



W.P.(MD)No.14705 of 2014

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.02.2023

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THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No. 14705 of 2014

and

M.P(MD)Nos. 1 & 2 of 2014

R.Sambath

... Petitioner

Vs.

1. The Sokkolal Higher Secondary School,
Mukkudal,
Tirunelveli District,
Represented by its Secretary,
Mukkudal – 627 601.

2. The District Educational Officer,
Cheranmahadevi,
Office at Tirunelveli,
Tirunelveli District.

3. The Chief Education Officer,
Kokarakulam,
Tirunelveli – 627 009.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of *Writ of Certiorarified Mandamus*, calling for all records relating to the impugned orders of the 1st respondent, dated 04.10.2012 and approved by the 2nd, respondent, vide its proceedings in O.Mu.No.3217/Aa4/12, dated 26.11.2012



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and quash the same in so far as it relies upon the letters of the petitioner, dated 04.10.2012 depriving the petitioner his backwages, emoluments and service benefits and thereafter hereby be pleased to direct the respondents 2 and 3 to enforce their statutory, mandatory functions prescribed under Rule 17(3) (iii) & 17(4) of the Tamil Nadu Recognized Private Schools Regulation Act, 1973 and Rules 1974 as against the 1st respondent by making order for payment of lawful arrears of salary, back wages, emoluments and service benefits from 30.06.2008 to the date of reinstatement 04.10.2012, with all benefits and privileges and such interest on sum due.

For Petitioner : No appearance

For R-1 : Mr.P.T.S.Narendra Vasan

For R-2 & 3 : Mr.D.Sadiq Raja,
Additional Government Pleader

ORDER

This writ petition has been filed for ***Writ of Certiorarified Mandamus***, to quash the impugned orders of the 1st respondent, dated 04.10.2012 and approved by the 2nd respondent proceedings in O.Mu.No.3217/Aa4/12, dated 26.11.2012 with consequential relief to grant arrears of salary, back wages, emoluments and service benefits, for a period from 30.06.2008 to the date of reinstatement 04.10.2012, with all benefits and privileges and interest.



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2. No appearance on the side of the petitioner. Heard Mr.P.T.S.Narendra Vasan, Learned Counsel appearing for the 1st respondent and Mr.D.Sadiq Raja, Learned Additional Government Pleader appearing for the 2nd respondent. Perused the material documents available on record.

3. The petitioner was appointed as B.T. Assistant on 09.04.1987 in the 1st respondent school, a private aided non-minority school. The school was sanctioned with P.G. Assistant post in the academic year 2003. The management requested the petitioner to relinquish the petitioner's right to the said post, but the petitioner declined the request. However, the school had appointed a teacher by direct recruitment to the said post. The contention of the petitioner is that the school had orally terminated the petitioner from service on 20.06.2008 and the petitioner started his legal battle against the school by filing W.P.(MD)No.14816 of 2008 and obtained interim orders passed by this Court in the writ petition. The petitioner also contended that the petitioner was placed under suspension on 30.06.2008, hence the petitioner preferred an appeal to the Department and the school was directed to reinstate the petitioner. But the school preferred writ



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petition in W.P.(MD)No.8494 of 2008 and the said writ petition was dismissed.

The contention of the petitioner is that because the writ petition is dismissed the petitioner is entitled to backwages. But subsequently the school had framed charges against the writ petitioner, conducted enquiry and finally the petitioner was dismissed from service on 30.10.2008. The petitioner preferred appeal and the same was allowed vide order dated 30.04.2010 directing the school to reinstate the writ petitioner in service, if the school refused to do so, then the writ petitioner may be transferred to another school along with the post. The school had filed a writ petition in W.P.(MD)No.12593 of 2012 and the same was dismissed vide order dated 26.09.2012. Thereafter the school had consented to transfer the petitioner along with the post and the 3rd respondent had passed an order dated 07.08.2012 directing the petitioner to join the duty in the 1st respondent school, then join duty in Meenakshi Sundaram Memorial Higher Secondary school, Idaykal and on the condition that the no salary would be paid to the petitioner for the non-employment period.

4. The contention of the petitioner is that the 1st respondent on 27.08.2012 had typed his own proceeding that the petitioner had given up the



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backwages as per School Committee proceedings dated 22.09.2012 and compelled the petitioner to join duty, hence the petitioner did not comply with the demand of the management and the authorities and the concerned transferred school also directed to the petitioner to join duty. Then the 3rd respondent compelled the petitioner to join vide proceeding dated 28.09.2012 to Grama Committee Higher Secondary School on condition no government salary would be paid and also compelled the 1st respondent school to transfer the petitioner, otherwise direct payment would be ordered. The further contention of the petitioner is that the all the respondents had coerced and threatened and hence he accepted the transfer under duress and signed the letter dated 04.10.2012 giving up his right to get backwages. Because of the illegal act of the 1st respondent the petitioner could not get the backwages, hence the writ petitioner is had filed the present writ petition.

5. The contention of the 3rd respondent is that the petitioner was out of service from 30.06.2008 to 03.10.2012 and the said period is treated as leave under loss of pay. Initially the petitioner was transferred from the 1st respondent



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school namely, Sokkolal Higher Secondary School to Meenakshi Sundaram Memorial Higher Secondary School, but the petitioner without joining the place had preferred litigation. Finally, the petitioner joined duty in Grama Committee Higher Secondary School on 04.10.2012 and receiving salary. Since the petitioner is not employed during the said period he is not entitled to salary for the said period and prayed to dismiss the writ petition.

6. It is seen from the records that the 3rd respondent has passed the transfer order, dated 07.08.2012, wherein it is stated that the petitioner is transferred to some other school and he is not entitled to salary for the non-employment period. The petitioner has not challenged the said order, but the school had challenged the said order in W.P.(MD)No.12593 of 2012 and the same was dismissed on 26.09.2012. The said order had attained finality, therefore the petitioner had lost the bus.

7. The next contention of the petitioner is that 1st respondent has not constituted a committee, without constituting committee, the said order dated 04.10.2012 was passed. But the said contention was refuted by the 1st respondent



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and submitted that the school committee was constituted and passed a resolution dated 22.09.2012. Moreover, none of the orders were passed without approval of the school committee and produced the resolution. On perusal of the resolution dated 28.06.2008 and the Secretary Letter in LDB dated 22.07.2008, this Court is of the considered opinion that the allegation of the petitioner that the orders were passed without approval of the school committee is incorrect and without any basis.

8. The petitioner has stated in the affidavit that he was serving in the Diocesan Book Depot during the non-employment period doing odd jobs. Since the petitioner was gainfully employment elsewhere, then the petitioner may not be entitled to any backwages for the non-employment period. Moreover, on the principle of “No work No pay”, the petitioner may not be entitled to backwages. Initially the petitioner was transferred from the 1st respondent school namely, Sokkolal Higher Secondary School to Meenakshi Sundaram Memorial Higher Secondary School, but the petitioner without joining the place had preferred litigation. Had he joined the said school at the earliest then the petitioner would have received salary, but the petitioner failed to do so at the appropriate time. In



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view of the foregoing reasons, this Court is not inclined to entertain this writ petition. The petitioner is not entitled to the salary for the non-employment period.

9. Accordingly, this writ petition stands dismissed. No Costs.

Consequently, connected miscellaneous petition is closed.

Index : Yes / No
Internet : Yes
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To

1. The District Educational Officer,
Cheranmahadevi,
Office at Tirunelveli,
Tirunelveli District.
2. The Chief Education Officer,
Kokarakulam,
Tirunelveli – 627 009.



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S.SRIMATHY, J

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**Order made in
W.P.(MD)No. 14705 of 2014**

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