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W.A.(MD) NoS.33, 34 & 374 of 2011

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 03.12.2021

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
and
THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

W.A. (MD) No.33 of 2011

and

M.P. (MD) No.1 of 2011

and

W.A. (MD) No.34 of 2011

and

M.P. (MD) Nos.1 & 2 of 2011 & 1 of 2013

and

W.A. (MD) No.374 of 2011

and

M.P. (MD) No.1 of 2011

W.A. (MD) No.33 of 2011:

L.Lakshamanaperumal

... Appellant

-vs-

1.Mannar Pandidurai Thevar Memorial School
rep.by its Secretary K.S.M.Ramachandran
Viswesapuram, Dombachery Post
Bodinayakanur, Theni District

2.The Director of Elementary Education,Chennai

3.The Joint Director of Elementary Education (Aided School),
College Road, Chennai-6

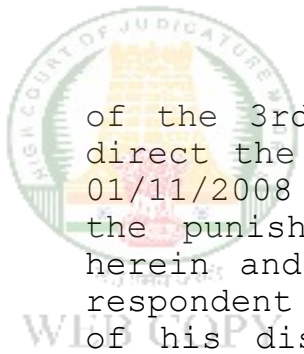
4.The District Elementary Educational Officer
Theni District, Theni

... Respondents

Writ Appeal filed under Clause 15 of Letters Patent to set aside the order, dated 30.11.2010, passed in W.P.(MD) No.13726 of 2010, on the file of this Court.

Prayer in WP(MD). 13726/ 2010 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandmaus, calling for the entire records relating to the orders dated 03/07/2008 and 28/07/2008 in R.C.No. 5032/A5/2008 on the file



of the 3rd respondent herein and quash the same and consequently direct the respondents 2 and 3 herein to approve the proposal dated 01/11/2008 of the petitioner herein seeking approval for imposing the punishment of dismissal from service on the 4th respondent herein and also to sanction subsistence allowance due to the 4th respondent for the period commencing from 18/06/2010 till the date of his dismissal from service without reference to the impugned order dated 03/07/2008 and 28/07/2008 of the 3rd respondent herein.

For Appellant : Mr.V.Panneerselvam

For Respondents : Mr.V.R.Rajasekaran
for Mr.R.Suriyanarayanan for R1
Mr.Thambidurai
Government Advocate for R2 to R4

W.A. (MD) No.34 of 2011:

L.Lakshamanaperumal ... Appellant

-vs-

1.The Secretary
Mannar Pandidurai Thevar Memorial School
Viswesapuram
Bodinayakkanur, Theni District

2.The Joint Director of Elementary
Education (Aided School)
College Road, Chennai-6

3.The District Elementary Educational Officer
Theni District, Theni ... Respondents

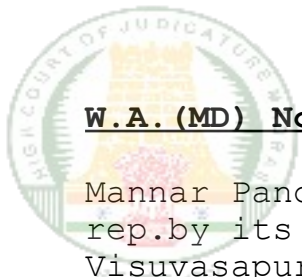
Writ Appeal filed under Clause 15 of Letters Patent to set aside the order, dated 30.11.2010, passed in W.P.(MD) No.9761 of 2009, on the file of this Court.

Prayer in WP(MD) . 9761/ 2009 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a WRIT OF CERTIORARIFIED MANDAMUS calling for the records relating to the second respondent's order made in Na.Ka.No. 5032/A5/2008 dated 05/12/2008 and as confirmed by the first respondent in Na.Ka.No.000258/H4/09, dated 15/05/2009 to quash the same and consequently direct the respondents to approve the penalty of removal from service imposed on the third respondent.

For Appellant : Mr.V.Panneerselvam

For Respondents : Mr.V.R.Rajasekaran
for Mr.R.Suriyanarayanan for R1
Mr.Thambidurai
Government Advocate for R2 & R3



W.A. (MD) No.374 of 2011:

Mannar Pandidurai Thevar Memorial Middle School
rep.by its Secretary K.S.M.Ramachandran
Visuvasapuram, Dombucheieri Post
Theni District

... Appellant

-vs-

1.Director of Elementary Education
Chennai-6

2.Joint Director of Elementary
Education (Aided Schools)
Chennai-6

3.District Elementary Education Officer
Theni District, Theni

4.L.Lakshmanaperumal

... Respondents

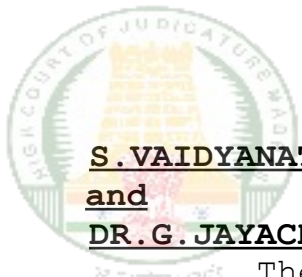
Writ Appeal filed under Clause 15 of Letters Patent to set aside the order, dated 30.11.2010, passed in W.P.(MD) No.13726 of 2010, on the file of this Court.

Prayer in WP(MD) . 13726/ 2010 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandmaus, calling for the entire records relating to the orders dated 03/07/2008 and 28/07/2008 in R.C.No. 5032/A5/2008 on the file of the 3rd respondent herein and quash the same and consequently direct the respondents 2 and 3 herein to approve the proposal dated 01/11/2008 of the petitioner herein seeking approval for imposing the punishment of dismissal from service on the 4th respondent herein and also to sanction subsistence allowance due to the 4th respondent for the period commencing from 18/06/2010 till the date of his dismissal from service without reference to the impugned order dated 03/07/2008 and 28/07/2008 of the 3rd respondent herein.

For Appellant : Mr.V.R.Rajasekaran
for Mr.R.Suriyanarayanan

For Respondents : Mr.Thambidurai
Government Advocate for R1 to R3
Mr.V.Panneerselvam for R4



C O M M O N J U D G M E N T

S.VAIDYANATHAN, J.

and

DR.G.JAYACHANDRAN, J.

The writ appeals in W.A.(MD) Nos.33 and 34 of 2011 have been filed by one Lakshmanaperumal being aggrieved by the common order dated 30.11.2010, passed by the learned Single Judge in W.P.(MD) Nos.13726 of 2010 and 9761 of 2009 respectively.

2. The short point involved in this case is as below:-

2.1. Lakshmanaperumal, the appellant herein, was the Headmaster in Mannar Pandidurai Thevar Memorial School, which is a Recognized Aided School. Due to some undesirable activities, he came to the adverse notice of the Officer of the Educational Department, who submitted a report dated 14.12.2007. Four charges were framed against him for major penalty. From the records, we find that an enquiry was conducted and the appellant - Lakshmanaperumal was found guilty of all the charges. Pending enquiry, he was placed under suspension. In these circumstances, the following writ petitions were filed for the following reliefs:

Sl.No.	Case No.	Relief
1.	W.P.(MD) No.13726 of 2010 (Filed by the Management)	Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of writ of Certiorarified Mandamus calling for the entire records relating to the orders dated 03.07.2008 and 28.07.2008 in R.C.No.5032/A5/2008 on the file of the third respondent and quash the same and consequently direct the respondents 2 and 3 to approve the proposal dated 01.11.2008 of the petitioner seeking approval for imposing the punishment of dismissal from service on the fourth respondent and also to sanction subsistence allowance due to the fourth respondent for the period commencing from 18.06.2010 till the date of dismissal from service without reference to the impugned orders dated 03.07.2008 and 28.07.2008 of the third respondent.



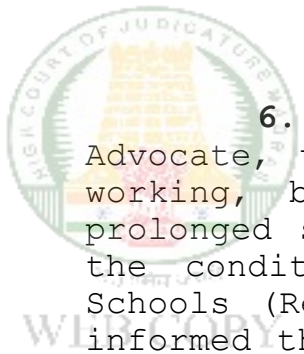
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2.	W.P.(MD) Nos.9760 of 2010 (Filed by Lakshmanaperumal)	Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of writ of Certiorarified Mandamus calling for the records pertaining to the impugned order of the first respondent in Na.Ka.No.026749/L3/2009, dated 25.11.2009, quash the same and consequently direct the first respondent to direct the fourth respondent to pay salary to the petitioner from 18.06.2008.
3.	W.P.(MD) Nos.9761 of 2010 (Filed by the Management)	Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of writ of Certiorarified Mandamus calling for the records relating to the second respondent's order made in Na.Ka.No.5032/A5/2008, dated 05.12.2008 and as confirmed by the first respondent in Na.Ka.No.000258/H4/09, dated 15.05.2009, to quash the same and consequently direct the respondents to approve the penalty of removal from service imposed on the third respondent.

3. After considering the rival submissions and the law governing the dispute, the learned Single Judge allowed W.P.(MD) No.9761 of 2009 and dismissed W.P.(MD) Nos.9760 and 13726 of 2010. As a result, the appellant - Lakshmanaperumal, though succeeded in establishing his rights to get salary for the period from 19.04.2008 to 05.12.2008, his relief regarding removal from service was not acceded to and therefore, the writ appeals in W.A.(MD) Nos.33 and 34 of 2011 came to be filed.

4. On perusal of the impugned common order passed by the learned Single Judge and the grounds of appeals, this Court finds that the charges framed against the appellant - Lakshmanaperumal are very grave in nature touching upon the impropriety, inculcating indiscipline to the students and therefore, he deserves to be punished, but not without affording proper opportunity.

5. It is the case of the appellant - Lakshmanaperumal that it was an *ex parte* order of dismissal and no proper opportunity was given to him to putforth his case. Whereas, the Management would contend that sufficient opportunity was given to him, but he did not participate in the enquiry proceedings, which led to pass the order of dismissal.



6. As far as the submission of the learned Government Advocate, the School in which the appellant - Lakshmanaperumal was working, being an Aided School, they were concerned about his prolonged suspension during the enquiry period without adhering to the conditions imposed under the Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974 and therefore, they categorically informed the Management that whatever the salary to be paid to the appellant - Lakshmanaperumal, the Management alone should pay to him and the Government will not pay the salary during the period of suspension.

7. The learned counsel appearing for the appellant - Lakshmanaperumal submits that the appellant is willing to give up the salary components for the period from 19.04.2008 to 05.12.2008.

8. Be that as it may, now the fact remains that the appellant - Lakshmanaperumal has attained the age of superannuation and considering the gravity of punishment imposed on him, the dismissal from service will disentitle him to get attendant benefits, hence this Court modifies the order of dismissal from service as compulsory retirement with effect from 05.12.2008. The period of suspension shall be taken into account for computing the service benefits alone. The appellant - Lakshmanaperumal shall have no right to claim any arrears of salary from the date of suspension till the date of his compulsory retirement, as modified by this Court above. The Management is directed to send proposal to the Education Department for regularizing the service period of the appellant - Lakshmanaperumal as stated above and process his pension proposal, within a period of four months from the date of receipt of a copy of this Judgment. On receipt of the proposal, the Education Department shall proceed further and pass appropriate orders as expeditiously as possible.

9. Accordingly,

- (i) The common Order dated 30.11.2010 in W.P.(MD) Nos.9760 & 13726 of 2010 and 9761 of 2009 is modified to the extent indicated above.
- (ii) W.A.(MD) Nos.33 & 34 of 2011 are partly allowed.
- (iii) W.A.(MD) No.374 of 2011 is disposed of.
- (iv) No costs. Consequently, connected miscellaneous petitions are closed.

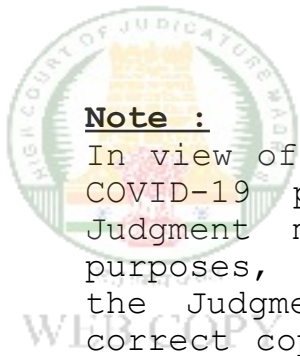
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Assistant Registrar (CS II)

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Sub Assistant Registrar(CS)

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Note :

In view of the present lock down owing to COVID-19 pandemic, a web copy of the Judgment may be utilized for official purposes, but, ensuring that the copy of the Judgment that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To:

- 1.The Director of Elementary Education,
Chennai.
- 2.The Joint Director of Elementary
Education (Aided School),
College Road, Chennai-6.
- 3.The District Elementary Educational Officer,
Theni District, Theni.

+1 CC to M/s.R.SURIYANARAYANAN, Advocate (SR-37446[F] dated 06/12/2021)

+1 CC to M/s.V.PANNEER SELVAM, Advocate (SR-37692[F] dated 07/12/2021)

+1 CC to M/s.SPL GP (SR-37426[F] dated 06/12/2021)

W.A. (MD) NoS.33, 34 & 374 of 2011

03.12.2021

MGJ(16.12.2021) 7P 7C