8. The trial Court, on considering the evidence placed before it, has allowed the suit. It held that the defendant has not placed any contra evidence in respect of the statement of accounts annexed along with the plaint. At the same time, since it is the fault of the Management issuing illegal termination and not reinstating her, despite order passed by the Appellate Authority, the private school management alone is liable to pay the suit claim and as against the Joint Director of School Education and State of Tamilnadu represented by Commissioner/ Secretary, School Education department, the suit was dismissed.

9. The present appeal preferred by the Management against the trial Court judgment and decree on the ground that the trial Court erred in fastening the liability on the Management/appellant without taking note of the fact that it is a non fee levying aided school. The salary to the staff and teachers are paid by the State represented by 2nd and 3rd defendants. Due to misappropriation of funds, the plaintiff was dismissed from service after due enquiry. In the enquiry, the plaintiff was given an adequate opportunity to defend despite that the termination order was challenged before the 2nd defendant as if she was not heard. The 2nd defendant has erroneously ordered reinstatement with back wages. The trial Court misapplied the Government order Ex.B-1 in this case to pass decree against the Management. Since the plaintiff was held guilty of misappropriation of school fund and the management was not inclined to reinstate her. The State has reinstated and accommodated her in some other institute. The employer- employee relationship is only between the State and plaintiff. Having accepted the legal relationship, the payment of back wages and suit claim is liable to be paid only by the State and not the private Management.

10. It is also contended that the trial Court failed to take note of limitation. The termination order was passed on



01.02.1981 and reinstatement order was passed on 23.10.1982. The suit was filed only on 02.02.1988 after the expiry of the limitation prescribed for recovery of money, i.e., three years. The period of limitation was saved only for four months and 17 days in view of the interim order passed by this Court in the writ petition. Even after exclusion period of that, the suit claim remains beyond the period of limitation.

11. The respondent entered appearance. Whereas, when the matter was taken up for final hearing, there was no representation for the appellant. Across the bar, it was reported that the learned counsel appeared for the appellant is no more. Therefore, this Court directed the Registry to serve notice to the appellant and inform that the appeal will be taken up for hearing on 25.01.2021. Despite intimation, there is no representation. Hence the Court has gone through the papers and records including the pleadings for mutate the following point for consideration:-

"Whether the liability to pay the back wages against the Management is sustainable?"

12. It is admitted by the appellant that, it is an aided school run by the private Management governed by the Tamil Nadu Recognised Private Schools (Regulating) Act 1973 and Rules 1974. The suspension order followed by termination order dated 01.02.1981 marked as Ex.A-1 was duly challenged by the respondent herein before the Appellate Authority. The Appellate Authority after considering the merits of the case had directed the school Management to reinstate the plaintiff and pay her salary and allowance due from the date of termination till the date of reinstatement. This fact candidly admitted that it is not disputed by the Management. However, they have preferred writ petition before the High Court in W.P.No.5609 of 1983 challenging the order passed by the Appellate Authority. While statute prescribed further appeal to the tribunal constituted under the statute. Bye-passing the statutory appeal provision, writ petition was filed and interim order was obtained. The interim order was in force for some time and later writ petition itself was dismissed.

13. The order passed by the 2nd defendant to reinstate the plaintiff never complied by the Management. Therefore, the State has reinstated her in some other institute. Therefore, point for consideration boils down whether the liability to pay the allowance and arrears should be fastened on the Management or on the State. It is reiterated in several judgments of this Court and Apex Court that the right of Managing the school by



private management does not mean that they can mal-administer or mis-administer the institute. When the Appellate Authority has ordered reinstatement with back wages, the Management has denied employment and refused to reinstate the plaintiff. The State cannot be found fault for this breach and non compliance. It is the decision of the Management and for the wrong decision, they alone has to answer and not the State. Therefore, the order of the trial Court fastening the liability exclusively on the Management/appellant to pay the back wages is legally correct.

14. Regarding the point of limitation, it is pertinent to note in the plaint itself, the plaintiff has given reasons and explained why her claim is not barred by limitation. Since the High Court issued the positive direction to reinstate on 15.02.1985, the suit filed on 02.02.1988 is within the period of 3 years and there is no issue framed regarding the limitation before the trial Court and the appellant herein had never sought for an additional issue to be framed on this aspect. It is clearly stated in the plaint itself how the suit fall within the limitation and no contra evidence let in by the defendant to say that the pendency of writ petition will not excluded the period of limitation.

15. Therefore, this Court finds no merit in this appeal and liable to be dismissed.

16. The learned counsel for the respondent submitted that pursuant to the direction passed by this Court, 50% of the decree amount has already been deposited and 50% of it, permitted to be withdrawn by the respondent. The order copy passed in C.M.P.No.567 to 569 of 1984 dated 18.07.1994 was produced by the learned counsel for the respondent. In such case the balance amount kept in deposit is permitted to be withdrawn by the respondent. For the remaining balance, it is open to the respondent to proceed against the appellant/Management for recovery of money resorting to the appropriate petition.

17. In the result, the Appeal Suit is dismissed with costs. Consequently, connected civil miscellaneous petitions are also closed.

s/d-
Assistant Registrar

//True Copy//

Sub-Assistant Registrar



To

The VI Assistant City Civil Court, Chennai.

Copy to

The Section Officer
VR Section
High Court, Madras 104.

+1 CC to Mr.B.Dinesh Kumar, Advocate sr 4899.

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CA(CO)
SP(10/12/2021)