



W.P.No.17574 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 22.06.2023

Delivered on: 04.08.2023

CORAM:

THE HONOURABLE MR.JUSTICE P.B.BALAJI

W.P.No.17574 of 2019

M.Venkatesan

... Petitioner

Vs.

1.The Director of School Education
DPI Complex
College Road
Chennai-6

2.The Joint Director (Personnel)
Directorate of School Education
College Road
Chennai-6

3.The Chief Educational Officer
Tiruvannamalai District
Tiruvannamalai

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records pertaining to the proceeding of the 2nd respondent in O.Mu.No.70529/C3/E3/2017 dated 29.12.2017 confirmed by the 1st



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respondent vide his proceedings in Na.Ka.No.30485/C4/E1/2018 dated 10.08.2018 and the confirmation order passed by the 2nd respondent in O.Mu.No.913/C3/E3/2019 dated 06.02.2019 and quash the same as illegal, incompetent and ultravires and consequently direct the respondents to treat the suspension period from 22.04.2012 to 14.10.2012 as duty period for all purposes and to pay all the monetary benefits arising therefrom.

For Petitioner : Mr.R.Jaya Prakash

For Respondents : Mr.D.Gopal, Govt. Advocate

ORDER

The petitioner has filed the present Writ Petition seeking issuance of a Writ of Certiorarified Mandamus to quash the proceedings of the 2nd respondent dated 29.12.2017 and confirmed by the 1st respondent on 10.08.2018 and subsequent confirmation order of the 2nd respondent dated 06.02.2019 to consequently direct the respondents to treat the period of suspension from 22.04.2012 to 14.10.2012 as duty period and pay all monetary benefits to the petitioner.



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2. The case of the petitioner is that he acquired B.Sc., Maths and B.Ed degrees and subsequently he was appointed as B.T.Assistant (Maths) on and from 08.10.2007. In the year 2012, while he was in service, in a land dispute among family members, an FIR came to be lodged in Crime No.296 of 2012 for alleged offences U/s. 147,148,294(b), 323,324& 506(ii) r/w Sec.149 of IPC. However, in C.C.No.61 of 2013, the petitioner was acquitted on 11.09.2015. In the interregnum period, the petitioner was suspended from 26.04.2012, as the petitioner was arrested on 22.04.2012 and subsequently released on bail on 25.04.2012 in connection with the said land dispute.

3. The petitioner's further case is that the 2nd respondent reinstated the petitioner on 05.10.2012 and after he joined service, he gave representations seeking regularisation of his suspension period and for arrears of pay. In and by proceedings dated 12.12.2016, the 2nd respondent dropped the departmental proceedings with a warning issued to the petitioner. However, subsequently in and by proceedings dated 29.12.2017, the 2nd respondent passed an order treating the suspension period from 22.04.2012 to



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14.10.2012 as leave period instead of duty period. The said order was unsuccessfully challenged by the petitioner before the 1st respondent. Aggrieved by the orders and proceedings of the respondents, the petitioner has approached this Court seeking issuance of a Writ in his favour.

4. The 3rd respondent has filed a counter stating that the petitioner was acquitted only on the ground of benefit of doubt in C.C.No.61 of 2013 and therefore, the respondents are empowered to treat the period of suspension as leave period and not duty period. The respondents also place reliance on R.54(B) of the Fundamental Rules pertaining to suspension and pay and allowances during the period of suspension. The orders and proceedings on the file of the respondents were justified in the counter affidavit of the 3rd respondent who pray for dismissal of the Writ Petition.

5. Heard Mr. R.Jaya Prakash, learned counsel for the petitioner and Mr.D.Gopal, learned Government Advocate for the respondents. This Court has also perused the records.



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6. Learned counsel for the petitioner would place reliance on judgment of Division Bench of this Court in the case of *The Secretary, Vallalar Gurukulam Higher Secondary School Vs. District Educational Officer, Cuddalore* and another, reported in **2005 (4) CTC 7**, wherein this Court held that though it was open to the employer to take two kinds of proceedings against the delinquent employee viz., criminal proceedings and departmental proceedings, however, when the employer chose not to initiate departmental proceedings against the delinquent employee and then when the employee is acquitted in the criminal proceedings, such an acquittal would operate retrospectively and the employee was entitled to salary for the period of unemployment, till she was reinstated.

7. Learned counsel for the petitioner would also place reliance on judgment of the Hon'ble Supreme Court in *Gurpal Singh Vs. High Court of Judicature of Rajasthan*, reported in **(2012) 13 SCC 94**, where the hon'ble Supreme Court placed reliance on R.54 of the Rules and held that it would be unjust to deny salary, especially when R.54 was discretionary and was only



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required to be exercised reasonably, taking into consideration material records for the decision. The Hon'ble Supreme Court held that the order of suspension in the departmental proceedings ought to have been revoked upon acquittal by the High Court during the pendency of the departmental enquiry, on the facts of the said case.

8. Per contra, Learned Government Advocate would state that the standard of proof required in criminal cases was entirely different and the same cannot be applied to departmental proceedings and would therefore contend that there is no infirmity in the impugned proceedings.

9. This Court at the outset, would like to refer to the admitted position that even before the petitioner was acquitted in the criminal case, the respondents chose to reinstate the petitioner on 05.10.2012. In the criminal case viz., C.C.No.61 of 2015 the petitioner was acquitted only much later on 11.09.2015. Despite the pendency of the criminal case, the 2nd respondent dropped the entire departmental proceedings and let off the petitioner with a



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mere warning in and by proceedings dated 12.12.2016. Subsequently, the 2nd respondent has suo motu passed an order treating the suspension period from 22.04.2012 to 14.10.2012 as leave period instead of duty period. This was only on 29.12.2017. When the 2nd respondent had made a conscious decision to drop the entire department proceedings with a warning to the petitioner as early as on 12.12.2016, it was not open to the 2nd respondent to thereafter pass a separate order treating the suspension period from 20.04.2012 to 14.10.2012 as leave period and deny salary to the petitioner.

10. Admittedly, the dropping of the entire departmental proceedings and reinstatement of the petitioner was during the pendency of the criminal case. Even in the criminal case, admittedly, the petitioner had been acquitted. In view of the 2nd respondent ordering reinstatement on 05.10.2012 and thereafter dropping the entire departmental proceedings on 12.12.2016, it would not be open to the 2nd respondent to subsequently impose a further punishment by way of treating the suspension period as leave period, disentitling the petitioner for entitlement of salary during the said suspension



11. This Court is therefore of the view that the belated order passed by the 2nd respondent, treating the suspension period as leave period is wholly unjustified. Infact, even in the decision of the the Hon'ble Supreme Court relied on by the counsel for the petitioner, the Hon'ble Supreme Court has held that it is open to the employer to initiate two parallel proceedings and that when the employee was acquitted in the criminal case, the suspension order ought to have been revoked even during the pendency of the departmental enquiry.

12. Applying the said ratio to the facts of the present case, the petitioner stands on a much better footing because of the fact that the respondents revoked the suspension order and reinstated the petitioner even pending the criminal case and that apart, they have also dropped the entire departmental proceedings. Having done so, it would not be open to the 2nd respondent to reopen the matter once again and pass an order treating the



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suspension period as one to be leave period and not a period on duty.

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13. For all the above reasons, the petitioner is entitled to succeed and consequently, the Writ Petition is allowed as prayed for.

04.08.2023.

Internet: Yes
Index: Yes/No
Neutral Citation: Yes/No
Speaking/Non-speaking order
kpr

To
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DPI Complex, College Road
Chennai-6

2.The Joint Director (Personnel)
Directorate of School Education
College Road, Chennai-6

3.The Chief Educational Officer
Tiruvannamalai District
Tiruvannamalai



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P.B.BALAJI, J.,
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Pre-delivery order in
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