



W.P(MD)No.8288 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.11.2022

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.8288 of 2021

T.Soundarajan Durai

... Petitioner

Vs.

1.The Director of School Education,
College Road,
Chennai – 600 006.

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

3.Tinnevely Diocese Trust Association (TDTA),
Rep. by the Hon'ble Administrators,
Old No.18, New No.19, North High Court Road,
Palayamkottai, Tirunelveli – 627 002.

4.The Manager,
TDTA High, Higher Secondary and Special Schools,
Diocesan Office Campus,
No.5, Punithavathiyar Street,
Palayamkottai, Tirunelveli,
Tirunelveli District.

5.The Correspondent,
St.John's Higher Secondary School,
Palayamkottai – 627 002,
Tirunelveli District.

... Respondents



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Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing the 3rd respondent Honourable Administrators of Tinnevely Diocese Trust Association (TDTA) to consider and pass orders forthwith on the petitioner's representation dated 29-03-2021.

For Petitioner : Mr.T.Cibi Chakraborty

For Respondents : Mr.N.Satheeskumar,
Addl. Government Pleader for R1 & R2.

Mr.G.Prabhu Rajadurai for R3 & R4.

Mr.P.P.Alwin Balan for R5.

ORDER

Heard the learned counsel for the writ petitioner, the learned Additional Government Pleader for the respondents 1 and 2, the learned counsel for the respondents 3 and 4 and the learned counsel for the fifth respondent.

2.The writ petitioner was working as Headmaster in St.John's Higher Secondary School, Palayamkottai. It is coming under the corporate management of the third respondent. The petitioner has been working in one corporate school or another coming under the third respondent since 1991. The



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petitioner was visited with an order of transfer dated 21.07.2017. The petitioner was relieved from the fifth respondent school and asked to join in Walker's Higher Secondary School, Dohnavur, Tirunelveli District. Questioning the same, the petitioner filed W.P.(MD)No.13828 of 2017. An interim order was granted in his favour on 26.07.2017. However, the petitioner could not continue to work in St.John's Higher Secondary School. The management took the stand that since he had already handed over charge, he will not be allowed to report for duty at St.John's Higher Secondary School. One Mrs.B.V.Persis Gnanaselvi who was working as Headmistress of Walker's Higher Secondary School, Dohnavur went on medical leave. According to the petitioner, she was not formally relieved from her post on 21.07.2017. The petitioner was literally left high and dry. According to the petitioner's counsel, neither he was allowed to report for duty at St.John's Higher Secondary School nor any instruction was given to him to join in the transferred place. Almost two years went by in this fashion. Eventually, the petitioner had to withdraw the writ petition itself on 26.04.2019. In the meanwhile, he filed Cont.P.(MD)No.1849 of 2018. The contempt petition was also closed. The petitioner eventually joined in Walker's Higher Secondary school on 09.05.2019 and he was transferred to Baren Bruck Higher Secondary School, Bungalow Surandai on 03.06.2019. He retired from service on 30.06.2022.



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Now the question that arises for consideration is as to how the period from 21.07.2017 upto 08.05.2019 is to be treated. According to the petitioner, since he had come this Court and obtained an interim order of stay, it should be treated as duty for all purposes and he must be paid the salary arrears also. The petitioner had earlier filed W.P.(MD)No.5277 of 2018 and direction was given on 26.04.2019 to the management to consider his representation. Thereafter, the Hon'ble Administrators issued proceedings dated 12.09.2020 making it clear that the aforesaid period is to be dealt with separately subject to the orders to be passed in W.P.(MD)No.20220 of 2018 filed by one Sathark Gnanadasan. Unfortunately for the petitioner, the said writ petition got dismissed as infructuous on 16.12.2020. In these circumstances, the present writ petition has been filed.

3.The learned counsel for the writ petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition and called upon this Court to grant relief as prayed for. His pointed contention is that mass transfers were issued in July 2017 and similarly placed persons had already been paid the salary arrears. The petitioner alone has been deprived of salary arrears. Even though the prayer is only for directing the management to pass order on the petition mentioned representation, he called upon this Court to issue a positive



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direction to the management to send an appropriate proposal to the department so that his salary grant will be released.

4.The learned counsel for the management states that the management is ready to consider the case of the writ petitioner.

5.I carefully considered the rival contentions and went through the materials on record. The stand of the management that they are willing to accept the case of the writ petitioner must be taken with a pinch of salt. I can understand if the management is going to pay the salary arrears from its pocket, it is not so. The writ petitioner was working in aided institutions all along. Therefore, the management would like to conveniently shift the burden to the department. Here is the case where the department has nothing to do with the fight between the writ petitioner and the management. The department had no role whatsoever. The management issued mass orders of transfer and the aggrieved teachers came to this Court and an undertaking was given before this Court and an interim direction was passed not to disturb the teachers. The management did not honour the undertaking given before this Court. The management took the stand that since the petitioner had already handed over the charge, he will not be allowed to report for duty.



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6. As already noted, the petitioner was transferred from St. John's Higher Secondary School to Walaker's Higher Secondary School. In the place of the writ petitioner, one Sathark Gnanadasan was posted. The said Sathark Gnanadasan had assumed charge on 21.07.2017 itself. The learned counsel for fifth respondent took me through the affidavit averments of the writ petitioner. The writ petitioner had frankly and fairly stated that to avoid complication, he handed over the charge to Sathark Gnanadasan. Interim order was passed by this Court only on 26.07.2017 in W.P.(MD)No.13828 of 2017. The undertaking given by the management was that the teachers will not be unnecessarily disturbed. In view of the same, a direction was given to the management not to disturb the petitioner until further orders. This interim order could not have taken the petitioner any where. The dates are material. When the interim order was passed on 26.07.2017, the petitioner had already handed over charge and in his place Thiru. Sathrak Gnanadasan had also assumed the charge. That is why the Hon'ble Administrators issued proceedings dated 12.09.2020 permitting the petitioner to implead himself in W.P.(MD)No.20220 of 2018 filed by Sathrak Gnanadasan as regards treating the period from 21.07.2017, till 08.05.2019. It is not as if the writ petition filed by Sathrak Gnanadasan came to be disposed of only on 16.12.2020. In other words, three months after the proceedings were



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issued by the Hon'ble Administrators, the writ petition came to be disposed of and dismissed as infructuous. In the meanwhile, the petitioner filed W.M.P.(MD)No.14821 of 2020 to get himself impleaded.

7.However, he chose to accept dismissal order of W.P.(MD)No.20220 of 2018 meekly. He ought to have agitated his rights in the said writ proceedings itself as directed by the Hon'ble Administrators or in the alternative, he could have filed writ appeal. He did not resort to either course of action.

8.In these circumstances, it would be monstrous to place any financial burden on the education department. The transfer order with which the petitioner was visited was promptly challenged by the petitioner but the petitioner did not carry the fight to its logical conclusion. He withdrew the writ petition without reserving any liberty. Likewise, the contempt petition filed by him alleging breach of the interim order was also allowed to be closed. He did not challenge the proceedings dated 12.09.2020 issued by the Hon'ble Administrators. He did not take the matter further when W.P.(MD)No.20220 of 2018 was dismissed as infructuous. Having been guilty of all such defaults, now the petitioner cannot expect the department to pay the bill. The matter is entirely between the management and the writ petitioner. I direct the third



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respondent to pass appropriate orders on merits and in accordance with law on the petition mentioned representation. Such an order will be passed by the third respondent/management within a period of four weeks from the date of receipt of a copy of this order.

9.The writ petition is disposed of accordingly. No costs.

22.11.2022

Index : Yes / No
Internet : Yes/ No
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To:-

1.The Director of School Education,
College Road,
Chennai – 600 006.

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



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G.R.SWAMINATHAN, J.

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