



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.02.2021

CORAM

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH
AND
THE HONOURABLE MRS.JUSTICE S.ANANTHI

W.A. (MD)No.1147 of 2018
and
C.M.P. (MD) No.8203 of 2018

The Secretary,
Sri.K.G.S. Higher Secondary School,
Aduthurai,
Thanjavur District.

... Appellant/Writ Petitioner

Vs.

1.K.Saravanan

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

... Respondents/Respondents

Prayer : Appeal filed under Clause 15 of the Letters Patent Act against the order passed by this Court in W.P.(MD)No.11813 of 2010, dated 04.10.2016.

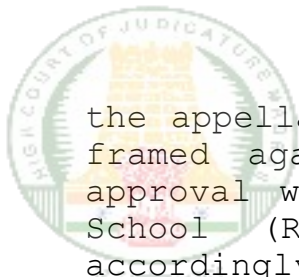
Prayer in WP(MD). 11813/ 2010 : Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a writ, order or direction in the nature of a WRIT OF CERTIORARIFIED MANDAMUS to call for the records relating to the order passed by the first respondent in proceedings Na.Ka.No.58432/W5/E2/2010 dated 9.8.2010 and quash the same and consequently direct the second respondent to reinstate the petitioner in service with backwages, continuity of service and other service and monetary benefits within a time frame to be fixed by this Hon'ble Court.

For Appellant : Mr.G.Sankaran
For Respondent No.1 : Mr.A.Thirumurthy
For Respondent No.2 : Mrs.S.Srimathy
Special Government Pleader
* * * * *

J U D G M E N T

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

The 1st respondent was appointed as Assistant Headmaster with
<https://hcservices.ecourts.gov.in/hcservices/>



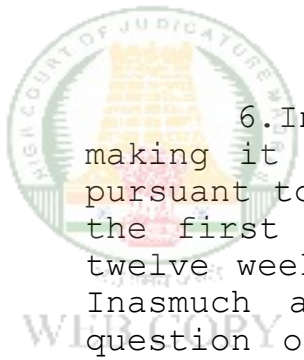
the appellant and he was working in the said capacity. Charges were framed against him and proved, resulting in his dismissal and approval was sought under Section 22(1) of the Tamil Nadu Private School (Regulation) Act, 1973 by the appellant, which was accordingly granted. An appeal was filed against the dismissal of respondent No.1 before respondent No.2/appellate authority. The order of dismissal passed by the appellant and the approval given by the Chief Educational Officer were set aside by the appellate authority *inter alia* holding that the punishment is disproportionate to the charge. The appellant for the reasons best known to him, approached the very same authority, who has passed the order, and the said authority reversed the order without giving notice to the first respondent. This order was put to challenge before the learned Single Judge. Learned Single Judge allowed the Writ Petition on the ground of want of notice and non-compliance of the adequate procedure. Challenging the same, the present appeal has been filed.

2.Mr.G.Sankaran, learned counsel for the appellant submitted that the first order passed by the appellate authority is in nullity and therefore, there is no question of issuing notice of hearing. Inasmuch as the order passed was wrong, the reversal of the order cannot be found fault with. Thus, the said order cannot be questioned and therefore, the order of the learned Single Judge warrants interference. Incidentally, it is submitted that the learned Single Judge observed that the charges framed as such comes under Chapter 5 Tamil Nadu Private School (Regulation) Act, 1973 and not Chapter 8.

3.Learned counsel for respondent No.1 submitted that the order which inure to the benefit of respondent No.1 has been reversed without notice, in the absence of power of review to the appellate authority.

4.This Court considered the rival submissions and perused the materials placed on record.

5.We do not find any merit in this appeal, though the reasons assigned by the learned Single Judge by placing reliance on Chapter 8 may not be correct. Power of review is a creature of the statute. In the case on hand, the appeal was filed, challenging the order of dismissal, as approved by the approving authority. The order of dismissal and the permission granted for the dismissal was found to be wrong by the appellate authority. When a power is given to the appellate authority to go into the entire issues involving the order of removal and permission for removal and having exercised the power, in the absence of any power of review, ought not to have undertaken that exercise and that too, without notice to respondent No.1. Such an order passed has got a civil consequences, as rightly held by the learned Single Judge. In such view of the matter, we are inclined to confirm the order of the learned Single Judge.



6. In such view of the matter, the appeal stands dismissed, making it clear that it is well open to the appellant to proceed pursuant to the order of remand passed by the appellate authority at the first instance. The entire exercise shall be completed within twelve weeks from the date of receipt of a copy of this judgment. Inasmuch as the respondent has reached the superannuation, the question of reinstatement per se would not arise. Consequently, connected C.M.P. is also dismissed. No costs.

Sd/-

Assistant Registrar (AE)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

SJ

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

To

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

+1 CC to Mr.A.THIRUMURTHY, Advocate (SR-6036[F] dated 18/02/2021)

+1 CC to THE SPECIAL GOVERNMENT PLEADER(SR-6470[F] dated 22/02/2021)

Order made in
W.A. (MD)No.1147 of 2018 and
C.M.P. (MD) No.8203 of 2018
18.02.2021

KMV(CO)

SRS (08/03/2021) 3P : 4C