



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.08.2021

CORAM:

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

W.P. (MD) No.7506 of 2013

V.Puduraja

... Petitioner

Vs.

- 1.The State of Tamil Nadu
Rep. By its Secretary
Department of School Education
Fort St.George, Chennai - 600 009
- 2.The Director of School Education,
College Road,
Chennai - 600 006
- 3.The Chief Educational Officer,
Madurai District, Madurai
- 4.The District Educational Officer
Usilampatti, Madurai District.
- 5.The Correspondent,
Nadar Saraswathi Higher Secondary school
Usilampatti - 625532
Madurai District.
- 6.B.Jeya Rajan
- 7.The Headmaster
Nadar Saraswathi Higher Secondary school
Usilampatti - 625532
Madurai District.

... Respondents

PRAYER: Writ Petitions filed under Article 226 of the Constitution of India for issuance of Writ of CERTIORARIFIED MANDAMUS to quash the proceedings of the 5th Respondent herein in proceedings No.Nil dated 22.06.2012 and to re-instate the petitioner as Office Assistant in the Nadar Saraswathi Higher Secondary School, Usilampatti, with all attendant benefits including salary from 04.01.2012.

For Petitioner : M/S.E.V.N.Siva
For R-1 to R-4 : Mr.M.Linga Durai
For R5 & R7 : No appearance

O R D E R

This Writ Petition is filed for issuance of a writ of Certiorarified Mandamus to quash the impugned proceedings of the 5th
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Respondent herein in proceedings No.Nil dated 22.06.2012 and to direct the official respondents to re-instate the petitioner as Office Assistant in the Nadar Saraswathi Higher Secondary School, Usilampatti, with all attendant benefits including salary from 04.01.2012.

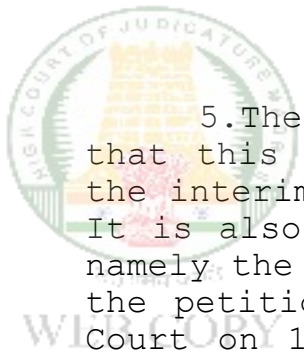
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2.The brief facts that are necessary for disposal of this writ petition are as follows:

The Petitioner was appointed as Office Assistant in the 5th respondent school namely Nadar Saraswathi Higher Secondary School on 11.01.1999. It is stated that the post is a regular sanctioned post and the appointment was against the vacancy. The appointment of petitioner was also approved by the 4th respondent. The 5th respondent school is a Private aided school and governed by the provisions of Tamil Nadu Recognized Private Schools (Regulation) Act and Rules.

3.It appears that there are internal disputes over the management of the fifth respondent for a long period. It is stated that the 4th Respondent passed an order dated 09.05.2011 approving the appointment of 6th Respondent as Correspondent of the school upto 24.01.2012 subject to the final judgement in the pending suits. The 6th respondent by an order dated 04.01.2012 placed the petitioner under suspension. Consequently, a charge memo was issued on 14.02.2012 alleging misconduct against the petitioner. It is admitted that the fourth respondent passed an order on 12.01.2012 for direct payment to the school. It is also admitted that such order of direct payment was challenged before this Court. There was an order of stay of operation of the order of direct payment. However, subsequently the order of direct payment was upheld after holding that the 6th respondent is not competent to represent the Educational Agency. There was a further direction directing the State Government to appoint a Special Officer under Section 34(A) of Tamil Nadu Societies Registration Act.

4.Pursuant to the issuance of charge memo to the petitioner, the 6th respondent called for explanation from the petitioner. The petitioner submitted his explanation to the Charge Memo on 20.02.2012. Quite contrary to the final order passed by this court in the Writ Petition earlier referred to above, the 6th respondent directed an enquiry against the petitioner on 28.05.2012. It is the case of the petitioner that without informing the petitioner as to the date, time or venue of enquiry, the 6th respondent proceeded to terminate the service of the petitioner. According to the petitioner, no enquiry was conducted and the petitioner was never given a copy of enquiry report. It is also stated that no second show cause notice was issued to the petitioner. Challenging the order dated 22.06.2012 dismissing the petitioner from service, the present Writ Petition is filed.



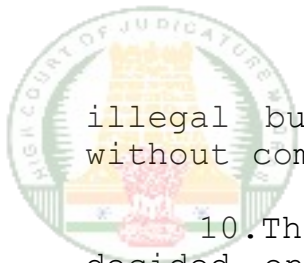
5.The learned counsel appearing for the petitioner submitted that this Court, after issuing notice to the respondents, passed the interim order staying the operation of the order of termination. It is also pointed out that this court has directed the respondent namely the District Educational Officer, Usilampatti to re-instate the petitioner into service forthwith. The order passed by this Court on 17.09.2014 was complied with by the District Educational Officer and the petitioner was directed to report duty on 23.04.2015 and the petitioner reported duty on 23.04.2015.

6.The learned counsel appearing for the petitioner submitted that the impugned order was passed by a person, who is neither competent nor an authority empowered to exercise the powers and functions of the Correspondent. The learned counsel also relied upon the judgement of this Court in WP(MD) No. 7854 of 2012 dated 23.04.2019. By a different order dated 18.05.2012, the same Correspondent passed an order terminating the services of one of R.Selvarani, who was also employed in the same school. When the order of termination was challenged before this court in WP(MD) No. 7854 of 2012. this Court quashed the order of termination and allowed the Writ Petition on the ground that the dismissal order dated 18.05.2012 by the 6th respondent suffers from several irregularities. It was held that the 6th respondent had no *locus standi* to exercise the powers of the Correspondent with effect from 12.01.2012. Hence it was held that the impugned order therein was void the *non est* in the eye of law.

7.The 4th respondent has also filed a counter affidavit and submitted that the 6th respondent was not in office for the school administration. It is further pointed out that no further permission to implicate major punishment to the employee is granted by the competent authority. Hence, it is submitted that the award of punishment against the petitioner is against the Rules. The learned counsel then pointed out that as per the procedure contemplated under the Private Schools Regulation Act and Rules and from the narration of facts and events, the order of termination against the petitioner is illegal and the procedure contemplated under the Act is not followed. No enquiry officer was appointed and no enquiry was conducted by following the procedure known to law.

8.When the 6th respondent is held to be a person, who has no *locus standi* and who is not competent to exercise powers and functions of the Correspondent of the school, this Court has no other option but to allow the Writ Petition and accordingly the impugned order passed by the 5th Respondent herein in proceedings No.Nil dated 22.06.2012 is set aside.

9.Since the petitioner has already been re-instated, no direction is required for re-instatement. The petitioner is entitled to continuity of services as the order of termination is not only



illegal but also void since that has been issued by a person, without competence or jurisdiction.

10.The issue relating to other monetary benefits has to be decided only in the presence of the person interested. In the present case, after the appointment of the Special Officer, the management is not in the hands of the Educational Agency. Since this Court has held that the termination of the petitioner from services is void, it may be the legal obligation of the management of the school to pay salary and other monetary benefits to the petitioner for his non-employment.

11.Since the learned counsel appearing for the petitioner seeks liberty to approach the appropriate management in future and the petitioner's right to claim salary is not adjudicated in the present proceedings, it is open to the petitioner to work out his remedy in a separate proceedings in accordance with law.

12.In the result, this writ petition is allowed in the above terms. No costs.

Sd/-

Assistant Registrar (CS II)

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/ /2021

Sub Assistant Registrar(CS)

To

1.The State of Tamil Nadu
Rep. By its Secretary
Department of School Education
Fort St.George, Chennai - 600 009

2.The Director of School Education,
College Road,
Chennai - 600 006

3.The Chief Educational Officer,
Madurai District, Madurai

4.The District Educational Officer
Usilampatti, Madurai District.

+1 CC to M/s.GP (SR-27512[F] dated 27/08/2021)

Order made in

W.P. (MD) No.7506 of 2013

25.08.2021

RS (15.09.2021) 4P 6C

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