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W.P.(MD)No.12783 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.01.2023

CORAM

THE HONOURABLE MRS.JUSTICE **S.SRIMATHY**

W.P.(MD)No.12783 of 2019

M.Stephen

... Petitioner

vs.

- 1.The Joint Director of School Education,
Directorate of School Education,
College Road, Chennai.
- 2.The Chief Educational Officer,
Tirunelveli, Tirunelveli District.
- 3.The District Educational Officer,
Cheranmahadevi,
Tirunelveli District.
- 4.The Government Higher Secondary School,
represented by its Head Master,
Veeranam, Tirunelveli District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, to call for the records on the files of the 1st respondent pertaining to its order bearing Na.Ka.No.48033/C2/E3/2014, dated



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22.09.2014 and to quash the same as illegal.

(Prayer amended, vide Court order, dated 09.01.2023, in W.M.P.(MD)No.585 of 2023 in W.P.(MD)No.12783 of 2019)

For Petitioner : Mr.S.C.Herold Singh

For Respondents : Mr.S.Kameswaran
Government Advocate

ORDER

This writ petition is filed for issuance of a writ of Certiorari, to quash the impugned order dated 22.09.2014 of the 1st respondent.

2. The petitioner was appointed as B.T. Assistant (Science) by Teacher Recruitment Board, vide order, dated 27.09.2007 and was appointed in the 3rd respondent School on 08.10.2007. The petitioner was placed under suspension, vide order, dated 25.07.2014, for the alleged misconduct and mischief behavior. The petitioner submitted a representation stating that no enquiry was conducted before suspension. Thereafter, the petitioner approached this Court and filed W.P. (MD)No.13980 of 2014, challenging the order of suspension. In the meanwhile,



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the petitioner had attained superannuation on 31.05.2016.

3. The contention of the petitioner is that the respondents have not issued any charge memo but kept the petitioner under suspension. Before retirement on attaining superannuation on 31.05.2016, the petitioner was not retained in service. After attaining superannuation, the petitioner submitted a representation to cancel the order of suspension through letter, dated 09.08.2016. Further, the respondents have not initiated any disciplinary proceedings. The petitioner was not granted any retirement benefits as well as pension. The petitioner was under suspension without any action. The petitioner could not meet out his family expenses and hence, constrained to send another communication, dated 06.05.2019, seeking subsistence allowance or full salary.

4. The further contention of the petitioner is that the petitioner is entitled to receive 50% of subsistence allowance for the first six months from the date of suspension. Thereafter, he is entitled to 75% and thereafter, if it is beyond the



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7. But the contention of the respondents is that the respondents have conducted an enquiry which would be evident from the communication of the Chief Educational Officer to the Joint Director of the School, dated 08.04.2021. In the said letter, the reference letter, dated 19.11.2017, shows as if the enquiry was completed in the year 2017 itself, but till date, the respondents have not passed any orders retaining the petitioner in service to complete the disciplinary proceedings. It is settled proposition that if the employer has not retained the employee in service on attaining superannuation, then disciplinary proceedings cannot be proceeded with, since there is no employer employee relationship. Hence, the respondents at this stage cannot proceed further and pass orders.

8. Therefore, this Court is inclined to allow this writ petition. The charge memo, dated 22.09.2014, is quashed. The petitioner is entitled to treat the suspension period as duty period. The respondents shall grant all monetary and terminal benefits to the petitioner within a period of eight weeks from the date of receipt of a copy of this order.



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9. With the above said observation, the writ petition is allowed. No costs.

Index : Yes / No
Internet : Yes
NCC : Yes / No

09.01.2023
(3/3)

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To

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