



REV.APLW.(MD).No.131 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 06.10.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

REV.APLW.(MD).No.131 of 2023

and

W.M.P.(MD).No.15240 of 2023

Thanam Middle School,
(Christian Minority Govt.
Aided School)
Represented by its Manager
& Correspondent,
P.Stanley, S/o. Paulraj,
Gandhi Nagar,
Madurai-625 020.

... Petitioner

Vs.

- 1.A.Vijayalakshmi,
Graduate Teacher (Removed from
Service),
Thanam Middle School,
Gandhi Nagar,
Madurai-625 020.
- 2.The Joint Director of Elementary
Education (Minority),
DIP Campus, College Road,
Chennai-625 020.
- 3.The District Educational Officer,
(formerly DEEO/Madurai-DEO Melur),
Madurai-625 001.



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4.The Block Educational Officer,
Madurai East,
Tallakulam,
Madurai-625 002.

5.P.Stanley,
Manager & Correspondent,
Thanam Middle School,
(Christian Minority Govt Aided
School)
Gandhi Nagar,
Madurai-625 020.

6.The Head Mistress,
Thanam Middle School,
Gandhi Nagar,
Madurai-625 020.

7.S.Balakrishnan,
Advocate,
No.50, East 3rd Street,
K.K.Nagar,
Madurai-625 020.

... Respondents

Prayer: Review Application Writ filed under Section 47 Rule 1 & Section 114 r/w 151 of CPC, to review the order dated 15.06.2023 passed in WP.(MD).No. 23457/2022 passed by this Court.

For Petitioner : Mr.W.Pamelin

For R-1 : Party in person



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ORDER

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This Review Application has been filed against the order, dated 15.06.2023, passed in W.P.(MD)No.23457/2022.

2. The first respondent had filed the Writ Petition for Certiorarified Mandamus to quash the punishment order passed in R.O.C.No.43 of 2022, dated 27.09.2022. This Court after considering the grounds raised in the Writ Petition had allowed the Writ Petition and directed the review applicant school to reinstate the writ petitioner with continuity of service, but declined backwages for non-employment period. Aggrieved over the said order, the present review application is filed stating that there is error apparent on the face of the record.

3. The first ground that was raised by the review applicant is that there is alternative remedy to approach the Joint Director as well as the Tribunal, but without approaching the same the writ petitioner had filed the present writ petition, hence the same is not maintainable. It is settled proposition even though alternative remedy is available, invoking writ jurisdiction is not a bar. The High Courts have imposed upon themselves certain restrictions on exercise



of such power. The High Court would not normally exercise of its jurisdiction under Article 226 of Constitution if an effective and efficacious remedy is available, but this rule of exclusion of writ jurisdiction on account of availability of an alternative remedy does not operate as an absolute bar to entertaining a writ petition but is a rule of discretion to be exercised depending on facts of each case. Rule of Exclusion of Jurisdiction by availability of alternate remedy is Rule of discretion and not one of Compulsion and the High Court may exercise Writ Jurisdiction in spite of availability of alternative remedy in at least three contingencies (i) where writ petition seeks enforcement of any Fundamental Right (ii) where there is failure of Principles of Natural Justice (iii) Where orders or proceedings are wholly without jurisdiction or vires of Act is challenged. And the following cases are relevant for the proposition that even in the presence of any statutory appeal available to the parties, the High Court can entertain the writ petition and the availability of alternative remedy is not a bar:

- a. Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and others AIR 1999 SC 22
- b. Tripura Vs. Manoranjan Chakraborty and others (2001) 10 SCC 740
- c. Harbanslal Sahnia Vs. Indian Oil Corporation Ltd., reported in 2003(1) CTC 189
- d. Swedish Match AB and another Vs. Securities and Exchange Board, India and another AIR 2004 SC 4219



- e. State of H.P. and others Vs. Gujarat Ambuja Cements Ltd. and another (2005) 6 SCC 499
- f. M/s.Dhampur Sugar Mills Ltd., v State of U.P. and Others 2007 AIR SCW 6072
- f. Central Bank of India Vs. Devi Ispat Ltd. (2010) 11 SCC 186
- g. Union of India Vs. Mangal Textile (I)(P) Limited reported in (2010) 14 Supreme Court Cases 553
- h. (2021) 6 SCC 771 Radha Krishnan Industries Vs. State of Himachal Pradesh and others

In the Radha Krishnan Industries' case the Hon'ble Supreme Court had held as under:

“15. Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged. There is a plethora of case-law on this point but to cut down this circle of forensic whirlpool, we would rely on (1998) 8 SCC 1 (“Whirlpool”)



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PART C some old decisions of the evolutionary era of the constitutional law as they still hold the field.” (emphasis supplied) 26 Following the dictum of this Court in Whirlpool (supra), in Harbanslal Sahnia v Indian Oil Corporation Ltd. this court noted that “7. So far as the view taken by the High Court that the remedy by way of recourse to arbitration clause was available to the appellants and therefore the writ petition filed by the appellants was liable to be dismissed is concerned, suffice it to observe that the rule of exclusion of writ jurisdiction by availability of an alternative remedy is a rule of discretion and not one of compulsion. In an appropriate case, in spite of availability of the alternative remedy, the High Court may still exercise its writ jurisdiction in at least three contingencies: (i) where the writ petition seeks enforcement of any of the fundamental rights; (ii) where there is failure of principles of natural justice; or (iii) where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged. (See Whirlpool Corporation Vs. Registrar of Trade Marks [(1998) 8 SCC 1] .) The present case attracts applicability of the first two contingencies. Moreover, as noted, the appellants' dealership, which is their bread and butter, came to be terminated for an irrelevant and non-existent cause. In such circumstances, we feel that the appellants should have been allowed relief by the High Court itself instead of driving them to the need of initiating arbitration proceedings.” (emphasis supplied) 27 The principles of law which emerge are that :

- (i) The power under Article 226 of the Constitution to issue writs can be exercised not only for the enforcement of fundamental rights, but for any other purpose as well;*
- (ii) The High Court has the discretion not to entertain a writ petition. One of the restrictions placed on the power of the High Court is where an effective alternate remedy is available to the aggrieved person; (2003) 2 SCC 107*
- (iii) Exceptions to the rule of alternate remedy arise where (a) the writ*



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petition has been filed for the enforcement of a fundamental right protected by Part III of the Constitution; (b) there has been a violation of the principles of natural justice; (c) the order or proceedings are wholly without jurisdiction; or (d) the vires of a legislation is challenged;

- (iv) An alternate remedy by itself does not divest the High Court of its powers under Article 226 of the Constitution in an appropriate case though ordinarily, a writ petition should not be entertained when an efficacious alternate remedy is provided by law;*
- (v) When a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before invoking the discretionary remedy under Article 226 of the Constitution. This rule of exhaustion of statutory remedies is a rule of policy, convenience and discretion; and*
- (vi) In cases where there are disputed questions of fact, the High Court may decide to decline jurisdiction in a writ petition. However, if the High Court is objectively of the view that the nature of the controversy requires the exercise of its writ jurisdiction, such a view would not readily be interfered with.”*

In the present case whether TET qualification acquired after the cut-off dated can be considered for approval of appointment cannot be decided in Tribunal and by the appellate authority. And other issues raised by the writ petitioner and the review applicant cannot be resolved by the appellate authority. Hence this



Court is of the considered opinion that the writ petition is maintainable and proceeded to entertain the same and accordingly passed orders. Hence the contention of the review applicant that without directing the first respondent to approach the tribunal, the Writ Petition ought not have been entertained cannot be accepted.

4. The next contention of the review applicant is that the education authorities have granted approval of appointment with a direction that the writ petitioner ought to qualify TET within a period of five years from the date of appointment. Hence the contention of the review applicant is that, when the writ petitioner had not acquired TET qualification within the prescribed time, then the writ petitioner is not entitled to continue in the said post. But this Court had directed the writ petitioner to continue in the post, hence the management had filed review. It is seen that the writ petitioner was not possessing TET qualification at the time of appointment and the time granted to acquire the TET qualification is 31.03.2019. But the petitioner subsequently passed TET examination on 28.03.2023. Hence the review applicant had raised a plea that the education department would not approve the appointment since the writ petitioner had passed beyond the prescribed time. Hence, this Court had issued an interim direction to the Education Department to consider and pass orders as



per law and to consider whether the writ petitioner is entitled to be approved on the basis of TET qualification which the writ petitioner has acquired after the cut-off date. Based on the interim order, the District Education Officer vide order dated 08.09.2023 has stated that the writ petitioner is entitled to be considered, if she is possessing TET qualification, even though it is acquired subsequently. Therefore, the ground raised by the review applicant cannot be sustained.

5. The next contention that was raised by the review applicant is that the writ petitioner is not possessing B.Ed. in English, since it was found on later date that the certificate submitted by the writ petitioner is not genuine. The writ petitioner was admitted to the B.Ed. course on 16.11.2007 and she has completed the course on 13.06.2008 and the said course was completed in seven months. The management while ascertaining the genuineness had found that the said institution is not in existence. This allegation was raised in the writ petition and this Court had elaborately considered the said allegation and has rendered a finding, it is only clerical error and the same cannot be considered as fraud. Moreover during 2007-2008 the said institution was in existence, but subsequently the said institution was not offering the said course and had changed into school. When the writ petitioner had approached the said



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institution, the error was rectified with an affixture of seal. The contention of the review applicant since the college is closed then the school cannot give rectification certificate. This Court is of the considered opinion since the college is closed subsequently, it cannot be stated that the writ petitioner did not complete the course, it cannot be stated that the institution cannot issue rectification when the same institution is running a school but not running college with B.Ed. course. At the time of hearing the writ petition, this Court had taken the worst scenario that the institution is not in existence and considered the case of the writ petitioner. Infact this Court directed the educational authorities to ascertain whether the institution was is existence during 2007, the educational authorities had produced evidence that the said institution was in existence during the said period and the said institution was recognized by Madurai Kamaraj University. At the time of hearing the writ petition this fact of closure of college and opening of a school was ascertained and confirmed by the learned Government Pleader appearing for the Education Department. The learned Government Pleader appearing for the Education Department also confirmed with the Madurai Kamarajar University that the college was in existence at the time, when the writ petitioner has completed her course. And this Court after taking the above narrated facts into consideration and thereafter had passed the order is the writ petition. Therefore, the ground



raised in the review application was already considered by this Court elaborately. Hence, there is no error apparent on the face of the record and this ground is rejected.

6. The next contention that was raised by the review applicant is that the writ petitioner has completed B.Com. in open university in the year 2003 and completed B.A. English in open university distance education which is not equivalent to 10+2+3 pattern. The contention of the review applicant is that the decree may be valid, but it is not valid for appointment and promotion as per the Annamalai University case. However, the entire issue was considered by Hon'ble Division Bench of this Court in P.Thavam and others Vs. the State of Tamil Nadu vide order dated 05.07.2022 reported in 2022-III-LLJ-487 (Mad). Moreover, the Annamalai University case was considering the issue of acquiring Master Degree without passing 10th, +1 and +2 and Bachelor degree. In the present case the writ petitioner had done 10th, then completed +1 and +2 and then completed B.A. and B.Com. in open university. The Annamalai University deprecated the practice of acquiring Masters Degree without acquiring Bachelors Degree. The management has completely confused the issue. This issue is also elaborately considered by this Court in the writ petition order. Hence, there is no error apparent on the fact of the record.



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7. For the reasons stated supra, the review application is filed to waste the time of court and hence it is liable to be dismissed with cost. Accordingly, the review petition is dismissed with cost of Rs.10,000/- (Rupees Ten Thousand only) payable to the institution mentioned below:

“SAKSHAM”

Swami Sivanandha Sevarshram,
Austin Patti Road, Thopur, Madurai
Contact Person Sri Govindharaj

Mobile Number: 63740 48342.

8. For the reasons stated supra, the Review Application is dismissed with costs. Consequently, connected miscellaneous petition is closed.

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NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
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S.SRIMATHY, J.

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