



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.06.2021

CORAM:

THE HONOURABLE Mr. JUSTICE S.S.SUNDAR

W.P. No.12915 of 2021

M.Chinnamuthu

.. Petitioner

Versus

1.State of Tamil Nadu rep. by its
Secretary to Government,
School Education Department,
Fort St. George,
Chennai - 600 009.

2.The Director of School Education,
College Road,
Chennai - 6.

3.The Chief Educational Officer,
Chief Educational Office,
Dharmapuri District.

.. Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the order passed by the 3rd respondent in his proceedings Na.Ka.No.6972/AA1/2018 dated 01.12.2020 and quash the same, and direct the Respondents to confer all consequential benefits.

For Petitioner : Mr.P.Ganesan

For Respondents : Mr.C.Kathiravan
Government Advocate

O R D E R

This Writ Petition has been filed for issuance of a Writ of Certiorarified Mandamus calling for the records pertaining to the order passed by the 3rd respondent in his proceedings Na.Ka.No.6972/AA1/2018 dated 01.12.2020 and quash the same, and direct the Respondents to confer all consequential benefits.

2.The petitioner was initially appointed as B.T. Assistant at the Government Higher Secondary School, Uthakarai, Dharmapuri District on 10.09.1984. He was promoted as PG Assistant and posted at Government Higher Secondary

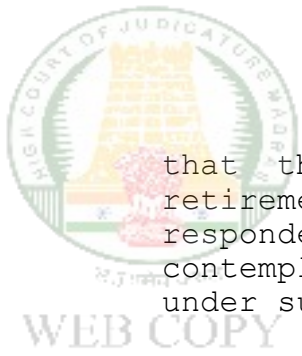


School, Indur, Dharmapuri District on 27.07.2006. Subsequently, he was posted as Headmaster at Government Higher Secondary School at Manavarapalli, Krishnagiri District on 20.06.2014. He was again transferred to Arasampatti, Krishnagiri District and thereafter to Government Boys Higher Secondary School, Karimangalam, Dharmapuri. However, he was placed under suspension by the 3rd respondent and not permitted to retire from service as per the proceedings dated 29.06.2016. Therefore, it is admitted that the petitioner was remaining in service under Rule 56(1)(c) of Fundamental Rules. On 27.06.2017, charges were framed by the 2nd respondent. The petitioner challenged the charge memo and the order of suspension in separate writ petitions. Both the writ petitions were disposed of with certain directions. Thereafter, the charges against the petitioner were dropped by the 1st respondent and the order of suspension was revoked by an order dated 04.01.2018.

3.The learned counsel for the petitioner states that the petitioner submitted his representation for re-employment as it was allowed in terms of Government Orders to serve till the completion of academic year. Since the charges were dropped and the petitioner was allowed to retire, the petitioner has now made a representation to the respondent for retirement benefits and other benefits including the pay for the period from 01.07.2016 to 31.05.2017 (i.e., for a period of 11 months) and for re-employment on the ground that he would have been allowed to serve for the said period by way of re-employment as it is permissible as per Government Orders, but for the charges framed which were dropped after his retirement.

4.The petitioner's representation was not considered, and thereafter, the petitioner filed a writ petition in W.P.No.5072 of 2020. This Court, by an order dated 28.02.2020 directed the petitioner to make a fresh representation to the 4th respondent therein and directed the respondent to pass appropriate orders or to act upon the representation in accordance with law, within a period of six weeks. Thereafter, the petitioner submitted a representation on 16.03.2020 to the 2nd respondent. The representation of the petitioner regarding pay for the period from 01.07.2016 to 31.05.2017 was rejected by impugned order on the ground that the petitioner did not work for the said period and that he cannot get the salary for the period without getting an order of employment and without serving. The petitioner is now challenging the impugned order on the ground that the petitioner is entitled to get salary for the period of re-employment.

5.The case of the petitioner is that he was suspended just a day before retirement on the ground of disciplinary proceedings and that the charge memo that was issued to the petitioner was dropped subsequently. The sum and substance of the contentions of the counsel appearing for the petitioner is



that the petitioner had applied for re-employment before retirement and the said application was not considered by the respondent on the ground of disciplinary proceedings that were contemplated which also resulted in keeping the petitioner under suspension just one day before his retirement.

6.The learned counsel also relied upon an unreported judgment of this Court dated 20.07.2011 in W.P.No.14014 of 2009 in the case of G.Menaka vs. The Chief Educational Officer, Chennai and others. The relevant portions in the said judgment are extracted hereunder:

20. Per contra, the learned counsel appearing for the third respondent School referred to the judgment of the Division Bench in The Secretary, Kumaran Middle School, Ramanathapuram District v. V.Panchavarnam and others in W.A.(MD)No.169 of 2007 dated 05.09.2007 (CDJ 2007 MHC 5153) for contending that the Division Bench had stated that discretion has been conferred on the Management to grant extension or not. But the passage quoted by the counsel is tone out of context. In paragraphs 13 and 14, it was observed as follows:

"13. According to Condition No.1, the character and the conduct of the teacher should be satisfactory for granting extension on re-employment basis beyond the date of attaining the age of superannuation. The said condition no doubt incorporates in itself a discretion, of course, a guided discretion conferred on the Management to grant extension or not to grant extension on the basis of the character and conduct of the teacher concerned. Admittedly, disciplinary proceedings were initiated and a charge memo was issued against the writ petitioner on 05.04.2005 and pending enquiry, he was also placed under suspension with effect from 25.04.2005. At the conclusion of enquiry, the Enquiry Officer submitted a report holding that four, out of five charges, stood proved. It is also not in dispute that based on the said enquiry report, a second show cause notice was issued to the writ petitioner. But, ultimately, as the writ petitioner was due to retire on superannuation shortly, the Management thought it fit to drop all further proceedings and allow him to retire on superannuation.



10. This Court has no reason to interfere with the impugned order. Accordingly, this writ petition stands dismissed as devoid of merits. Since the entitlement to the other benefits as per the petitioner's representation were not considered, the issue whether the petitioner is entitled to other benefits is not an issue in the writ petition. Hence, the petitioner can pursue his representation regarding the other benefits. No Costs.

Sd/-

Assistant Registrar (CS-VII)

//True Copy//

Sub Assistant Registrar

ssr

To

1. The Secretary to Government,
School Education Department,
Fort St. George, Chennai - 600 009.

2. The Director of School Education,
College Road, Chennai - 6.

3. The Chief Educational Officer,
Chief Educational Office,
Dharmapuri District.

+lcc to Mr. P. Ganesan, Advocate, S.R.No. 30106

+lcc to the Government Pleader, S.R.No. 29831

W.P. No. 12915 of 2021

EV(CO)
GN(09/08/2021)