



W.P(MD)No.7382 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 14.06.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.7382 of 2023

and

W.M.P.(MD)Nos.6916, 6917, 6918 & 10867 of 2023

P.Arul Jothikiruban

... Petitioner

Vs.

- 1.The Chief Educational Officer,
Thoothukudi.
- 2.The District Educational Officer,
Thoothukudi.
- 3.The Manager,
High and Higher Secondary Schools,
CSI Thoothukudi Nazareth Diocese,
Nazareth,
Caldwell School Campus,
100, Beach Road,
Thoothukudi-628 001.
- 4.Premkumar Rajasingh,
The Manager,
High and Higher Secondary Schools,
CSI Thoothukudi Nazareth Diocese,
Nazareth,
Caldwell School Campus,
100, Beach Road,
Thoothukudi-628 001.



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5.The Correspondent,
Mary Ann Best Girls Higher Secondary School,
Pandaranchettivilai-628 203,
Thoothukudi District.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records connected with the charge memo dated 11.01.2023 and the suspension order dated 15.02.2022, consequently, the extension of the suspension orders dated 20.01.2023 and 27.01.2023 issued by the third respondent and to quash the impugned orders as patently illegal and arbitrary and direct the respondents to relieve the petitioner on superannuation and to pay all the retirement benefits with pension.

For Petitioner : Mr.V.Raghavachari
Senior Counsel
for Mr.J.Kinsgly Solomon

For Respondents : Mr.N.Satheesh Kumar
Additional Government Pleader for R1 & R2

: Mr.N.Dilip Kumar for R3 to R5

ORDER

Heard the learned senior counsel appearing for the writ petitioner and the learned Additional Government Pleader appearing for the official respondents and Shri.N.Dilip Kumar, learned counsel, appearing for the contesting respondents.



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2. The petitioner served the fifth respondent school as Headmistress. She reached the age of superannuation on 31.01.2023. On the eve of her superannuation, the petitioner was served with the order of suspension on 05.12.2022. She was also served with the charge memo dated 11.01.2023. Challenging the same, the present writ petition has been filed.

3. The learned senior counsel pointed out that the subject matter of the charge memo dates back to the year 2014. He submitted that as per the bylaws governing the administration of the institution, the accounts are annually audited. The audited statements have been duly approved. The learned senior counsel would contend that since the petitioner's husband participated in the diocesan election, the petitioner is being victimized by issuance of the impugned charge memo and suspension order. Though the contentions advanced by the learned senior counsel are quite persuasive, I am conscious of the limitation in exercise of writ jurisdiction. The charge memo in the very nature of things will involve wading into factual aspects. In this case, there are too many accounting details. It is for this reason I decline to consider the validity of the



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charge memo at this stage. However, the apprehension expressed by the learned senior counsel is that the enquiry officer cannot be a person from among the committee members who were responsible for the issuance of the impugned charge memo. When I indicated this to the learned counsel appearing for the private respondents, the learned counsel fairly submitted that the enquiry officer will not be from among the members of the Finance Sub Committee.

4. Considering the special facts and circumstances obtaining in this case, I direct the respondents to appoint a chartered accountant having atleast ten years of standing and who is not a part of any of the committees which had concerned itself with the issue on hand as enquiry officer. This undertaking given by the private respondents is placed on record. Since the petitioner had already reached the age of superannuation, disciplinary action initiated against her should be concluded on merits and in accordance with law within a period of six months from the date of receipt of a copy of this order. It is further submitted that the pension papers of the petitioner have not been processed and therefore, the petitioner is not getting provisional pension. A person against whom disciplinary action has been initiated and



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suspended will be entitled to subsistence allowance. If she had crossed the age of superannuation and has not been allowed to retire, she must be paid provisionally. I direct the management to submit the relevant proposals to the concerned authorities and the competent authorities are directed to sanction and disburse provisional pension to the petitioner. This disbursement shall be done within a period of eight weeks from the date of receipt of a copy of this order. The gratuity and other monetary benefits which cannot be denied under any circumstances shall also be disbursed to the petitioner within a period of twelve weeks. All the contentions of the petitioner are left open. If in the enquiry, the presenting officer is a lawyer or a legally trained person who is not involved in this case, the petitioner also will be entitled to assistance of a lawyer. If the presenting officer is not from a legal background, the petitioner can only have the assistance of a non-legal person.

5. The Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

14.06.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
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G.R.SWAMINATHAN, J.

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To

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Thoothukudi.
- 2.The District Educational Officer,
Thoothukudi.

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