



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.08.2021

CORAM:

THE HONOURABLE MR.JUSTICE **S.S.SUNDAR**

W.P.(MD) No.16970 of 2013

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... Petitioner

.vs.

1.The Chief Educational Officer,
Tirunelveli, Tirunelveli District.

2.The District Educational Officer,
Cheranmahadevi, Tirunelveli District.

3.Padma
District Educational Officer / Special Officer,
Concordia Higher Secondary School,
Valliyoora, Tirunelveli District.

... Respondents

PRAYER: Writ Petitions filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records of the impugned order passed by the second respondent herein in his proceedings in Na.Ka.No.3154A1/2003, dated 13.09.2013 and consequently to direct the second respondent herein to immediately release the salary for 34 months, ie., 13.09.2000 to 19.06.2003 to the petitioner herein forthwith.

For Petitioner : Mr.V.Meenakshi Sundaram
for Mr.D.Nallathambi
For R-1 to R3 : Mr.M.Linga Durai
Government Advocate

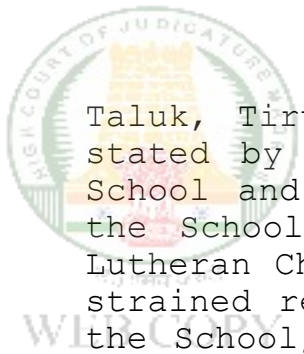
O R D E R

This Writ Petition is filed for issuing a Writ of Certiorarified Mandamus, to quash the impugned order, dated 13.09.2013 and to direct the second respondent herein to release the salary for 34 months, ie., from 13.09.2000 to 19.06.2003 to the petitioner herein.

2.Heard Mr.V.Meenakshi Sundaram, learned Counsel for Mr.D.Nallathambi, learned Counsel for the petitioner and Mr.M.Linga Durai, learned Government Advocate appearing for the respondents.

3.Brief facts that are necessary for the disposal of this Writ Petition are as follows:

3.1.The petitioner was working as a Watchman in a School called Concordia Higher Secondary School, Valliyoora, Radhapuram



Taluk, Tirunelveli District, which is a private aided school. It stated by the petitioner that he is a permanent employee of the School and he is getting salary from the Government. Originally, the School was managed by a Trust, known as "Indian Evangelical Lutheran Church Trust". It is stated by the petitioner that due to strained relationship between the petitioner and the Headmaster of the School, the petitioner was prevented from getting increment of salary from the year 1996. It is further stated that a criminal case in Cr.No.270 of 2000 was registered against the petitioner at the instance of a private individual and the petitioner was arrested in connection with the criminal case on 13.09.2000.

3.2.Since he was granted bail only on 15.09.2000, the petitioner was prevented from signing the attendance register by the then Headmaster of the School. The petitioner, therefore, filed a suit in O.S.No.264 of 2000 on the file of the District Munsif Court, Valliyoor for permanent injunction against the Headmaster and Correspondence of the School. An interim injunction was granted in I.A.No.1627 of 2000 to the effect that the respondents in the interim application shall not interfere with the petitioner's work as Watchman. It is also stated that the said suit was decreed by a judgment and decree, dated 19.01.2004.

3.3.Despite repeated representations, it is stated that the respondents have not chosen to pay salary for the period from 13.09.2000 to 19.06.2003, the period during which the petitioner was wrongfully suspended. It is stated further that the petitioner was, therefore, filed a Writ Petition in W.P.(MD)No.9204 of 2005 before this Court and this Court, by order, dated 07.10.2005, directed the respondents to consider the petitioner's representation. Pursuant to the order of this Court, the District Educational Officer, Cheranmahadevi, passed an order, dated 22.11.2005, directing the Correspondence of the School to pay the petitioner's salary on the ground that the Government is not bound to pay salary for the period. Challenging the said order, dated 22.11.2005, the petitioner filed another Writ Petition in W.P.(MD)No.1610 of 2006. The said Writ Petition was disposed of by order, dated 15.07.2011 quashing the impugned order, dated 22.11.2005 with the following directions:

"12.The petitioner is only aggrieved by the fact, that while accepting claim qua salary, unreasonable condition has been imposed, that the payment is to be made by the School from its own funds.

13.The contention of the learned Counsel for the petitioner, is that this condition is totally arbitrary as the respondents school is private aided school and grant of salary is to be released by this Government, though, the preliminary responsibility to pay the salary is that of the School Management.



14.The Writ Petition is allowed, this impugned part of the order, directing that the salary to the petitioner for the period from 13.09.2000 to 19.06.2003 is to be paid by the school is ordered to be quashed.

15.The respondent Management is directed to pay the salary to the petitioner for the period referred to above, within a period of of two months from the date of receipt of a certified copy of this order. It shall open to the Management thereafter, to seek reimbursement from the Department under grant in aid. On demand by the school Management, the respondent Nos.1 to 3 are directed to release the grant in aid for payment of salary to the petitioner. No costs.

3.4.The petitioner, in the light of the directions from this Court, appears to have made few representations. Finding that the representations were not considered, the petitioner has filed a contempt petition before this Court. Thereafter, by the impugned order, passed by the second respondent, dated 13.09.2013, a person, by name, Mr.Muthuraja, as Secretary of Lutheran Centre, Nagercoil, was directed to disburse the salary to the petitioner and then submit the claim before the respondents. Aggrieved by the same, the present Writ Petition is filed.

4.The learned Counsel for the petitioner submitted that the impugned letter was served on the Secretary of Trust, which is also named as "Lutheran Centre, Nagercoil". It is some other institution under corporate management. It is further stated that the petitioner is working in a School, which is under the management of a Trust, named as "Indian Evangelical Lutheran Church Trust". It is the case of the petitioner that the respondents though address the communication to a wrong person, served the order to the Trust, which was in the management of the School, in which, the petitioner is employed. The learned Counsel for the petitioner further submitted that the School, in which the petitioner is engaged, is now under direct payment and a Special Officer is also appointed for the administration of the School. It is in the said circumstances, the earlier direction of this Court ought to have been complied with by the Special Officer. When the Trust, which is not in the administration of the School but the Special Officer is in charge of the administration of the School, the direction ought to have been treated as a direction against the Special Officer.

5.The learned Government Advocate relied upon the counter affidavit filed by the third respondent. It is to be seen that there is no dispute with regard to the fact that the School in which the petitioner was employed is under the management of the Special Officer. Though the direction originally by this Court was to get the salary from the management, the order was not complied with in its letter and spirit. In the counter affidavit, it is mainly



contended that there is no direction to the respondents to pay the salary to the petitioner and that the petitioner, who failed to take appropriate steps to receive the salary from the management of the School, cannot insist the respondents to disburse the salary. The case of the respondents is unjust and misconceived.

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6. There is no dispute that the petitioner is entitled to get salary from the management and the management has to be reimbursed the money, which they have paid to the petitioner. In this case, the very management has now been taken over by the Special Officer. Hence, the Special Officer, who stepped into the shoes of the management, is liable to comply the direction of this Court. In the absence of any other special circumstances, the impugned order cannot be sustained, as it was on a wrong understanding of the order of this Court earlier.

7. Since this Court is of the view that the Government has to pay salary to the petitioner, this Court is unable to accept the stand taken by the respondents in the counter affidavit that their liability comes only after the management pays the salary to the petitioner and seeks reimbursement by submitting claim application. In the wake of the management being taken over by the Special Officer, the second respondent ought to have disbursed the salary by way of grant.

8. Hence, this Writ Petition is allowed and the impugned order passed by the second respondent, dated 13.09.2013 is set aside. The third respondent is directed to release the salary of the petitioner immediately to the petitioner for the period from 13.09.2000 to 19.06.2003. It is to be further clarified that the amount payable to the petitioner should come from the School management and the responsibility of the third respondent is neither personal nor as the District Educational Officer, but, as the Special Officer of the School concerned. Hence, the fund that may be disbursed to the petitioner shall come from the management of the School, in which the petitioner was employed.

9. If for any reasons, the petitioner is unable to get salary for the period from the Special Officer, the respondents 1 and 2 shall disburse the amount as per the earlier direction of this Court.

10. The learned Counsel for the petitioner submitted that the petitioner retired from service on attaining the age of superannuation in March 2014. The grievance of the petitioner is that his retirement papers were not forwarded due to the pendency of this Writ Petition. He also stated that the period during which he was denied salary was also not regularised so far. This Court, therefore, directs the respondents to forward the pensionary papers of the petitioner after taking into account the period, during which the petitioner was denied salary, to be the period of service for



the purpose of pension and other emoluments.

11. With the above directions, this Writ Petition is allowed.
No costs.

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Sd/-

Assistant Registrar (CRL)

// True Copy //

/ /2021

Sub Assistant Registrar (CS)

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To

1. The Chief Educational Officer,
Tirunelveli, Tirunelveli District.

2. The District Educational Officer,
Cheranmahadevi, Tirunelveli District.

+1 CC to M/s.D.NALLATHAMBI, Advocate (SR-26016[F] dated 11/08/2021)

+1 CC to M/s.SPL GP (SR-26054[F] dated 12/08/2021)

W.P. (MD) No.16970 of 2013
11.08.2021

PS (CO)
KB (25.08.2021) 5P 5C