



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 25.01.2022

Pronounced on : 22.03.2022

CORAM

THE HONOURABLE MRS.JUSTICE **S.SRIMATHY**

W.P. (MD)Nos. 3535, 20002 and 20061 of 2014

and

M.P. (MD)Nos.1 and 2 of 2014

WEB COPY

W.P. (MD)No.3535 of 2014:

The Ramasamy Memorial Middle School,
represented by its Secretary,
Agraharam South Street,
Vasudevanallur, Sivagiri Taluk,
Tirunelveli District.

... Petitioner

vs.

1.The Joint Director of School Education,
(Aided Schools) DPI Buildings,
College Road, Chennai - 600 006.

2.The District Elementary Education Officer,
Tirunelveli Town,
Tirunelveli District.

3.S.Paramasivam

4.M.Valliammal

... Respondents

***(Cause title amended, vide Court Order,
dated, 11.04.2017 in M.P. (MD)No.3 of 2014)***

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, to call for the records relating to the order of the 2nd respondent made in Om.Mu.No.9634/B1/09, dated 09.12.2009 and of the first respondent made in Na.Ka.17178/G1/2013, dated 02.08.2013 and Na.Ka.No.17178/G1/2013, dated 03.01.2014 and to quash all of them in so far as the petitioner Ramasamy Memorial Middle School Vasudevanallur, Tirunelveli District is concerned.

For Petitioner : Mr.M.Joseph Thatheus Jerome

For R1 and R2 : Mr.N.Ramesh Arumugam
Government Advocate (Civil side)

For R3 and R4 : R. Aravindan



W.P. (MD)No.20002 of 2014:

M.Valliammal

... Petitioner

vs.

- 1.The Joint Director,
Department of Primary Education,
Government of Tamil Nadu,
Chennai - 6.
- 2.The District Elementary Education Officer,
Department of Primary Education,
Tirunelveli -1.
- 3.Ramasamy Memorail Middle School,
represented by its Secretary,
Vasudevannallur, Sivagiri Taluk,
Tirunelveli Distirct.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, to direct the third respondent to pay the salary for the suspension period commencing from 16.04.2009 to 30.06.2009 and the annual increment payable to the writ petitioner for the period from 2009 to 2014 as directed by the official respondents, with other consequential benefits, within the period as fixed by this Court.

For Petitioner : R. Aravindan
For R1 and R2 : Mr.N.Ramesh Arumugam
Government Advocate
(Civil side)

For R3 : Mr.M.Joseph Thetheus Jerome

W.P. (MD)No.20061 of 2014:

M.Valliammal

... Petitioner

vs.

- 1.The Joint Director,
Department of Primary Education,
Chennai - 6.
- 2.The District Elementary Education Officer,
Department of Primary Education,
Tirunelveli.
- 3.Ramasamy Memorial Middle School,
represented by its Secretary,
Vasudeva Nallur, Sivagiri Taluk,
Tirunelveli District.
- 4.Selvi

... Respondents



PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records pertaining to the order passed by the first respondent in Na.Ka.No.17178/G1/2013, dated 03.01.2014 and to quash the same and consequently to direct the first respondent to pass appropriate order to promote the writ petitioner for the post of Headmaster in the third respondent School on the basis of her seniority and other relevant experience, by cancelling the promotion given to the fourth respondent with other consequential benefits thereon.

For Petitioner : R. Aravindan
For R1 and R2 : Mr.N.Ramesh Arumugam
Government Advocate
(Civil side)

For R3 : Mr.M.Joseph Thetheus Jerome

For R4 : No appearance

COMMON ORDER

The Writ Petition in W.P.(MD)No.3535 of 2014, is filed for issuance of a Writ of Certiorari, to call quash the order in Om.Mu.No.9634/B1/09, dated 09.12.2009 and of the first respondent made in Na.Ka.17178/G1/2013, dated 02.08.2013 and Na.Ka.No.17178/G1/2013, dated 03.01.2014.

2.The Writ Petition in W.P.(MD)No.20002 of 2014, is filed for issuance of Writ of Mandamus, to direct the third respondent to pay the salary for the suspension period commencing from 16.04.2009 to 30.06.2009 and the annual increment payable to the writ petitioner for the period from 2009 to 2014 as directed by the official respondents, with other consequential benefits, within the period as fixed by this Court.

3.The Writ Petition in W.P.(MD)No.20061 of 2014 is filed for issuance of Certiorarified Mandamus, to quash the order passed by the first respondent in Na.Ka.No.17178/G1/2013, dated 03.01.2014 and consequently to direct the first respondent to pass appropriate order to promote the writ petitioner for the post of Headmaster in the third respondent School on the basis of her seniority and other relevant experience, by cancelling the promotion given to the fourth respondent with other consequential benefits thereon.

4.The petitioner School in W.P.(MD)No.3535 of 2014, is having standards from I to V, which is aided and standards VI to VIII,



which is self-financing. The delinquent Valliammal, the fourth respondent in W.P.(MD)No. 3535 / 2014, is working in the petitioner School. According to the school, the delinquent failed to discharge her duties effectively and diligently and she is disobedient and refused to sign staff circular and was alleged with several allegations. Therefore, the School Committee decided and resolved to take disciplinary action against delinquent and was suspended from service on 15.04.2009 and the said suspension order was communicated to the delinquent as well as to the District Elementary Education Officer. The petitioner School submitted a claim statement for the subsistence allowance of the delinquent during the period of suspension along with the salary claim bill for the Teachers on 05.05.2009. The disciplinary proceedings could not be completed in two months because the delinquent was not appearing on the date of enquiry. The suspension was ordered to be extended. Therefore, the petitioner School sought prior permission from the second respondent, vide application, dated 13.06.2009. Thereafter, the domestic enquiry was almost completed and the suspension was not extended by the School Committee, vide resolution, dated 29.06.2009 and the delinquent was directed to join duty from 01.07.2009. Thereafter, the delinquent joined duty on 01.07.2009. In the disciplinary proceedings, the School Committee found the delinquent guilty and a second opportunity was granted for the delinquent to submit an explanation for imposing punishment. Thereafter, the School Committee took a lenient view and imposed punishment of stoppage of increment of three years. The school sought prior permission on 09.09.2009.

5.The contention of the petitioner school was that for imposing minor punishment, it is not necessary for the school to seek prior permission from the educational authorities. However, the second respondent, vide order, dated 09.12.2009 has entertained a petition, dated 24.10.2009, filed by third respondent. The contention of the petitioner is that the third respondent is not a Teacher or any person under Section 23 or under Section 22 or under Section 41 or any aggrieved person under Tamil Nadu Recognized Private School Regulation Act. The second respondent entertained such petition and without giving any opportunity to the school and has passed an order. Therefore, the petitioner School submitted a reply, dated 14.12.2009 and the second respondent has stated prior permission is required before finalizing the punishment, vide letter, dated 23.06.2010. Thereafter, the School imposed the minor punishment of stoppage of increment for three years with cumulative effect, vide order, dated 04.07.2010.



6. Thereafter, the fourth respondent has filed a Writ Petition in W.P. (MD) No. 1748 of 2010 with a prayer not to approve the appointment of the Headmaster made by the School. But the said Writ Petition was withdrawn with a liberty to file statutory appeal. But the fourth respondent has not preferred any appeal against the punishment or suspension or service condition. In the meanwhile, the first respondent Joint Director of School Education has served a copy of the proceedings, dated 02.08.2013 and an order, dated 03.01.2014. In the said order, the first respondent has treated a petition filed by the delinquent as a review petition and has passed an order. The petitioner school is aggrieved by the above said two orders and has filed this present Writ Petition in W.P. (MD) No. 3535 of 2014.

7. In the order, dated 02.08.2013, it has been directed that the petitioner School is liable to pay the subsistence allowance, since the petitioner School has not obtained any prior permission for suspension. In the order, dated 03.01.2014, it has been stated that prior to imposing the punishment by the School Committee, the School ought to have obtained permission from the Educational authority before imposing the punishment of stoppage of increment for three years with cumulative effect. Therefore, the impugned order and the punishments imposed by the School Committee was set aside. The second respondent has filed a counter affidavit stating that the School Committee is constituted by the Educational agency of the petitioner School in accordance to Rule 12 of the Tamil Recognized Private Schools Rule, 1974. The School is empowered to take disciplinary action but the same should be in accordance with the procedures laid down in the Rules and orders of the Government. The affected Teacher has every right to appeal against the punishment order, as per G.O.Ms.No.1228, Educational, dated 30.08.1994. The School Committee is required to obtain prior permission from the Educational authority before placing a Teacher under suspension and the said procedure was not followed by the petitioner School before passing the suspension order, dated 15.04.2009. The petitioner School, therefore is bound to pay the full salary to the fourth respondent from the School funds for the irregular suspension. The claim of the petitioner School that prior permission is not necessary for imposing postponing of increment for three years is wrong. Before passing the punishment order prior permission is necessary as per G.O.Ms.No.1228. The District Elementary Education Officer is the competent authority of disciplinary action imposed on Teachers of private and aided Schools. Therefore, the petitioner School ought to have waited for the orders from the second respondent to impose the punishment. Since there is no prior permission, the punishment order is liable to be set aside.



8.The averment that the third respondent is not connected to the School and therefore, the petition filed by the third respondent cannot be entertained is wrong. The third respondent is the husband of the fourth respondent and therefore, the third respondent has filed a petition before the Chief Minister's Grievance Cell. The second respondent has also submitted stating that, vide Na. Ka. No. 3662 / 09 / Aa1, dated 23.06.2010, it was directed that the petitioner School shall act as per the above said Act and Rules and avoid unnecessary correspondence. Irrespective of major punishment or minor punishment the petitioner School is bound to take prior permission from the second respondent before passing order. In the proceedings, dated 02.08.2013, of the first respondent, the second respondent was directed to collect the particulars and submit before the second respondent. Therefore, it is not necessary to communicate to the petitioner School about the proceedings of the first respondent. For these reasons, the second respondent has prayed to dismiss the Writ Petition.

9.The third and fourth respondents have filed a counter affidavit stating that a dispute arose between the fourth respondent and the petitioner School regarding the promotion to the post of Headmaster. Since the School has overleaped the seniority and has declined promotion to the fourth respondent, the petitioner questioned the attitude of the School and hence, the petitioner was placed under suspension and subsequently disciplinary proceedings was initiated under Section 22 of Tamil Nadu Recognized Private Schools (Regulation) Act and Rule 17 of the Rules, 1974, the period of suspension shall not be extended beyond two months without an order by the competent authority. Since the fourth respondent was kept under suspension beyond two months then the petitioner School is bound to pay the salary for the period of suspension. In spite of repeated requests, the School has not paid salary to the fourth respondent. Thereafter, the School has revoked the suspension from 29.06.2019 and permitted the fourth respondent to join the School on 01.07.2009. Thereafter, the School has passed an order of punishment of stoppage of increment for three years with cumulative effect and served a copy to the petitioner. Since the punishment was a major punishment, the School ought to have obtained approval from the competent authority but, without approval the punishment order was served on the fourth respondent. Therefore, the claim of the fourth respondent that the punishment is illegal, as per G.O.Ms.No.1228, prior permission is necessary from the educational authority. Since the same was not obtained, the fourth respondent was aggrieved and submitted a representation through her husband to the Chief Minister Cell. Therefore, the second respondent directed



the petitioner School to pay the salary, vide order, dated 09.12.2009. But, the petitioner submitted a reply on 14.12.2009 but has not challenged the same in the manner known to law for more than five years and now has challenged the same, as after-thought. On the ground of delay and laches alone the Petition is liable to be dismissed.

10.The fourth respondent has already submitted an appeal before the second respondent on 12.07.2010 itself. Therefore, the claim of the petitioner is that the appeal was not submitted is factually incorrect. The first respondent, vide order, dated 02.08.2013 has directed the second respondent to verify whether the fourth respondent has preferred any appeal and also whether the order, dated 09.12.2009 was complied with. Therefore, the order passed by the first respondent is legally valid and the promotion granted to one Selvi is illegal.

11.The petitioner School submitted a reply affidavit to the averments stated by the third and fourth respondents. As per the Act, the Educational Department has to pay the subsistence allowance for the first two months and it is wrong on the part of the fourth respondent to blame the petitioner. The petitioner has also communicated to the Educational Department that the domestic enquiry against the fourth respondent was stalled by the fourth respondent and hence the suspension ought to be extended. The Educational department has received the same but, does not passed any order. In the meanwhile, the petitioner School has revoked the suspension on 29.06.2009 and the fourth respondent was directed to join on 01.07.2009 and in the meanwhile, the disciplinary proceedings was completed. The fourth respondent was found guilty and the prior permission was requested on 31.09.2008, 09.09.2009 and 17.10.2009, from the educational Department but the official respondents did not pass an order. In the meanwhile, the School issued the punishment order to the fourth respondent but, the fourth respondent has suppressed the facts in the counter affidavit. Therefore, the petitioner prayed to allow the Writ Petition and direct the Education Department to pay the subsistence allowance for the suspension period as per the Act.

12.Heard Mr.M.Joseph Thatheus Jerome, learned Counsel appearing for the petitioner School and Mr.N.Ramesh Arumugam, learned Government Advocate appearing for the official respondents. Mr.R.Aravindan Learned Counsel appearing for the individual

13.The School has suspended the fourth respondent on 15.04.2009. As per Rule 17 of the Tamil Nadu Recognized Private



School Regulation Rules, 1974 any Private School can suspend the Teacher for two months and the said suspension order shall be intimated to the Education Department. The Rule specifically states that the order shall be intimated to the Educational Department. The rule is not stating that prior approval ought to be obtained. If the school is intending to extend then also it should intimate to the authorities. It is not stating prior permission is necessary. The relevant portion of the Rule is extracted hereunder:

"(2) (i) Whenever a Teacher or other person employed in a private school is kept under suspension, such suspension shall, immediately on the date of issue of the suspension order, be intimated by the Secretary of the School Committee to the District Educational Officer concerned along with a copy of the suspension order.

(ii) On receipt of intimation regarding the suspension of a teacher or other person as mentioned in clause (i) above, the District Educational Officer concerned shall make payment of subsistence allowance to the Teacher or other person who is placed under suspension every month from the date of suspension for not more than two months at half the rate of pay which he was drawing at the time of suspension and in addition the dearness allowance, if admissible, on the basis of such pay.

(iii) Whenever the competent authority has extended the period of suspension of a Teacher or other person under the proviso to clause (b) of sub-section (3) of Section 22 of the Act, he shall intimate such extension of suspension to the District Educational Officer concerned. On receipt of such intimation, the District Educational Officer concerned shall make payment of subsistence allowance to the Teacher or other person who is placed under suspension for a further period not exceeding two months at half the rate of pay which he was drawing at the time of suspension and in addition, the dearness allowance, if admissible, on the basis of such pay.

(iv) The District Educational Officer concerned shall send an intimation regarding the payment of the subsistence allowance under clauses (ii) and (iii) above to a Teacher or other person who is placed under suspension to the Secretary of the School Committee.



(v) The payment of subsistence allowance shall be limited to maximum of four months in all."

14. Therefore, this Court is of the considered opinion that as per Rule 17, the petitioner School need not get any prior permission from the official respondents. If the School prefers to extend the suspension, then also the School shall intimate the extension of suspension to the Education Department. In the present case, the School has intimated at the time of suspension and has submitted an application, dated 13.06.2009 for extension of suspension. It is also seen that the fourth respondent was suspended on 15.04.2009. On 14.06.2009, two months would have been completed. Even prior to 14.06.2009, i.e., on 13.06.2009, itself the petitioner School has submitted a communication for extension of suspension order. From the records, it is seen that the official respondents have not issued any order intimating the granting of subsistence allowance as stated in Rule 17(2) (iv).

15. In the meanwhile, the School has revoked the suspension, vide order, dated 29.06.2009 of the School Committee directing the fourth respondent to join duty on 01.07.2009. As per Rule 17(2) the school ought to intimate the suspension, intimate the extension of suspension, thereafter the official respondents ought to intimate the payment of subsistence allowance to the school and the delinquent. In the present case since the school has already intimated the suspension and extension of suspension, then it is the Education Department who is bound to pay the subsistence allowance to the fourth respondent. Therefore, this Court is setting aside the order, dated 02.08.2013, where it has directed that the petitioner school to pay the subsistence allowance. The official respondents, namely first and second respondents are directed to pay the subsistence allowance for a period from 15.04.2009 to 30.06.2009.

16. As far as the order of punishment is concerned, the contention of the school is that stoppage of increment for three years with cumulative effect is only a minor punishment, therefore, it is not necessary to obtain prior permission from the Education Department. Under section 22 it is stated that the no teacher shall be dismissed, removed or reduced in rank nor his appointment be otherwise terminated except with the prior approval of the competent authority. The petitioner School referred to the Annexure appended to the Rules and the contents stated in the forms prescribed for the imposition of punishment, no where it is stated that the prior approval is necessary. If the Teacher is imposed with a punishment of dismissal from service, termination order or removal or compulsory retirement, then, the management ought to have obtained prior permission. But the punishment for stoppage of increment for



three years with cumulative effect is not a major punishment and so the school need not obtained any prior approval.

17. This Court is of the considered view that the stoppage of increment for three years with cumulative effect is not a major punishment it is not necessary to obtain prior permission. However the punishment will have civil consequence on the fourth respondent, the School ought to have informed the official respondents. It is seen from the records that the school has informed the official respondents about the punishment. The fourth respondent is at liberty to challenge the said punishment in accordance to law. Therefore, this Court is of the considered opinion that the petitioner School need not obtained prior permission for imposing stoppage of increment for three years with cumulative effect. Therefore, the order passed on 03.01.2014 is set aside and the Writ Petition in W.P.(MD)No. 3535 of 2014 is allowed.

18. The Writ Petition W.P.(MD)No.20002 of 2014, is filed by the fourth respondent in W.P.(MD)No.3535 of 2014, i.e., the delinquent namely, Valliammal. The Writ Petition in W.P.(MD)No.20002 of 2014, is filed for issuance of Writ of Mandamus, to direct the third respondent to pay the salary for the suspension period commencing from 16.04.2009 to 30.06.2009 and the annual increment payable to the writ petitioner for the period from 2009 to 2014 as directed by the official respondents, with other consequential benefits, within the period as fixed by this Court.

19. This Court has held that the School is not responsible for paying subsistence allowance for the said period and has directed the official respondents to pay the same. Therefore, for the first part of the prayer, this Court is directing the first and second respondents to pay the subsistence allowance from the period from 15.04.2009 to 30.06.2009.

20. Since the disciplinary proceedings have ended up in imposing punishment, the delinquent is entitled to regularize the said suspension period. Therefore, this Court is directing the school management to regularize the suspension period as duty period and confer consequential monetary and service benefits to the delinquent in accordance to law.

21. As far as the increment portion is concerned, the school ought to submit the proposal for the increment from 2009-2014. The school is directed to submit the proposal to the official respondents, then the official respondents shall pass suitable orders in accordance to law and pay the annual increments.



Therefore, this Writ Petition is disposed of with the above direction.

22. As far as the Writ Petition W.P.(MD)No.20061 is concerned, the said Valliammal has preferred this Writ Petition for issuance of a Writ of Certiorarified Mandamus, to call for the records pertaining to the order passed by the first respondent in Na.Ka.No.17178/G1/2013, dated 03.01.2014 and to quash the same and consequently to direct the first respondent to pass appropriate order to promote the writ petitioner for the post of Headmaster in the third respondent School on the basis of her seniority and other relevant experience, by cancelling the promotion given to the fourth respondent with other consequential benefits thereon.

23. The School management has filed a counter affidavit stating that under Rule 15 (4) of the Tamil Nadu Recognized Private Schools (Regulation) Act, 1973 and Rules 1974, the School has every right to promote a person of their choice. The said provision is stating any promotion can be granted based on the merit and ability of the person and if merit and ability are same then, seniority ought to be taken into account. In this present case, the School Committee has analyzed the merit and ability of the said Valliammal and the Selvi and thereafter, had come to the conclusion that the said Selvi is more meritorious person. Therefore, the school has granted promotion to the said Selvi. The proceedings of the School Committee, dated 19.08.2009, disclosed that proper and fair evaluation in selection of candidates have taken place. Further, a circular inviting the selection was also sent by the Headmaster to all the Teachers in the School on 20.08.2009. The said circular has also been approved by the Educational Department on 04.02.2010. Therefore, the petitioner is not eligible for promotion compared to the said Selvi and the School has prayed to dismiss this Writ Petition.

24. The first respondent has filed a detailed counter affidavit stating that the School Committee has conducted a written test and personal interview while conducting selection process of the qualified Teachers including the said Valliammal. The marks secured by the qualified Teachers as stated in counter affidavit are given under:

"	Marks
1. Tmt.M.Selvi	66
2. Tmt.A.Ayisha Prithal Begum	56
3. Tmt. Subahani alias Tamilselvi	46
4. Tmt.P.Indira	42
5. Tmt.M.Valliammal the petitioner	33"



25. From this, it is evident that Selvi has secured 66 marks and the said Valliammal is the fifth candidate with 33 marks and there are three more candidates who have secured more than the said Valliammal. Therefore, this Court is of the considered opinion that even if the Selvi's promotion is questionable then there are three more candidates above the said Valliammal, who have secured more marks than Valliammal. Therefore, this Court is of the considered opinion that the petitioner Valliammal is not entitled to promotion. Therefore, the Writ Petition is dismissed.

26. The Writ Petition W.P.(MD)No.3535 of 2014 is allowed. The Writ Petition W.P.(MD)No.20002 of 2014 is disposed of. The Writ Petition 20061 of 2014 is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (Records)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

Tmg

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 Joint Director,
Department of Primary Education,
Government of Tamil Nadu,
Chennai - 6.
2. The District Elementary Education Officer,
Department of Primary Education,
Tirunelveli -1.



3.The Joint Director of School Education,
(Aided Schools) DPI Buildings,
College Road, Chennai - 600 006.

+1 CC to M/s.M.JOSEPH THATHEUS JEROME, Advocate (SR-13357[F] dated 22/03/2022)

+1 CC to M/s.SPL GP (SR-13854[F],SR-13844[F] & SR-13843[F]dated 23/03/2022)

+1 CC to M/s.R.ARAVINDAN, Advocate (SR-14106[F] dated 24/03/2022)
W.P.(MD)Nos. 3535, 20002 and 20061 of 2014
22.03.2022

MGJ(05.04.2022) 13P 7C