



WEB COPY



W.P.No.25158 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.06.2023

CORAM

THE HONOURABLE MR.JUSTICE P.B.BALAJI

W.P.No. 25158 of 2019

K.Suresh

... Petitioner

Versus

1.The Director of Elementary Education,
College Road,
DPI Campus,
Chennai-6.

2.The Chief Educational Officer,
Salem,
Salem District,

3.The District Educational Officer,
Salem,
Salem District.

4.3.The District Elementary Educational Officer,
Salem,
Salem District.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, prays to issue a Writ of Certiorari Mandamus, calling for the entire records which culminated in passing the order bearing reference in Na.Ka.No.8012/A3/2011 dated 31.01.2017 of the 4th respondent and confirm



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in Na.Ka.No.13368/E2/2018 dated 28.12.2018 by the 2nd respondent and quash the same and consequently directing the respondents to give all monetary benefits to the petitioner.

For Petitioner : Mr.P.Ganesan

For Respondents : Mr.M.S.Prem Kumar
Government Advocate

ORDER

This writ petition has been filed seeking issuance of a writ of Certiorarified Mandamus, to quash the impugned order in Na.Ka.No.8012/A3/2011 dated 31.01.2017 of the 4th respondent confirming the order in Na.Ka.No.13368/E2/2018 dated 28.12.2018 by the 2nd respondent and consequently directing the respondents to give all monetary benefits to the petitioner.

2. The petitioner is aggrieved by the decision of the 2nd respondent in appeal proceedings dated 28.12.2018 confirming the order of the 4th respondent dated 31.01.2017. The case of the petitioner is that he joined as Secondary Grade Assistant on 07.01.2005 in the Panchayat Union Middle School at Poosaripatti on a consolidated pay. Subsequently, he was given a



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Time Scale of Pay in the post of Secondary Grade Teacher. While he was in his service, he was served with order of suspension dated 27.10.2011 on the ground that he misbehaved with one Mrs.Latharani, Head Mistress of the school. The petitioner made a representation to the 2nd respondent and he was reinstated into service on 29.02.2012 and posted at Panchayat Union Middle School, Veeratchiyur as Secondary Grade Assistant. Subsequently, the petitioner was served with charge memo dated 27.10.2011. The petitioner gave a representation on 05.05.2012 seeking copies of the Annexure-III of the charge memo and other related documents mentioned in the charge memo. However, it was not provided to the petitioner. The petitioner made several representations, but no steps have been taken. Thereafter, the enquiry officer was appointed by the 4th respondent on 25.03.2015, fixing the date of enquiry as 10.04.2015. The petitioner sought for time to submit his explanation. However, the same was denied and based on the available documents, the petitioner submitted his explanation on 20.01.2016 denying all the charges. Thereafter, a show cause notice was issued on 13.06.2015 by the 4th respondent as if the petitioner had not co-operated with the enquiry officer. To this, the petitioner had submitted his explanation on 21.06.2016.



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Thereafter, a new enquiry officer was appointed on 14.10.2016 and enquiry was also held. Even at that point of time, the petitioner was not given copies of the relevant documents and no witnesses were also examined. The specific case of the petitioner is that the concerned Head Mistress, who gave the complaint against the petitioner, was also not examined and despite the same, the 4th respondent passed order of punishment, ordering stoppage of increment for a period of two years without cumulative effect and the same was served on the petitioner only on 07.02.2017. Thereafter, as against the order of punishment, the petitioner filed an appeal to the 1st respondent promptly on 13.03.2017 through the 4th respondent. However, it was returned with an endorsement that it should be sent through the immediate Superior Officer. On 20.03.2017, the petitioner once again sent the appeal through the Head Master and the same was also returned and this was also complied with by the petitioner and he sent appeal on 23.03.2017 and the same was returned by the 2nd respondent with an endorsement that he had to submit the appeal along with extra copies. However, the impugned order came to be passed as if the petitioner's appeal was not in time.



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3. Heard the learned counsel for the petitioner and the learned Government Advocate for the respondents.

4. The impugned order is also perused. It is seen that excepting the reason that the appeal was filed out of time, the order has not been passed on merits. Further, from the discussion narrated herein above, it is clearly evident that the appeal was filed well within the time limit as set out in the impugned order itself. However, for reasons best known to the 2nd respondent, it is mentioned that the appeal has not been filed in time. Admittedly, the petitioner chose to file an appeal way back in March 2017 itself. Thereafter, only procedural requirements were to be complied with. Therefore, it cannot be stated that the appeal has not been filed in time. But for observation that the appeal barred by limitation, the 2nd respondent has not considered the appeal on merits.

5. In view of the above, it would be just and proper for the 2nd respondent to consider the petitioner's appeal and pass orders on merits and in accordance with law after affording the petitioner reasonable opportunity



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of being called to give his explanation, to advance the grounds raised in the appeal. Accordingly, the impugned order is set aside and the 2nd respondent is hereby called upon to conduct fresh appeal proceedings after giving notice to the petitioner and pass orders on merits and in accordance with law. The 2nd respondent shall fix a date for hearing of the appeal not later than 31.08.2023 and after affording personal hearing to the petitioner, shall conclude the appeal proceedings on or before 31.10.2023. It is needless to state since the order in appeal has been set aside, the impugned order shall not be implemented till a final decision is taken by the 2nd respondent.

6. With the above observations, this writ petition is disposed of. No costs.

30.06.2023

Index: Yes/ No
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