



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

WEB COPY

W.P. (MD) Nos.16871, 16872 & 16873 of 2021

and

W.M.P. (MD) Nos.13755, 13756, 13757, 13758, 13759 & 13761 of 2021

W.P. (MD) No.16871 of 2021:

M.Jeyaseelan

... Petitioner

vs.

1.The Commissioner of School Education
O/o.the Commissioner of School Education
DPI Compound, College Road, Chennai

2.The Chief Educational Officer
Office of the Chief Educational Office
Kanyakumari, Kanyakumari District

3.The District Educational Officer
O/o.the District Educational Office
Thiruvattar, Kanyakumari District

4.The Correspondent
Abraham Memorial Higher Secondary School
Marthancode-629 163
Kanyakumari District

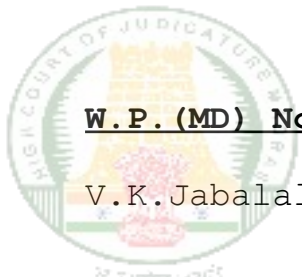
5.Miss.Blessy Litta

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of writ of certiorari calling for the records relating to the impugned proceedings Nil, dated 05.03.2019 passed by the 5th respondent and consequential impugned order A.Thi.Mu.No.8297/E2/2020, dated 21.12.2020 passed by 2nd respondent and quash the same as illegal.

For Petitioner : Mr.C.Venkatesh Kumar
for M/s.Ajmal Associates

For Respondents : Mr.G.V.Vairam Santhosh
Additional Government Pleader for R1 to R3
Mr.A.Rajesh for R4 & R5



W.P. (MD) No.16872 of 2021:

V.K.Jabalal

... Petitioner

vs.

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O/o.the Commissioner of School Education
DPI Compound, College Road, Chennai

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4.The Correspondent
Abraham Memorial Higher Secondary School
Marthancode-629 163
Kanyakumari District

5.Miss.Blessy Litta

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of writ of certiorari calling for the records relating to the impugned proceedings Nil, dated 04.03.2019 passed by the 5th respondent and consequential impugned order A.Thi.Mu.No.8310/E2/2020, dated 21.12.2020 passed by 2nd respondent and quash the same as illegal.

For Petitioner : Mr.C.Venkatesh Kumar
for M/s.Ajmal Associates

For Respondents : Mr.G.V.Vairam Santhosh
Additional Government Pleader for R1 to R3
Mr.A.Rajesh for R4 & R5

W.P. (MD) No.16873 of 2021:

S.Lodwin

... Petitioner

vs.

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... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of writ of certiorari calling for the records relating to the impugned proceedings Nil, dated 04.03.2019 passed by the 5th respondent and quash the same as illegal.

For Petitioner : Mr.C.Venkatesh Kumar
for M/s.Ajmal Associates

For Respondents : Mr.G.V.Vairam Santhosh
Additional Government Pleader for R1 to R3
Mr.A.Rajesh for R4 & R5

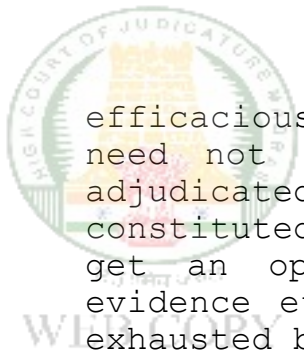
C O M M O N O R D E R

Since the issue involved in all the cases are interlinked, they have been clubbed together, heard together and are being disposed of by this common order.

2. The orders impugned in the present writ petitions are punishment orders passed by the Correspondent of a Private Aided School. Therefore, appeal lies under Section 23 of the Tamil Nadu Recognized Private Schools (Regulation) Act, 1973 (hereinafter, referred to as "the Act").

3. Section 23 of the Act provides appeal against the order of punishment imposed on teachers and other persons employed in private schools. Explanation to Section 23 of the Act clarifies that the expression 'order' includes any order made on or after the date of the commencement of the Act in any disciplinary proceeding which was pending on that date. Even appeal is entertainable in respect of the grievances regarding pay and allowances or any of whose conditions of service are altered or interpreted to his disadvantage, by any order. Therefore, the scope of Section 23 of the Act is wider and in respect of the orders passed by the Private School Management, the aggrieved person is bound to prefer appeal under Section 23 of the Act.

4. Section 24 of the Act contemplates second appeal. The second appeal lies before the Tribunal and the jurisdictional Principal Sub Court is designated as the Tribunal to deal with the second appeal under Section 24 of the Act. When statutory

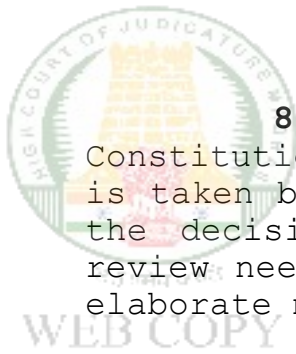


efficacious alternate appeal remedy is available, the High Court need not entertain a writ petitions. The disputes are to be adjudicated before the Appellate Authority and the Special Tribunal constituted, which is a judicial forum, wherein the petitioners will get an opportunity of effective adjudication, including taking evidence etc. Therefore, the appeal remedy contemplated is to be exhausted before approaching the High Court.

5. The Rule is to exhaust the appellate remedy. Entertaining a writ petition is an exception. The importance of alternate remedy, at no circumstances, be undermined by the High Courts. The power of judicial review is limited. The opportunity of the aggrieved person to adjudicate the disputed issues with reference to the original documents and evidence, including oral evidence, need not be taken away by the High Court in a routine manner. When such remedies are efficacious, the aggrieved person also may get an opportunity to defend his case in a proper manner. Therefore, a balanced approach is required. Only if there is any gross injustice or the High Court formed an opinion that some remedy is imminent and the damage, if any caused, cannot be restored, then alone the writ petition is to be entertained, but not otherwise before exhausting the statutory remedy contemplated under the Act.

6. The legislative intention is also to be considered by the High Court. The legislative intention is to ensure that the decisions of the Original Authorities are tested regarding its correctness or otherwise. Therefore, the alternate remedy / appellate remedy contemplated under the statute is to be followed in all circumstances and preferring a writ petition will unnecessarily take away the rights of the aggrieved person. It is not as if the aggrieved person at his choice approaching the Court challenging the original order passed by the Management.

7. Large number of writ petitions are filed without exhausting the statutory appeal remedies and High Court is also entertaining such writ petitions in a routine manner. Keeping such writ petitions pending for long time would cause prejudice to the interest of the litigants also. Thus, such statutory provisions regarding the appeal are to be decided at the first instance, enabling the litigants to avail the remedy by following the procedures as contemplated under law. Such writ petitions are filed may be on the ground of jurisdiction or otherwise. However, the Courts are expected to ensure that all such legal grounds available to the parties are adjudicated before the proper Forum and only after exhausting the statutory remedies, writ petitions are to be entertained. In the absence of exhausting such remedies, High Court is loosing the benefit of deciding the matter on merits as the High Court cannot conduct a trial or examine the original records in the writ proceedings under Article 226 of the Constitution of India.



8. The power of judicial review under Article 226 of the Constitution of India is to ensure the process to which a decision is taken by the Authority Competent in accordance with law, but not the decision itself. Thus, the scope of the power of judicial review need not be expanded so as to conduct an adjudication in an elaborate manner.

9. In the present case, when the appellate remedy is available to the petitioners, this Court need not go into the merits of the case and the petitioners are at liberty to approach the competent Appellate Authority in a prescribed format. In the event of preferring any appeal, the Appellate Authority shall consider the case on merits and in accordance with law. The period during which the writ petitions were pending before this Court is to be taken into consideration for the purpose of condoning the delay and the issues are to be adjudicated on merits and a final decision is to be taken by affording an opportunity, as expeditiously as possible.

10. To be noted, the Appellate Authority is exercising quasi judicial power. While exercising such a power, the competent Appellate Authority is conferred with the powers to deal with the legal grounds as well as the precedents, which all are placed by the respective parties. Therefore, the apprehension of the petitioner is unnecessary and the petitioner is at liberty to raise all legal grounds, including the grounds raised in the present writ petitions, before the Appellate Authority.

11. With the above observations and liberty, the writ petitions are disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (T&P)

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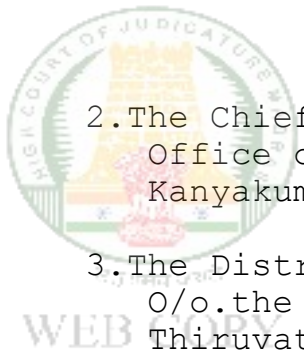
/ /2022

Sub Assistant Registrar(CS)

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To:

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+3 CC to M/s.C.VENKATESH KUMAR (AJMAL ASSOCIATES), Advocate
(SR-10737[F] dated 09/03/2022)

+1 CC to M/s.T.CIBI CHAKRABORTHY, Advocate (SR-10777[F]
dated 09/03/2022)

+1 CC to M/s.SPL.GP (SR-10981[F] dated 09/03/2022)

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