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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.01.2022

CORAM:

THE HON'BLE MR. JUSTICE D.KRISHNAKUMAR

W.P.No.504 of 2022 and
WMP No.545 of 2022

B.Illangeswaran

... Petitioner

vs.

1. The Commissioner,
Directorate of School Education,
DPI Campus, College Road,
Chennai 600 006.
 2. The Joint Director of School Education (Higher Secondary),
Directorate of School Education, DPI Campus,
College Road, Chennai 600 006.
 3. The Chief Educational Officer,
Tirupattur District, Tirupattur.
 4. The District Educational Officer,
Tirupattur Educational District,
Tirupattur.
- ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus to call for the records relating to the impugned proceedings issued by the second respondent in Na.Ka.No.048657/W2/E3/2021 dated 01.11.2021 and to quash the same and consequently directing the first respondent to consider the Appeal petition dated 24.02.2021 submitted by the petitioner, based on merits and records, within a time frame to be fixed by this court.

For Petitioner : Mr.G.Sankaran

For Respondents : Mr.Abhishek Murthy, Gov.Advocate
(Education),



O R D E R

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This writ petition has been filed seeking to issue a Writ of Certiorarified Mandamus to quash the impugned proceedings issued by the second respondent in Na.Ka.No.048657/W2/E3/2021 dated 01.11.2021 and consequently directing the first respondent to consider the Appeal petition dated 24.02.2021 submitted by the petitioner, based on merits and records, within a time frame, as fixed by this court.

2. Mr.Abhishek Murthy, learned Government Advocate takes notice for the respondents

3. The case of the petitioner in brief:

While the petitioner was working as P.G.Assistant in Koratti Government Higher Secondary School, Tirupattur in the 2014, he was implicated in a criminal case in Crime No.5/2014, filed by one Mr.Jayakrishnan, belongs to Kerala State, alleging that the petitioner had received advance amount, by creating a fabricated sale agreement. Inview of the same, the petitioner was arrested on 13.03.2014 and he was placed under suspension vide order dated 29.04.2014 passed by the second respondent and Deparmental enquiry was also proceeded against him. After, investigation, the Deputy Superintendent of Police, Nedumangad, filed a final report dated 08.09.2014 and 4.01.2016 to treat the case as false. Therefore, the petitioner was exonerated from the criminal charges. Thereafter, the suspension order was revoked vide order dated 04.10.2017 by the second respondent, without prejudice to the pendency of departmental action and then, the third respondent passed order dated 08.02.2019, imposing punishment of censure against the petitioner.

3.1. Against the order of censure, the petitioner filed an Appeal before the second respondent, wherein, on 20.07.2010, the second respondent has passed an order stating that as per Rule 7 (1)(a) of the Tamil Nadu Government Servant Conduct Rules, a Government servant cannot purchase any immovable property, without intimation to the Department. On 07.03.2020, the third respondent, issued another charge memo under 17(b) of Tamil Nadu Civil Service (Discipline and Appeal) Rules and the petitioner submitted his explanation. The enquiry officer filed report and based on that report, punishment was imposed on the petitioner, stopping increment without cumulative effect.

3.2. According to the petitioner, he has been imposed for



the second time for the same set of charges, which is violation of statutory provisions. Therefore, he filed an Appeal before the second respondent, however, it was rejected, stating that the Appeal has not been filed within a period of 60 days, from the date of receipt of the order. Challenging the above order, this writ petition has been filed.

4. The learned counsel for the petitioner submitted that there is a delay of 42 days in filing the Appeal before the second respondent and the reasons for the delay is also stated by the petitioner in the Appeal petition. He further submitted that due to the bonafide reasons only, the petitioner could not file the Appeal within 60 days from the date of receipt of order, but without considering the reasons, the Appeal petition was rejected and hence, the rejection order passed by the second respondent is liable to be quashed.

5. The learned Government Advocate (Education), appearing for the respondents submitted that the petitioner has filed the Appeal beyond the limitation period of 60 days and hence, there is no error on the orders passed by the second respondent, and it does not warrant any interference by this court.

6. Heard the counsels appearing for both the parties and I have perused the materials on record. By consent of both the counsel, this matter has been taken up for final hearing.

7. It is not disputed by the petitioner that the Appeal was preferred with a delay of 42 days. In the Appeal petition the petitioner has stated that, he has received the punishment order on 13.11.2020, however, due to the pandemic situation during that period, he could not file the Appeal immediately and hence, there occurred a delay. But the petitioner has not filed appropriate petition along with the Appeal petition, to condone the delay in preferring the Statutory Appeal. Therefore, this court is of the view that on this technical ground, an employee could not be penalized and one more opportunity to be given to the petitioner to file separate petition to condone the delay in filing the Appeal.

8. Accordingly, it is ordered as follows:

(i) the impugned order dated 01.11.2021 passed by the second respondent is set aside and the petitioner is directed to resubmit his Appeal along with a petition to condone the delay in preferring the Appeal, before the second respondent, within four weeks from the date of receipt of a copy of this order.

ii) On such receipt of the Appeal along with condone delay petition, the second respondent shall consider the condone delay



petition and pass appropriate orders within six days thereafter.

9. With the above direction, this writ petition is allowed. Consequently, connected writ miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

mst

To

1. The Commissioner,
Directorate of School Education,
DPI Campus, College Road,
Chennai 600 006.
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College Road, Chennai 600 006.
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Tirupattur District, Tirupattur.
4. The District Educational Officer,
Tirupattur Educational District,
Tirupattur.

+1cc to the Government Pleader Sr.3365
+1cc to Mr.G.Sankaran, Advocate Sr.3182

W.P.No.504 of 2022 and
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ca[co]
srg 02/02/2022