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W.P.Nos.20133, 33030 & 35338 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.08.2023

CORAM :

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

W.P.Nos.21033, 33030 & 35338 of 2019
and W.M.P.Nos.2197 of 2021, 20216, 33459, 35245 and 36161 of
2019

W.P.No.21033 of 2019

T.Maha Lakshmi

.. Petitioner

VS

1.The Joint Director of Elementary Education
DPI Complex, Chennai – 06.

2.The Chief Educational Officer,
Thiruvallur – 602 001,
Thiruvallur District.

3.The District Elementary Educational Officer,
Thiruvallur – 602 001,
Thiruvallur District.

4.The Assistant Elementary Educational Officer,
Minjur, Thiruvallur District.

5.The Manager and Correspondent
Nathan Aided Primary School,
Nerkundram, Chennai – 107,
Thiruvallur District.

6.The Correspondent and Head Mistress
Sahaya Matha Aided Primary School,
Minjur – 601 203
Thiruvallur District.

.. Respondents



W.P.Nos.20133, 33030 & 35338 of 2019

W.P.No.33030 of 2019

T.Maha Lakshmi

.. Petitioner

VS

- 1.The Joint Director of Elementary Education
DPI Complex, Chennai – 06.
- 2.The Chief Educational Officer,
Thiruvallur – 602 001,
Thiruvallur District.
- 3.The District Elementary Educational Officer,
Ponneri, Thiruvallur District.
- 4.The Assistant Elementary Educational Officer,
Minjur, Thiruvallur District.
- 5.The Manager and Correspondent
Nathan Aided Primary School,
Nerkundram, Chennai – 107,
Thiruvallur District.
- 6.The Correspondent and Head Mistress
Sahaya Matha Aided Primary School,
Minjur – 601 203
Thiruvallur District.

.. Respondents

W.P.No.35338 of 2019

Sahaya Matha Aided Primary School
Rep. By its Correspondent,
Minjur – 601 203
Thiruvallur District.

.. Petitioner

VS

- 1.The Joint Director of Elementary Education,
DPI Complex, Chennai – 06.
- 2.The Chief Educational Officer,
Thiruvallur – 602 001,
Thiruvallur District.



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3.The District Educational Officer,
Ponneri, Thiruvallur District.

4.T.Maha Lakshmi

.. Respondents

Prayer in W.P.No.21033 of 2019 : Petition filed under Article 226 of the Constitution of India praying to issue a writ of mandamus directing the respondents to permit the petitioner to join duty as Secondary Grade Teacher in the 6th respondent school with all consequential service and monetary benefits from 01.01.2018 as requested by the petitioner within a time limit that may be stipulated by this Court.

Prayer in W.P.No.33030 of 2019 : Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus calling for the entire records which culminated in issuing the suspense proceedings order dated 19.11.2019 on the file of the 6th respondent, quash the same.

Prayer in W.P.No.35338 of 2019 : Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus calling for the records pertaining to the impugned order dated 03.12.2019 in Na.Ka.No.2191/AA2/2019 on the file of the 3rd respondent and quash the same, directing the competent authorities to conduct a thorough investigation into the chain of illegalities arising from the vacancy position, appointment, deployment, verification of certificates, declaration of salary – eligibility in respect of the 4th respondent, with the collusion of others, as to initiate appropriate action against all the miscreants



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and or pass such further or other orders as it may deem fit and proper in the circumstances of the case.

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For Petitioner : Mr.L.Chandrakumar
for Mr.R.K.Girish Neelakandan
(in W.P.No.21033 of 2019)
(in W.P.No.33030 of 2019)

Father Xavier Arul Raj,
Senior Counsel
for M/s.Father Xavier Associates
(in W.P.No.35338 of 2019)

For Respondents : Mr.S.Silambanan,
Additional Advocate General
assisted by
Mr.S.Ravi Kumar, Spl. GP
for R1 to R4
(in WP.21033 & 33030 of 2019)
for R1 to R3
(in W.P.No.35338 of 2019)

Ms.M.Sneha for R5
(in WP.21033 & 33030 of 2019)

Father Xavier Arul Raj,
Senior Counsel
for A.Arul Mary
for R6
(WP 21033 & 33030 of 2019)

COMMON ORDER

Since the issues in all the three writ petitions are intricately connected with each other and there cannot be a discussion on the averments made in the affidavit in any one of the writ petitions without examining the averments made in the affidavits filed in



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support of the other writ petitions and common arguments were also advanced with respect to the facts stated, a common order is passed.

2. The petitioner in W.P.No.33030 of 2019, who is also the petitioner in W.P.No.21033 of 2019 – T.Maha Lakshmi, would be henceforth called 'the teacher'. The fifth respondent in W.P.No.33030 of 2019, which is also the fifth respondent in W.P.No.21033 of 2019 / Nathan Aided Primary School, would henceforth be called 'Nathan School' and was the school where the teacher was originally appointed. The sixth respondent in W.P.No.33030 of 2019, which is also the sixth respondent in W.P.No.21033 of 2019 / Sahayamatha Aided Primary School, would henceforth be called 'Sahayamatha School', the school to which the teacher was deployed.

3. Sahayamatha School had filed W.P.No.35338 of 2019. In that particular writ petition, the fourth respondent is the teacher. The respondent nos. 1 to 4 in W.P.No.33030 of 2019 & W.P.No.21033 of 2019 and respondent nos. 1 to 3 in W.P.No.35338 of 2019 would be henceforth collectively called 'the educational department'. They are the authorities, who had issued various



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communications and who had also taken action and exercised control since Nathan school and Sahayamatha School which are both minority and aided schools. It must also be mentioned that they also have the authority to approve the appointment of the teacher and also, to approve salary, if any, paid to her and whether she is eligible for the same and also the authority, who can deploy her from one school to another, in this case from Nathan School to Sahayamatha School.

4. The facts surrounding the three writ petitions, centre around the appointment order of the teacher / T. Maha Lakshmi in the Nathan school. It is contended that there was a sanctioned vacancy in the Nathan school, consequent to the retirement of a teacher / Padma Nesanandam, who was working as Secondary Grade Teacher, who had retired on 31.05.2012.

5. Since there was a vacancy in that particular post, the teacher was appointed as Secondary Grade Teacher by an order of the Assistant Elementary Educational Officer, Villivakkam Panchayat on 17.01.2015. This particular order had to be approved and was also approved on 22.05.2015, by the District Elementary Educational Officer, Tiruvallur District. The teacher continued to



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work in the Nathan school. It was however found that she was surplus in so far as the teacher - student ratio is concerned in that particular school / Nathan School and, therefore, the third respondent, the District Educational Elementary Officer at Tiruvallur had recommended that she should be transferred from Nathan School to Sahayamatha School.

6. This would not be a transfer as such but a deployment of the teacher from one school to another. That particular order had been read over to this Court and it had been stated in it that she had been so deployed from Nathan school to Sahayamatha School as an additional teacher and not in any existing vacancy. The entire issue surrounds this particular order of deployment to Sahayamatha School. This order, as stated, was recommended by an order dated 21.12.2016. The transfer cum release order was passed by the fourth respondent, Assistant Elementary Educational Officer, Villivakkam on 12.06.2017.

7. It is contended by the teacher that she joined duty in Sahayamatha School on the same date / 12.06.2017. She continued to work till 31.12.2017. It had also been stated that her educational testimonials were also verified and no doubts have been raised on



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that score. No doubts have been raised on that score even during arguments advanced before this Court.

8. On 08.01.2018, she had applied for medical leave for a period of 20 days and thereafter she sought to join duty in Sahayamatha School. It is her grievance that she was not permitted to join duty. Complaining of that particular fact, she filed W.P.No.21033 of 2019. Even though the said writ petition is still pending, it is evident that subsequent events happened which gave a legitimacy for Sahayamatha School to not prevent her from joining duty and, therefore, in view of the fact that those aspects will have to be examined, the complaint by her that she was prevented from joining duty as raised in W.P.No.21033 of 2019, does not survive for adjudication any more and, therefore, straight away the said writ petition in W.P.No.21033 of 2019 is dismissed as the issue having become infructuous.

9. The facts will therefore have to be continued relating to the issues as stated in the second writ petition filed by the teacher, W.P.No.33030 of 2019. In the affidavit filed in support of the writ petition, it had been stated that after the period of medical leave, she wanted to join duty in Sahayamatha School but she was not



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permitted to join duty and that therefore she has been out of employment from 29.01.2019 till the date when she filed the writ petition and it can be reasonably presumed that she is still out of employment and that till this date, she has not been paid any salary.

10. She was then called upon to attend an enquiry on 19.03.2018 and it is claimed by her that she appeared for an enquiry and also submitted her explanation. The entire enquiry was consequent to a decision taken by the official respondents / education department that her deployment order from Nathan School to Sahayamatha School, was the result of collusion among the educational officials and that the entire issue was shrouded not only with secrecy but tainted with fraud.

11. As a matter of fact, the first order of such deployment did not contain the signature of any official and there was only a rubber stamp and therefore, Sahayamatha School did not permit her to join and they resisted her deployment to their school. Subsequently signatures were obtained. They however did not address letters seeking permission for salary to be paid to her.



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12. It is on record that the educational officials visited Sahayamatha School and it is quite tangentially contended that they exerted influence and pressure on the authorities of Sahayamatha School to forward the necessary paper work for her to be paid salary. In view of all these aspects, particularly because it was found that her deployment order was tainted with fraud, an enquiry was launched against her and also against the educational officials and also incidentally against Sahayamatha School. It is contended on behalf of Sahayamatha School that the entire issue was opened up for enquiry only consequent to them issuing a letter of the educational authorities.

13. In the mean while, Sahayamatha School, in view of the surrounding circumstances, had also taken a decision to place the teacher on suspension and they passed that order on 19.11.2019. Questioning that particular order of suspension, the teacher filed W.P.No.33030 of 2019. She is still placed on suspension and it is the grievance expressed by the learned counsel on her behalf that subsistence allowance had also not been paid to her and a charge memo had not been either framed or served on her and the entire issue is kept in limbo without any progress.



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14. A letter was addressed to the education department by Sahayamatha School on 15.02.2018. They were extremely agitated by one fact, namely, that the teacher had somehow managed to enter their campus and had also signed the attendance register. She was also paid salary. They then found that her entire deployment order was shrouded in mystery. Raising suspicion, Sahayamatha School had addressed the letter wherein they had pointed out that they had never requested her to be transferred to their school. Their school was already having sufficient number of teachers. At that point of time they had a student strength of 331 and therefore, the staff strength was sufficient and not deficient. It was also not surplus. They had no connection whatsoever with Nathan school or with the teacher and it was contended that the teacher was actually deployed only as an additional teacher and not on any vacancy. It was also contended that they had a right to appoint a teacher which right is ingrained under the Constitution. Being a minority institution they had a right to appoint their own teachers. This right had been usurped by the deployment of the teacher to their school. It was contended that this was a direct interference with the administration of the school and it was also



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contended that such interference cannot withstand the scrutiny of this Court, particularly because Sahayamatha School is a minority institution and has protection under the Constitution.

15. The entire sequence of events of the teacher going on leave and the resistance they had made when she was originally deployed had been stated in their complaint. They also pointed out that there was something wrong in the entire deployment issue. They therefore stated that they have a teacher whom they do not want, a teacher who had been thrust upon them without them seeking her to be so deployed, a deployment which had interfered with their right to appoint a teacher of their choice since they were a minority institution and, therefore, they raised these objections before the education department.

16. On the basis that she did not come to the school and had not joined the school and that she had surreptitiously signed in the attendance register, they had taken a decision to place her under suspension. This was by proceedings dated 19.11.2019.

17. In the mean while, a show-cause notice was issued to Sahayamatha School by proceedings dated 03.12.2019 in



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Na.Ka.No.2191/AA2/2019 by the third respondent therein / District Educational Officer at Ponneri in Tiruvallur District. Questioning this particular show-cause notice, Sahayamatha School filed W.P.No.35338 of 2019.

18. It had been contended by the learned Senior Counsel on behalf of the writ petitioner therein that in the show-cause notice it had been stated that the petitioner / Sahayamatha School had invited the teacher, though there was a surplus of teacher on 12.06.2017, the date of deployment. They also claimed salary to be paid to her, and that the records have been fabricated at their behest and that therefore to show their bonafide they should come forward to lodge a criminal complaint.

19. It is contended in the writ petition that Sahayamatha School had never invited the teacher, that there was no surplus of teachers and that they had no connection with her before she was so deployed. It is also contended that she was deployed only as an additional teacher and not in any existing vacancy, which deployment had actually interfered with their right to appoint a teacher of their choice. It is also contended that they were not privy to any of the acts of omission and commission committed by



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the officials, either with or without the collusion of the teacher, and therefore they had no materials to lodge a criminal complaint and they could never substantiate any complaint if at all they were compelled to do so. It had been contended that they were the victim in the entire scenario and the therefore the show - cause notice issued to them should be quashed.

20. In the counter affidavit filed by the educational department, the facts aforementioned have not been specifically denied or disputed except the fact that the teacher was appointed surplus in Nathan School.

21. It had been contended by the learned counsel on behalf of the Nathan School that the teacher had been appointed in an existing vacancy consequent to the retirement of another teacher, Padma Nesanandam and therefore, the appointment could not be faulted. It had also been stated that her certificates were verified and their genuinity were also examined and scrutinized and no issue was opened up on that particular aspect. It was also contended that her appointment was approved by the education department. It was also contended that in the normal course she was deployed from Nathan School to Sahayamatha School and therefore the role of



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Nathan school stops with such deployment as she had moved away from the rolls of Nathan School to Sahayamatha School.

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22. On the part of the education department, in the additional counter affidavit, it had been contended that an enquiry was conducted over the entire issue and as many as seven officials had been proceeded with departmentally and on six of them punishments of various nature had been imposed and as against one further official, the enquiry process is under way. The imposition of such punishments or the process undergone are not directly an issue before this Court. It only reflects that the respondents have taken note of the gravity of the situation to which they had put, not only the teacher, but more particularly, Sahayamatha School by such deployment.

23. In the additional counter affidavit, there is one significant paragraph in which it had been stated that continuation of the teacher in Sahayamatha School would set a bad precedent since there was already surplus of teachers and that therefore the stand taken by Sahayamatha School in not permitting her to rejoin the school after expiry of medical leave was in order.



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24. Learned Additional Advocate General on behalf of the education department had pointed out that the respondents had woken up to the reality of the situation and had initiated action against their own officials and punishments have been also imposed. Learned Additional Advocate General was however emphatic that her initial appointment in Nathan School was not proper and as a matter of fact was fraudulent and therefore contended that no sympathy should be extended to her. With respect to subsistence allowance which was claimed, it had been contended that it is Sahayamatha School who should initiate the process for such payment.

25. The entire issue therefore surrounds the order of suspension issued against the teacher and the show-cause notice issued to Sahayamatha School.

26. With respect to the show-cause notice, I am of the definite opinion that it was a knee jerk reaction to avoid any complaint that deployment order had been issued irregularly. It is a fact that the Sahayamatha School found at their door steps a teacher one fine morning and they had no other option but to permit her to enter in. But after they had found that the deployment



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order was tainted, they had taken a conscious decision not to permit her to rejoin duty. This shows, to a little extent, their boanfide. They also took the step of suspending her from service.

27. Suspension of a teacher is touched upon in Section 22 (3) (a) and 3(b) of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973. The provisions are extracted below:-

"22. Dismissal, removal or reduction in rank or suspension of teachers or other persons employed in private schools.

...

(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."

28. It is a fact that, as on date, the teacher has been under



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suspension for well over the prescribed period. The Court had also granted permission to continue her to be placed under suspension on a specific request in that regard by Sahayamatha School. Therefore, continuation of suspension cannot be faulted.

29. Now the issue of payment of subsistence allowance has to be addressed. Sahayamatha School had taken two decisions. They had taken a decision not to permit her to rejoin the school. They had also taken a decision to suspend her from service. These two decisions could be taken only by an employer consequent to any nefarious act of an employee. They do not want their employee to continue to work under them and they wanted that employee to stay away from their precincts. Therefore, the employer exercising the right has prevented the employee, in this case, the teacher from re-joining and simultaneously had also taken a decision to suspend the teacher.

30. The act of suspension itself shows exercise of authority which Sahayamatha School claims they can exercise over the teacher. Only when there is an authority to so suspend could a suspension order be ever issued. If it is so issued, the consequences or the follow up steps should also be initiated. The follow up steps



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are payment of subsistence allowance during the period of her suspension and taking a decision whether to proceed further by issuing a charge memo on the basis of the explanation given and to conduct an enquiry.

31. So far as the payment of subsistence allowance is concerned, it is the specific contention of Sahayamatha School that they should not be mulcted with the financial responsibility of payment of such subsistence allowance.

32. I would hold that it would only be appropriate that they address the education department in this regard and a direction is given to the education department to take a decision if ever a letter is addressed by Sahayamatha School. It would only be appropriate that they do so at the earliest since no teacher can be kept under permanent suspension. The longer the period of suspension the earlier would be the time when full salary would have to be paid to her.

33. So far as the show-cause notice issued to Sahayamatha School is concerned, as seen from the narration of facts, it had been issued more out of an apprehension and out of a presumption that



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Sahayamatha School was also involved both in her initial appointment and subsequently in her deployment to them. But that presumption fact has not been substantiated. It is also to be noted that a complainant who lodges a criminal complaint, should be in a position to establish the allegations. Sahayamatha School does not have any record to substantiate the allegations. They had no idea at all about the teacher prior to her being deployed to them. Therefore, the entire show-cause notice is based on presumptions and an apprehension that the education department would be found fault with if such a show cause notice is not issued. The show-cause notice therefore is set aside and struck down. This would mean W.P.No.35338 of 2019 is allowed.

34. So far as the suspension is concerned, it is again reiterated that the issue will have to be resolved only by the education department and they can so resolve only when Sahayamatha School addresses a letter to them about the subsistence allowance and seeks further clarification as to how to proceed further consequent to the suspension order. It has to be a decision taken by Sahayamatha School and a direction had to be given in this regard by the education department. Such a direction can be given only when necessary request is made. The teacher



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was deployed by the directions of the education department. The teacher has now been placed under suspension.

35. A direction is given to Sahayamatha School to address the education department both with respect to continuation of the period of suspension and with respect to the payment of subsistence allowance and initiation of any further action, then await orders and then proceed further. If such a request is placed, the education department shall respond to the same within a period of three weeks from the date of receipt of such request. Till such time, the teacher will have to be kept under suspension, but if the time schedule is not adhered to by the respondents, the teacher would have every right to get subsistence allowance in accordance with the rules, particularly Section 22(b) of Tamil Nadu Recognised Private Schools (Regulation) Act, 1973. This Court at this stage, however, can never pass an order on a hypothetical situation and presume that no such response would emanate from the education department.

36. In view of the above discussion,

(i) W.P.No.21033 of 2019 is dismissed,

(ii) W.P.No.33030 of 2019 is disposed of with



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direction and

(iii) W.P.No.33538 of 2019 stands allowed.

37. A direction is again issued to Sahayamatha School to address the education department relating to the suspension of the teacher raising queries relating to (i) payment of subsistence allowance, (ii) further action to be taken consequent to suspension and (iii) re-deployment of the school of the teacher out of the school.

38. A decision is to be taken within a period of two weeks from the date of receipt of such communication by the education department from Sahayamatha School.

39. No order as to costs. Connected miscellaneous petitions are closed.

24.08.2023

Index:Yes/No
Neutral Citation:Yes/No
ssm



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To

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DPI Complex, Chennai – 06.
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C.V.KARTHIKEYAN,J.

ssm

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