



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON:	02.03.2021
DELIVERED ON:	30.03.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P. (MD) Nos.23280 & 24571 of 2018 and 16588 of 2019

and W.M.P. (MD) Nos.21150 of 2018 & 13228 of 2019

(Through Video Conference)

1) R.Selvaraj ... Petitioner in W.P. (MD)
Nos.16588 of 2019 &
23280 of 2018

2) M/s.Senaiar Kalaimagal High School,
Rep. by its Secretary,
Erachi- 628 720, Kovilpatti Taluk,
Tuticorin District. ... Petitioner in W.P. (MD)
No.24571 of 2018

Vs.

1) The Chief Educational Officer,
Thoothukudi-628 002
Thoothukudi District.

2) The District Educational Officer,
Kovilpatti 628 501,
Thoothukudi District.

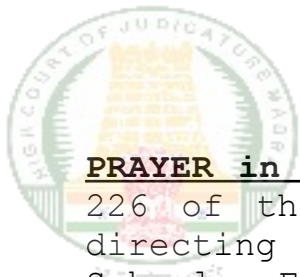
3) The Secretary,
Senaiar Kalaimagal High School,
Erachi- 628 720, Kovilpatti Taluk,
Thoothukudi District.

4) Mr.S.Sankaran ... Respondents in W.P. (MD)
Nos.16588 of 2019 &
23280 of 2018

1) The Chief Educational Officer,
Thoothukudi- 628 002,
Thoothukudi District.

2) The District Elementary Educational Officer,
Kovilpatti 628 501,
Thoothukudi District.

3) R.Selvaraj ... Respondents in W.P. (MD)
No.24571 of 2018



PRAYER in W.P. (MD) No. 23280 of 2018: Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, directing the 3rd respondent Secretary, Senaiar Kalaimagal High School, Erachi, Kovilpatti, Thoothukudi District herein to forthwith allow the petitioner to re-join duty as Headmaster in the 3rd respondent school and continue to pay salary and all attendant benefits from the date of rejoining and disburse the subsistence allowance to the petitioner for the entire period of suspension w.e.f. 24.08.2018 till the date of re-joining.

PRAYER in W.P. (MD) No. 16588 of 2019: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned proceedings issued by the 3rd respondent Secretary of Senaiar Kalaimagal High School, Erachi, Kovilpatti, Thoothukudi District in Na.Ka.No.1/2018 dated 19.12.2018 reducing the rank of BT Assistant (Social Science), quash the same and further direct the respondents to allow the petitioner herein to continue as Headmaster in the third respondent with all attendant benefits including salary, allowances and continuity of service.

PRAYER in W.P. (MD) No. 24571 of 2018: Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, directing the 2nd respondent to consider and pass orders on the representation of the petitioner dated 23.10.2018 relating to extension of order of suspension of the third respondent w.e.f. 24.10.2018, within a time frame fixed by this Court.

In W.P. (MD) Nos. 23280/2018 & 16588/2019:

For Petitioner : Mr. Ajmal Khan,
Senior Counsel for
M/s. Ajmal Associates

For RR 1 & 2 : Mr. A. Thiyagarajan
Government Advocate

For RR 3 & 4 in : Mr. B. Saravanan
W.P. (MD) No.
23280/2018 & R4
in W.P. (MD) No.
16588/2019

In W.P. (MD) No. 24571 of 2018:

For Petitioner : Mr. B. Saravanan



For RR 1 & 2 : Mr. A. Thiyagarajan,
Government Advocate

For R3 : Mr. Ajmal Khan, Senior Counsel

C O M M O N O R D E R

Since the issue involved in all these writ petitions are one and the same, they are disposed of by this common order.

2. The petitioner herein, in W.P. (MD) No. 23280 of 2018 and 16588 of 2019, was appointed as Headmaster in the third respondent School on 21.06.1991. On 24.08.2018, he was placed under suspension in contemplation of a Departmental Inquiry and accordingly, a charge memo was issued by the third respondent on 10.09.2018, on three counts. On expiry of two months, the suspension order dated 24.08.2018 came to be extended until the final decision of the pending disciplinary action through his proceedings dated 23.10.2018. Pursuant to the inquiry report, dated 23.11.2018 holding the charges proved against the petitioner, the third respondent had imposed a punishment of reversion of rank from the post of Headmaster to BT. Assistant (Social Science) through the impugned proceedings dated 19.12.2018.

3. The third respondent herein, while extending the suspension period through his order dated 23.10.2018, claims to have given a representation to the District Educational Officer, Kovilpatti, requesting for approval for extending the suspension period and since the representation was not considered in time, the third respondent has filed the above writ petition in W.P. (MD) No. 24571 of 2018 seeking for a direction of the second respondent to consider his representation within the stipulated time.

4. It is the case of the delinquent Headmaster that the order extending the suspension period is violative of Section 22(3)(b) of the Tamil Nadu Recognised Private Schools Regulations Act, 1973 (hereinafter referred to as the Act). As also, the order of punishment dated 19.12.2018, which is in violation to 22(1) of the Act. Insofar as the writ petitions filed by the delinquent Headmaster is concerned, an action taken by the School Management extending the suspension period unilaterally beyond two months is opposed to section 22 (3) (b) of the Act.

5. As per section 22(3)(b) of the Act, the School Management is empowered to place the Teacher under suspension for a period of two months. However, if the suspension period is required to be extended thereafter, the same can be done only by the Competent Authority authorised by the Government of Tamil Nadu for extending the suspension order for a further period of two months, on



condition that, such an extension order contains reasons necessitating the extension and circumstances under which, the enquiry cannot be completed, which reasoning for non-completion of enquiry should be directly attributable to the Teacher.

6. Admittedly, the competent Authority had not passed any reasoned order enabling the extension of suspension period. The School Management had taken a stand that their representation dated 23.10.2018 seeking for extension of the suspension period is pending before the District Educational officer. Such a defence cannot justify the action of extending the suspension period since such a power of extending is vested with the Competent Authority alone, as required under provision 22 (3) (b) of the Act.

7. The District Educational Officer had filed a counter affidavit affirming that the application seeking approval for the extension of the suspension period, was received only on 26.10.2018 and that such approval cannot be considered, since the School Management had already extended the period of suspension, without obtaining their permission. The statement of the District Educational Officer is in conformity with the proviso to Section 22(3)(b) of the Act. As such, the impugned order of the School Management dated 23.10.2018 extending the suspension Management dated 23.10.2018 extending the suspension period cannot be legally sustained. Consequently, the plea taken by the School Management in W.P. (MD) No. 24571 of 2018 does not also require consideration since no representation can be made seeking for post approval of the extension of the suspension period and therefore, this writ petition filed before the School Management does not require consideration.

8. The aforesaid proposition is supported by the decision of this Court in the case of **V.Thiagarajan vs. the Director of School Education Chennai and others** reported in (2011) 6 MLJ 467 in the following manner:-

"12. The allegation levelled against the petitioner is that the petitioner lost Pupils' attendance register of 10th Standard 'D' Section on 5.8.2010. Therefore the management resolved to place the petitioner under suspension under Rule 17(2)(i) of the Rules, until further orders. The order of suspension was communicated to the petitioner on 3.1.2011. As per Section 22(3)(b) the suspension order passed against a teacher or other person employed in a private school can remain in force only for a period of two months from the date of suspension and it can be extended by the competent authority for reasons to be recorded in writing for a



further period of two months only. Though it is contended in the counter affidavit that resolution was passed by the School Committee on 19.2.2011, appointing enquiry officer pursuant to which a representation was submitted to the competent authority/2nd respondent on 2.3.2011 seeking extension of the period of suspension for a further period of two months, no order extending the period of suspension was issued by the competent authority viz., the second respondent till date. The statutory provision viz., Section 22(3)(b) clearly states that no order of suspension shall remain in force for more than a period of two months from the date of suspension unless the competent authority extends the period of suspension for a further period of two months by recording reasons in writing and one such reason is that the enquiry could not be completed within two months for reasons directly attributable to such teacher or other person.

13. Here in this case, the enquiry officer was appointed by the 4th respondent management by resolution dated 17.2.2011. In the counter affidavit it is stated that on 28.3.2011 the petitioner submitted a request to permit him to peruse certain documents. The said request itself was after two months. Thus the delay in not completing the enquiry for the allegation levelled against the petitioner till 2.3.2011 is not attributable to the petitioner and the management should be blamed for taking such a long time. Further, the request for extension of the period of suspension was made on 2.3.2011 and in the said request letter it is not stated how the petitioner is responsible for not completing the enquiry within two months. On the contrary, it is stated in the said representation addressed to the second respondent that the enquiry could not be completed within two months and therefore extension is to be granted. The said reason cannot be a reason to seek extension of the period of suspension as it is in violation of the statutory provision contained in section 22(3)(b) of the Act, which specifically states that the reasons for not completing the enquiry should be directly attributable to the petitioner (delinquent)."

9. Insofar as the impugned order of punishment imposed on the School Headmaster is concerned, it is seen that the punishment of <https://hccservicescourts.mv.in/hccservices> link to the post of B.T. Assistant (Social science)



has been imposed without the prior approval of the Competent Authority appointed by the Government of Tamil Nadu. Section 22(1) of the Act mandates such prior approval from the competent authority before imposing punishments of dismissal, removal or reduction in rank. It is not in dispute that the School Management had not obtained prior approval of the Competent Authority before imposing the impugned punishment, which again is clearly in violation of Section 22(1) of the Act. The District Educational Officer, Kovilpatti had also affirmed in their counter statement that the School Management has imposed the punishment of reversion without their prior approval, which is against Section 22(1) of the Act and as such, the punishment itself is invalid.

10. An Hon'ble Division Bench of this Court in the case **Tamilavel Uma Maheswaranar Karanthai Arts College, Thanjavur vs. State of Tamil Nadu and others** reported in (2012) 2 CWC 432 has affirmed the above proposition that, a punishment of reversion, without prior approval is illegal. The relevant portion of the order reads thus:

"A perusal of the above said discussions reveal that to get prior permission before effecting termination of service is not a mere formality and it is mandatory and if such approval is not obtained before termination, the order of termination has to be construed as illegal and ab initio void. "

11. In the light of the above discussion, the impugned order of punishment dated 19.12.2018, reverting the delinquent from the post of Head Master to B.T. Assistant (Social Science), being illegal, is quashed. Likewise, the proceedings of the third respondent dated 23.10.2018, extending the delinquent Head Master's suspension period, being illegal, is quashed. Since the original suspension order dated 24.08.2018 is valid only for a period of two months, the suspension order itself has become redundant and therefore, the petitioner would be entitled to rejoin duty as Head Master in the School Management. Accordingly, the writ petitions filed in W.P.(MD) Nos.16588 of 2019 & 23280 of 2018 stand allowed.

12. Since the representation dated 23.10.2018 made by the School Management to the District Educational Officer for post approval of the extension of the suspension period is impermissible and illegal, the prayer sought for in W.P.(MD) No. 24571 of 2018 cannot be sustained. Accordingly, the writ



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W.P. (MD) Nos. 23280 & 24571 of 2018

petition stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar ()

// True Copy //

/ /2021

Sub Assistant Registrar (CS)

sts

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:

- 1) The Chief Educational Officer,
Thoothukudi-628 002
Thoothukudi District.
- 2) The District Educational Officer,
Kovilpatti 628 501,
Thoothukudi District.
- 3) The Secretary,
Senaiar Kalaimagal High School,
Erachi- 628 720, Kovilpatti Taluk,
Thoothukudi District.

+1 CC to M/s.AJMAL ASSOCIATES, Advocate (SR-14690[F] dated 31/03/2021)

+3 CC to M/s.B.SARAVANAN, Advocate (SR-14659, 14656, 14657[F] dated 31/03/2021)

+1 cc to The Special Government Pleader Sr.No.14817

Common Order made in
W.P. (MD) Nos. 23280 & 24571 of 2018
and 16588 of 2019

Dated:
30.03.2021