



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.02.2022

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.(MD) No.20302 of 2019

and

W.M.P.(MD) No.16911 of 2019

A.Thilakam

... Petitioner

-vs-

1.The Joint Director/Appellate Authority,
Elementary Education (Aided Schools),
Directorate of Elementary Education,
Chennai-600 006.

2.M.C.T.M. Memorial Primary School,
Rep., by its Secretary,
Namunasamuthiram, Pudukkottai District.

... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus to call for the records relating to the impugned order issued by the 1st respondent in Na.Ka.No.014924/H4/2019 dated 06.08.2019 read with order dated 25.01.2011 issued by the 2nd respondent and quash the same and consequently direct the respondents to pay all the consequential benefits payable to the petitioner.

For Petitioner : Mr.T.Antony Arul Raj

For R1 : Mr.G.V.Vairam Santhosh,
Additional Government Pleader

O R D E R

The order passed by the 1st respondent dated 06.08.2019 read with order dated 25.01.2011 issued by the 2nd respondent are sought to be quashed in the present writ petition.

2.The writ on hand has been instituted questioning the punishment imposed. The petitioner is working as a Secondary Grade Teacher in the 2nd respondent-School, which is a Government Aided School. The appointment of the petitioner was approved by the competent Educational Authority and the petitioner is working under the management of the 2nd respondent.



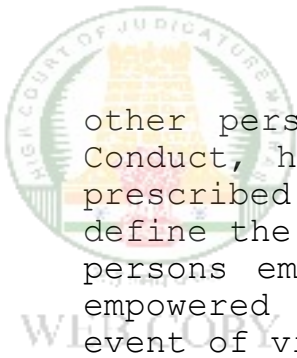
3.Learned counsel appearing for the petitioner urged this Court by stating that the petitioner was imposed with an order of punishment on certain personal vengeance and extraneous circumstances. Several instances are stated in the affidavit for the purpose of assailing the impugned orders. However, High Court cannot conduct an elaborate enquiry in respect of such disputed facts. Disputed facts are to be adjudicated with reference to the documents and evidences in original.

4.The power of judicial review of the High Court under Article 226 of the Constitution of India is to ensure the process through which a decision is taken by the competent authority in consonance with the provisions of the statute or rules, but not the decision itself. Therefore, the scope of adjudication of disputed facts is limited and such adjudication can be done in extraordinary circumstances where it is possible to form an opinion. Otherwise, the aggrieved person has to exhaust the statutory remedies provided under the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 (hereinafter referred to as "the Act" for brevity) for the better appreciation of facts. This apart, the factual findings recorded by the competent authority or the statutory authorities by conducting a full-fledged enquiry would be of greater assistance to the High Court for the purpose of exercise of judicial review under Article 226 of the Constitution of India. Thus, the aggrieved person need not be deprived of an opportunity of an effective adjudication under the provisions of the Act.

5.The importance of the appellate remedy contemplated under the Act need not be undermined. The legislative intent is to ensure that the aggrieved person get an opportunity for effective adjudication of documents and evidences including oral evidences, if required. Therefore, such a valuable opportunity is to be availed for the purpose of arriving finality in respect of disputed facts.

6.In the event of entertaining a writ petition before complete adjudication of facts and circumstances, there is a possibility of omission, error or otherwise in the matter of disputed facts. Therefore, in all circumstances, the aggrieved person must be permitted to exhaust the statutory remedy, which is available to redress the grievances in an effective manner. Thus, the rule is to prefer an appeal and entertaining a writ petition is an exception.

7.Let us now consider the scope of the Act. Section 20 of the Act provides 'appointment of teachers and other employees in private schools'. Section 21 provides 'teachers and other persons employed in private schools to be governed by Code of Conduct'. Sub-Section (1) of Section 21 contemplates that every teacher and every other person employed in any private school shall be governed by such Code of Conduct as may be prescribed and if any teacher or



other person so employed violates any provision of such Code of Conduct, he shall be liable to such disciplinary action as may be prescribed. Sub-Section (2) states that the school committee, may define the standards of conduct to be observed by teachers and other persons employed in the private school. Therefore, the school is empowered to provide Code of Conduct for enforcement and in the event of violation, disciplinary proceedings may be initiated.

8. Section 22 denotes 'dismissal, removal or reduction in rank or suspension of teachers or other persons employed in private schools'. Accordingly, an order of suspension may be issued.

9. Pertinently, Section 23 provides 'appeal against orders of punishment imposed on teachers and other persons employed in private schools'. Section 23 of the Act, reads as follows:-

"23. Appeal against orders of punishment imposed on teachers and other persons employed in private schools.- Any teacher or other person employed in any private school -

(a) who is dismissed, removed or reduced in rank or whose appointment is otherwise terminated; or

(b) whose pay or allowances or any of whose conditions of service are altered or interpreted to his disadvantage, by any order, may prefer an appeal against such order to such authority or officer as may be prescribed; and different such authorities or officer as may be prescribed for different classes of private schools.

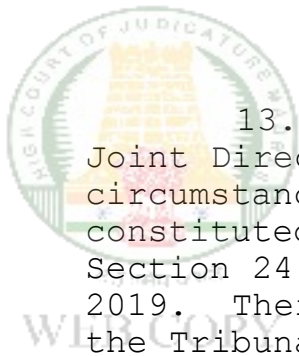
10. Therefore, an appeal shall lie under Section 23 if any order passed by the Original Authority regarding pay or allowances or any of whose conditions of service are altered or interpreted to his disadvantage. The usage of words "pay or allowances" widely cover varieties of punishment including the minor punishment of stoppage of increment or recovery or otherwise. Explanation to Section 23 further 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. Any disciplinary proceedings including the pay and allowances or alteration of services, conditions are in interpretation made to the disadvantage of the person. Thus, reading of Section 23 unambiguously provides that an appeal under Section 23 shall be filed by an aggrieved person, if any, order passed affecting the service conditions of the teachers or the persons employed in private schools.

11. Section 24 contemplates 'second appeal' and the caption made in Section 23 is adopted in Section 24 of the Act. Accordingly, any order passed under Section 23 is appealable under Section 24 as it is a second appeal. Once the first appeal is



provided under Section 23 of the Act covering any order passed including the order regarding pay and allowances, which all are minor in nature, then Second Appeal against the First Appeal cannot be denied under the established principles of law. Even the statute indicates the same as Section 24 unambiguously stipulates that if any appeal under Section 23 was against the dismissal, removal or reduction in rank or termination of appointment of teacher or other persons employed in private schools, such teacher or other person or the educational agency aggrieved by any order may prefer an appeal to the Appellate Tribunal or Tribunal.

12. The language employed in Section 24 is that a teacher or other person or the educational agency are entitled to prefer second appeal. Therefore, even in respect of minor punishment falling under Section 23(b), the educational agency or the teacher or other person may file a second appeal. Section 23 further clarifies that aggrieved person by any order may in any such appeal may prefer appeal against the order to the Tribunal. Thus, any person aggrieved by any order passed in the first appeal is entitled to file a second appeal under Section 24 of the Act. The second appeal is not restricted with reference to the dismissal, removal or reduction in rank or termination of appointment alone. The caption mentioned in the Sections 23 and 24 alone cannot be looked into for the purpose of interpretation of Sections 23 and 24. A constructive interpretation with reference to the scope and language employed as a whole must be considered for the purpose of entertaining an appeal either under Section 23 or a second appeal under Section 24 of the Act. It is needless to state that Section 23 provides first appeal and Section 24 provides second appeal. Section 23 clarifies that any teacher or other person employed in any private school is aggrieved from and out of the order passed with reference to the pay or allowances or any of the disadvantage, prefer an appeal in the event of passing any order by the appellate authority under Section 23 and such orders are appealable under Section 24 i.e., Second Appeal. It is not as if first appeal can be filed against all orders and second appeal is restricted only for the termination, removal or reversion in rank. Once the first appeal is entertained and an order is passed on merits, then the second appeal would lie against all such orders under Section 24 of the Act before the Tribunal constituted. Therefore, it is unambiguously clear that against the order passed by the Original Authority/School Management, the first appeal lies before the competent authority under Section 23 of the Act and the Second Appeal lies before the Tribunal under Section 24 of the Act. The respective jurisdictional Principal Sub Courts are designated as Tribunal for the purpose of entertaining Second Appeal under Section 24 of the Act. Thus, all such orders passed under Section 23 of the Act are appealable orders and the Second Appeal would lie under Section 24 of the Act before the Tribunal constituted for adjudication of the disputes.



13. In the present case, the first appeal was decided by the Joint Director of Elementary Education (Aided Schools). Under these circumstances, the petitioner has to approach the Tribunal constituted for the purpose of adjudication of Second Appeal under Section 24 of the Act. The writ petition was instituted in the year 2019. Therefore, the petitioner need not be unnecessarily driven to the Tribunal for the purpose of filing a fresh appeal, as this Court is inclined to transfer the writ petition before the Tribunal for disposal of the case by re-numbering as Second Appeal under Section 24 of the Act. These being the factum established, this Writ Petition stands transferred to the Principal Sub Court/Tribunal, Pudukkottai District constituted under Section 24 of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 for adjudication and disposal and the Tribunal is requested to dispose of the matter as expeditiously as possible. The Registry, Madurai Bench of Madras High Court, Madurai is directed to transfer all the case papers to the Principal Sub Court/Tribunal, Pudukkottai District within a period of two weeks from today.

14. With the above observations and directions, this Writ Petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Deputy Registrar (Accounts)

// True Copy //

/ /2022

Sub Assistant Registrar (CS)

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To

1. The Joint Director/Appellate Authority,
Elementary Education (Aided Schools),
Directorate of Elementary Education, Chennai-600 006.

2. The Principal Sub Court/Tribunal, Pudukkottai.

Copy to

1. The Registrar (Judicial),
Madurai Bench of Madras High Court, Madurai.
2. The Section Officer Writ Section,
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s. SPL GP (SR-5062[F] dated 09/02/2022)

+1 CC to M/s. T. ANTONY ARUL RAJ, Advocate (SR-5243[F] dated 10/02/2022)

W.P. (MD) No. 20302 of 2019

08.02.2022

NSN (CO)

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