



W.A.(MD)Nos.745 of 2015 & 1216 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 23.08.2023

PRONOUNCED ON: 29.09.2023

CORAM:

THE HONOURABLE **DR.JUSTICE ANITA SUMANTH**

AND

THE HONOURABLE **MR.JUSTICE R.VIJAYAKUMAR**

W.A.(MD)Nos.745 of 2015 & 1216 of 2017

W.A.(MD)Nos.745 of 2015:

The Manager / Correspondent,
Government Aided Secondary School,
Kalluppalam,
Edaicode Post,
Kanyakumari District – 629 152.

...Appellant

/Vs./

1.N.Nalina Kumar

2.The Director of School Education,
(Higher Secondary Schools),
D.P.I.Campus, College Road,
Chennai – 600 006.

3.The District Educational Officer,
Kuzhithurai Educational District,
Marthandam,
Kanyakumari District.

...Respondents



W.A.(MD)Nos.745 of 2015 & 1216 of 2017

PRAYER:- Writ Appeal - filed under Clause XV of Letters Patent Act, to set aside the order dated 23.12.2014 passed in W.P.(MD)No.7337 of 2009 on the file of this Court and thereby allow this appeal.

For Appellant : Ms.J.Anandhavalli

For Respondents : Mr.S.Bharathykannan (R1)

Mr.V.Om Prakash (R2 & R3)

Government Advocate

W.A.(MD)Nos.1216 of 2017:

1.The Director of School Education,
(Higher Secondary Schools),
D.P.I.Campus, College Road,
Chennai – 600 006.

2.The District Educational Officer,
Kuzhithurai, Educational District,
Marthandam,
Kanyakumari District.

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PRAYER:- Writ Appeal - filed under Clause XV of Letters Patent Act, to set aside the order dated 23.12.2014 passed in W.P.(MD)No.7337 of 2009.

For Appellants : Mr.V.Om Prakash
Government Advocate
For Respondents : Mr.S.Bharathykannan (R1)
Ms.J.Anandhavalli (R2)

COMMON JUDGMENT

(Judgment of the Court was made by **DR.ANITA SUMANTH, J.**)

A common order is passed in these writ appeals filed by the Manager/Correspondent of the Government Aided Secondary School at Kalluppalam (in short 'School'), and the Director of School Education (Higher Secondary Schools (in short 'DSE') and District Educational Officer, Kuzhithurai, Marthandam, Kanyakumari District (in short 'DEO') challenging an order passed in WP(MD)No.7337 of 2009 dated 23.12.2014.



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2. The writ petitioner had sought a mandamus simpliciter directing the respondents, ie., DSE, DEO and the school to approve his appointment as PG Assistant (Political Science) teacher in the school with effect from 13.01.2003 with all attendant and consequential benefits. The writ petition came to be allowed, the Writ Court issuing a mandamus to the respondents as prayed for and confirming the appointment of the writ petitioner as PG Assistant (Political Science) in the school from 13.01.2003 till April 2012 with all service and monetary benefits less a sum of Rs.63,300/- and Rs.5,940/- determined as honorarium and sitting fee respectively. Compliance was to be effected within eight weeks from the date of receipt of a copy of that order.

3. In defence of the order of the writ Court dated 23.12.2014, the submissions of Mr.S.Bharathykannan for the writ petitioner are as follows:-

(i) Writ Petitioner had been appointed in the Government Higher Secondary Aided School, Mottakkala (GHSS) as PG Assistant



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(History) Teacher in 1992. He was transferred to the school in question in 1998, re-transferred back to GHSS in Mottakkala in 2001 and then re-transferred back to the school in question to fill in the post of PG Assistant (Political Science) Teacher in the vacancy caused by the promotion of one K.Vijayakumaran as Higher Secondary School Headmaster from the post of PG Assistant (Political Science) Teacher.

(ii) According to writ petitioner, the school management had sent a proposal to the DEO seeking approval of his appointment. An order of appointment was issued on 13.01.2003 by then Manager, G.Sahadevan Nair and such order of appointment stands testimony to his appointment in the School. He continued to render service for several years and was not paid any salary for his services. His pay has been fixed at a sum of Rs.6,500/- with DA.

(iii) The writ petitioner claimed to have sent representations on several occasions, last being 24.12.2008, seeking approval of his appointment from 13.01.2003 with all benefits. The Manager who had appointed him passed away in 2007 and he claims that the incumbent



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Manager was inimical to him, compelling him to resign from the post of PG Assistant. The date of such alleged resignation has not been stipulated. The writ petition came to be filed in 2009 seeking mandamus as set out in the preceding paragraphs.

4. The submissions, in common, of Ms.J.Anandhavalli, learned counsel for the school management and Mr.V.Om Prakash, learned Government Advocate appearing for DSE and DEO are as follows:-

(i) The entire narration of events put forth by the writ petitioner have been stoutly denied even at the stage of writ petition by way of a detailed counter. Writ petitioner was never employed in Mottakkala between 1992 and 1998 as claimed. The falsity of the claim is clear from the fact that there were only 5 sanctioned posts of PG Assistant in the GHSS in Mottakkala and admittedly, the writ petitioner was not one among the five.

(ii) His transfer and posting in Kalluppalam School between



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1998 and 2000 is also denied, as is the claim for re-transfer in 2001 – 2002 to Mottakkala. The school and the DEO strenuously deny the alleged appointment of the writ petitioner on 13.01.2003 in the school in question. The post of PG Assistant (Political Science) had admittedly been held by K.Vijayakumaran on 13.01.2003.

(iii) It is true that the said Vijayakumaran had completed 10 years of service as PG Assistant on 12.01.2003 and his promotion to the post of Headmaster was due on 13.01.2003. However, he had not fulfilled the compulsory requirements of the Tamil language test and hence though otherwise eligible, his promotion had not taken place on 13.01.2003, but only on 02.01.2004 when he passed the test. The school records stand testimony to this position.

(iv) Both the appellants conclusively deny that any proposal had been either sent by the school or received by the DEO in regard to the appointment of the writ petitioner. In fact, the approval in regard to Vijayakumaran's appointment as Principal ultimately came only in 2007 with effect from 2004. The entire sequence of events as put forth by the



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writ petitioner is false.

(v) That apart, writ petitioner being a member of a political party had contested the panchayat elections in 2005 being elected as President of Parassala Panchayat in Kerala. He was thus functioning as elected Panchayat President since 02.10.2005, which appointment would militate against his claim of employment in a Government aided school. More importantly there has been no disclosure of this position, ie, his position as Councillor, in the writ affidavit and this by itself ought to have weighed with the writ Court in dismissing the writ petition on the ground of non-disclosure of material particulars.

(vi) A specific objection has been raised relying on the Tamil Nadu Recognized Private Schools Regulation Rules, 1974, as per which Government Employees would be bound by the Code of Conduct set out in Annexure II thereto. Clauses 7 and 8 of Annexure II which prohibits a teacher employed in an aided school from engaging with political party or canvassing in an election are attracted in this case.

(vii) The appellants would categorically claim possession of



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all official records including attendance registers to show that the writ petitioner has never attended the school from 2003 or at any time prior thereto and there is thus no merit whatsoever in his claim for appointment in, or rendition of services, to the school in question.

5. The writ petitioner had filed a rejoinder in 2014 on the anvil of the passing of the orders by the writ Court. 2014 rejoinder addresses the averments in the counters filed in March 2010 and March 2011 of the school and DEO respectively. For the first time, in that rejoinder, the writ petitioner claimed that the records pertaining to his services were destroyed by the Management. He produces two group photographs relating to the period 1998-1999 where he figures and this, according to him, establishes that he was part of the faculty of the school. His posting in 1998-1999 in the school in question, according to him, was in the vacancy caused by the retirement of one, Elayaperumal.



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6. As regards his appointment as a Panchayat member, while denying it, he states alternatively, that even if he had been representing the Panchayat as a member, the honorarium would be quantified at Rs.63,300/- and the respondents could well have issued a show cause notice in that regard as per the service Rules.

7. The writ petitioner draws attention to the staff fixation orders for the period 2002 – 2010, where there is one sanctioned post for PG Assistant (political science) Teacher, which he claimed to have filled. He also relies on proceedings of the Chief Educational Officer, Kanyakumari, (CEO) dated 01.02.2011 and 17.10.2008 in Na.Ka.No. 6600/Aa3/2003, where his name figures along with a list of teachers as having been deputed for valuation of answer sheets.

8. The appellants have nothing really to say in regard to the proceedings of the CEO as above, but clarify, that being deputed for paper valuation by itself would not lead to a conclusion that he had



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rendered service as PG Assistant (Political Science) Teacher from 13.01.2013 or from any date. That apart, they point to a difference in the format of the appointments orders issued by the Kalluppalam school.

9. The appointment order relied upon by the petitioner reads thus:-

*Station Higher Secondary
School
Kalluppalam
Dated 13.01.2003*

Sri N.Nalinakumaran is appointed P.G.Assistant teacher under this Management on a pay of Rs. 6500/- plus Rs.3180 D.A. Per mensem in the scale of Rs.6500-10500 and is posted as P.G.Assistant in this school from 13.01.2003 to ----- in the vacancy of K.Vijayakumaran, who has -----

This appointment is subject to termination on either side on justifiable grounds at one month notice with the previous approval of the Department and without notice in the event of misconduct on the part of the teacher or if retrenchment becomes necessary on account of reduction in the strength of the class.

*(signature)
Signature of Teacher*

*(signature)
Signature of Manager,
MANAGER,
Higher Secondary School,*



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*Kalluppalam, Eracode P.O.
Kanyakumari Dist.”*

10. The appointment order issued to K.Vijayakumaran on the same day posting him as Headmaster reads thus:-

*Station : Kalluppalam
Date : 13.01.2003*

Sri K.Vijayakumar, P.G.Asst is appointed on promotion as permanent teacher under this Management on a pay of Rs.8550 +225PP plus Rs. 600/- P.P per mensem in the scale of Rs. 8000-275-13500 and is posted as Headmaster in this school from 13.01.2003 onwards in the vacancy of Mr.S.Elayaperumal who has voluntary retired w.e.f. 31.05.1999.

This appointment is subject to termination on either side on justifiable grounds at one month notice with the previous approval of the Department and without notice in the event of misconduct on the part of the teacher or if retrenchment becomes necessary on account of reduction in the strength of the class.

(signature)

Signature of Teacher

(signature)

*MANAGER,
Higher Secondary School,
Kalluppalam, Eracode P.O.”*



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11. Upon careful perusal, this Court does not see any material difference in the two appointment orders. In fact, the signature of the Managers of both the orders appears similar, to the naked eye. This is yet another disputed fact, among a plethora of disputed facts that are involved in this matter. According to the appellants, K.Vijayakumaran has been discharging the services of PG Assistant from 31.05.1999 consistently till his superannuation in 2017, in the single post sanctioned for PG Assistant (Political Science).

12. One of the queries posed to the school was as to whether salary had been paid to him both in his capacity of PG Assistant and Headmaster. The school has filed a compilation dated 28.08.2023 containing 30 documents, none of which have been adverted to in the course of the hearing. We thus continue to be unclear as to the roles played by K.Vijayakumaran till his superannuation. This fact perse, does not matter, but is yet another illustration of the disputed factual matrix that plagues this matter.



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13. In the present case, the claim of the writ petitioner is premised on various documents such as his appointment order that are flatly denied by the appellants. That apart, the school records are not before us and it is belatedly, in rejoinder filed only in 2014 that the writ petitioner alleged that the school records have been destroyed.

14. One point of note is that the validity of the appointment order dated 13.01.2003 held by the writ petitioner is nowhere specifically contested by the school. That is to say, that while the validity of that order has certainly been disputed from the start, nowhere has the school expressly denied the signature on the order or stated that said signature was forged.

15. The attempt has always been to eschew the document without really denying it. There is some history in this regard, fleetingly referred to by the school in the counter filed on 24.03.2010. We sought



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details of the same, if only, to place on record the full extent of the dispute in facts that pervades every aspect of this matter. One G.Sahadevan Nair, who has issued the order of appointment in favour of the writ petitioner, executed registered gift deeds executed by him on 16.11.2004 and 25.05.2005 in favour of his nieces Padmajakumari and Jeyakumari in respect of various movable and immovable properties.

16. He passed away on 12.07.2007 and was found to have executed a will dated 15.05.2007 in favour of one, T.Sasidharan Nair, described therein as working for various schools. Said Sasidharan Nair claimed that he was the correspondent of the schools and teachers training institute hitherto managed by Sahadevan Nair. Thus, and this would suffice for the purposes of this case, there was a dispute as to the proper manager/correspondent for the schools hitherto run by Sahadevan Nair including the schools where the writ petitioner claims to have rendered services.



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17. Though an oral submission has been made by learned counsel to the effect that the litigation between the relatives of Sahadevan Nair have travelled to the Supreme Court and ended in favour of his nieces who are now in management of the schools, we are unaware of these facts and, in any event, unconcerned with the same. The reason for this digression is only to note that, perhaps, the murky background in regarding ownership of the schools was the reason why the school did not contest the appointment order, preferring only to disavow the same.

18. It is on the basis of the above rival contentions that involve appreciation of seriously disputed questions of fact that mandamus has been issued by the Writ Court as prayed for by the writ petitioner. Having heard all learned counsels, we are of the considered categorical view that the prayer of the writ petitioner for mandamus ought not to have been considered, that too positively, by the writ Court.



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19. It is a settled position that issue of mandamus under Article 226 of the Constitution of India can only be upon the person seeking such relief, establishing conclusively and concurrently, both the existence of a fundamental right, and the violation thereof, by the State. It is only upon concurrent satisfaction of the aforesaid two positions, that mandamus can be considered.

20. It is always open to the writ Court to issue mandamus to a petitioner directing the respondent to deal with the representation of the writ petitioner in line with the principles of natural justice, and in the process, iron out and settle all inconsistencies and disputes in factual matrices. This has not been done in this case and a positive direction issued for pay over of service benefits. A detailed exercise of computation of such benefits has also been engaged in, involving disputed facts, many of which were suppressed by the writ Petitioner at the first instance.



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21. That apart, the rejoinder in this case, filed in 2014 more than adequately establishes that the writ petitioner has come to Court with unclean hands. He was eminently unfit, as a Panchayat Councillor, to have held a government post. Not content with suppressing that fact, he has the audacity to state that the school ought to have, at best, issued a show cause notice, which it did not do. The writ Court has accepted these indiscretions and engaged in the exercise of computing the sitting fee earned by the writ petitioner and reducing the same from the benefits to be paid by the school. All this, on the premise of severely disputed facts and documents.

22. The order of the writ Court is set aside and these writ appeals are allowed. No costs and connected miscellaneous petitions closed as well.

[A.S.M.J.] & [R.V.J.]
29.09.2023

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



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TO:

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AND
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Pre-delivery Common Judgment made in
W.A.(MD)Nos.745 of 2015 & 1216 of 2017

Dated:
29.09.2023