



W.P.(MD)Nos.12428 and 15367 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.11.2022

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)Nos.12428 and 15367 of 2018
and
W.M.P.(MD)Nos.11304, 13856, 14822 and 14823 of 2018
and
Cont.P.(MD)Nos.1196 and 1197 of 2018
in
W.M.P.(MD)Nos.13856 and 11304 of 2018
in
W.P.(MD)Nos.15367 and 12428 of 2018

W.P.(MD)No.12428 of 2018:-

C.Balamurugan

... Petitioner

Vs.

- 1.The Chief Educational Officer,
Chief Educational Office,
Thoothukudi District.
- 2.The District Educational Officer,
District Educational Office,
Kovilpatti - 628501,
Thoothukudi District.
- 3.The Secretary,
Ettayapura Raja Higher Secondary School,
Ettayapuram, Thoothukudi District.
- 4.Ramkumar Raja

... Respondents



W.P(MD)Nos.12428 and 15367 of 2018

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records of the impugned suspension order issued by 3rd Respondent herein in his proceedings in Na.Ka.No.13/2018/ dated 11.05.2018 and quash the same as illegal and further direct the 3rd Respondent herein not to interfere with the petitioner's right to function as Headmaster of Ettayapuram Raja Higher Secondary School, Ettayapuram, Thoothukudi District.

For Petitioner : Mr.V.Meenakshisundaram

For Respondents : Mr.N.Sathees Kumar,
Addl. Government Pleader for R1 & R2.
Mr.S.Ramesh,
For Mr.V.Raghavachari for R3 & R4.

W.P.(MD)No.15367 of 2018:-

C.Balamurugan

... Petitioner

Vs.

- 1.The Chief Educational Officer,
Chief Educational Office,
Thoothukudi District.
- 2.The District Educational Officer,
District Educational Office,
Kovilpatti - 628501,
Thoothukudi District.
- 3.The Secretary,
Ettayapura Raja Higher Secondary School,
Ettayapuram, Thoothukudi District.

4.Ramkumar Raja

... Respondents



W.P(MD)Nos.12428 and 15367 of 2018

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling for the records of the impugned suspension extension order issued by the 3rd respondent herein in his proceedings in Na.Ka.No.16/2018 dated 06.07.2018 and quash the same as illegal.

For Petitioner : Mr.V.Meenakshisundaram

For Respondents : Mr.N.Sathees Kumar,
Addl. Government Pleader for R1 & R2.
Mr.S.Ramesh,
For Mr.V.Raghavachari for R3 & R4.

Cont.P.(MD)No.1196 of 2018:-

C.Balamurugan

... Petitioner

Vs.

Ramkumar Raja,
The Secretary,
Ettayapura Raja Higher Secondary School,
Ettayapuram, Thoothukudi District.

... Respondent

PRAYER: Petition filed under Section 11 of the Contempt of Courts Act, to punish the Respondent herein for deliberate and willful disobedience of the order of this Honourable Court dated 16.07.2018 in W.M.P.(MD) No.13856 of 2018 in W.P(MD) No.15367 of 2018 amounting to Contempt of Court under the Contempt of Courts Act, 1971.

For Petitioner : Mr.V.Meenakshisundaram

For Respondent : Mr.S.Ramesh,
For Mr.V.Raghavachari.



W.P(MD)Nos.12428 and 15367 of 2018

Cont.P.(MD)No.1197 of 2018:-

C.Balamurugan

... Petitioner

Vs.

Ramkumar Raja,
The Secretary,
Ettayapura Raja Higher Secondary School,
Ettayapuram, Thoothukudi District.

... Respondent

PRAYER: Petition filed under Section 11 of the Contempt of Courts Act, to punish the Respondent herein for deliberate and willful disobedience of the order of this Honourable Court dated 16.07.2018 in W.M.P.(MD) No.11304 of 2018 in W.P(MD) No.12428 of 2018 amounting to Contempt of Court under the Contempt of Courts Act, 1971.

For Petitioner : Mr.V.Meenakshisundaram

For Respondent : Mr.S.Ramesh,
For Mr.V.Raghavachari.

COMMON ORDER

Heard the learned counsel on either side.

2.The petitioner in both the writ petitions are one and the same. In W.P.(MD)No.12428 of 2018, the order of suspension is under challenge. In W.P.(MD)No.15367 of 2018, the order extending the period of suspension is



under challenge. The petitioner is employed as Headmaster in the third respondent school. It is an aided non-minority institution. The power of the private school management to suspend an employee is set out in Section 22 of the Tamil Nadu Recognized Private Schools (Regulation) Act, 1973 r/w. Rule 17 of the Tamil Nadu Recognized Private Schools (Regulation) Rules, 1974. The relevant statutory provisions read as under:-

“22. Dismissal, removal or reduction in rank or suspension of teachers or other persons employed in private schools. - (1)

Subject to any rule that may be made in this behalf, no teacher or other person employed in any private school shall be dismissed, removed, or reduced in rank nor shall his appointment be otherwise terminated except with the prior approval of the competent authority.

(2) Where the proposal to dismiss, remove or reduce in rank or otherwise terminate the appointment of any teacher or other person employed in any private school is communicated to the competent authority, that authority shall, if it is satisfied that there are adequate and reasonable grounds for such proposal, approve such dismissal, removal, reduction in rank or termination of appointment.

(3) (a) No teacher or other person employed in any private school shall be placed under suspension, except when an inquiry into the gross misconduct, within the meaning of the Code of Conduct prescribed under sub-section (1) of section 21, of such



teacher or other person is contemplated.

(b) No such suspension shall remain in force for more than a period of two months from the date of suspension and if such inquiry is not completed within that period, such teacher or other person shall, without prejudice to the inquiry, be deemed to have been restored as teacher or other employee:

Provided that the competent authority may, for reasons to be recorded in writing extend the said period of two months, for a further period not exceeding two months, if in the opinion of such competent authority, the inquiry could not be completed within the said period of two months for reasons directly attributable to such teacher or other person.

17. Dismissal, removal or reduction in rank or suspension of teacher or other persons employed in private school. –

(1) The competent authorities to accord prior approval for the dismissal, removal or reduction in rank of a teacher or other person employed in any private school, shall be the District Educational Officer in respect of teacher or other person employed in Pre-primary, Primary and Middle Schools and the Chief Educational Officer in respect of teacher or other person employed in High Schools, Higher Secondary Schools and Teachers' Training Institutes.

(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.*

(3) (i) *Where after enquiry, including the appeal, a suspension is found to be not justified, the management shall remit the amount of subsistence allowance paid to the teacher or other person, employed in that private school to the Government in one lumpsum under the appropriate head of account. The educational agency shall, however, pay such teacher or other person the full pay and allowances he would have drawn but for his suspension less the amount of subsistence allowance already paid to the teacher or other person for the suspension period from the funds of the management without any claim from grant.*

[(ii) Where a substitute is appointed in the place of a teacher or other person employed in a private school kept under suspension, the management shall not be entitled to any grant in respect of such a substitute.]

[(iii) Where the appellate authority has decided against the imposition of the penalty of dismissal or removal from service or placement under suspension of a teacher or other person employed in a private school by the management of that school, the management of every private school, not being a minority school, shall implement the order of the Appellate Authority and re-instate the teachers or other persons with all back wages for the period of dismissal or suspension or removal within one month from the date of order of the Appellate Authority, failing which, apart from resumption of the post, recognition shall be withdrawn.]



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[17A. Educational agencies not to obtain compulsorily resignation letter either at the time of appointment or subsequently from the employees in their school. –

(1) Whenever a teacher or other person employed in a private school, tenders his resignation of appointment, he shall inform the fact of his resignation in writing by registered post with acknowledgement due to the District Educational Officer, Inspectress of Girls' School or the Deputy Inspector of Schools concerned.

(2) No teacher or other person employed in a private school shall give to the educational agencies at any time undated or predated resignation letter.

(3) No educational agency shall insist or compel any teacher or other person employed in a private school to give at any time undated or predated resignation letter.

(4) No teacher or other person employed in a private school shall be relieved from service on the strength of resignation letter. The resignation letter shall, on receipt, be sent to the Chief Educational Officer concerned in respect of teacher and other persons employed in High Schools, Higher Secondary Schools and Teachers' Training Institutes and to the District Educational Officer concerned in respect of teacher and other person employed in a Pre-primary, Primary and Middle Schools. The Chief Educational Officer or District Educational Officer concerned shall, in turn, get the confirmation of the teacher or other person employed, as the case may be, as to the fact of such resignation and then accord his approval to relieve the teacher or other person



employed, as the case may be, from service.

(5) Entries regarding the date of acceptance of resignation of appointment shall be made by the Secretary of the school committee, in the Service Registers of the teacher or in the Service Registers of the other persons employed in a private school under proper attestation and duly countersigned by the District Educational Officer or the Inspectress of Girls' Schools, as the case may be.

(6) No substitute shall be appointed in the place of a teacher or other person employed in a private school who has been relieved on the basis of the resignation letter tendered by him, without obtaining prior approval of the Chief Educational Officer concerned in respect of the teacher and other person employed in High Schools, Higher Secondary Schools and Teachers' Training Institutions and the District Educational Officers concerned in respect of teachers and other persons employed in Pre-primary, Primary and Middle Schools.] ”

3. In this case, the management has framed certain articles of charge against the writ petitioner. Invoking their statutory power, the suspension order has been issued. It cannot be said to be without jurisdiction. However an interim stay was granted primarily on the ground that the period of suspension was not mentioned. Even if the period of suspension has not been mentioned, it should be read as limited to two months from the date of suspension order. The



W.P.(MD)Nos.12428 and 15367 of 2018

petitioner's case is that the interim order of stay was not complied with and therefore, he has filed Cont.P.(MD)No.1197 of 2018. It is seen that aggrieved by the grant of interim order, the management has filed a petition for vacating the interim stay by filing W.M.P.(MD)No.14822 of 2018. It is well settled contempt action will not lie, when a petition for vacating the interim order has been filed. The order of suspension dated 11.05.2018 is sustained. However, it is clarified that it would stand limited only to a period of two months.

4.The challenge in W.P.(MD)No.15367 of 2018 is in respect of the order dated 06.07.2018 whereby the suspension order was further extended. This order was clearly illegal because the original suspension order itself has been stayed by this Court in W.P.(MD)No.12428 of 2018. Secondly, the statutory provision contemplates that it is the competent authority of the Education Department who has to grant extension of the initial period of two months by a speaking order. In this case, the competent authority has not passed any such order. In the absence of concurrence from the competent authority, the order of extension passed by the management authority is unsustainable. Aggrieved by the interim order granted in W.P.(MD)No.15367 of 2018, the management filed a petition to vacate the interim stay in W.M.P.(MD)No.14823 of 2018. Hence, contempt action will not lie against the management.



W.P(MD)Nos.12428 and 15367 of 2018

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5. In view of the above, the suspension order is sustained and extension order is set aside.

6. The statute contemplates that at the end of four months period from the original date of suspension, the employee is deemed to be reinstated. It is of course open to the management to decline to assign duty. But the full monthly pay will have to be paid by the management. I would not saddle with the department with the liability. It is the management that is liable to pay all the salary arrears to the writ petitioner. If the petitioner had been allowed to work, then the department would be liable to make the payment. Of course, the learned counsel for the management submitted that the petitioner did not report for duty. I called upon the management to produce copy of the communications sent to the writ petitioner calling upon him to report for duty. No such communication is forthcoming. Therefore, the liability to pay the salary arrears would lie only on the management and not on the department. The arrears shall be paid by the management to the writ petitioner within a period of twelve weeks from the date of receipt of a copy of this order.



W.P(MD)Nos.12428 and 15367 of 2018

7.The writ petitions are disposed of accordingly with the aforesaid directions and Cont.P.(MD)Nos.1196 and 1197 of 2018 are closed. No costs. Consequently, connected miscellaneous petitions are closed.

08.11.2022

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

- 1.The Chief Educational Officer,
Chief Educational Office,
Thoothukudi District.
- 2.The District Educational Officer,
District Educational Office,
Kovilpatti - 628501,
Thoothukudi District.



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W.P(MD)Nos.12428 and 15367 of 2018

G.R.SWAMINATHAN, J.

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**W.P(MD)Nos.12428 and 15367 of 2018
and
Cont.P.(MD)Nos.1196 and 1197 of 2018**

**08.11.2022
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