

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.01.2021

CORAM

THE HON'BLE MR.JUSTICE R. SURESH KUMAR

Writ Petition Nos.7984, 7985, 7986, 7987, 7988,
7989, 7990, 7991, 7992 and 7993 of 2004

A.Yasmin Afras ... Petitioner in W.P.No.7984/2004
M.Ganga ... Petitioner in W.P.No.7985/2004
S.Chitralekha ... Petitioner in W.P.No.7986/2004
N.Vairam ... Petitioner in W.P.No.7987/2004
P.Kokila ... Petitioner in W.P.No.7988/2004
S.Kannaki ... Petitioner in W.P.No.7989/2004
S.Jayanthi ... Petitioner in W.P.No.7990/2004
V.Thenmozhi ... Petitioner in W.P.No.7991/2004
A.Ruby Chandra Gantham ... Petitioner in W.P.No.7992/2004
S.Madheswari ... Petitioner in W.P.No.7993/2004

-Vs-

- 1.The Special Officer / President
Salem Cooperative Sugar Mills Matriculation
Higher Secondary School, Mohanur
Namakkal District.
- 2.The Director of Matriculation Schools
College Road, Chennai 600 006.
- 3.The Commissioner of Sugars
474, Anna Salai, Nandanam
Chennai - 600 005. ... Respondents in all the W.Ps.

Prayer in W.P.7984/2004 : Writ Petition under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus calling for the records of the first respondent in relation to Rc.No.1/2003/Corr/School dated 18.01.2004 and the

order of errata in Rc.No.1/2003/Corr/School dated 04.03.2004 issued by the first respondent and quash the same and issue a consequential direction to the respondents to reinstate the petitioner as Hindi Teacher in the first respondent school with service and monetary benefits.

Prayer in W.P.7985/2004 : Writ Petition under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus calling for the records of the first respondent in relation to Rc.No.1/2003/Corr/School dated 18.01.2004 and the order of errata in Rc.No.1/2003/Corr/School dated 04.03.2004 issued by the first respondent and quash the same and issue a consequential direction to the respondents to reinstate the petitioner as Hindi Teacher in the first respondent school with service and monetary benefits.

Prayer in W.P.7986/2004 : Writ Petition under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus calling for the records of the first respondent in relation to Rc.No.1/2003/Corr/School dated 18.01.2004 and quash the same and issue a consequential direction to the 1st respondent to retain the petitioner in Salem Cooperative Sugar Mills Matriculation Higher Secondary School, Mohanur, Namakkal District with all monetary benefits.

Prayer in W.P.7987/2004 : Writ Petition under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus calling for the records of the first respondent in relation to Rc.No.1/2003/Corr/School dated 18.01.2004 and quash the same and issue a consequential direction to the 1st respondent to retain the petitioner in Salem Cooperative Sugar Mills Matriculation Higher Secondary School, Mohanur, Namakkal District with all service and monetary benefits.

Prayer in W.P.7988/2004 : Writ Petition under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus calling for the records of the first respondent in relation to Rc.No.1/2003/Corr/School dated 18.01.2004 and quash the same and issue a consequential direction to the 1st respondent to retain the petitioner in Salem Cooperative Sugar Mills Matriculation Higher Secondary School, Mohanur, Namakkal District with service and all monetary benefits.

Prayer in W.P.7989/2004 : Writ Petition under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus calling for the records of the first respondent in relation to Rc.No.1/2003/Corr/School dated 18.01.2004 and quash the same and issue a consequential direction to the 1st respondent to retain the petitioner in Salem Cooperative Sugar Mills Matriculation Higher Secondary School, Mohanur, Namakkal District with service and all monetary benefits.

Prayer in W.P.7990/2004 : Writ Petition under Article 226 of the Constitution of India praying for a Writ of Certiorarified

Mandamus calling for the records of the first respondent in relation to Rc.No.1/2003/Corr/School dated 18.01.2004 and quash the same and issue a consequential direction to the respondents to retain the petitioner in Salem Cooperative Sugar Mills Matriculation Higher Secondary School, Mohanur, Namakkal District with service and all monetary benefits.

Prayer in W.P.7991/2004 : Writ Petition under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus calling for the records of the first respondent in relation to Rc.No.1/2003/Corr/School dated 18.01.2004 and quash the same and issue a consequential direction to the respondents to retain the petitioner in Salem Cooperative Sugar Mills Matriculation Higher Secondary School, Mohanur, Namakkal District with service and all monetary benefits.

Prayer in W.P.7992/2004 : Writ Petition under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus calling for the records of the first respondent in relation to Rc.No.1/2003/Corr/School dated 18.01.2004 and quash the same and issue a consequential direction to the 1st respondent to retain the petitioner in Salem Cooperative Sugar Mills Matriculation Higher Secondary School, Mohanur, Namakkal District with service and all monetary benefits.

Prayer in W.P.7993/2004 : Writ Petition under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus calling for the records of the first respondent in relation to Rc.No.1/2003/Corr/School dated 18.01.2004 and quash the same and issue a consequential direction to the 1st respondent to retain the petitioner in Salem Cooperative Sugar Mills Matriculation Higher Secondary School, Mohanur, Namakkal District with service and all monetary benefits.

For Petitioner in all W.Ps.: Mr.R.Saseetharan

For Respondents in all WPs : Mr.R.Gopinath,
Standing Counsel-for R1

Mr.S.Suresh Kumar,
Govt.Advocate - for R2

Mr.Balaramesh, Special
Govt.Pleader-for R3

C O M M O N O R D E R

Since the issue raised in all these writ petitions are one and the same and therefore, with the consent of the learned counsel for both sides, all these writ petitions were heard together and are being disposed of by this common order.

2. All the petitioners in this batch of writ petitions were the erstwhile teachers working in the first respondent School, which is a Matriculation School run by the Sugar Mill called Salem Sugar Mills. The said school was a recognized school, wherein these petitioners were engaged as teaching faculty in various disciplines. They have been working for several years and at one point of time, there has been a dispute with regard to the pay parity as these petitioners seems to have requested for pay scale on par with the teachers working in Government and Government aided schools. In this context, earlier round of litigation were there, pursuant to which ultimately in January 2004 ie., on 17.01.2004, separate proceedings were issued by the Special Officer of the Mill, who was the President of the School concerned, whereby the pay scale of each of these petitioners were revised by invoking the recommendations made by the 5th Pay Commission and that was implemented from 01.04.1996.

3. Though the said issue of pay parity was settled for the time being by issuance of the said orders, ultimately ie., in fact the very next day on 18.01.2004, the respondent School has issued an order of termination by way of retrenchment against each of these petitioners by invoking Clause 20(B) of the Code of Regulations for Matriculation Schools. Challenging the said orders of retrenchment or termination from service on the ground of retrenchment, these writ petitions were filed with the respective prayers.

4. I have heard Mr.Saseedharan, learned counsel for the petitioners in all these writ petitions, who would submit that, these petitioners were eligible teachers to hold the posts, which they held prior to the impugned orders and in view of the pay disparity, since the said issue had been agitated by them, though ultimately that was settled by proceedings dated 17.01.2004, annoyed with the said move on the part of the petitioners, on 18.01.2004, abruptly orders of termination have been issued against these petitioners on the ground of retrenchment by invoking Clause 20B of the Code of Regulations for Matriculation Schools. In this context, learned counsel for the petitioners would submit that, the impugned orders would not stand in the legal scrutiny as the petitioners had been the permanent employees (teaching faculty) of the respondent school and if at all the respondents have to invoke Clause 20B of the Code of Regulations for Matriculation Schools, the procedure contemplated in the said Regulations ought to have been followed, by which a reasonable opportunity by way of a show cause notice should have been preceded before taking an action of termination and later on orders of termination should have been passed. However, without adopting this procedure, since the impugned orders are passed, these impugned orders are liable to be set aside and accordingly the pay benefits payable to these petitioners for the subsequent service period should be directed to be paid.

5. However, Mr.Gopinath, learned Standing Counsel appearing for the School and Mr.Balaramesh, learned Special Government Pleader appearing for the Commissioner of Sugars, made submissions in support of the impugned orders and would submit that, insofar as the pay disparity is concerned, that was ultimately settled as each and every petitioner in this batch of cases and other similarly placed teachers have been brought under time scale of pay on par with the other teachers, as has been recommended by various Pay Commissions including 5th Pay Commission and accordingly revised pay has been paid to them.

6. Further, insofar as their termination is concerned, since the School is a Self Financing Institution, as the respondent Mill only is in charge of the expenses to be incurred by the school management and no aid whatsoever comes from the Government, therefore only based on the teacher-pupil ratio or in commensurate with the pupils' strength of the school in every academic year, the school management has to take a decision to retrench some of the teachers and in this regard, Clause 20 of the Code of Regulations for Matriculation Schools provides for such a termination on the ground of retrenchment or otherwise and in this regard only two months notice in lieu thereof two months salary can be paid or if the teacher / employee concerned is a permanent employee or has been working for a

long time after regularization, such a notice shall be three months or in lieu thereof three months salary has to be paid, they contended.

7. Only in that context, since the student strength was reduced drastically and therefore this number of teachers were not required to be employed in the school, the management decided to terminate some of the teachers including the petitioners by invoking Clause 20(B) of the Code of Regulations for Matriculation Schools and in this regard, as has been contemplated under the Regulations, three months salary or two months salary as the case may be, has been paid to the petitioners and therefore, the termination orders which are impugned herein cannot be found fault with as absolutely there is no infirmity in those orders. Hence, the learned counsel appearing for the respondents seek sustainability of these orders.

8. I have considered the said rival submissions made by the learned counsel for the parties and have perused the materials placed on record.

9. Insofar as the sustainability of the impugned orders are concerned, the learned counsel for both sides heavily relied on Clause 20 of the Code of Regulations for Matriculation Schools. In order to appreciate the same, the relevant clause ie., Clause 20 is extracted hereunder.

"Clause 20 : Terminations. (A) In respect or Teachers or a Member of non-teaching staff appointed temporarily or to act on probation ,the management shall have power to terminate the services of such teacher or a member of non-teaching staff without notice for or all of the following reasons.

(i) Wilful neglect of duty, serious misconduct, gross subordination, mental unfitness, suspension or cancellation of teachers certificates by the Director under the Code of Regulations for Matriculation Schools.

ii) With a notice of two months or two months salary in lieu thereof and before coming to a final decision shall duly consider his/her statement and if a he/she so desires give him/her a personal hearing or conduct an enquiry for the following reasons:

(a) Incompetence (b) Retrenchment (c) Physical unfitness oy any other good cause.

Termination.(B) In respect of teachers or a member of non-teaching staff appointed permanently, the management shall have the power to terminate the services of such a teacher or a member of the non-teaching staff without notice for any or all the following reasons.

(a) Wilful neglect of duty, serious misconduct, gross insubordination, mental unfitness, suspension or cancellation of teachers' certificate by the Director under the Code of Regulations for Matriculation Schools.

(b) With three months notice or three months salary in lieu thereof for the following reasons:

(a) Incompetence (b) Retrenchment (c) Physical unfitness or any other good cause."

10. Therefore, Clause 20(A) speaks about the teachers or members of non-teaching staff appointed temporarily or to act on probation and how they should be dealt with in case the management wants to terminate them, whether with a notice of two months or two months salary in lieu thereof, has been contemplated. Like that Clause 20(B) speaks about the teachers or a member of non-teaching staff appointed permanently and how they should be dealt with in case the management wants to terminate them for the reasons stated therein. In that case, a three months notice or three months

salary in lieu thereof has been contemplated. Accordingly, the learned counsel for the respondents would submit that, since these teachers were appointed permanently, invoking Clause 20(B) of the Act, either three months notice should be given or in lieu thereof, three months salary should be given and accordingly, by paying three months salary only these petitioners were terminated on the ground of retrenchment.

11. However, it is to be noted that while invoking Clause 20(A) as well as 20(B), it should be subject to the proviso given therein, where it contemplates that a show cause notice to be given. However, it seems that no such show cause notice or personal hearing has been given. Therefore, this Court feels that prima facie it is in violation of proviso (ii) which envisages that only after the conduct of the personal hearing or enquiry by the Management, such kind of action should be taken.

12. However, it is also be noted that whether the same procedure to be adopted for a mere termination or termination simplicitor also because, normally such kind of personal enquiry or enquiry would be made only for the employee or teacher concerned who has to be dealt with by proposing any punishment. Here, in the case in hand, it is only a termination simplicitor for the reason of retrenchment in view of the sudden reduction of the strength of the pupils in the school. Therefore, the said contemplation cannot be strictly expected to be undertaken. Anyhow, in this case when these petitioners / teachers were permanently appointed, whether they could have been sent out abruptly one fine morning by invoking Clause 20(B) of the Act by making a payment of three months salary in lieu of three months notice by way of mere termination simplicitor on the ground of retrenchment, is in question. In this context, the learned counsel for both sides have submitted that similar orders passed by the very same management in respect of some other teachers have already been challenged, where in a batch of cases in W.P.Nos.7206 of 2004 etc., in the matter of R.Thulasiammal -Vs- The Director of Matriculation Schools and Others", a learned Judge having considered all these aspects and also following a Division Bench Judgement in this regard, was pleased to set aside those termination orders and allowed those writ petitions as prayed therein. The operative portion of the order passed in the said batch of writ petitions dated 18.09.2018 is extracted herein for easy reference.

" 31. For the foregoing reasons, these writ petitions are allowed and the impugned orders are set aside. The petitioners are entitled to all monetary benefits on a par with similarly placed staff in government schools in the light of the Division Bench decision referred supra, for the service rendered by them. No costs. Consequently, connected miscellaneous petitions are closed."

13. However, the said order dated 18.09.2018 subsequently has got modified by further orders of the learned Judge dated 25.01.2019 and after modification, the operative portion of the order ie., Para 31 stood like this.

" 31. For the foregoing reasons, these writ petitions are allowed and the impugned orders are set aside. The petitioners are entitled to all monetary benefits on a par with similarly placed staff in government schools in the light of the Division bench decision referred supra, for the service rendered by them. The respondents concerned are directed to pass suitable order in respect of monetary benefits to the petitioners within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed."

14. Therefore, the sum and substance of the issue is that, though such termination orders made against similarly placed teachers by the very same management was set aside, however insofar as the pay and service benefits in consequence to the setting aside of the termination orders are concerned, the learned Judge has modified the order dated 18.09.2018 on 25.01.2019 and the effect of the modification is that, the management of the School was directed to pass suitable orders in respect of the monetary benefits to the petitioners within a time frame of eight weeks.

15. Therefore, insofar as the decision to be taken with regard to the monetary benefits for which the petitioners are entitled is concerned, it has to be decided and accordingly suitable orders are to be passed only by the Management of the School and that liberty has been given in the said orders as has been modified.

16. This position is not in dispute and in this regard it is further submitted by the learned counsel for the respondent School that after termination, the teachers had never worked for the school, even though the initial stay granted by this Court was subsequently vacated and it is his further contention that according to the information they received, these teachers were working gainfully in some other school for the rest of their service before attaining superannuation and according to him, all these teachers have already reached superannuation and the question of making payment of any arrears of salary by the school as expected by the petitioners also does not arise in this case.

17. However, the learned counsel for the petitioners would submit that, during the period of stay these petitioners were not working anywhere gainfully and even after the stay was vacated subsequently, these petitioners were not employed

by the respondents school and these teachers till such time as they reached superannuation, were not gainfully employed anywhere and therefore they are entitled to get the salary due. Accordingly, the learned counsel would submit that, suitable orders have to be passed by the respondent sanctioning the salary.

18. Whether these petitioners are entitled to get salary for the subsequent period or not cannot be decided at this juncture in view of the order passed by the learned Judge in the similar batch of cases on 18.09.2018 as modified by the order dated 25.01.2019.

19. Therefore, this Court feels that in similar lines as that of the earlier order referred to above, these writ petitions can also be disposed of and accordingly these writ petitions are disposed of with the following order.

20. That the impugned orders in respect of each of the writ petition are hereby quashed and consequently the monetary benefits payable to the petitioners shall be decided and in this regard the respondents are directed to be pass suitable orders in respect of the monetary benefits to the petitioners within a period of twelve (12) weeks from the date of receipt of a copy of this order.

21. It is needless to mention that if it is the stand of the respondent management / school that the petitioners are not entitled to get any salary due, to that effect also, an order shall be passed individually to each of these petitioners and on receipt of such orders, it is for the petitioners to work out their remedy if their interests are prejudiced in such orders to be passed by the respondent management.

22. With the above directions, all these writ petitions are disposed of. No costs.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

KST

To

1.The Special Officer/President
Salem Cooperative Sugar Mills Matriculation
Higher Secondary School, Mohanur
Namakkal District.

2.The Director of Matriculation Schools
College Road, Chennai 600 006.

3.The Commissioner of Sugars
474, Anna Salai, Nandanam
Chennai - 600 035.

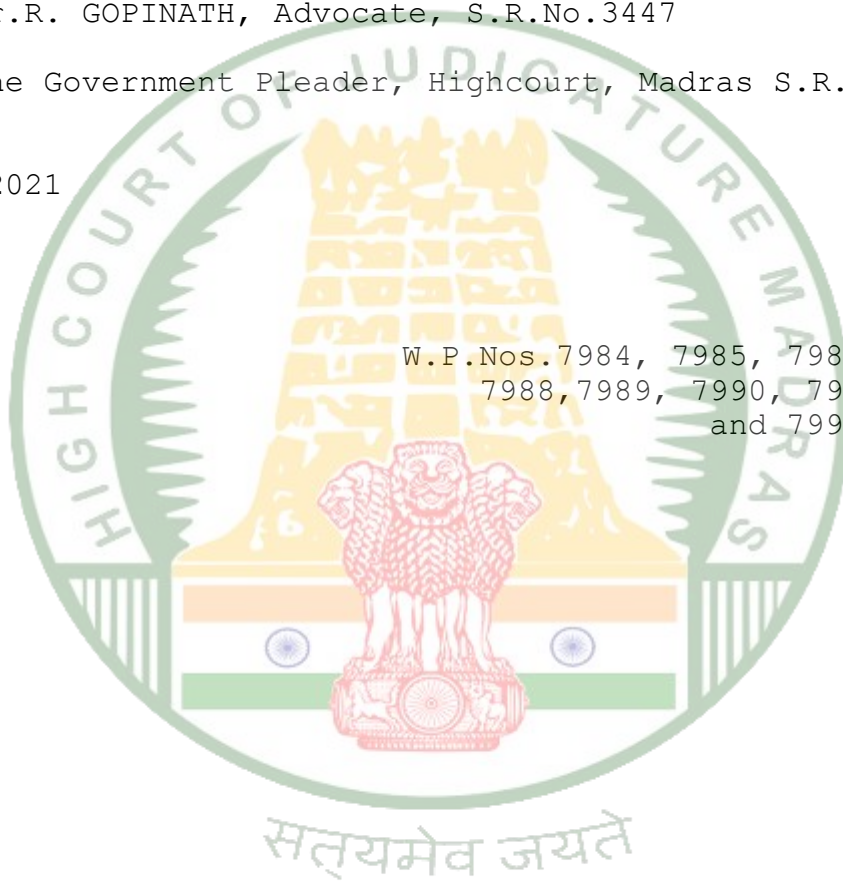
+10ccs to Mr.SASEETHARAN, Advocate, S.R.Nos.3514,3515, 3516,
3517, 3518, 3519, 3520, 3521, 3522, 3523

+1cc to Mr.R. GOPINATH, Advocate, S.R.No.3447

+1cc to the Government Pleader, Highcourt, Madras S.R.No.3265

SR(CO)
SM/24/02/2021

W.P.Nos.7984, 7985, 7986, 7987,
7988,7989, 7990,7991, 7992
and 7993 of 2004



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