



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.03.2021

CORAM:

THE HONOURABLE MR.JUSTICE **M.M.SUNDRESH**

AND

THE HONOURABLE MRS.JUSTICE **S.ANANTHI**

W.A. (MD) No.1264 of 2020 &

C.M.P. (MD) No.7206 of 2020

and

C.M.P. (MD) No.583 of 2021

in

W.A. (MD) No.SR2728 of 2021 &

W.A. (MD) No.SR2728 of 2021

W.A. (MD) No.1264 of 2020:

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

2.The Assistant Elementary Educational Officer,
Ambasamudram, Tirunelveli District. : Appellants/1st & 2nd
Respondent

Vs.

1.P.Mangaiyarkarasi : 1st Respondent/Writ Petitioner

2.The Secretary and Correspondent,
Perumal Thevar Memorial Primary School,
Kakanallur, Ambasamudram,
Tirunelveli District. :2nd Respondent/3rd Respondent

PRAYER: Writ Appeal filed under Clause 15 of the Letters Patent as against the order dated 12.07.2018 made in W.P. (MD) No.13137 of 2014.

Prayer in WP (MD). 13137 of 2014 :

Writ Petition is filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorari/Mandamus, calling for the records pertaining to the Impugned Order passed by the third respondent dated 21.07.2014 dismissing the petitioner from service and quash the same and consequently direct the 3rd respondent to allow the petitioner to continue her service.

For Appellants : Mrs.S.Srimathy,
Special Government Pleader

For Respondents : Mr.Mohammed Imran
for M/s.Ajmal Associates for R.1
Mr.K.R.Laxman
for R.2



C.M.P. (MD) No.583 of 2021 in W.A. (MD) No.SR2728 of 2021:

The Secretary and Correspondent,
Perumal Thevar Memorial Primary School,
Kakanallur, Ambasamduram,
Tirunelveli District.

: Petitioner / Appellant

Vs.

1.P.Mangaiyarkarasi

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

3.The Assistant Elementary Educational Officer,
Ambasamudram, Tirunelveli District. : Respondents

PRAYER in C.M.P. (MD) No.583 of 2021: Petition filed under Section 5 of the Limitation Act to condone the delay of 891 days in filing the writ appeal against the order dated 12.07.2018 made in W.P. (MD) No.13137 of 2014.

PRAYER in W.A. (MD) No.SR2728 of 2021: Writ Appeal filed under Clause 15 of the Letters Patent as against the order dated 12.07.2018 made in W.P. (MD) No.13137 of 2014.

For Petitioner : Mr.K.R.Laxman,
/Appellant

For Respondents : Mr.Mohammed Imran
for M/s.Ajmal Associates for R.1

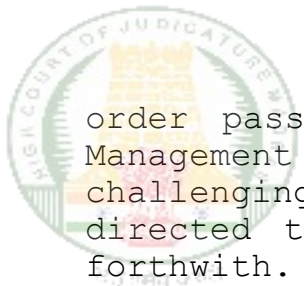
Mrs.S.Srimathy,
Special Government Pleader
for R.2 and R3

COMMON JUDGMENT

(Judgment of the Court was delivered by **M.M.SUNDRESH, J.**)

Two appeals have been filed challenging the order of the learned Single Judge, of which, one is in SR stage. W.A. (MD) No.1264 of 2020 has been filed by the Government and C.M.P. (MD) No.583 of 2021 in W.A. (MD) No.SR2728 of 2021 has been filed by the Management.

2. The first respondent / Teacher filed a writ petition in W.P. (MD) No.13137 of 2014 seeking a writ of certiorari challenging the
<https://hcservices.ecourts.gov.in/hcservices/>



order passed by the Management dismissing her from service. The Management has also filed a writ petition in W.P.(MD)No.8354 of 2016 challenging the order dated 07.03.2016, by which, the Management was directed to reinstate the petitioner in W.P.(MD)No.13137 of 2014 forthwith.

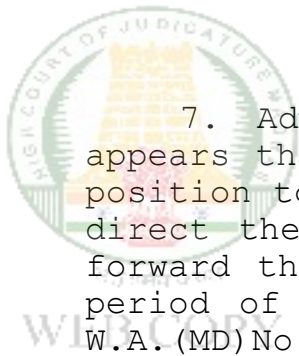
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3. The learned Single Judge passed an order quashing the impugned order, which is the subject matter of W.P.(MD)No.13137 of 2014, ie., the order of dismissal. Incidentally, the order dated 09.07.2018, rejecting the dismissal proposal sent by the Management, has worked itself out, as the prayer sought for in the writ petition filed by the Management no longer survives. Certain directions have been issued with respect to the disbursement of salary and other benefits. Accordingly, the payment due to the writ petitioner in W.P.(MD)No.13137 of 2014 was directed to be shared both by the Government and the Management, on the ground that the Government is responsible for the delay and the Management is the cause.

4. As there was no dispute with respect to the reasoning adopted by the learned Single Judge to the effect that prior approval has not been sought for before passing the order of dismissal, the aforesaid admitted position stood accepted. The only other issue is with respect to the payment due to the petitioner in W.P.(MD)No.13137 of 2014 and by whom.

5. Taking into consideration of the aforesaid position, this Court requested Advocate Mr.T.Lajapathi Roy, to act as a Mediator. Upon mediation, it is agreed that the Management School would pay a sum of Rs.1,00,000/- (Rupees One Lakh only) to discharge its liability. The remaining question would be with respect to the payment that would be payable by the Government, namely, the appellants in W.A.(MD)No.1264 of 2020.

6. On the aforesaid aspect, we find considerable force and submission made by the learned Special Government Pleader. Though there was a delay in passing order on the approval sought for, the fact remains that the issue has arisen in view of the order of dismissal passed, even prior to the approval, by the Management. The Government / appellants in W.A.(MD)No.1264 of 2020 have passed an order directing the School Management to reinstate the Teacher. This was put into challenge and an interim order has been obtained. Because of the pendency, the request for prior approval was not considered. Therefore, it is not as if the appellants in W.A.(MD) No.1264 of 2020 have taken a contra stand to the writ petition in W.P.(MD)No.13137 of 2014. In such view of the matter, we cannot fasten the liability on the statutory authorities, namely, the aforesaid appellants. However, the subsistence allowance is required to be paid for the four months period, ie., the suspension period.



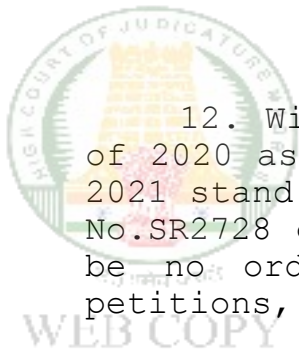
7. Admittedly, the institution is an aided institution. It appears that the Management is in dire state and they are not in a position to make any payment on this. In such view of the matter, we direct the Management / petitioner in C.M.P.(MD)No.583 of 2021 to forward the proposal for payment of subsistence allowance from the period of suspension to be cleared and paid by the appellants in W.A.(MD)No.1264 of 2020. Similarly, the Management will have to forward all the other papers for the incidental relief for the writ petitioner. The writ petitioner / Teacher is also entitled for continuity of service for the aforesaid period and therefore, consequential benefits will have to be given, though she is not entitled for any salary for the interregnum period.

8. Accordingly, the petitioner in C.M.P.(MD)No.583 of 2021 in W.A.(MD)No.SR2728 of 2021 / Management shall pay a sum of Rs.1,00,000/- (Rupees One Lakh only) within a period of two weeks from the date of receipt of a copy of this judgment and within such period, all the papers pertaining to the writ petitioner in W.P.(MD) No.13137 of 2014, as indicated by us supra, will have to be sent, which is inclusive of the payment of subsistence allowance during the period of suspension.

9. On receipt of the aforesaid proposal, the Government / appellants in W.A.(MD)No.1264 of 2020 will have to pass appropriate orders within a further period of eight weeks thereafter. We once again reiterate that the subsistence allowance will have to be paid by the aforesaid appellants. We find that though they are not responsible for the delay, there is a degree of responsibility which can be fixed upon them as well, at least to the extent of paying the subsistence allowance and the consequential benefits other than the salary for the interregnum period.

10. At this juncture, it has been brought to the notice of this Court that the request for approval of the Secretaryship of the Management is pending consideration with the appellants in W.A.(MD) No.1264 of 2020. Appropriate orders in this regard will have to be passed within a period of four weeks from the date of receipt of a copy of this judgment. If the approval is granted, then the direction issued by us in the preceding paragraph would start from the period of two weeks from the date of such approval. If approval is denied, then apart from the direction to the Management to pay the amount, which has to be complied with by the Management, as ordered, ie., within a period of two weeks from the date of receipt of a copy of this judgment, the remaining direction will have to be complied with by the appellants in W.A.(MD)No.1264 of 2020 forthwith.

11. This Court places on record its appreciation for the efforts made by Mr.T.Lajapathi Roy, learned Counsel, who was appointed as Mediator.



12. With the above observations and directions, W.A.(MD)No.1264 of 2020 as well as C.M.P.(MD)No.583 of 2021 in W.A.(MD)No.SR2728 of 2021 stand disposed of. In view of the orders passed above, W.A.(MD) No.SR2728 of 2021, which is in SR stage, stands closed. There shall be no order as to costs. Consequently, connected miscellaneous petitions, if any, shall stand closed.

Sd/-

Assistant Registrar (CS-III)

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/ /2021

Sub Assistant Registrar(CS)

gk

To

1. The District Elementary Educational Officer,
Tirunelveli,
Tirunelveli District.
2. The Assistant Elementary Educational Officer,
Ambasamudram, Tirunelveli District.
3. The Secretary and Correspondent,
Perumal Thevar Memorial Primary School,
Kakanallur, Ambasamudram,
Tirunelveli District.

+1 CC to Mr.K.R.LAXMAN, Advocate (SR-9894[F] dated 10/03/2021)

+1 CC to M/s.AJMAL ASSOCIATES, Advocate (SR-9937[F] dated 10/03/2021)

**W.A. (MD) No.1264 of 2020
and
C.M.P. (MD) No.583 of 2021
in
W.A. (MD) No.SR2728 of 2021
09.03.2021**

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