



W.A.No.140 of 2020 and
W.P.No.20696 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.12.2023

CORAM

THE HON'BLE Mr. JUSTICE R.SURESH KUMAR
AND
THE HON'BLE Mr. JUSTICE G.ARUL MURUGAN

W.A.No.140 of 2020 and
W.P.No.20696 of 2019 and
C.M.P.No.1965 of 2020

W.A.No.140 of 2020 :

The Secretary and Correspondent,
Islamiah Boys Higher Secondary School,
Vaniyambadi, Vellore District.

... Appellant

Vs.

1.J.S.Burhanuliah

2.The District Educational Officer,
Thirupathur,
Vellore District.

... Respondents

Prayer : Appeal filed under Clause 15 of the Letters Patent Act, praying
to set aside the order dated 24.07.2019 in W.P.No.4325 of 2010.

For Appellant : Mr.S.Nedunchezhiyan

For Respondents : Mr.B.Manimaran
for M/s.Ansari Associates for R1
: Mr.M.Murali
Government Advocate for R2



W.A.No.140 of 2020 and
W.P.No.20696 of 2019

W.P.No.20696 of 2019:

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Islamiah Boys Higher Secondary School
rep. By its Secretary and Correspondent,
Vaniyambadi,
Vellore District.

... Petitioner

Vs.

1.The Joint Director of School Education
[Secondary Education],
College Road, Chennai – 6.

2.The Chief Educational Officer,
Vellore.

3.The District Education Officer,
Thirupathur, Vellore District.

4.J.S.Burhanullah

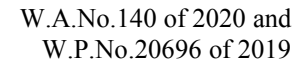
... Respondents

Prayer : Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the entire records relating to the proceeding in Na.Ka.No.7681/ஆ-3/08 dated 04.02.2009 and O.Mu.No.7681/ஆ-3/2009 dated 11.03.2009 on the file of the 3rd respondent herein and quash the same and consequently direct the 2nd respondent herein and to approve the proposal in P.No.37/2008-09 dated 27.03.2009 of the petitioner herein for termination of the services of the 4th respondent herein.

For Petitioner : Mr.S.Nedunchezian

For Respondents : Mr.M.Murali
Government Advocate for R1 to R3

: Mr.B.Manimaran
for M/s.Ansari Associates for R4



(Judgment of the Court was delivered by R.SURESH KUMAR, J.)

2. W.A.No.140 of 2020:

2.2. After inflicting such punishment, the School Management had sent the said punishment order to the authority concerned viz., the



W.A.No.140 of 2020 and
W.P.No.20696 of 2019

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District Educational Officer/the 2nd respondent herein for approval, the 2nd respondent having considered the entire proceedings which culminated in the termination order, had rejected the same by issuing a proceedings dated 04.02.2009. In the said rejection order, it was held by the 2nd respondent that, the procedure as contemplated under the Tamil Nadu Private Schools Regulations Act and the Rules made thereunder have not been properly followed. Therefore, the order of punishment awarded against the Teacher cannot be accepted, accordingly it was rejected with a rider that the School Management shall reinstate the Teacher.

2.3. As the reinstatement was not made, the 2nd respondent/District Educational Officer (in short 'D.E.O.') has sent further communication on 11.03.2009 reiterating the earlier order and further directed the School Management to reinstate the Teacher within a week period.

2.4. As against the said order passed by the D.E.O., the School Management claimed to have sent a representation/appeal to the Chief Educational Officer on 27.03.2009.



W.A.No.140 of 2020 and
W.P.No.20696 of 2019

WEB COPY

2.5. Thereafter, nothing has been moved on either direction, therefore after having waited for long years, the Teacher had approached this Court by filing the writ petition in W.P.No.4325 of 2010 dated 24.07.2019 seeking to set aside and quash the order of termination made by the School Management dated 13.12.2018 and to reinstate the Teacher into service with backwages and attendant benefits.

2.6. The said writ petition was allowed by the order passed by the Writ Court dated 24.07.2019 against which the present intra Court appeal has been directed.

3. W.P.No.20696 of 2019:

3.1. Even though it was claimed by the School Management that, they have sent the representation/appeal to the Chief Educational Officer on 27.03.2009, it is the further claim that the said representation or appeal has not been considered and decided and no orders have been passed by the Chief Educational Officer (in short 'C.E.O.').



W.A.No.140 of 2020 and
W.P.No.20696 of 2019

WEB COPY

3.2. However, no further action has been taken from the side of the School Management and only at the time of final hearing of the writ petition filed by the Teacher as the said writ petition filed by the Teacher was disposed on 24.07.2019 just 10 days prior to the said order, the School Management had chosen to file this writ petition on 11.07.2019 challenging the order passed by the D.E.O. rejecting the plea of the School Management for termination of the Teacher and those two orders passed by the D.E.O. on 04.02.2009 and 11.03.2009 were under challenge in this writ petition.

4. Heard Mr.S.Nedunchezhiyan, learned counsel appearing for the appellant, Mr.B.Manimaran, learned counsel appearing for the 1st respondent Teacher and Mr.M.Murali, learned Government Advocate appearing for the 2nd respondent/D.E.O in the writ appeal and the respondents 1 to 3 in the writ petition.

5. The learned counsel appearing for the appellant as well as the writ petitioner in W.P.No.20696 of 2019 i.e., the School Management has submitted that, the District Educational Officer is not the competent



W.A.No.140 of 2020 and
W.P.No.20696 of 2019

WEB COPY

authority to pass orders by making the rejection of the termination order passed by the School Management, therefore the C.E.O. i.e., Chief Educational Officer being the competent authority to whom the representation had been forwarded by the School Management on 27.03.2009, but the C.E.O. did not pass any orders on such representation. Therefore, waiting the orders to be passed by the C.E.O., the School Management did not move any further to file any writ petition and only in the year 2019 as the Teacher filed a writ petition challenging the termination order, the Management was constrained to file the writ petition in W.P.No.20696 of 2019.

6. The learned counsel would also contend that, if the D.E.O. is not a competent authority and the C.E.O. alone is the competent authority on that ground itself the order passed by the D.E.O. rejecting the plea raised by the School Management to get approval for the termination order passed by them against the Teacher is vitiated.

7. On the other hand, Mr.B.Manimaran, learned counsel appearing for the 1st respondent Teacher would contend that, only to the 2nd



W.A.No.140 of 2020 and
W.P.No.20696 of 2019

respondent/D.E.O., the School Management had sent the proposal that they have terminated the Teacher out of the disciplinary proceedings and seeking the approval of the D.E.O. and since the D.E.O. having considered the said order has rejected the same, in the year 2009 itself and it has been communicated immediately to the School Management in February/March 2009 itself despite that the said order has never been questioned for more than 10 years.

8. Only when the writ petition filed by the Teacher was taken up for hearing, at this juncture as a knee-jerk reaction, the School Management was triggered to file the writ petition challenging the order passed by the D.E.O. rejecting the termination order, therefore the writ petition in W.P.No.20696 of 2019 is not maintainable as is hit by latches, hence on that ground itself, the writ petition is to be dismissed.

9. Insofar as the competency of the D.E.O. to pass order is concerned, if at all the D.E.O. has passed order, further appeal can be filed to the C.E.O. and that has been provided under the rule, therefore it cannot be stated that the D.E.O. does not have the competency to pass orders, he contended.



W.A.No.140 of 2020 and
W.P.No.20696 of 2019

WEB COPY

10. Mr.M.Murali, learned Government Advocate appearing for the 2nd respondent would submit that, only to the D.E.O. the termination order has been forwarded by the School Management to give approval which was considered and approval was rejected after having gone through the entire issue to the disciplinary proceedings where the procedure contemplated under the Act as well as the Rules since have not been followed, the D.E.O. has come to such a conclusion that the termination order would not be sustained and accordingly the same was rejected as early as on 04.02.2009 itself.

11. The learned Government Advocate would further submit that, if at all the School Management is aggrieved by such an order passed by the D.E.O., they can very well prefer appeal against such order to the Chief Educational Officer who is the appellate authority as against all orders passed by the D.E.O., but no such appeal has been filed only a representation claimed to have been sent by the School Management on 27.03.2009, therefore the representation has not been considered because it has not been filed by way of appeal.



W.A.No.140 of 2020 and
W.P.No.20696 of 2019

WEB COPY

12. The issue since has been concluded and no further persuasive action has been taken even if at all the School Managements are aggrieved for more than a decade, all of a sudden after 10 years he cannot turn around and file a writ petition challenging the order passed by the D.E.O. in the year 2009, therefore on the ground of laches the writ petition has to be dismissed and even on merits also the said writ petition is deserved to be dismissed, the learned Government Advocate contended.

13. We have considered the said rival submissions made by the learned counsel appearing for the parties and have perused the materials placed before this Court.

14. Insofar as the writ appeal is concerned, the learned Judge has taken note of the order passed by the D.E.O. on 04.02.2009 where the termination order which was sought to be approved by the School Management has been considered and rejected by the D.E.O. The said order has never been questioned by the School Management till the disposal of the writ petition, therefore taking note of the same, the



W.A.No.140 of 2020 and
W.P.No.20696 of 2019

WEB COPY

learned Judge apart from other reasons i.e. on the main reason of non approval of the termination order was pleased to allow the writ petition filed by the Teacher through the impugned order, therefore we do not find any error in the said approach of the learned Judge in allowing the said writ petition, as a result the writ appeal also fails.

15. Insofar as the writ petition i.e. W.P.No.20696 of 2019 is concerned, the order impugned therein was passed by the District Educational Officer on 04.02.2009, as against which, no appeal has been filed only a representation has been filed and in that representation, according to the School Management, no orders have been passed therefore they have been waiting.

16. If at all they have waited to pass orders by the C.E.O. on the representation given by the School Management, there must be a reasonable time to wait beyond which they need not wait as already there has been a rejection order passed by the D.E.O. where a direction already been given to the School Management to reinstate the Teacher. Therefore in the teeth of the said order, there was an obligation on the part of the



W.A.No.140 of 2020 and
W.P.No.20696 of 2019

School Management to reinstate the Teacher. When that being so, the claim now made by the School Management that, they have waited to pass orders by the C.E.O. on their representation dated 27.03.2009 is not an acceptable reason for such a long delay.

17. The delay of 10 years can very well be construed as a laches, because, absolutely no reason also has been made by the School Management in approaching this Court by filing the present writ petition only on 11.07.2019.

18. Probably the writ petition filed by the Teacher since has been disposed of on 24.07.2019 before which during any of the hearing if at all the issue with regard to the non challenge of the order of the D.E.O. by the School Management would have triggered the School Management to file this writ petition as a knee-jerk reaction after 10 years.

19. For such a long delay of 10 years absolutely no reason has been given by the writ petitioner School Management in this writ petition



W.A.No.140 of 2020 and
W.P.No.20696 of 2019

in W.P.No.20696 of 2019, therefore such a writ petition can be rejected on the ground of laches alone.

20. That apart, insofar as the competency of the Officer concerned who passed an order of rejection is concerned, if at all the D.E.O. passed an order against which appeal could have been filed before the C.E.O. which is contemplated in the Rule itself, as the order passed by the D.E.O. would be appealed to the C.E.O. and the order passed by the C.E.O. would be appealed to the Director or Joint Director of School Education. Therefore, such a hierarchy of appeal is available that could have been explored by the School Management which they have failed, therefore the competency question cannot be raised at this point of time by the School Management.

21. Insofar as the plea raised by the School Management that, it is the School of Minority Management, therefore they need not be competent authority. The competent authority is concerned, the relevant provision is Section 22(1) of the Tamil Nadu Private Schools Regulations Act, it contemplates such a requirement of getting a prior



W.A.No.140 of 2020 and
W.P.No.20696 of 2019

permission and such a statutory obligation cannot be over ridden by any other authority.

22. Therefore, that plea raised by the School Management also is liable to be rejected, accordingly it is rejected.

23. Therefore for all these reasons and the discussions herein above made, we are of the considered view that the order passed by the learned Judge which is impugned in the writ appeal is to be sustained, accordingly it is sustained and the writ petition in W.P.No.20696 of 2019 is liable to be rejected for the reason of latches as well as on merits, therefore it is to be rejected.

24. In the result, both the Writ Appeal as well as the Writ Petition are dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is also dismissed.

[R.S.K., J.] [G.A.M., J.]
08.12.2023

Index : Yes/No
Speaking Order : Yes/No
Neutral Citation : Yes/No
Sgl



W.A.No.140 of 2020 and
W.P.No.20696 of 2019

To
WEB COPY

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WEB COPY



W.A.No.140 of 2020 and
W.P.No.20696 of 2019

R. SURESH KUMAR, J.
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W.A.No.140 of 2020 and
W.P.No.20696 of 2019

08.12.2023