

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment reserved on : 11.02.2021

Judgment pronounced on : 15-02-2021

CORAM:

The Honourable Mr. Justice R. Subbiah
and

The Honourable Mr. Justice Sathi Kumar Sukumara Kurup

Writ Appeal No. 1638 of 2019

M.K. Mohammed Ishmayil .. Appellant

Versus

1. The State of Tamil Nadu
represented by The Secretary
Education Department
Fort St. George, Chennai
2. The Chief Educational Officer
Villupuram District
3. District Educational Officer
Dindivanam District
4. The National Higher Secondary School
represented by the Correspondent
Mr. Ramtex Thiyagarajan
Dindivanam
5. Venkataraman
Teacher
National Higher Secondary School
Dindivanam .. Respondents

Appeal filed under Section 15 of Letters Patent against the Order dated 10.10.2018 passed in WP No. 13603 of 2013 on the file of this Court Writ Petition filed under Article 226 of the Constitution of India praying for the issue of Writ of Mandamus directing the respondents jointly or severably to pay a sum of Rs.10,00,000/- (Rupees ten lakhs only) as compensation for the present status of the petitioners son "Abbas Ali" and for the loss of education, future career and the mental agony suffered by the petitioner and his family.

For appellant : Ms. D. Geetha
For respondents : Mrs. P. Kavitha
Government Advocate
(Education) for RR1 to 3
Mr. N. Suresh for R5

JUDGMENT

R. SUBBIAH, J

This writ appeal is filed as against the order dated 10.10.2018 passed in WP No. 13630 of 2019, whereby the learned single Judge dismissed the writ petition filed by the appellant herein.

2. The writ petition was filed by the appellant praying to issue a Writ of Mandamus directing the respondents to jointly or severally pay a sum of Rs. 10 lakhs as compensation for the present status of his son Abbas Ali and for the loss of education, future career and mental agony suffered by him and his family.

3. The case of the appellant in the writ petition is that he is the father of three children and he is eking out his livelihood by selling tea in cycle in and around Tindivanam, by which he is earning Rs.200 to Rs.300 per day. According to the appellant, his elder son Abbas Ali, aged 17 years, was studying in the 4th respondent school, which is an Aided school. It is his case that his son was a bright student and he used to score second rank in his class. Further, his son also used to help other student in their studies. While so, on 24.01.2013 when his son was writing model exam in the school, a boy next to him was asking something to his son, who was responding to him. On seeing his son speaking with another student, Mr. Venkataraman, fifth respondent came to his son, assaulted him on his forehead and backhead. Due to such assault in front of other student, the appellant's son was humiliated and insulted, resultantly, his son was affected mentally and psychologically. On the said day, when the appellant's son returned home, he looked dull and he did not speak to any one and he did not sleep through out that night by repeatedly murmuring 'Mahappa Mustafa' and 'Abbas Ralilla. In effect, his son was seen disturbed and was not normal.

4. According to the appellant, on the next day viz., 25.01.2013, being Milad-un-Nabi, he went to the mosque along with his son. When the appellant and his son were in the mosque, the appellant's son behaved unusually by raising his arms, folding his fore arms, starred at every one and behaved differently. On seeing his attitude, on 26.01.2013, the appellant took his son to Dr. K. Balasubramaniam at Tindivanam, who after examination, referred the appellant's son to Dr. S.N. Bala Subramanian, Psychiatrist. Therefore, on 27.01.2013, the appellant had taken his son for treatment to Dr.S.N. Bala Subramanian, who gave some treatment, but his son's condition worsened. Therefore, he had taken his son to a Doctor at Pondicherry. Later, the appellant came to know that his son was assaulted by the fifth respondent in front of other students which made him to fell into depression. Further, Ms. Santha, one of the teachers working in the School came to see the appellant's son and she had informed the appellant that his son was assaulted by the fifth respondent and on seeing it, the other students laughed at him. Further, the fourth respondent called upon the appellant and informed him that he will take care of his son's medical expenses and educational expenses and that he will ensure that his son passes the examination

5. According to the appellant, his son's mental condition worsened day-by-day and therefore, he had taken his son for treatment on 11.02.2013 to JIPMER Hospital, Pondicherry. It is his contention that from the date of the incident namely 24.01.2013, his son did not attend the school and remained at home. Further, on 12.02.2013, one of the teachers by name Kamalakannan came to the house of the appellant and requested him to send his son to school. On the next day, the appellant along with his son went to the school where the teachers attempted to convince and pacify his son. The fourth respondent also arranged a separate room for his son to write the practical examination, but his son did not write the exam and indulged in unpleasant actions. Ultimately, the appellant's son partly attended the examination. Further, on 26.02.2013, the fourth respondent called the appellant to bring his son to the school, however, based on the advise of the Doctors, the appellant did not take his son to the school.

6. It is stated that on 06.03.2013, the appellant gave a complaint against the fourth and fifth respondents, but the complaint was not acted upon. Ultimately, a voluntary organisation had taken the issue to the higher police authorities and thereafter, a case was registered only under Section 23 of the Juvenile Justice Act and not under the provisions of the Indian Penal Code. The appellant also produced his son before the learned Judicial Magistrate, Tindivanam and as per the directions of the learned Magistrate, his son was admitted in the Institute of Mental Health, Kilpauk, Chennai. The appellant also submitted a representation dated 25.03.2013 to the District Superintendent of Police to register a case under the provisions of the Indian Penal Code, but it was not considered. On 06.04.2013, the appellant sent a representation to the first respondent seeking payment of compensation for the present mental health condition of his son by fixing the vicarious liability against the respondents 2 to 5, but there was no response. As the mental condition of the appellant's son continued without any improvement in sight, he has filed the writ petition for the relief as stated supra.

7. The case of the appellant was resisted by the respondents by filing a counter statement. The third respondent in the counter stated that on 24.01.2013, son of the appellant was writing revision examination and at that time, he gave his answer paper to a co-student for making copy of it. He was also found to be speaking with other students at the time of examination. Therefore, the fifth respondent, who is employed as PG Teacher in the fourth respondent school asked the appellant's son about such irregularity. At that time, the fifth respondent gave a pat on the back of the appellant's son and advised him not to indulge in such malpractice. Then, the appellant and other students had quietly written the examination and went home. According to the third respondents, the teachers in all the Schools were instructed not to indulge in inflicting corporal punishment towards the student. The appellant has not reported anything about the beating of the son by fifth respondent. When a representation has been received by the third respondent with copy of first information report registered against the fifth respondent dated 15.03.2013, only then the third respondent came to

know about the incident. Immediately, the second respondent directed the third respondent to initiate disciplinary action against the fifth respondent in connection with the incident. Accordingly, by an order dated 15.03.2013, the fifth respondent was placed under suspension. A report has also been received from the police department by the school management intimating that the criminal case registered against the fifth respondent was closed. It was stated that the criminal case was closed by considering the explanation offered by the fifth respondent. Subsequently, the suspension order issued against the fifth respondent was also revoked by the fourth respondent with effect from 16.05.2013 and the fifth respondent was reinstated in service. The third respondent also stated that the appellant has given the complaint after a lapse of 1 1/2 months. Had the complaint been given immediately, a discreet enquiry could have been conducted by causing an enquiry with co-students and other persons connected with the incident. The third respondent therefore submitted that the allegation that the fifth respondent had beaten the son of the appellant in his fore head and back head is false. The fifth respondent had only given a pat on the back of the son of the appellant and advised him to behave properly. In such circumstances, the third respondent prayed for dismissal of the writ petition.

8. The learned single Judge, taking note of the rival submissions has concluded that the materials placed on record does not indicate as to whether the son of the appellant was really affected by any mental illness or whether he is mentally unstable on account of the incident that was said to have taken place on 24.01.2013 in the manner as stated by the petitioner. Therefore, while dismissing the writ petition, the learned single Judge gave liberty to the appellant to work out his remedy, if any, by filing a suit. Aggrieved by the same, the appellant has come up with this writ appeal.

9. We have heard the learned counsel for both sides and perused the materials placed on record. As pointed out by the learned single Judge, in the absence of any evidence to suggest that the fifth respondent had resorted to corporal punishment by assaulting the appellant's son on 24.01.2013, the

question of issuing a Mandamus as prayed for in the writ petition will not arise. When the case of the appellant is disputed by the respondents, this Court cannot conduct a roving enquiry under Article 226 of The Constitution of India. The proper course for the appellant is only to file a civil suit where he can adduce evidence, both oral and documentary, including medical records to conclude that the present status of his son is due to the incident that had allegedly taken place on 24.01.2013. Therefore, we are of the opinion that there is no compelling circumstances warranting this Court to interfere with the order passed by the learned single Judge. The Writ Appeal is therefore dismissed. No costs.

rsh

s/d-
Assistant Registrar(CS VIII)

True Copy

Sub-Assistant Registrar

To

1. The Secretary,
State of Tamil Nadu
Education Department
Fort St. George, Chennai.
2. The Chief Educational Officer
Villupuram District.
3. District Educational Officer
Dindivanam District.

- + 1 cc to Mr. N. Suresh, Advocate Sr.8965
- + 1 cc to Mrs. D. Geetha, Advocate Sr.8407
- + 1 cc to the Government Pleader Sr.8803

WA No. 1638 of 2019

SS(CO)
EU 22.2.2021