



WEB COPY

W.P.(MD)No.3670 of 2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 03.01.2022
CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY
W.P. (MD)No.3670 of 2015

and
W.M.P. (MD)No.16189 & 16191 of 2020
and
M.P. (MD)No.1 of 2015

1. D.Samuel Diraviaraj (Died)
2. Stephen Jeyson
3. Wilson Jeyakumar
4. Nirmala Jeyaseeli

... Petitioners

***(Petitioners 2 to 4 are impleaded, vide Court order,
dated 08.08.2019 in W.M.P. (MD)No.13096 of 2019
in W.P. (MD)No.3670 of 2015)***

vs

1. The District Educational Officer,
Seranmahadevi,
Tirunelveli District.
2. The District Rehabilitation Officer,
Kokirakulam,
Tirunelveli District.
3. The Correspondent,
Florence Swainson Higher Secondary School,
Palayamkottai,
Tirunelveli District.
4. The Correspondent,
Walker Higher Secondary School,
Dohnavur - 627 102.

... 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 relating to the proceedings of the first respondent in Na.Ka.No.40/A1/2014, dated .02.2014 and quash the same and further directing the first respondent to disburse the salary as well as pension benefits as early as possible.



For Petitioners : Mr.S.Arivazhagan

For Respondents : Mrs.D.Farjana Ghoushia for R1 & R2
Special Government Pleader
No appearance for R3 & R4

O R D E R

This Writ Petition is filed for issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the proceedings of the first respondent, dated 07.02.2014 and quash the same and further directing the first respondent to disburse the salary as well as pension benefits as early as possible.

2. The petitioner has completed B.A., B.Ed., and also completed Diploma in teaching the deaf. On 09.06.1955, the petitioner was appointed as B.T. Assistant in the third respondent school. On 26.09.1989, his daughter-in-law died by committing suicide and the petitioner was arrayed as first accused in the criminal case in Cr.No.502 of 1989 under Section 174 of the Criminal Procedure Code. But the case was altered under Section 302 of the Indian Penal Code, thereafter, the petitioner was suspended from service on 02.10.1989. Thereafter, the petitioner was reinstated in service on 30.01.1991. After joining duty, the third respondent voluntarily ordered the petitioner to take leave, therefore, the petitioner was forced to take leave on 29.09.1989 to 29.01.1991 (loss of pay), 31.01.1991 to 27.02.1991 (loss of pay), 01.03.1991 to 31.03.1991 (Unearned leave) and 02.04.1991 to 11.04.1991 on medical leave. Thereafter, the petitioner joined duty on 12.04.1991.

3. In the meanwhile, the third respondent transferred the petitioner to the fourth respondent school and relieved on 19.06.1991. The petitioner reported to duty to the fourth respondent school on 20.06.1991. The petitioner was not paid any salary for these days and the petitioner attained superannuation on 31.08.1992 and was allowed to retire from service. Neither the third respondent nor the fourth respondent initiated departmental proceedings against the petitioner and no orders were passed for stoppage of any salary and pension benefits. The petitioner was convicted in the criminal case in S.C.No.87 of 1991 on the file of the Sessions Court for the offences under Section 304(1), 354 and 201 of the Indian Penal Code and was imposed 10 years of imprisonment. The said judgment was delivered on 25.11.1994, i.e., after the petitioner's retirement. The petitioner has preferred an appeal and the punishment was reduced to seven years and six months. Thereafter, the petitioner was released.



4. The petitioner submitted a representation to regularize the period and release the salary also. The petitioner submitted a representation to approve the transfer, thereafter, the fourth respondent school submitted a proposal to the first respondent for the approval of transfer and as well as the retirement. The first respondent sought clarification regarding the criminal case as well as the departmental proceedings. The first respondent returned the proposal, vide order, dated 22.01.2014, stating that the petitioner was convicted by the Criminal Court. Therefore, the transfer as well as the retirement cannot be approved. Again, the fourth respondent submitted a detailed representation specifically contending that the conviction was two years after the retirement and requested to approve the proposal for transfer and retirement. Thereafter, the first respondent passed the impugned order, dated 07.02.2014 stating that as per Rule 9(k) of the Tamil Nadu Private Schools (Regulation) Rules 1973, since the petitioner was convicted, the transfer cannot be approved. The contention of the petitioner is that, after conviction he was left alone, he filed a writ petition belatedly in the year 2015. It is reported that the petitioner died on 30.06.2019 and the legal heirs namely the sons and the daughter impleaded themselves as parties, vide Court order, dated 08.08.2019. The claim of the petitioner is to quash the impugned order and to direct the respondents to disburse the salary as well as the pension benefits.

5. The first respondent has filed a counter stating that though the transfer of the petitioner occurred prior to the conviction, the approval of transfer was sought after the conviction. Therefore, the respondent was not in a position to grant the benefits after the conviction order.

6. The third and fourth respondent schools have not filed any counter affidavit and has also not been represented by any Advocate.

7. Heard Mr.S.Arivazhagan, learned Counsel appearing for the petitioner and Mrs.D.Farjana Ghoushia, Special Government Pleader appearing for the respondents 1 and 2.

8. Rule 9(k) of the Tamil Nadu Private Schools (Regulation) Rules 1973 states that the School Committee shall not appoint any teacher whose certificate has been suspended or cancelled or who has been declared unfit to be a teacher in recognized schools or who has been convicted for offences involving moral turpitude. This Rule 9(k) is coming under the heading of "Recognition" and this rule states that the school shall not appoint any teacher who are convicted for moral turpitude. Therefore, this Court of the considered opinion that the reasons stated by respondents to decline approval is erroneous since the Rule states the school shall not appoint a teacher once the



was convicted on a later point of time. Moreover, the petitioner was convicted on 25.11.1994 and the petitioner was transferred on 19.06.1991 i.e. prior to the conviction. Since the school has not submitted any application to approve the transfer order, the petitioner cannot be denied the benefits. It is the specific case of the petitioner that he was forced to take leave by the Management, since the criminal case is pending against the petitioner. The petitioner was forced to take leave on loss of pay. Therefore, in order to meet the ends of justice, this Court is of the considered opinion that the petitioner is entitled to salary for the days he had worked. For the days the petitioner not allowed to work, the petitioner is entitled to 50% of the salary. The deceased petitioner is entitled to terminal benefits with the gratuity, arrears of pension and other benefits. The respondents shall independently consider whether the deceased petitioner's legal heirs are entitled to family pension since it is reported that the sons and daughter alone are alive and the wife is not alive.

9. Therefore, this Court is directing the third and fourth respondents to submit a proposal of transfer as well as the terminal benefits. The first and second respondents are directed to consider the same within six weeks and grant the approval of transfer and disburse the terminal benefits within twelve weeks from the date of receipt of a copy of this order.

10. With the above direction, the Writ Petition is allowed. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(T & P)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

jbr

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

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+1 CC to M/s.S.ARIVALAGAN, Advocate (SR-326[F] dated 05/01/2022)

+1 CC to M/s.SPL GP (SR-217[F] dated 04/01/2022)

Order made in
W.P. (MD) No. 3670 of 2015
03.01.2022

ma (CO)
TR(09.02.2022) 5P 7C