



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Civil Appellate Jurisdiction)

Thursday, the Twentieth day of April Two Thousand and Twenty Three

PRESENT

The Hon`ble Mr.Justice R.SURESH KUMAR
and
The Hon`ble Mr.Justice K.K. RAMAKRISHNAN

CMP(MD) No.4091 of 2023
IN
WA(MD) No.1194 of 2017

1 THE STATE OF TAMIL NADU
REPRESENTED BY THE SECRETARY TO GOVERNMENT,
EDUCATION DEPARTMENT,
FORT ST.GEORGE,
CHENNAI-600 009.

2 THE DIRECTOR OF TEACHER EDUCATION,
RESEARCH AND TRAINING,
COLLEGE ROAD,
CHENNAI-6.

3 THE DIRECTOR OF SCHOOL EDUCATION,
COLLEGE ROAD,
NUNGAMBAKKAM,
CHENNAI-6.

4 THE DISTRICT EDUCATIONAL OFFICER,
ARUPPUKOTTAI TALUK,
VIRUDHUNAGAR DISTRICT.

... Petitioners / Appellants

Vs

1 R.VINOTH KUMAR

2 THE SECRETARY
HINDU HIGH SCHOOL,
GOPALAPURAM,
PALAYAMPATTY POST,
VIRUDHUNAGAR DISTRICT.

3 THE PRINCIPAL
SRI RAMAKRISHNA MISSION,
VIDYALAYA MARUTHI COLLEGE OF PHYSICAL EDUCATION,
SRI RAMAKRISHNA VIDYALAYA POST,
PERIYANAICKENPALAYAM,

... Respondents / Respondents



Petition filed praying that in the circumstances stated therein and in the affidavit filed therewith the High Court may be pleased to issue clarification of the judgment and orders passed in WA(MD).No. 1194 of 2017 dated 09-03-2021.

Prayer in WA(MD) No.1194 of 2017:

Writ Appeal file under Clause 15 of the Letters Patent, against the order dated 18.01.2017 passed in WP(MD) No.8115 of 2011.

Prayer in WP(MD). 8115/ 2011 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court Pleased to issue a Writ of Mandamus directing the 4th respondent to approve the appointment of the petitioner as Physical Education Teacher with effect from the date of initial appointment i.e., from 24.05.2010 and consequently pay all arrears of salary and attendant, monetary benefits etc.

ORDER : This petition coming up for orders on this day, upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of Mr,VEERA KATHIRAVAN, Additional Advocate General assisted by Mr.A.KANNAN, Special Government Pleader on behalf of the petitioners and of Mr.V.R.VENKATESAN, Advocate for the Respondents, the court made the following order:-

(Order of the Court was made by R.SURESH KUMAR,J.)

This petition has been filed to seek a clarification of the judgment and order passed in WA(MD) No.1194/2017 dated 09.03.2021.

2. The writ petition filed by the writ petitioner was allowed, which has been confirmed by the Division Bench in the writ appeal filed by the petitioner State.

3. Despite these orders having been passed long back, the order since have not been complied with and the writ petitioner Teacher has not been reinstated, contempt petition has been filed in Cont.P (MD) No.1689/2022.

4. At this stage, this petition has been filed on behalf of the State and the officials concerned of the education department seeking clarification.

5. In this context, the learned Additional Advocate General would submit that insofar as the school, where the writ petitioner was working and has been removed from service is concerned, at the time of his removal, he was under the private management, subsequently there has been no private management in the helm of affairs and the school is in the direct management for the purpose of teaching grant. Therefore, under the provisions of the Tamil Nadu Private Schools (Regulation) Act, 1973 (hereinafter referred to as



'the Act'), if at all any disciplinary action to be taken by proposal to that effect has to be made including the reinstatement, that kind of orders to be made by the school management ie., the educational agency or school committee and thereafter it has to be forwarded to the education department, ie., the authority concerned namely the District Educational Officer and the Chief Educational Officer, as the case may be, to approve such reinstatement.

6. Here in the case in hand, since the school is under the direct payment, ie., direct management for the purpose of teaching grant under the education department, where proposal now has been made by the District Educational Officer concerned to the Chief Educational Officer whether can be proceeded further and based on which whether the reinstatement proposal can be approved and the writ petitioner can be reinstated with all benefits as directed by this Court is a question. Therefore, this position is to be clarified by this Court, the learned Additional Advocate General contended.

7. Heard the learned Additional Advocate General and the learned counsel for the respondent Teacher.

8. Insofar as the school is concerned, it is admittedly under the direct payment system that means that for all current affairs the management is virtually at the hands of the education department.

9. Suppose if this kind of direct payment of management system continues years together, in the meanwhile the teaching staff are to be filled up or to be transferred or some action to be taken to the welfare of the teaching and non teaching staff within the meaning of the Act by invoking the doctrine of necessity, the department, ie., the education department can step into the shoes for attending the essential work like the present one, where the writ petitioner's dismissal, having been considered, was set aside and he was directed to be reinstated, causing delay further by not reinstating the teacher would unnecessarily wasting the service period of the teacher concerned, that apart the Government also have to make the salary at a later point of time without extracting any work from the teacher that will be a great loss to the exchequer.

10. Therefore, considering these peculiar facts and circumstances, this Court feel that the following clarification can be given in this petition:

- that the order passed by the writ Court as confirmed by the Division Bench in the writ appeal referred to above would be complied with by the appellants, namely, the District Educational Officer with the concurrence of the Chief Educational Officer concerned;
- by complying the same, reinstatement shall be given to the teacher at the school concerned and he would be entitled to get



the service benefits for the period for which he was reinstated to get reinstatement pursuant to the orders passed by this Court;

- It is also brought to our notice by the learned Additional Advocate General that insofar as the Physical Education Teacher is concerned, the students strength is very minimal and therefore, the physical education teacher may not be required in the school, therefore, if at all the teacher is concerned, is reinstated as a physical education teacher, he can be shifted to some other needy school;
- The said contention made by the learned Additional Advocate General also to be accepted because if the school strength does not make it to the school entitled to seek for appointment or reinstatement of physical education teacher, the present teacher, who is the writ petitioner on his reinstatement can be transferred to any needy school by the petitioner education department and if such a redeployment or transfer is made, the same shall be accepted by the teacher and in the transferred school, he shall join immediately;
- this order is passed with liberty to the petitioner authorities to make compliance as indicated above without prejudice to their right to agitate the issue before the Special Leave Petition, which they claimed to have filed on 29.03.2023;
- The needful as indicated above shall be undertaken and a compliance report shall be filed before this Court on 05.06.2023.
- The presence of the respondents is dispensed with for the time being.

Post on 05.06.2023.

sd/-
20/04/2023

/ TRUE COPY /

/05/2023

Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

RR

To

1 THE SECRETARY TO GOVERNMENT,
THE STATE OF TAMIL NADU
EDUCATION DEPARTMENT,
FORT ST. GEORGE,
CHENNAI-600 009.

<https://www.mhc.tn.gov.in/judis>



CMP(MD)



23

2 THE DIRECTOR OF TEACHER EDUCATION,
RESEARCH AND TRAINING,
COLLEGE ROAD,
CHENNAI-6.

3 THE DIRECTOR OF SCHOOL EDUCATION,
COLLEGE ROAD,
NUNGAMBAKKAM,
CHENNAI-6.

4 THE DISTRICT EDUCATIONAL OFFICER,
ARUPPUKOTTAI TALUK,
VIRUDHUNAGAR DISTRICT.

ORDER

IN

CMP (MD) No.4091 of 2023

IN

WA (MD) No.1194 of 2017

Date :20/04/2023

ED/BUC/SAR-4 (08/05/2023) 5P 5C