



W.A.(MD)Nos.609 of 2013, 898 of 2015 and 1039 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 15.03.2023

CORAM:

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

AND

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

W.A.(MD)Nos.609 of 2013, 898 of 2015 and 1039 of 2016

Gnanapushpam

... Appellant in W.A.(MD) No.609
of 2013 & 3rd Respondent in
W.A. (MD) Nos.898 of 2015 &
1039 of 2016

Appavu Middle School,
Rep. its Correspondent.
Arulachi,
Tirunelveli District.

... Appellant in W.A.(MD) No.898
of 2015

The Correspondent,
Appavu Primary School,
Arulachi, Vasudevanallur Range,
Sivagiri Taluk,
Tirunelveli District.

... Appellant in W.A.(MD) No.1039
of 2016 & 3rd Respondent in
W.A. (MD) No.609 of 2013

Vs.

1.The District Elementary Educational Officer,
Tirunelveli.



W.A.(MD)Nos.609 of 2013, 898 of 2015 and 1039 of 2016

2.The Additional Assistant Elementary Educational Officer,
Vasudevanallur,
Tirunelveli District.

... Respondents 1 & 2 in all
the Writ Appeals

COMMON PRAYER: Appeals filed under Clause 15 of Letters Patent, praying this Court to set aside the common order dated 23.08.2012 passed in W.P.(MD)No.13936 of 2011, 8877 of 2012 and 13936 of 2021 respectively on the file of this Court.

For Appellant in W.A. (MD) : Mr.F.Deepak
No.609 of 2013 and 3rd
Respondent in W.A.(MD) Nos.
898 of 2015 & 1039 of 2016

For Appellant in W.A.(MD) : Mr.C.Mayilvahana Rajendran
Nos.898 of 2015 & 1039 of
2016 and 3rd Respondent
in W.A. (MD) No.609 of 2013

For Respondents 1 & 2 in all : Mr.A.Kannan
the Writ Appeals Additional Government Pleader

COMMON JUDGMENT

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

Since the issue raised in these intra-Court appeals is common and are inter-connected, with the consent of the learned counsel appearing for both sides all these appeals are heard together and disposed of by this common judgment.



W.A.(MD)Nos.609 of 2013, 898 of 2015 and 1039 of 2016

2. The appellant in W.A. (MD) No.609 of 2013, who is the 3rd Respondent in W.A.(MD) Nos.898 of 2015 and 1039 of 2016, was a teacher working in the school, which is the third respondent in W.P. (MD) No.609 of 2013 and appellant in W.A.(MD) Nos.898 of 2015 and 1039 of 2016.

3. For the sake of convenience, the appellant in W.A. (MD) No. 609 of 2013 hereinafter will be called as 'the teacher' and the appellant in other two appeals henceforth will be called as 'the school management' and the other official respondents would be called as 'the official respondents / department'.

4. The teacher was working at the school of the management as Secondary Grade Teacher, while so, since disciplinary proceedings has been contemplated against her, she was placed under suspension by order dated 20.12.2010 with effect from 03.01.2011. Subsequently, an enquiry was conducted, where charges framed against the teacher were said to have been proved, pursuant to which, the teacher was dismissed from service by order dated 24.03.2011, of the school management. Insofar as the period of suspension of the teacher is concerned, she was suspended from 20.12.2010,



W.A.(MD)Nos.609 of 2013, 898 of 2015 and 1039 of 2016

such suspension would be valid for four months period, thereafter, if it is not approved by the department, it shall be deemed to have been revoked, thereby the teacher would be entitled to get reinstatement, otherwise, she would be entitled to get subsistence allowance.

5. In the meanwhile, the dismissal order dated 24.03.2011 was challenged in W.P. (MD) No.4031 of 2011, which was allowed by a learned Judge of this Court by order dated 11.11.2011 and the dismissal order was set aside for certain alleged infirmities in the enquiry and ultimately, the matter was remitted back for redoing the departmental enquiry.

6. When such an enquiry was conducted, it was the grievance of the teacher that, certain heavily relied upon documents had not been supplied to the teacher and the enquiry was not properly conducted, therefore, on that, the teacher had filed a Writ Petition in W.P.(MD) No. 13936 of 2011, where an order of interim stay was granted by the learned Judge on 08.12.2011, thereby the enquiry was halted. In the meanwhile, already the teacher having failed in her attempt to get promotion had filed a Writ Petition in W.P.(MD) No.14749 of 2010, which was also pending



W.A.(MD)Nos.609 of 2013, 898 of 2015 and 1039 of 2016

consideration before this Court. Yet another Writ Petition was filed by the teacher in W.P.(MD) No.2042 of 2012 seeking subsistence allowance.

7. In the meanwhile, an order has been passed on 11.06.2012 by the District Elementary Educational Officer, directing the school management to pay full salary to the teacher and reinstate her, because as per Section 22 of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 read with Rule 17 of the Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974, such a suspension cannot be extended beyond four months period unless they get prior approval from the department, which, according to the department, has not been obtained by the school management, therefore, on that ground that order dated 11.06.2012 was passed, directing the school management to pay full salary to the teacher by taking the teacher into service. Aggrieved over the same, the school management filed Writ Petition in W.P.(MD) No.8877 of 2012. That is how, all these four Writ Petitions came to be filed with the respective relief and all these Writ Petitions were grouped together and were heard and disposed by the common order dated 23.08.2012 by the learned Judge.



W.A.(MD)Nos.609 of 2013, 898 of 2015 and 1039 of 2016

8. The said order is impugned in all these Writ Appeals herein.

Insofar as the said impugned order passed by the learned Judge is concerned, having considered the factual matrix of these cases in all aspects, the learned Judge, insofar as the Writ Petition in W.P. (MD) No.8877 of 2012, filed by the school management is concerned, has partly allowed the Writ Petition, but at the same time, the school management was directed to pay the subsistence allowance to the teacher from the date of the original suspension till final orders were passed against her.

9. In W.P. (MD) No.2042 of 2012, since the teacher had requested for subsistence allowance and in view of the order passed in W.P.(MD) No. 8877 of 2012, that prayer has become infructuous, that was recorded by the learned Judge.

10. Insofar as W.P.(MD) No.14749 of 2010, seeking promotion to the post of Headmistress as sought for by the petitioner is concerned, learned Judge has held that since the dismissal order made against the teacher was set aside and the matter was remanded and that was once again stayed and the enquiry could not be conducted, depending upon the enquiry



W.A.(MD)Nos.609 of 2013, 898 of 2015 and 1039 of 2016

to be conducted and final orders are to be passed, that plea of promotion or appointment to the post of Headmistress does not arise and therefore, the learned Judge has directed the school management to go ahead with the enquiry.

11. Sofaras W.P.(MD) No.13936 of 2011 is concerned, the learned Judge had held that, since the enquiry which has already commenced and halted because of the pendency of the said writ petition, that stay granted shall go and in this regard some time frame has also been fixed for conduct of the enquiry.

12. That is how all the four Writ Petitions have been disposed by the learned Judge through the impugned order.

13. In this context, it should be noted that, as against the said order passed by the learned Judge, first the teacher had come up before the Division Bench by filing intra-Court appeal in W.A.No.609 of 2013, where she challenged the order passed in W.P.(MD) No.13936 of 2011.



W.A.(MD)Nos.609 of 2013, 898 of 2015 and 1039 of 2016

14. Though the said Writ Appeal was filed, no stay was granted and it was pending, during that time, in 2015, the school management filed Writ Appeal in W.A.(MD) No.898 of 2015 against the order passed in W.P.(MD) No.8877 of 2012.

15. Also the school management filed further appeal in W.A.(MD) No.1039 of 2016 against the order passed in W.P.(MD) No.13936 of 2011.

16. It is further to be noted that in none of these cases, interim orders were granted by the Division Bench till 2019. However, only on 21.11.2019 a Division Bench of this Court considering the prima-facie opinion they formed to the extent that, the appellant/teacher had no intention to participate in the domestic enquiry, the order passed in the Writ Petition insofar it relates to the direction to conduct the enquiry and to pay the subsistence allowance, the Division Bench granted an order of interim stay.

17. With these factual background, these Writ Appeals are taken up for final hearing.



W.A.(MD)Nos.609 of 2013, 898 of 2015 and 1039 of 2016

18. Heard Mr.F.Deepak, learned counsel for the appellant in W.A. (MD) No.609 of 2013 / 3rd Respondent in W.A.(MD) Nos.898 of 2015 and 1039 of 2016, Mr.C.Mayilvahan Rajendran, learned counsel for the appellant in W.A.(MD) Nos.898 of 2015 and 1039 of 2016 / the third respondent in W.A. (MD) No.609 of 2013 and Mr.A.Kannan, learned Additional Government Pleader appearing for the official respondents in these Writ Appeals.

19. Insofar as the plea raised by the teacher for getting promotion and appointment to the post of Headmistress is concerned, no orders have been passed, though such a plea was raised in the year 2010 and in the meanwhile, due to the disciplinary proceedings, since she was suspended on 20.10.2012 with effect from 03.01.2011 and subsequently dismissed on 24.03.2011, eventhough the said dismissal order was set aside and subsequently enquiry was directed to be conducted, again second round of litigation was filed in W.P.(MD) No.13936 of 2011, where an order of interim stay has been granted by this Court on 08.11.2012 and though that was cleared by the learned Judge through the common impugned order, subsequently though Writ Appeals have been filed in the years 2013, 2015



W.A.(MD)Nos.609 of 2013, 898 of 2015 and 1039 of 2016

and 2016, where there has been no interim order of stay of operation of the impugned order of the learned Judge, the school management has not taken care for conducting any enquiry. When this was specifically asked, the learned counsel appearing for the school management submitted that because of the pendency of the Writ Appeal filed by the Petitioner, the school management thought of not to proceed with the enquiry, also, no subsistence allowance was given as directed by the learned Judge through the impugned order to the teacher atleast from the date of suspension till the date of stay granted in W.P.(MD) No.13936 of 2011 i.e, 08.11.2011.

20. Insofar as the subsequent period also as to whether the teacher was entitled to get subsistence allowance or reinstatement is concerned no decision was taken, despite no interim orders were granted by this Court in the intra-Court appeals as referred to above.

21. At the time of filing these cases, the age of the teacher was 48, now, according to Mr.F.Deepak, learned counsel for the teacher, the age of the teacher is 59 years old, therefore, she may have one year of service till superannuation. It is also brought to our notice by the learned counsel for



W.A.(MD)Nos.609 of 2013, 898 of 2015 and 1039 of 2016

the school management that, as on date the school management is not effectively functioning as the Correspondent is no more and the issue is to be settled as to who has to become the Correspondent of the school and in the meanwhile, the learned Additional Government Pleader also would submit that, the school has been taken over for the purpose of direct payment by the department and the teaching grants are being paid directly by the education department through the CEO/DEO concerned.

22. Having considered all these aspects we are of the view that, insofar as taking disciplinary proceedings against the teacher is concerned, which is inconclusive because of series of litigations as stated supra, that power is vested only with the school management and as on date there is no effective management available at this time, therefore, even if we permit the management to go ahead with the enquiry, no useful purpose would be served and no enquiry could be conducted.

23. But at the same time, it is also be taken note of that, the teacher having waited for all these years and because of some litigations which have been triggered only by the teacher because of which the enquiry



W.A.(MD)Nos.609 of 2013, 898 of 2015 and 1039 of 2016

was delayed for long years, is at the verge of retirement as only one year service alone still remains to reach the superannuation.

24. At this juncture, for want of conducting an enquiry in turn for want of having an effective management of the school, if the enquiry is deferred for some time within which the teacher may reach superannuation, thereafter, the further question would arise as to whether the teacher is to be permitted to retire and who has to take such a decision also would be a question and assuming that the teacher is permitted to retire, then whether the teacher is entitled to get the retirement benefits and what about the enquiry which is being halted because of these litigations, whether it is to be continued or not, all these questions would arise and in order to answer those questions if we simply leave the matter at rest for want of management of the school to conduct the enquiry, that is in no way beneficial to either of the parties, especially the teacher, as she has been out of service for the past more than 10 years and is at the verge of retirement. Therefore, considering the totality of the situation, by taking note of the legal position in this regard by having the factual matrix of these cases, we are of the view that, the teacher can be permitted to be reinstated into



W.A.(MD)Nos.609 of 2013, 898 of 2015 and 1039 of 2016

service as Secondary Grade Teacher for the time being i.e., till her superannuation, however, subject to the enquiry to be conducted against her, which has already been commenced and to some extent it has been conducted, otherwise no useful purpose would be served and ultimately the issue cannot be resolved amicably and effectively. In that view of the matter, this Court is inclined to dispose these Writ Appeals with the following orders:-

- i. that there shall be a direction to the official respondents to issue an order of reinstatement to the teacher as Secondary Grade Teacher within a period of two weeks from the date of receipt of a copy of this order, in view of the absence of the effective administration or management of the school concerned.
- ii. the said reinstatement is strictly subject to the enquiry to be conducted in this regard on a later date by the school management once the effective management has come into office.
- iii. suppose the enquiry could not be conducted by the school management, as there has no effective school management, even till the teacher attains superannuation after one year, the teacher should not be permitted to retire from service as her service will be withheld



W.A.(MD)Nos.609 of 2013, 898 of 2015 and 1039 of 2016

for the purpose of completion of enquiry even after superannuation.

- iv. therefore, after conducting the enquiry by the school management, once the proper management has come into office, the result of which, shall be communicated to the department and based on such a decision to be taken in the disciplinary proceedings as enquiry to be conducted by the school management, the further course of action or the further entitlement of the teacher can be decided.
- v. Whatever be the outcome of the decision, insofar as the subsistence allowance payable to the teacher is concerned, from the date of original suspension i.e., from 03.01.2011 till 08.12.2011 the date on which interim order was passed regarding conduct of enquiry on the Writ Petition in W.P.(MD) No.13936 of 2011 filed by the teacher herself, the teacher would be entitled to get the subsistence allowance. Therefore, the same shall be calculated and be paid by the school management and in this case if the school management is not in a position to pay the subsistence allowance because there is no effective school management available as of now, the department can pay the same and get it reimbursed from the school management once the school management takes office. The same shall be complied with



W.A.(MD)Nos.609 of 2013, 898 of 2015 and 1039 of 2016

by the department within a period of three months from the date of receipt of a copy of this order.

vi. for the purpose of payment of salary for the remaining period of service, after reinstatement as stated supra, it shall be paid by the department to the teacher as per the salary for which she is entitled to the post of Secondary Grade Teacher alone.

vii.in case the effective management has come into office of the school management and they wanted to conduct an enquiry as directed above, whatever the documents on the side of school, which is going to be relied upon against the teacher, that shall be supplied to the teacher and thereafter after giving appropriate opportunity enquiry shall go on.

25. With all these directions, these Writ Appeals are disposed.

However, there shall be no order as to cost.

(R.S.K., J.) & (K.K.R.K, J.)
15.03.2023

NCC : Yes / No
Index : Yes / No
SJ

R.SURESH KUMAR, J.



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W.A.(MD)Nos.609 of 2013, 898 of 2015 and 1039 of 2016

AND

K.K.RAMAKRISHNAN, J.

SJ

To

- 1.The District Elementary Educational Officer,
Tirunelveli.
- 2.The Additional Assistant Elementary Educational Officer,
Vasudevanallur,
Tirunelveli District.

W.A.(MD)No609 of 2013, 898 of 2015 and 1039 of 2016

15.03.2023