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W.P. No.2585/2007, SA, Batch

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Pronounced on
23.02.2021	05.03.2021

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. (MD) NOS. 2585 OF 2007 & 11596 OF 2009

S.A. (MD) NOS. 981 TO 984 OF 2011

AND

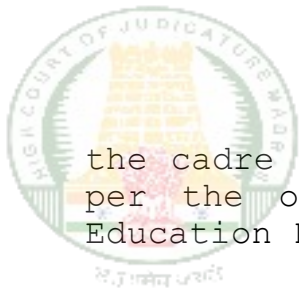
M.P. (MD) NOS. 1 OF 2007, 1 & 2 OF 2009, 1 OF 2011 & 1 OF 2013

A.Kallakondan .. Petitioner in all the petitions
& Appellant in all the appeals

- Vs -

1. State of Tamil Nadu
rep. By its Secretary to Govt.
School Education Department
Secretariat, Chennai - 9.
2. Director of School Education
Chennai - 6. .. RR-1 & 2 in all the writ petitions
3. District Educational Officer
Tenkasi Taluk, Tenkasi
Tirunelveli. .. R-3 in the WPs & SAs
4. Secretary
Kammawar Hindu High School
Viswanathaperi 627 763
Tirunelveli District. .. R-4 in WPs & R-2 in Sas
5. K.Ayyasamy .. R-1 in SA No.981/11
6. D.Veeramani .. R-1 in SA No.982/11
7. A.Rajaguru @ Guru .. R-1 in SA No.983/11
8. A.Karuppiyah .. R-1 in SA No.984/11

W.P. (MD) No.2585 of 2007 filed under Article 226 of the Constitution of India praying this Court to issue a writ of mandamus directing respondents 2 to 4 to pay the salary to the petitioner in



the cadre of craft teacher for the period from 1.6.94 to 7.10.03 as per the order of the 1st respondent in G.O. Ms. No.108, School Education Department dated 7.7.06.

W.P. (MD) No.11596 of 2009 filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorarified mandamus calling for the records pertaining to the order passed by the 1st respondent in G.O. Ms. No.108, School Education Department dated 7.7.06 and Government Letter (D) No.383/D1/2009, insofar as it restricts the sanction of one post of craft instructor upto 7.10.03 and direct the respondents to sanction the post of craft instructor permanently without any restriction so as to enable the petitioner to work and get salary.

Second Appeals filed u/s 100 of the Code of Civil Procedure against the judgment and decree passed in A.S. Nos.74 to 77 of 2010 by the Subordinate Judge, Sankarankoil, confirming the judgment and decree passed by the District Munsif-cum-Judicial Magistrate, Sivagiri, in O.S. Nos.115, 114, 149 & 150 of 2007, dated 24.08.2010.

For Petitioner : Mr. V.Panneerselvam
For Appellant : Mr. V.Sasikumar

For Respondents : Mr. C.M.Marichelliah Prabhu, AGP
for RR-1 to 3 in all the writ petitions
& for R-3 in all the appeals
Mr. F.X.Eugene for R-1 in all the appeals
& R-4 in all the writ petitions

COMMON JUDGMENT

While W.P. (MD) No.2585/07 has been filed for a direction to the official respondents to pay the salary to the petitioner for the period from 1.6.94 to 7.10.03 in the post of craft instructor, W.P. (MD) No.11596/09 has been filed for quashment of G.O. Ms. No.108, School Education Department dated 7.7.06 and the consequential impugned letter in and by which the representation for permanent post of craft instructor was rejected and for a consequential direction to sanction one post of craft instructor permanently in the 4th respondent school.

2. The second appeals have been preferred by the appellant/petitioner for setting aside the judgment and decree passed by the learned Subordinate Judge, Sankarankoil in A.S. Nos.74 to 77 of 2010 in and by which the the judgment and decree passed by the learned District Munsif-cum- Judicial Magistrate, Sivagiri in O.S. Nos.115, 114, 149 & 150 of 2007 was confirmed.



3. For the sake of convenience, the parties will be referred to as arrayed before this Court in the present batch of petitions/appeals.

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4. The facts, as could be culled out from the appeals and the writ petitions, are briefly stated hereunder :-

The appellant herein had instituted I.P. No.15/03 on 31.10.03 before the Sub Court, Sankarankoil and the 1st respondent herein in the respective second appeals were shown as respondents in the said petition. The insolvency petition was filed by the appellant herein on the ground that he was unable to pay the monies, which he had borrowed from the respective respondents mentioned therein and, therefore, to declare him as insolvent and for a further direction to appoint an Official Receiver to take possession of the schedule mentioned properties and sell them in public auction and apportion the sale proceeds to the respective respondents therein proportionately towards his debt.

5. However, when the insolvency petition was taken up for enquiry on 12.8.04, the appellant herein absented himself leading to the dismissal of the petition for default. Since the 1st respondent herein in the second appeals were not paid the sums advanced as loan to the appellant herein and the insolvency petition also having been dismissed for default and the appellant herein having not taken any efforts to pay the amount received as loans from the various persons shown in the insolvency petition as party respondents, the 1st respondent herein in the second appeals filed the respective suits before the District Munsif-cum-Judicial Magistrate, Sivagiri seeking recovery of the monies due to them.

6. Before the trial court, the 1st respondent herein in the respective second appeal took a stand that since the appellant herein had admitted his debt and liability to repay the amounts to the 1st respondent herein, the act of the appellant herein in getting the insolvency petition dismissed for default is only for the purpose of frustrating the claim of the 1st respondent herein. It is the further stand of the 1st respondent herein that the admission of liability by the appellant herein in the insolvency petition acts as an estoppel for the appellant herein to deny repayment of the said amounts to the respective 1st respondent herein.

7. However, the said stand was countered by the appellant herein, before the trial court, by taking a stand that the suit is not maintainable. It was the further stand of the appellant herein that though he had borrowed various sums from very many persons, including the respective 1st respondent herein, his inability to pay the said amounts led to the filing of I.P. No.15/03 to declare him as insolvent. However, since he was working as a temporary teacher,



he had filed a writ petition for making his appointment permanent, which petition was pending before this Court and the said step was taken by the appellant herein on the bona fide intention to clear all the debts. It is the further stand of the appellant herein that since he had cleared the dues of many of the lenders, he did not want to proceed with the insolvency petition and, therefore, the insolvency petition was left to be dismissed. It is the further stand of the appellant herein that no document was executed by the appellant in favour of the respective 1st respondent herein with regard to the monies borrowed. It was the further stand of the appellant herein that pending the insolvency petition, on the basis of a false complaint, the appellant herein was arrested on the premise that he had conducted chit transaction and had failed to pay the monies back to the depositors, but in fact no chit, as alleged in the complaint, was conducted by the appellant herein. The appellant further raised the plea of limitation stating that the suit filed by the respective 1st respondent herein is barred by limitation, as it has been filed beyond the period of three years. It is the further stand of the appellant herein that there is no proof for the allegation of chit transaction and receipt of monies by the appellant herein from the 1st respondent herein.

8. Before the trial court, on the side of the respective 1st respondents, while the respective 1st respondents examined themselves as P.W.1, three other witnesses were examined as P.W.s 2 to 4 and Exs.A-1 to A-4 were marked by the 1st respondent/plaintiffs, while Exs.X-1 to X-4 were marked by the witnesses. While the appellant herein examined himself as D.W.1, however, no documentary evidence was marked. The trial court on considering the oral and documentary evidence, allowed the suit in part by holding that the respective 1st respondent herein/plaintiff is entitled for recovery of the principal amount alone with cost and disallowed the claim for interest. Aggrieved by the said judgment and decree, while the appellant herein preferred appeals before the Subordinate Court, Sankarankoil, however, no cross appeal was filed by the respective 1st respondent insofar as denial of interest by the trial court is concerned.

9. The first appellate court, framed four issues for consideration and there being no new documentary evidence adduced nor any new oral evidence has been let in, on the basis of the materials available on record, both oral and documentary, dismissed the appeals filed by the appellant herein against which the present appeals have been filed by the appellant herein.

10. However, even prior to the filing of the appeals, as submitted by the appellant herein before the trial court, the above writ petitions were filed by the petitioner for the relief supra, wherein the appellant herein has averred that the appellant herein



was appointed as craft teacher on 30.3.1991 and joined duty on 3.4.1991 and that the appellant's appointment was approved by the 3rd respondent in the writ petition on 5.11.93 on condition that aid will be given only from the date on which the grant is sanctioned by the Government. It is the further averment of the petitioner that since the date of his joining, he was not paid salary as grant was not released by the Government, which resulted in filing of W.P. No.1965 of 1997 by the school for sanction of one post of craft teacher in addition to other posts and the said writ petition was disposed of directing the respondents to consider and pass orders on the request of the school for sanction of one post of craft teacher and also other posts. However, the Government sanctioned only 1 post of Junior Assistant and 1 post of Physical Education teacher by order dated 4.8.1999 and the post of craft teacher as also the other posts sought for were not sanctioned. Therefore, Contempt Petition No.24 of 2001 was filed in which counter was filed stating that the school is not entitled for the post of craft teacher in view of G.O. Ms. No.340, Education Department, dated 1.4.92 and, recording the same the contempt petition was dismissed and liberty was given to the petitioner(s) therein to agitate their rights.

11. Pursuant to the said order, second round of litigation was initiated by filing W.P. No.18288/01 by the school for sanction of 1 post of craft teacher from 3.4.1991 with consequential benefits and this Court disposed of the said petition on 27.12.04 pursuant to which G.O. Ms. No.108, School Education Department was issued sanctioning one post of craft teacher from 1.6.94 to 7.10.03. Pursuant to the said order, the appellant herein submitted representation claiming salary and pay as per G.O. Ms. No.108, however, the said representation was not received by the 4th respondent prompting the appellant herein to submit representation to the 3rd respondent for payment of salary. In spite of passing of the above G.O. Ms. No.108, the salary having not been disbursed for the period from 1.6.94 to 7.10.03, W.P. No.2585/07 has been filed.

12. It is the further averment of the appellant that the post having been sanctioned for only a particular period, viz., 1.6.94 to 7.10.03, though the appellant is very much working, the post ought to have been sanctioned as a permanent post and, therefore, the appellant filed representation to the government for deleting the outer limit and since no order was passed, the appellant filed W.P. No.58/09 in which this Court directed the respondents to consider and pass orders vide order dated 7.1.09 and even thereafter, as no orders were passed, contempt petition in C.P. No.438/09 was filed, which led to the passing of the impugned order rejecting the claim of the appellant and challenging the said order as well as G.O. Ms. No.108, School Education Department dated 7.7.06, W.P. No.11596/09 has been filed by the appellant.



13. Since the impugned order references the suits that were filed by the respective 1st respondent herein and reliance has been placed on the claims made in the said suits and the resultant position of non-disbursal of the amounts in view of the interim orders passed in the said suits, the second appeals, which are the off shoots of the suits as also the writ petitions are taken up together for final disposal.

14. When the matter was taken up for hearing, learned Addl. Government Pleader appearing for the official respondents placed before this Court a letter in Na.Ka.No.3233/A1/08 dated 9.11.09, emanating from the District Educational Officer, Tenkasi to the 4th respondent/school to the effect that after holding a sum of Rs.2,45,482/-, being the amount in which there is an order of stay in the suit, the balance portion of the amount from the sanctioned sum of Rs.6,72,034/- being the pay for the period 1.6.94 to 7.10.03 for the post of craft instructor, which the petitioner was occupying, be disbursed to him and in consonance with the said order, the petitioner has been paid a sum of Rs.4,26,552/- under due acknowledgment from the appellant. Copy of the said communication as also the acknowledgment are placed before the Court, which has been fairly accepted by the learned counsel for the appellant. In effect, a sum of Rs.2,45,432/- has been retained in view of the order of stay passed in the suits. The above statement of the learned Addl. Government Pleader as also the learned counsel for the appellant is recorded.

15. At the time of admission of the second appeals, the following substantial questions of law were framed for consideration:-

a) *Whether both the Courts below are correct in not dismissing the suit holding Ex.A-4 is not an instrument as satisfying the requirement of Stamp Act and Negotiable Instruments Act creating the liability?*

b) *Whether both the Court below are correct in decreeing the suit by holding the suit is not barred by limitation without satisfying the requirement of Section 18 of the Limitation Act?*

c) *Have not both the Courts below committed serious error of law holding the suit is not barred by limitation upon the averments made in Ex.A-2 dated 31.10.2003 is amount to acknowledgment without any unambiguous evidence of the amount mentioned in Ex.A-4 is the amount mentioned in Ex.A-3? And*

d) *Have not the Courts below correct in not dismissing the suit as time barred by limitation under Section 65 of the Chit Funds Act, 1982, upon*



the finding of the suit transaction amounts to chit?

16. Though the above four substantial questions of law have been framed for consideration at the time of admitting the appeals, however, when the appeals were taken up for hearing, this Court felt that the above four substantial questions of law could be reframed for better clarity and, accordingly, the following two substantial questions of law were framed and the learned counsel addressed this Court on the following two substantial questions of law :-

i) Whether the courts below committed an error in holding that the suits are not barred by limitation by placing reliance upon Ex.A-2?

ii) Whether the courts below committed an error in holding that Exs.A-2, A-3 and A-4, which were the basis for determining the limitation, are admissible as evidence as per Section 65 of the Evidence Act?

17. Learned counsel appearing for the appellant in the writ petitions submitted that the non-grant of permanency to the post of craft instructor is *per se* unsustainable as no reason has been given in G.O. Ms. No.180 for the purpose of granting approval only for a limited time. It is the further submission of the learned counsel for the appellant that once the official respondents have granted approval for the post of craft instructor, it cannot be discontinued by the official respondents without giving any proper reasoning, and putting the appellant, who is the holder of the post as also the 4th respondent/school on notice, more so, when it was the school, which had sought for creation and approval of the said post.

18. Learned counsel appearing for the appellant in the appeals vehemently contended that the courts below have misdirected themselves in accepting Ex.A-4 as an admissible piece of evidence, which is bereft of any particulars, which renders Ex.A-4 inadmissible as primary evidence. Further, Ex.A-4 cannot also be admissible as secondary evidence u/s 65 of the Evidence Act in view of the fact that the ingredients of accepting the same as secondary evidence as found in sub-section (b) of Section 65 has not been satisfied. It is the further submission of the learned counsel for the appellant that Ex.A-4 ought not to have been relied upon by the courts below as the said document does not create any right on the respective 1st respondent herein the right to recover the amounts, as the said documents are inadmissible piece of evidence. It is the further submission of the learned counsel for the appellant that the suits ought to have been dismissed on the question of limitation when there is no valid acknowledgment of the debt in writing as required u/s 18 of the Limitation Act. It is the further submitted by the learned counsel for the appellant that the averments in



Exs.A-1 to A-3 would not amount to an acknowledgment for saving the limitation u/s 18 of the Limitation Act and such a finding recorded by the courts below is legally untenable. It is the further submission of the learned counsel for the appellant that the finding of the courts below that the averments in the insolvency proceedings protects the limitation in view of the acknowledgment of the liability in the insolvency proceedings is wholly unsustainable as it does not satisfy the ingredients of acknowledgment provided u/s 18 of the Limitation Act. It is further submitted by the learned counsel for the appellant that the courts below have erroneously acted on Ex.A-4 and that the said document cannot be termed to be either primary evidence or secondary evidence as mandated under the Evidence Act. It is the further submission of the learned counsel for the appellant that the requirement of the appellant for borrowing the amounts has not been established in accordance with law and, that the finding of the courts below that the amounts fell due out of the chit transaction between the appellant and the 1st respondents herein has not been established by adducing proper evidence. In fine, it is the submission of the learned counsel for the appellant that the courts below have misdirected themselves in holding that the suits are not barred by limitation and that the evidence adduced on the side of the respective 1st respondents/plaintiffs with respect to the monetary transaction between the appellant and the respective 1st respondents herein stood established is perverse and inconsistent with the materials available on record and, therefore, the concurrent findings recorded by the courts below deserve to be set aside.

19. Per contra, learned Addl. Government Pleader appearing for the official respondents submitted that the official respondents, on proper appreciation of the necessity of having an approved post of craft instructor, had thought it fit to grant the said post only upto 7.10.03, more especially keeping in mind the fact that the appellant had been in service since 1.6.94 to 7.10.03 and have approved the post for the said period. The official respondents, keeping in mind the student-teacher ratio in the school, have taken a policy decision not to approve appointment of the post of craft teacher in the 4th respondent/school beyond 7.10.03, which cannot be put in issue before this Court. However, taking into account the service of the petitioner during the relevant period, the official respondents have approved the post for the said time period and have released the necessary funds, of which, a portion of it has already been received by the appellant herein. Therefore, it is not open to the appellant herein to claim, as a matter of right, approval of the post of craft teacher in the 4th respondent/school and to employ him in service in the said post.

20. Learned counsel appearing for the 4th respondent/school as well as the respective 1st respondents herein, submitted that the



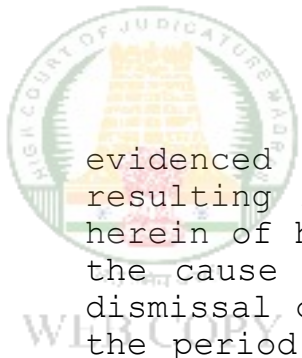
appellant, having admitted his liability to the 1st respondents herein by filing the I.P. No.15/03, the limitation stood saved and the 1st respondents have instituted the suits well within time from the date of passing of orders in the said insolvency proceedings. Further, the admission of the appellant in the insolvency petition relating to his liability to the 1st respondents herein stands testimony to the authenticity of Ex.A-4 and, therefore, it is not open to the appellant to contend that Ex.A-4 is not a valid piece of document, which can be relied upon to adjudicate on the liability of the appellant towards the 1st respondents herein.

21. It is the further submission of the learned counsel for the 1st respondents herein that Section 65 of the Evidence Act provides for acceptance of secondary evidence and sub-section (b) to Section 65 provides that when the existence, condition or contents of the original have been proved to be admitted in writing by the person against whom it is proved, then the said written admission is admissible. It is the submission of the learned counsel for the 1st respondents herein that the appellant having admitted his liability to the 1st respondents herein in the insolvency proceedings, Ex.A-4, which is the chit transaction between the appellant to the 1st respondents herein in pursuance of which Ex.A-4 was issued, is very much admissible as secondary evidence and, the courts below, reading Exs.A-1 to A-4 compositely, on proper appreciation of the said documents, have accepted the said evidence and, therefore, this Court shall not interfere with the concurrent findings of fact recorded by the courts below. Accordingly, he prays for dismissal of the second appeals.

22. This Court paid its best attention to the submissions advanced by the learned counsel appearing on either side and also perused the materials available on record as also the concurrent decisions rendered by the courts below.

23. It is trite that the High Court under Section 100 of the Code of Civil Procedure shall not disturb the concurrent findings of fact delineated by the courts below unless the case involves substantial questions of law. The questions of law, which are said to be of substantial nature, have been reframed and, therefore, in the admitted factual scenario, this Court would deal with the same. Further, as both the questions of law are intertwined, this Court would deal with it in a composite manner rather than addressing them separately as the same would only pave the way for repetition rather than clearing the issue on hand.

24. The whole gamut of the respective 1st respondents case falls within a very narrow compass. The suits have been instituted by the 1st respondents herein for recovery of the amounts paid by them to the appellant herein in furtherance of a chit transaction, as



evidenced by Ex.A-4 and the non-repayment of the said amount, resulting in the insolvency proceedings initiated by the appellant herein of his own accord in I.P. No.15/03 on 31.10.03 had given them the cause of action for instituting the suit on 18.6.07 after the dismissal of I.P. No.15/03 on 12.08.04. It is not in dispute that the period of limitation for instituting a suit is three years and Section 12 prescribes the exclusion of period in legal proceedings, which is extracted hereunder :-

"12. Exclusion of time in legal proceedings. (1)

In computing the period of limitation for any suit, appeal or application, the day from which such period is to be reckoned, shall be excluded.

(2) In computing the period of limitation for an appeal or an application for leave to appeal or for revision or for review of a judgment, the day on which the judgment complained of was pronounced and the time requisite for obtaining a copy of the decree, sentence or order appealed from or sought to be revised or reviewed shall be excluded.

(3) Where a decree or order is appealed from for sought to be revised or reviewed, or where an application is made for leave to appeal from a decree or order, the time requisite for obtaining a copy of the judgment on which the decree or order is founded shall also be excluded.

(4) In computing the period of limitation for an application to set aside an award, the time requisite for obtaining a copy of the award shall be excluded.

Explanation.-In computing under this section the time requisite for obtaining a copy of a decree or an order, any time taken by the court to prepare the decree or order before an application for a copy thereof is made shall not be excluded."

25. Section 18 of the Limitation Act prescribes the effect of acknowledgment in writing and the consequential saving/extension of limitation in such scenario and the same is extracted hereunder :-

"18. Effect of acknowledgment in writing. (1)

Where, before the expiration of the prescribed period for a suit or application in respect of any property or right, an acknowledgment of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, or by any person through whom he derives his title or liability, a fresh period of limitation shall be computed from the time when the acknowledgment was so signed. (2)



Where the writing containing the acknowledgment is undated, oral evidence may be given of the time when it was signed; but subject to the provisions of the Indian Evidence Act, 1872 (1 of 1872), oral evidence of its contents shall not be received.

Explanation.-For the purposes of this section,-
(a) an acknowledgment may be sufficient though it omits to specify the exact nature of the property or right, or avers that the time for payment, delivery, performance or enjoyment has not yet come or is accompanied by a refusal to pay, deliver, perform or permit to enjoy, or is coupled with a claim to set-off, or is addressed to a person other than a person entitled to the property or right,
(b) the word "signed" means signed either personally or by an agent duly authorised in this behalf, and (c) an application for the execution of a decree or order shall not be deemed to be an application in respect of any property or right."

26. A conjoint reading of Section 12 and Section 18 clearly reveals that not only the time spent in legal proceedings is to be excluded for the purpose of computation of limitation, but any acknowledgment of liability in writing, before the expiration of the period of limitation, would give a fresh lease of life to the period of limitation to the parties to institute appropriate proceedings.

27. It is borne out by record that I.P. No.15/03 has been filed by the appellant himself admitting his liability to the respondents therein, in which the judgment and decree was passed on 12.8.04. The categorical admission of the appellant in the insolvency petition as to his liability to the respondents therein definitely gives a fresh lease of life to the respondents therein, of which the 1st respondents herein were also parties, to pursue the suits. Even excluding the time spent in the legal proceedings, it can be safely concluded that the suits have been instituted within a period of three years and, thereby, the suits are not barred by limitation. Further, it has been categorically observed by the first appellate court that though the prayer in I.P. No.15/03, filed by the appellant is to the effect that an Official Receiver is to be appointed for the purpose of taking possession of the scheduled mentioned properties and to sell them and apportion the sale proceeds to the respondents therein, however, a contradictory plea has been taken by the appellant in the written statement to the effect that though he orally borrowed the monies, however, pending the insolvency proceedings, he had paid much of the liability and, therefore, he thought it fit to have the insolvency petition dismissed. If such a stand of the appellant is to be agreed, the appellant should have appeared before the Court and withdrew the



insolvency proceedings by placing not only the facts but also relevant documents in support of his plea that he had paid off the liabilities to the respondents therein. However, the appellant had left the insolvency proceedings to be dismissed for default, which clearly shows the devious mind of the appellant to have the insolvency petition dismissed so that the respondents, who have given money to the appellant, would be left stranded on the question of limitation and would not be in a position to recover their money back. Further, nowhere in the written statement the appellant has stated that he has discharged the liability towards the respondents and to that effect placed any documents during to the course of the hearing of the suits to substantiate the said stand. No contra evidence evidencing the payment of the monies due to the 1st respondents herein had been placed before the trial court by the appellant herein, nor any witnesses, apart from himself, had been examined to show that the monies due to the 1st respondents/plaintiffs were, in fact, paid by the appellant herein. In the absence of the appellant placing any document to show that he had discharged his liability towards the 1st respondents herein, the contention of the appellant that the suits are vexatious and not maintainable is wholly unsustainable.

28. Further, Section 18 prescribes that acknowledgment of liability should be made before the expiry of the period of limitation for instituting the suit and in the case on hand, the appellant having acknowledged the debt in his insolvency petition, the same has given a new lease of life by extending the period of limitation for instituting the suits for recovery of the money.

29. Though it has been held by both the courts below that the appellant having not taken the plea of time barred claim in I.P. No.15/03, in the said backdrop of the undisputed position of the appellant, the said stand of the appellant has to be unequivocally be understood as an acknowledgment of debt. It is to be pointed out that any person, who wants to come out of the rigor of debt, would definitely take a plea that he has either discharged the debt or that the claim of debt is time barred. However, the appellant has not taken either of the stand, which clearly goes to show that the appellant has indeed acknowledged the claim of the respective 1st respondents herein. Further, the averments in the insolvency petition, which has been accepted and signed by the appellant, is a clear acknowledgment of liability, in writing, by the appellant, as prescribed u/s 18 of the Limitation Act and, therefore, the appellant cannot escape from the clutches of his acknowledgment in the insolvency petition in the absence of any documentary evidence to the contra being placed before the courts below. Therefore, the question of limitation raised by the appellant, is nothing but a faint attempt on the part of the appellant to hold on to the last straw to extinguish himself from the liability to the pay the 1st



respondents and the said plea raised by the appellant on the question of limitation, on the face of the materials available on record, as pointed out above, deserves to be rejected.

30. Insofar as the admissibility of Ex.A-3 and A-4 vis-a-vis the acknowledgment of the amount of liability of the appellant to the respective 1st respondents herein is concerned, it is to be pointed out that Ex.A-3 is the copy of the insolvency petition in I.P. No.15/03 and Ex.A-4 is the alleged chit receipt said to have been issued by the appellant to the respective 1st respondents herein. It is the contention of the appellant that there being no date or signature in Ex.A-4, the same should not be taken as an admissible piece of evidence in support of the stand of the appellant's liability to the respective 1st respondents herein.

31. True it is that the courts below have noted that there is no signature or date in Ex.A-4 except for the fact that it is a copy of the receipt alleged to have been issued by the appellant to the respective 1st respondents herein. Though the appellant disputes Ex.A-4, however, what strikes at the root of the said contention of the appellant is the fact that the appellant, on his own volition, had filed I.P. No.15/03 in which there is a categorical acknowledgment of liability on the part of the appellant to the respective 1st respondents herein. May be, the exact quantification is not made in the said insolvency petition. But definitely the liability has been admitted by the appellant. Once the liability stands admitted by the appellant, Ex.A-4 falls within the four corners of secondary evidence as prescribed u/s 65 (b) of the Indian Evidence Act. For better clarity, Section 65 (b) is quoted hereunder :-

"65. Cases in which secondary evidence relating to documents may be given.- Secondary evidence may be given of the existence, condition or contents of a document in the following cases -

** * * * **

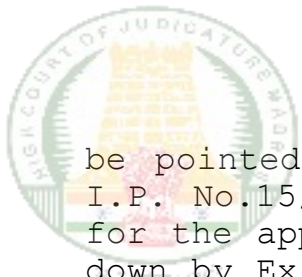
(b) when the existence, condition or contents of the original have been proved to be admitted in writing by the person against whom it is proved or by his representative in interest;

** * * * **

In case (b), the written admission is admissible.

** * * * **

32. In the case on hand, as already stated above, there is a categorical admission on behalf of the appellant by endorsing the contents of I.P. No.15/03 in which he has admitted his liability to the 1st respondents herein and has gone on further to state that he is in debt to many persons. Though the appellant has raised the plea of non-admissibility of Ex.A-4 in the suits, however, it is to



be pointed out that Ex.A-3, which is the copy of the petition in I.P. No.15/03, stares on the face of Ex.A-4 and there is no escape for the appellant from Ex.A-3. Once the appellant has tied himself down by Ex.A-3, which is his own document, signed by him, he cannot take a plea that Ex.A-4 cannot be acted upon, as it is not admissible as evidence. Evidence, as envisaged under the Evidence Act falls into two categories, viz., primary evidence and secondary evidence. Secondary evidence is covered u/s 63 of the Evidence Act of which Section 65 deals with secondary evidence relating to documents which has already been extracted supra. Once Ex.A-3 is admitted to be that of the appellant, in which there is an admission as to the liability of the appellant herein towards many persons, including the 1st respondents herein, then Ex.A-4 follows suit as secondary evidence, unless it is shown that the appellant has discharged his liability. However, the appellant has misreably failed to prove that he has discharged the debt to the 1st respondents herein, as he has neither filed any proof relating to repayment of the debt or placed before the insolvency court any document to show that he has discharged the liability and having the insolvency petition dismissed. However, the insolvency petition has been dismissed only on account of his default in not appearing before the Court, when the matter was taken up for enquiry, which has many connotations, of which one has been shown above to be that of an attempt on the part of the appellant to defeat the rights of the 1st respondents herein. In such a backdrop, the claim of the appellant that the finding of the courts below that Exs.A-3 and A-4 have been proved and are admissible in evidence is perverse does not merit acceptance.

33. In the light of the reasons adduced above, the two reframed substantial questions of law are answered in favour of the respondents and against the appellant.

34. Insofar as the writ petitions are concerned, W.P. No.2585/07 pertains to the payment of salary to the appellant for the period 1.6.94 to 7.10.03. As already recorded above, an amount of Rs.6,72,034/- was already sanctioned by the official respondents of which an amount of Rs.4,26,552/- has already been paid to the appellant under due acknowledgment. Only a sum of Rs.2,45,482/- has been retained by the respondents in view of the order of stay granted by the trial court pertaining to the recovery of the amount in the suits filed. Therefore, the prayer in W.P. No.2585/07 having been granted, nothing survives for adjudication and, accordingly, W.P. No.2585/07 deserves to be closed.

35. Insofar as W.P. No.11596/07 is concerned, though the appellant has pleaded that the post having been sanctioned, it cannot be only for a limited period of time, but should be a permanent post and, therefore, the appellant ought to be reinstated



in the said post, the said contention cannot be accepted for the simple reason that it is within the domain of the competent authority, on the basis of necessity and in tune with the teacher-student ratio to create and approve any post. Courts cannot step into the shoes of the authority to find out the necessity for the continuance of a post. Only mala fides and perversity can be looked into in the order passed. The Government, after careful consideration, and acceding to the request of the school, had created the post of craft teacher for a prescribed period of time only for the purpose of accommodating the appellant in the said post. When such a policy decision has been taken by the Government for creating the post for a particular period of time, this Court cannot go beyond the policy decision and direct creation of the post at the instance of the appellant, who has come before this Court pleading that the said post should be continued till eternity. The creation and approval of the post being a policy decision of the Government, this Court cannot enter into the realm of the Government to otherwise hold that the said post held by the appellant should be continued. Further, on and from 7.10.03, the post had lapsed and ceased to exist and such being the undisputed position, this Court cannot direct the official respondents to recreate and approve a post, which has been deemed to be not required by the respondents as a matter of policy. Accordingly, the prayer sought for by the appellant for sanction of the post and consequential direction for reinstatement of the appellant in the said post cannot be acceded to and, accordingly, W.P. No.11596/07 also deserves to be dismissed as devoid of merits.

36. As already held above, a sum of Rs.2,45,482/- had been ordered to be withheld from the dues payable to the appellant pursuant to the orders of the trial court relating to the amounts due to the respective 1st respondents herein. In view of this Court confirming the judgment and decree passed by the courts below, it is made clear that the 1st respondents herein would be entitled to the fruits of the judgment and decree made in the respective suits and appeals and, accordingly, the respective 1st respondents are entitled for the decretal amount as ordered in the respective suits. Consequent upon paying the decretal amount to the respective 1st respondents herein, the balance amount, if any, lying in deposit from the amount of Rs.2,45,482/- is directed to be paid to the appellant.

37. In the result,

- i) The second appeals are dismissed confirming the judgment and decree passed in A.S. Nos.74 to 77 of 2010 by the Subordinate Judge, Sankarankoil, confirming the judgment and decree passed by the District Munsif-cum-Judicial Magistrate, Sivagiri, in O.S. Nos.115, 114, 149 & 150 of 2007;



ii) W.P. No.2585 of 2007 is closed and W.P. No.11596/09 is dismissed; and

iii) The amount of Rs.2,45,482/- lying with the respondents shall be apportioned and disbursed to the respective 1st respondents herein, if not already paid by the appellant, as per the decree in O.S. Nos.115, 114, 149 & 150 of 2007 as confirmed in A.S. Nos.74 to 77 of 2010 and confirmed by this Court. The balance amount, if any, after payment of the decretal amount, lying in deposit from the amount of Rs.2,45,482/- shall be paid to the appellant.

iv) If the appellant herein has already paid the amounts due to the respective 1st respondents herein as per the decree in O.S. Nos.115, 114, 149 & 150 of 2007 as confirmed in A.S. Nos.74 to 77 of 2010 and confirmed by this Court, for which proof of payment is produced by the appellant herein, after proper enquiry and verification, the entire amount lying in deposit to the tune of Rs.2,45,482/- shall be paid to the appellant herein.

Consequently, connected miscellaneous petitions are closed. However, in the circumstances of the case, there shall be no order as to costs.

Sd/-

Assistant Registrar(CS-II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

GLN

To

1. The Secretary to Government
School Education Department
Government of Tamil Nadu
Secretariat, Chennai - 9.

2. Director of School Education
Chennai - 6.

3. District Educational Officer
Tenkasi Taluk, Tenkasi
Tirunelveli.

4. The Subordinate Judge, Sankarankovil,



5. The District Munsif cum Judicial Magistrate,
Sivagiri.

Copy to
The Section Officer, V.R. Section,
Madurai Bench of Madras High Court, Madurai. (2 copies)

+1 CC to M/s.SPL GP (SR-9509[F] dated 08/03/2021)

+2 CC to M/s.V.PANNEER SELVAM, Advocate (SR-9730 & 9731[F] dated
09/03/2021)

+1 CC to M/s.F.X.EUGENE, Advocate (SR-7115[F] dated 25/02/2021)

JUDGMENT IN

W.P. (MD) NO. 2585 OF 2007

W.P. (MD) NO.11596 OF 2009

**S.A. (MD) NOS. 981 TO
984 OF 2011**

Pronounced on 05.03.2021

KMK (CO)
TR(23.06.2021) 17P 12C