



W.P(MD)No.6978 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 20.04.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.6978 of 2023

and

W.M.P.(MD)No.6598 of 2023

M.A.Kader Ammal Beevi

... Petitioner

Vs.

1.The District Educational Officer,
(Secondary Grade Education),
Tirunelveli Education District,
Tirunelveli.

2.K.Barkath Umma,
Temporary Correspondent,
Muslim Girls Higher Secondary School,
MLM Nagar, Melapalayam,
Tirunelveli.

3.Muslim Women Educational Society,
Melapalayam, Tirunelveli,
Rep. through its President,
L.K.S.Noor Jahan.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling for the records relating to the proceedings of the impugned order in



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Na.Ka.No.725/Aa3/2023 dated 08.02.2023 on the file of the
1st Respondent and quash the same as illegal.

For Petitioner : Mr.S.Selva Adithya,
For Mr.K.Vinoharan

For Respondents : Mr.N.Satheesh Kumar,
Addl. Government Pleader for R1.
Mr.T.S.Venkatramana, Senior Counsel,
For Ms.V.Janaki Devi.

ORDER

Heard the learned counsel for the writ petitioner, the learned Additional Government Pleader for the first and the learned senior counsel for the respondents 2 and 3.

2.The petitioner challenges the suspension order passed by the first respondent on 08.02.2023. She was working as Headmistress of Muslim Girls Higher Secondary School, Melapalayam. The Correspondent of the school was implicated in a criminal case under Protection of Children from Sexual Offences Act, 2012. He has been arrested and subsequently detained under “Goondas Act”. The petitioner was also arrested in the



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said case and she was in judicial custody for over 26 days. She had come out on bail.

3. Admittedly, the school in question is a minority private school within Section 2 of the Tamil Nadu Recognized Private Schools (Regulation) Act, 1973. Teachers employed in such schools can be dealt with only under Section 22 of the Act r/w Rule 17 of the Tamil Nadu Recognized Private Schools (Regulation) Rules, 1974. The said provisions are as follows:-

“Section 22. Dismissal, removal or reduction in rank or suspension of teachers or other persons employed in private schools. - (1) Subject to any rule that may be made in this behalf, no teacher or other person employed in any private school shall be dismissed, removed, or reduced in rank nor shall his appointment be otherwise terminated except with the prior approval of the competent authority.

(2) Where the proposal to dismiss, remove or reduce in rank or otherwise terminate the appointment of any teacher or other person employed in any private school is communicated to the competent authority, that authority shall, if it is satisfied that there are adequate and



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reasonable grounds for such proposal, approve such dismissal, removal, reduction in rank or termination of appointment.

(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.

Rule 17. Dismissal, removal or reduction in rank or suspension of teacher or other persons employed in private school- (1) The competent authorities to accord prior



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approval for the dismissal, removal or reduction in rank of a teacher or other person employed in any private school, shall be the District Educational Officer in respect of teacher or other person employed in Pre-primary, Primary and Middle Schools and the Chief Educational Officer in respect of teacher or other person employed in High Schools, Higher Secondary Schools and Teachers' Training Institutes.

(2) (i) Whenever a teacher or other person employed in a private school is kept under suspension, such suspension shall, immediately on the date of issue of the suspension order, be intimated by the Secretary of the school committee to the District Educational Officer concerned along with a copy of the suspension order.

(ii) On receipt of intimation regarding the suspension of a teacher or other person as mentioned in clause (i) above, the District Educational Officer concerned shall make payment of subsistence allowance to the teacher or other person who is placed under suspension, every month from the date of suspension for not more than two months at half the rate of pay which he was drawing at the time of suspension and in addition the dearness allowance, if admissible, on the basis of such pay.

(iii) Whenever the competent authority has extended the period of suspension of a teacher or other person under the proviso to clause (b) of sub-section (3) of section 22 of the



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Act, he shall intimate such extension of suspension to the District Educational Officer concerned. On receipt of such intimation, the District Educational Officer concerned shall make payment of subsistence allowance to the teacher or other person who is placed under suspension for a further period not exceeding two months at half the rate of pay which he was drawing at the time of suspension and in addition the dearness allowance, if admissible, on the basis of such pay.

(iv) The District Educational Officer concerned shall send an intimation regarding the payment of the subsistence allowance under clauses (ii) and (iii) above to a teacher or other person who is placed under suspension to the Secretary of the school committee.

(v) The payment of subsistence allowance shall be limited to maximum of four months in all.

(3) (i) Where after enquiry, including the appeal, a suspension is found to be not justified, the management shall remit the amount of subsistence allowance paid to the teacher or other person, employed in that private school to the Government in one lumpsum under the appropriate head of account. The educational agency shall, however, pay such teacher or other person the full pay and allowances he would have drawn but for his suspension less the amount of subsistence allowance already paid to the teacher or other



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person for the suspension period from the funds of the management without any claim from grant.

[(ii) Where a substitute is appointed in the place of a teacher or other person employed in a private school kept under suspension, the management shall not be entitled to any grant in respect of such a substitute.]

[(iii) Where the appellate authority has decided against the imposition of the penalty of dismissal or removal from service or placement under suspension of a teacher or other person employed in a private school by the management of that school, the management of every private school, not being a minority school, shall implement the order of the Appellate Authority and re-instate the teachers or other persons with all back wages for the period of dismissal or suspension or removal within one month from the date of order of the Appellate Authority, failing which, apart from resumption of the post, recognition shall be withdrawn.]”

4.The impugned order has been passed under Rule 17(e) of Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955. It is too obvious that the said rule is not applicable to the case on hand. Of course, as rightly pointed out by the learned Additional Government Pleader, mis-quoting, non-quoting and wrong quoting of the statutory



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rules by itself will not vitiate the proceedings. But then, the first respondent who is not a person with any inherent power is obliged to trace his order to some statutory provision or rule or atleast government order. In this case, the first respondent is unable to anchor the impugned order on any such rule or G.O. However, since the petitioner was in judicial custody for a period of 26 days, during the said period, the petitioner will be deemed to have been under suspension. I would go to the extent of saying that this case even if formal order is not passed, that would be the legal consequence of her detention. I, therefore would not fault the first respondent for having passed the impugned order of suspension. It is all the more so because during the relevant time, the school came under direct management. Be that as it may, the question that arises now is whether the impugned order should be continued. There cannot be any vacuum in administration. The department had appointed the second respondent as temporary correspondent. The learned senior counsel for the respondents 2 and 3 informed the Court they do not want the petitioner's suspension to continue. As per the statutory scheme, it is only the management of the minority school which can decide whether to place an employee under suspension or whether to



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continue the suspension. It is not for the department to dictate the management as to what to do. Since the management has decided that while the merits of the matter can be gone into later, the suspension of the petitioner need not continue. In that view of the matter, the petitioner's suspension stands revoked and she shall be reinstated in service forthwith and without delay.

5.This writ petition is allowed on these terms. No costs.
Consequently, connected miscellaneous petition is closed.

20.04.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
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To:-

The District Educational Officer,
(Secondary Grade Education),
Tirunelveli Education District,
Tirunelveli.



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G.R.SWAMINATHAN, J.

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