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W.P.(MD)No.23720 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.12.2022

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No.23720 of 2019

1.M.Muthuselvam
2.K.Umamaheshwari
3.S.Sebastian
4.N.Ravichandran
5.P.Velmurugan
6.G.Kanagalatha
7.S.R.Senthilkumar

... Petitioners

vs.

1.The Director of School Education,
College Road, Chennai-06.

2.The Joint Director of School Education,
(Higher Education), College Road,
Chennai-06.

3.The Chief Educational Officer,
Tallakulam, Madurai-02.



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4.The District Educational Officer,
Tallakulam, Madurai-02.

5.The Secretary,
MLWA Higher Secondary School,
(Run by Jain Educational and
Empowerment Trust),
Madurai-01.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to direct call for the records pertaining to the impugned order of the 4th respondent, vide proceedings, Na.Ka.No.1734/A3/2019, dated 07.08.2019 and to quash the same as illegal and unconstitutional, consequently, to direct the 4th respondent to pay salary to the petitioners for the period worked from October 2011 to May 2012 (eight months) in the 5th respondent school within the time frame.

For Petitioners : M/s.A.Amala

For R1 to R4 : Mr.D.Sadiq Raja
Additional Government Pleader

For R5 : No appearance



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ORDER

This writ petition is filed for issuance of a writ of Certiorarified Mandamus, to quash the impugned order dated 07.08.2019 and consequently to direct the 4th respondent to pay salary to the petitioners for the period worked from October 2011 to May 2012 (eight months) in the 5th respondent school within the time frame.

2. The Teachers were appointed in the 5th respondent School in various posts like B.T. Assistant, P.G. Assistant, Physical Education Teacher, etc. The 5th respondent School is an aided School run by Jain Educational and Empowerment Trust, Madurai. The students' strength of the 5th respondent School was 617 and the Teachers and Non-Teaching Staff is 25. In the year 2011, the 5th respondent School was facing problem in running the School due to sudden fall in the student strength. He requested the educational institution to close down the school. The 2nd respondent issued orders to the 3rd and 4th respondents to deploy the Teachers



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working in the 5th respondent School to some other needy School. Despite specific instructions to deploy, the respondents did not deploy the Teachers at relevant point of time and permitted all the Teachers to work in the same School.

3. After intervention of District Collector, Madurai, the Educational Authorities took appropriate steps to revive the school with effect from 01.06.2012 and thereafter, the 5th respondent School is functioning smoothly till now. Now, the 5th respondent school has shown good progress with 100 percent pass. The claim of the petitioners is that they did not receive salary for the period from October 2011 to May, 2012. The petitioners submitted several representations and in fact, 4th respondent submitted a communication to the respondents 2 and 3 seeking approval for granting salary for the left-out period of 8 months. The petitioners already filed writ petitions in W.P(MD)Nos: 9928 to 9934 of 2019, with the prayer to direct the respondents to pay eight months' salary to the petitioners. This Court directed the respondents to consider the



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representation, dated 29.03.2019, and pass orders. Subsequently, the impugned order came to be passed denying the salary for the said period. The reasons stated are that since there was no work, the petitioners are not entitled to salary under the principle of “No Work No Pay”.

4. The 4th respondent has filed a counter affidavit stating that the present management obtained statements from the parents to the effect that they are ready to migrate to other places in view of family circumstances and decided to receive transfer certificates of their children. The District collector conducted an enquiry and it was found that one S.B. Rajkumar purchased the School properties on 06.12.2004. Just six days before the purchase of the property by S.B. Rajkumar, the Jain Educational Trust was created 29.11.2007 and the said S.B. Rajkumar was shown as one of the Trustees in the said Jain Educational Trust. One S. Bowerlal, the father of S.B. Rajkumar, was made as the President of the Trust. The creating of the Jain Educational Trust was preplanned and predetermined to



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purchase the buildings in which the Schools are being run. The Educational Agency deliberately reduced the students strength for the purpose of closing the School. All these things happened within 15 days. The purpose on which consideration, the transfer of the educational agency was ordered, was defeated with a plan and determination. Since the students' strength was drastically reduced, the existing students were migrated to some other place. The Joint Director has passed an order to deploy the Teachers. Subsequently, the respondents deployed the Teachers to the needy places. However, it took 8 months to complete the exercise until then, the Teachers were continuing in the in the said Schools. There were no students at all. The Teachers were simply visiting the School without any work. Under the principle of No Work No Pay, the petitioners are not entitled to salary.

5. The 5th respondent has filed a counter affidavit wherein the 5th respondent has denied the fact that S.B. Rajkumar the owner of the building



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purposefully transferred the property to the present educational agency. The 5th respondent submitted that due to age of the School buildings, they were weak and in this connection, the Civil Engineer inspected the School. But the educational agency of the School has no funds to demolish the building and construct new building. At the same time, the plight of the students should also be taken into account. Considering all these factors, particularly, the safety of the students, since there is no alternative source except to close the School for the welfare of the students, it was decided to close the School with effect from 01.06.2012. The management of the School submitted a representation to make arrangement to admit the students in the nearby School and deploy the Teachers to the needy Schools. The proposals of the management were considered after the intervention of the District Collector. The issue was sorted out and subsequently, all the Teachers were continuing in the same School and the students' strength was also increased.



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6. Heard M/s.A.Amala, learned Counsel appearing for the petitioner and Mr.D.Sadiq Raja, learned Additional Government Pleader appearing for the respondents 1 to 4 and perused the records placed before this Court.

7. The School was not running during the intermediate period. However, the respondents have paid salary from 01.06.2011 to 01.09.2011. The School was revived from June 2012 onwards. During the period from October 2011 to May 2012, the School was not functioning due to the above reasons stated supra. The learned Counsel for the petitioners relied on the judgment reported in **2007 (2) CTC 135** and the relevant portion of the judgment is extracted here under:

"13. (a) The Honourable Supreme Court in the decision reported in Srikantha S.M. v. Bharath Earth Movers Ltd., 2005 (8) SCC 314, considered the unjust denial on the part of the employer to assign work and held that the employee is entitled to get salary and other benefits and the principle of 'No work, No pay cannot be applied in such cases. In paragraphs 28 to 30, the Honourable Supreme Court held as follows:

"28. The next question is, as to what benefits the appellant is entitled to As he withdrew the resignation and yet he was not allowed to work, he is entitled to all consequential benefits. The learned counsel for the respondent Company no doubt contended that after 15.1.1993, the



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appellant had not actually worked and therefore, even if this Court holds that the action of the respondent-Company was not in consonance with law, at the most, the appellant might be entitled to other benefits except the salary which should have been paid to him. According to the counsel, the principle of no work, no pay would apply and when the appellant has admittedly not worked, he cannot claim salary for the said period.

29. We must frankly admit that we are unable to uphold the contention of the respondent Company. A similar situation had arisen in J.N. Srivastava, 1998 (9) SCC 559 and a similar argument was advanced by the employer. The Court, however, negated the argument observing that when the workman was willing to work but the employer did not allow him to work, it would not be open to the employer to deny monetary benefits to the workman who was not permitted to discharge his duties. Accordingly, the benefits were granted to him. In Shambhu Murari Sinha v. Project & Development India Ltd., 2002 (3) SCC 437 this Court held that since the relationship of employer and employee continued till the employee attained the age of superannuation he would be entitled to full salary and allowances of the entire period he was kept out of service. In Balram Gupta, 1987 Supp SCC 228 in spite of specific provision precluding the Government servant from withdrawing notice of retirement, this Court granted all consequential benefits to him. The appellant is, therefore, entitled to salary and other benefits,

30. For the foregoing reasons, in our opinion, the Appeal deserves to be allowed and is accordingly allowed. The action of the respondent Company in accepting the resignation of the appellant from 4.1.1993 and not allowing him to work is declared illegal and unlawful. It is, therefore, hereby set aside. The orders passed by the learned Single Judge and the



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Division Bench upholding the action of the Company are also set aside. The respondent-Company is directed to treat the appellant in continuous service up to the age of superannuation i.e. 31.12.1994 and give him all benefits including arrears of salary. The Company may adjust any amount paid to the appellant on 15.1.1993 or thereafter. The Appeal is accordingly allowed with costs."

(b) In the decision reported in Shambhu Murari Sinha v. Project & Development India Ltd., 2002 (3) SCC 437, the Honourable Supreme Court considered as to whether voluntary retirement offer could be withdrawn and even after the withdrawal of voluntary retirement request, if a person is relieved, whether he is entitled to rejoin duty and shall be paid all his salary and other benefits during the period he was out from the service and if a person reached the age of superannuation he shall be paid full salary and allowances for the entire period he was out of service till the date of his superannuation and thereafter he shall be entitled to get all retiral benefits counting the above period as if he was in service.

14. The stand taken by the respondents that the petitioner is not qualified to go on voluntary retirement as he has not completed 20 years of service and therefore the Bank treated his request as one of resignation, cannot be accepted as the petitioner has not given any letter of resignation nor consent to treat his voluntary retirement request to that of resignation, at y point of time. The Honourable Supreme Court in the decision reported in Prabha Atri (Dr.) v. State of U.P., 2003 (1) SCC 701, at para 10 considered signation in the following manner:

"10. To constitute a resignation, it must be unconditional and with an intention to operate as such. At best, as observed by this Court in the decision in P.K. Ramachandra Iyer, 1984 (2) SCC 141 it may amount to a



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threatened offer more on account of exasperation, to resign on harassed unnecessarily but not, at any rate, amounting to a resignation, account of a feeling of frustration born out of an idea that she was being actual and simple...”

Hence we are of the view that the petitioner is entitled to get salary and other benefits from 1.10.1999 till the date of his reinstatement with continuity of service as the petitioner was unilaterally prevented from attending to his lawful duties by virtue of an illegal order of relieving the petitioner as if he has resigned. It is not the case of the respondents that the petitioner was gainfully employed at any time after 1.10.1999. The same is not pleaded by the respondents either in the counter affidavit or in the grounds raised in the Writ Appeal and not even pleaded at the time of arguments. Hence, the decision of the learned Single Judge denying backwages to the petitioner stands set aside.”

The learned Counsel for the petitioner also relied on the judgment reported in **(2005) 8 Supreme Court Cases 314** and the relevant portion of the judgment is extracted here under:

“29. We must frankly admit that we are unable to uphold the contention of the respondent Company. A similar situation had arisen in J.N. Srivastava e and a similar argument was advanced by the employer. The Court, however, negatived the argument observing that when the workman was willing to work but the employer did not allow him to work, it would not be open to the employer to deny monetary benefits to the workman who was not permitted to discharge his duties. Accordingly, the



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benefits were granted to him. In Shambhu Murari Sinha I also, this Court held that since the relationship of f employer and employee continued till the employee attained the age of superannuation he would be entitled to "full salary and allowances" of the entire period he was kept out of service. In Balram Gupta² in spite of specific provision precluding the government servant from withdrawing notice of retirement, this Court granted all consequential benefits to him. The appellant is, therefore, entitled to salary and other benefits."

8. When the Joint Director has passed an order to deploy the Teachers to other needy place, the Teachers are entitled to salary and pay protection should be granted by the Government. Rightly, the respondents have paid salary for the months June, July, August and September. However, the respondents did not pay from October 2011 to May 2012. For this period, the respondents submitted that there is no work for the Teachers and they were simply visiting the School, since the students were migrated to some School. This reason, cannot be entertained. The respondents had already passed an order to transfer the Teachers to the needy place. If the respondent had passed an order transferring the teachers without delay, then the teachers would have worked during the said period. The fault is on



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the official respondents for not passing order in time and it is not the fault of the teachers. In such circumstances, the petitioners are entitled to salary for the said period. The principle of “No Work No Pay”, is not applicable to the present facts of the case. Therefore, the respondents are incorrect in stating that they are not entitled to salary. The impugned order is quashed. The respondents are directed to pay the salary to the petitioners within a period of 12 weeks from the date of receipt of a copy of this order.

9. With the above said observation, the writ petition is allowed. No costs.

Index : Yes / No
Internet : Yes

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To

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- 3.The Chief Educational Officer,
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S.SRIMATHY, J

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