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W.P.(MD)No.15303 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.04.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No.15303 of 2019

and

W.M.P.(MD)No.11877 of 2019

Pon Nandagopal

.

... Petitioner

vs.

1.The Additional Chief Secretary,
Government of Tamilnadu,
Fort St. George, Chennai-9.

2.The Commissioner,
Hindu Religious and Charitable
Endowment,
Uthamar Gandhi Salai,
Nungambakkam, Chennai.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to quash the G.O.No.8, dated 22.01.2019, issued by the Tourism, Culture and Endowment Department, Chennai, filed against the order passed in G.O.71, issued by Tourism, Culture and Endowment Department, dated



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03.05.2016 and consequentially, to direct the respondents to pay the pensionary benefits forthwith.

For Petitioner : Mr.R.Murali
For Respondents : Mr.R.Suresh Kumar
Additional Government Pleader

ORDER

This writ petition is filed for writ of Certiorarified Mandamus, to quash the G.O.No.8, dated 22.01.2019, issued by the Tourism, Culture and Endowment Department, Chennai, passed against the order passed in G.O.71, issued by Tourism, Culture and Endowment Department, dated 03.05.2016 and consequentially, to direct the respondents to pay the pensionary benefits forthwith.

2. The petitioner was serving as Assistant Commissioner in Hindu Religious and Charitable Endowment Department and he was in-charge of Periyannayagi Amman Girls Higher Secondary School which is



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attached to Arulmigu Mandirapureeswarar Thirukoil situated at Kovilur in Tiruvarur District. As the Assistant Commissioner of Thiruvarur was also the Secretary of the School, while he was functioning as the Secretary of the said School, four charges were framed against him, vide charge memo, dated 28.02.2011.

3.1. The 1st charge against the petitioner is that he had called for the School Committee members urgently to the office of the Joint Commissioner regarding the selection of Teachers and obtained signatures of the School Committee members in a separate sheet and has not obtained the signatures of the School Committee members in the minute book maintained by the school. Apart from that, he has issued appointment orders on 28.02.2011 and they have joined duty on 01.03.2011.

3.2. The 2nd charge is that since the code of conduct for the general



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election came into force on 01.03.2011, the petitioner has unnecessarily and without any basis had appointed the Teachers.

3.3. The 3rd charge is that the marks secured by the applicants were filled only in pencil on 22.02.2011 and necessary resolution was passed for appointment on 28.02.2011.

3.4. The 4th charge is that the entire appointment of all the 8 Teachers were not in accordance with Section 15 of the Recognized Private School Regulation Act. Apart from that, the entire appointment was not made by the Educational Agency whereby committed serious irregularity in the appointment of Teachers.

4. The petitioner was placed under suspension on 13.08.2014 and subsequently, the suspension was revoked and the petitioner was permitted to retire on attaining superannuation on. Thereafter, the



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disciplinary proceeding was conducted, the charges levelled against the petitioner were held to be proved and a punishment of cut in pension of Rs.2,000/- per month for a period of three years was imposed in G.O. (D)No.71 TC&RE dated 03.05.2016. The petitioner preferred an revision to the 1st respondent after a lapse of 65 days. The Government has taken four years to pass an order in the impugned G.O.(D)No.8 Tourism, Culture and Endowment Department dated 22.01.2019. Both the said G.O. were challenged in the present writ petition.

5. The contention of the petitioner is that the charges against the petitioner are without any basis and the appointments and recruitment process were carried out as per law. The appointment orders were issued before the code of conduct came into force. Subsequently, the appointment orders were not approved by the Educational Department and the aggrieved persons filed separate writ petitions and all the writ petitions were allowed. Thereafter, their appointments were confirmed.



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Therefore, the contention of the petitioner is initiation of the disciplinary proceedings against the petitioner ought to be considered as infructuous automatically. Unfortunately, the disciplinary enquiry was proceeded and the respondents have imposed a punishment of cut in the pension to the tune of Rs.2,000/- per month for three years. Aggrieved over the same, the present writ petition is filed.

6. The contention of the petitioner for the 1st charge is that the Joint Commissioner had directed the petitioner to conduct the selectin process, hence the paper publication was issued in January 2011 calling for applications from the eligible candidates. The petitioner had produced the paper publication and it is seen that he school committee has issued the advertisement. Therefore, there is no infirmity in the paper publication.

7. The next contention of the petitioner is that school committee



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resolution was passed and the same is entered in the minute book, wherein it was resolved to appoint the said eight teachers. The extract of the minute book was submitted before this Court. Also, the resolution was typed mentioning individual names. The said copy is submitted before this Court. Interestingly in all the resolutions the Joint Commissioner has affixed signature with official seal. Therefore the 1st charge that the petitioner is not proved and the allegation is false.

8. The contention of the petitioner is that the petitioner was serving as Assistant Commissioner, hence he was in-charge Secretary of the School. The school committee is headed by the Joint Commissioner and the petitioner ought to follow the directions of the Joint Commissioner. The recruitment process was conducted as per the direction of the Joint Commissioner. A School Committee was constituted as per law,



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thereafter, the School Committee had issued paper publication in January 2011. Applications were submitted by the eligible candidates. Then the School Committee has processed the applications after following all the rules and regulations including reservation and 8 teachers were selected 23.02.2011 and they were appointed on 24.02.2011. The code of conduct came into force on 01.03.2011. Infact the petitioner had produced the appointment order of the eight teachers dated 24.02.2011. Therefore, the allegation by the respondents that the code of conduct came into force, then the appointment order was issued is incorrect. Hence the said 2nd charge is not proved.

9. The respondents further contended that the petitioner has hurriedly issued the appointment order. Such an allegation was refuted by the petitioner by citing another appointment order issued to non-teaching staff which was approved by the educational authority. The same committee has approved for the non-teaching staff. Therefore, the



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claim of the respondents that the petitioner has not followed the election code of conduct is incorrect.

10. It is seen that from the documents that the resolution was signed by the Commissioner on 23.02.2011. Moreover, the respondents have not taken a stand that the Joint Commissioner has preferred a complaint or deposed before the authority or the enquiry officer that he never ever signed the resolution or never issued any appointment orders. Therefore, the action taken against the petitioner as Assistant Commissioner is victimization of the petitioner.

11. It is also seen that the TNPSC was consulted by the respondents, wherein the TNPSC has opined that as such there is no violation by the petitioner, may be a slight violation. From this it is evident that the TNPSC is also of the opinion that the petitioner has not violated any of the rules. It is also seen that the government had



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proposed a punishment of cut in the pension for Rs.4000/- and the TNPSC has opined that the same is on the higher side and opined to impose Rs.2000/- for three years and the reason stated by the TNPSC is that the government had decided to impose punishment, if so the punishment may be reduced. On the comprehensive reading of the opinion of the TNPSC, it is evident that the TNPSC itself is of the opinion that there is no violation, since the government has decided to impose punishment, then a lesser punishment may be imposed. It is also seen that the Joint Commissioner is the Head of the School Committee, but the respondents have not taken any action against the said Joint Commissioner. Therefore, this Court is of the considered opinion that the petitioner is victimized. Therefore, this Court is quashing the impugned order. The respondents have already recovered the entire amount. Hence the respondents are directed to pay all the monetary benefits to the petitioner including the recovered amount. The said exercise shall be



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completed within a period of eight weeks from the date of receipt of a copy of this order.

12. With the above said observation, the writ petition is allowed.

No costs. Consequently, connected miscellaneous petition is closed.

Index : Yes / No

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Internet : Yes

NCC : Yes / No

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To

1.The Additional Chief Secretary,
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Fort St.George, Chennai-9.

2.The Commissioner,
Hindu Religious and Charitable
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Uthamar Gandhi Salai,
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S.SRIMATHY, J

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