



W.P.(MD).No. 4515 of 2017

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 16.12.2022

DELIVERED ON : 15.02.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD).No. 4515 of 2017

and

W.M.P.(MD).No.3618 of 2017

A.Sreekumaran Thampi

... Petitioner

Vs

- 1.The State of Tamil Nadu,
Represented by its Secretary,
Department of School Education,
Fort St.George,
Chennai – 600 009.
- 2.The Director of School Education,
College Road,
Chennai – 600 006.
- 3.The Joint Director of School Education,
(Secondary Education),
College Road, Chennai – 600 006.
- 4.The Chief Educational Officer,
Kanyakumari District,
Nagercoil – 629 001.



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5.The District Educational Officer,
Thuckalay, Kanyakumari District.

6.The Correspondent,
V.K.P.Higher Secondary School,
Colachel – 629 215,
Kanyakumari District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records relating to the impugned proceedings issued by the sixth respondent Correspondent in No.19/CR/M/1992 dated 05.06.1992 dismissing the petitioner from service, quash the same, and further direct the respondents to sanction all monetary benefits with back-wages including retirement benefits.

For Petitioner : Mr.S.C.Herold Singh

For R-1 to R-5 : Mr.D.Sadiq Raja,
Additional Government Pleader.

For R-6 : Mr.M.Gnanagurunathan

ORDER

This Writ Petition is filed to quash the order dated 05.06.1992 and further direct the respondents to sanction all monetary benefits with backwages including retirement benefits.



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2. The brief facts as stated in the affidavit are that the petitioner joined as a Junior Assistant in the sixth respondent School on 01.07.1978. The sixth respondent School claiming to be a Malayalam Linguistic Minority Educational Institution, has established English Medium School in the year 1918 in the name and style of “English Middle School, Colachel”. The members of Managing Committee are not Malayalam speaking, some of them are Tamil speaking. Hence, the School was neither established by Malayalam speaking nor continued to be administered by Malayalam speaking. Hence the School is not eligible to be declared as Malayalam Linguistic Minority Educational Institution as per G.O.Ms.No.375 (School Education- XI) dated 12.10.1998. Subsequently, there were some disputes in the Management, hence after 11 years, the Government has taken over the Management. Suppressing certain facts, the present Correspondent B.Lalitha Bai instituted a suit in O.S.No.430 of 1980 on the file of Additional District Munsif Court, Padmanabhapuram, Kanyakumari District seeking for declaration as Linguistic Minority. The above declaration is against the facts and it is a fraud on the Constitution.



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3. While that being so, the sixth respondent suspended the petitioner with effect from 08.10.1991 based on the complaint forwarded by DEO dated 23.09.1991. The petitioner was directed to appear for preliminary enquiry and he appeared. However, in the enquiry, the petitioner was directed to accept the offence, so that, a minor punishment would be imposed, but the petitioner did not accept the same. The contention of the petitioner is that without giving the preliminary report, the sixth respondent issued charge memo dated 13.12.1991 levelling seven charges against the petitioner. When the petitioner refused to accept the allegations of dereliction of duty, the Correspondent obtained two complaints from two teachers namely, H.P.M.Suguna and A.Clara Sugirtha Bai on 26.11.1991. The charges against the petitioner are as follows:

i. That Thiru. A. Sreekumaran Thampi, Junior Assistant, V.K.P. Higher Secondary School, Colachel deceived certain teachers of the school by actually making short payments against the amount due to them as per the sanctions accorded by the District Educational Officer, Thuckalay towards the temporary advances from their Provident Fund accounts that the amount still remaining unpaid has been misappropriated and thereby conducted himself in a manner unbecoming of a responsible Junior Assistant of the educational institution.

ii. That Thiru. A. Sreekumaran Thampi did not hand over certain school records to C. Lakshmi Bai, Junior Assistant of the school at the time of his handing over section on 01.05.1991 and even after the directions of the Correspondent in his orders of dated 04.07.1991 and 12.08.1991 and thereby he had not acted properly in discharging his official duties and has discarded the orders of the Correspondent.



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iii. *That Thiru. A. Sreekumaran Thampi, Junior Assistant, V.K.P, H.S., Colachel, had unauthorisedly absented himself from duty from 10.07.1991 to 09.10.1991 and thereby he had been negligent and irresponsible in his duties.*

iv. *That he refused to accept letter No. 7/CR/dated 15.10.1991 sent to him by registered post by the Correspondent and thereby he had been disobedient and defiant of the appointing authority.*

v. *That during the preliminary enquiry into the allegation conducted on 26.11.1991, he behaved most impolitely and indecently with the Correspondent by unnecessary utterances in an arrogant tone and thereby had been in subordinate to the Correspondent.*

vi. *That he in his statement dated 14.10.1991 addressed to the Correspondent has stated that he turned up to the School on 11.10.1991, when the Correspondent and his were present in the School which is a deliberate lie, and has conducted himself unbecoming of a subordinate,*

vii. *That with the malicious moto of ignobling the Correspondent and the Headmaster he in his statement dated 14.10.1991 stated that the Correspondent and the Headmaster wanted to him to sign two blank papers on 11.10.1991 and thus conducted himself in a manner most unbecoming of a subordinate.*

4. The petitioner has given the detailed reply denying all the charges which is extracted hereunder:

i. *With regards to 1 Charge, I have denied the charge as false, and further indicated that there are loan transaction between myself and Tmt. H.P.M. Suguna, and the petitioner received a sum of Rs. 3000/- not as alleged in the Charge, and paid the same to her through Mr. Maria Sebastian on 12.08.1991.*

ii. *With regards to 2nd Charge, I have denied the charge as false, and further indicated that all the documents were handed over on 01.05.1991.*



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iii. With regards to 3rd Charge, I have denied the charge as false, and further indicated that in view of my health condition, I applied for Medical Leave, and it was accepted by the Management and salary also disbursed. Similarly, on 28.08.1991, Onam Advance amount Was disbursed to me, and on 20.08.1991, P.F. Loan was disbursed to me.

iv. With regards to 4th Charge, I have denied the charge as false, and further indicated that I am residing in No. 1-99B, Sasthankarai, Colachel and received all the letters.

v. With regards to 5th Charge, I have denied the charge as false, and further indicated that I was in polite during preliminary enquiry, and behaved as his servant.

vi. With regards to 6th Charge, I have denied the charge as false.

vii. With regards to 7th Charge, I have denied the charge as false.

5. The contention of the petitioner is that the enquiry is biased and he was not permitted to mark the vital documents, especially the receipt signed by the said H.P.M.Suguna and Clara Sugirtha Bai. The petitioner was also not permitted to peruse the documents filed by the Management. However the enquiry report dated 15.05.1992 held the charges are proved, except Charge No.3. The School issued a subsequent show cause notice dated 25.05.1992 proposing the punishment of dismissal from service. The petitioner submitted explanation on 27.05.1992. Without discussing the explanation, the sixth respondent has simply accepted the enquiry report and dismissed the petitioner from service on 05.06.1992.



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6. The further contention of the petitioner is that the sixth respondent issued School Calendar for the academic year 1992-1993 in the month of May 1992 and has started to take classes from 01.06.1992. In the said Calendar, the petitioner's name under the category of non-teaching staff was deleted, but the punishment was imposed on 05.06.1992, which would indicate the respondents have predetermined to dismiss the petitioner. The petitioner has challenged the dismissal order in I.D.No.9 of 1993. Subsequently, it was not pressed and has filed W.P.(MD).No.1592 of 2006. Against the order of termination, the petitioner has filed an Appeal before the Joint Director on 11.08.1992. On 15.03.2004, the Joint Director dismissed the Appeal stating that the Appeal was against the Minority Educational Institution and the same would not lie before him and against the same, the petitioner filed an Appeal before the Director and the Director also confirmed the decision of the Joint Director vide order dated 25.02.2005. The Hon'ble High Court vide order dated 07.07.2011 was pleased to set aside the proceedings of the Joint Director and further directed the Joint Director to pass orders on merits. In the meanwhile, the School has filed a Writ Appeal in W.A.(MD).No.527 of 2012 and has withdrawn the same on 05.02.2013. Since the Joint Director has not passed the order, a Contempt Petition was filed.



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In the meanwhile, the Joint Director rejected the appeal stating that the appeal provision is not applicable to Minority Educational Institutions. Hence, the Contempt Petition was closed. Since the petitioner was not financially sound, the present Writ Petition was filed belatedly.

7. The petitioner further contended that the petitioner was the Guarantor of the Correspondent, the 6th respondent herein, who received chit amount from Selvam Chit Fund, Marthandam, Kanyakumari District and the Correspondent has not repaid the amount. In view of the intimation made by Chit Fund in the month of February 1991, the petitioner requested the Correspondent to pay the money and save the petitioner from the problem. However, the Correspondent did not pay the amount and in order to take vengeance against the petitioner, he dismissed the petitioner from service. Finally, the Chit Fund issued notice to the petitioner dated 04.12.1991 directed the petitioner to pay a sum of Rs.50,000/-. The said teacher namely, H.P.M.Suguna received a loan from Provident Fund and signed the receipt and had made a complaint before the 6th respondent School alleging that the petitioner has not paid the money. Having received the entire money, the said teacher made allegations at the instigation of the 6th respondent Correspondent. Hence, all the charges against the petitioner were issued in order



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to take vengeance against the petitioner and the respondents were successful since the petitioner was dismissed from service. Challenging the same, the present Writ Petition is filed.

8. The further contention of the petitioner is that, in the suit in O.S.No. 430 of 1980, the sixth respondent School was granted Linguistic Minority status vide judgment dated 29.07.1992. Until then, it was treated as Non-Minority Educational Institution. The petitioner was dismissed prior to the said judgment that is on 05.06.1992. Since until then, the School was non-minority School, the judgment passed by the Joint Director stating it is the linguistic minority cannot be sustained in law. Hence, the petitioner prays to allow this Writ Petition by setting aside the dismissal order.

9. The fifth respondent has filed a counter stating that the sixth respondent is a Linguistic Minority Institution receiving grant from the Government. The petitioner was appointed as a Junior Assistant on 01.07.1978, and because of certain allegations, he was removed from service on 05.06.1992. The sixth respondent School is the Minority Educational Institution. Therefore, Section 22 to 24 and Rule 16 to 18 of the Act and Rule have been struck down by



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the Hon'ble Division Bench vide order dated 17.12.1975. Hence, the appeal is not maintainable to the Joint Director and the petition is not maintainable.

10. The sixth respondent has filed a counter stating that the sixth respondent is the Minority Educational Institution and the same was recognized by the judgment rendered in the suit. The allegations against the Management is nothing but abuse of process of law. When the minority status questioned by the petitioner was rejected by the Hon'ble Court in W.P.(MD).No.6447 of 2011 raising the very same plea by suppressing the dismissal of his earlier writ petition is nothing but abuse of process of law. The claim of the petition was also rejected by the Joint Director and subsequently based on the orders passed by the Hon'ble High Court, the Joint Director reheard the matter and the same was also dismissed by stating the sixth respondent is a Minority Educational Institution. Therefore, the claim of the petitioner to entertain the appeal is against law. Moreover, the claim of the petitioner was already rejected by the Hon'ble High Court vide order dated 12.10.2012. Without challenging the same, now the claim cannot be entertained. The writ petitioner is an insubordinate employee and he refused to obey the orders of the School Management. Hence, a charge memo was issued to him, after conducting enquiry and after giving adequate opportunity, the



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petitioner was dismissed from service vide order dated 05.06.1992. Therefore, the claim of the petitioner cannot be entertained. Hence, the sixth respondent prays to dismiss this Writ Petition.

11. Heard Mr.S.C.Herold Singh, learned counsel for the petitioner, Mr.D.Sadiq Raja, learned Additional Government Pleader, appearing for the respondents 1 to 5 and Mr.M.Gnanagurunathan, learned counsel for the sixth respondent and perused the records.

12. The petitioner was appointed on 01.07.1978 as Junior Assistant and he was dismissed from service on 05.06.1992 and he has served for the past 14 years, then the petitioner has attained superannuation in December 2016. The contention of the petitioner is that the sixth respondent has obtained Linguistic Minority status by filing a suit which was granted from 29.07.1992, however, the petitioner was dismissed on 05.06.1992, since the Minority Status was granted only from July 1992 onwards, prior to July 1992 itself, the petitioner was dismissed which means the Minority Status was not there as on the date of dismissal. However, the learned counsel appearing for the sixth respondent submitted that the issue of minority was raised in the previous litigations which



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was rejected by the Hon'ble High Court as well as the Joint Director, hence the plea of Minority Status cannot be raised which will hit by the principles of *res judicata*. It is seen that the sixth respondent was granted minority status by the Civil Court. The issue of granting minority status by civil court is considered by Hon'ble Supreme Court in the case of T. Varghese George Vs Kora K. George and others reported in (2012) 1 SCC 360, wherein the Hon'ble Supreme Court has held that minority status ought to be granted only by the competent authority and Civil Court has no jurisdiction. The relevant portion is extracted hereunder:

“29. Then comes the question as to whether the orders obtained under the above referred Tamil Nadu Act by three schools belonging to the trust can make any difference. It is necessary to note in this connection that these orders were obtained from a Civil Court and were confirmed in appeal. However, we must note that a recognition of a school as a minority school is to be obtained from a competent authority under Section 11 of that Act, and not from any Civil Court, and any party aggrieved by non-grant thereof has a right of appeal under Section 41 of that Act to the prescribed Authority. Section 53 of the Act clearly lays down that no Civil Court shall have jurisdiction to decide or deal with any question which is by or under this Act required to be decided or dealt with by an authority or officer mentioned in this Act. Thus, prima facie, it would appear that the orders were obtained from a forum non-juris. The reliance on the judgments of the Civil Court though pressed into service before the single Judge were not taken as a relevant factor for deciding the minority character of the trust. Now, that this submission is being reiterated, Shri Ganesh has submitted with some force that these orders are from a Court



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without any jurisdiction. We must note in this connection, that the statement of objects and reasons of the Act states that the act was passed to regulate the service conditions of the teaching and non-teaching staff in private schools and in that context some separate provisions were made for the minority schools. In the present case, though the declaration was claimed under the Tamil Nadu Act, it was not obtained from an authority specifically created for that purpose under the act to give such a status declaration. Therefore, in our understanding these orders cannot be used for determining the character of the trust. It is also relevant to note that these orders were obtained after the demise of the founder and not during his life time.”

Hence, any decree declaring minority status is non est in law. However, this judgment was not brought to the knowledge in the previous litigation. Therefore, this Court is of the considered opinion that the school is not a minority institution. If the school is not a minority institution, then provision of the Tamil Nadu Recognized Private Schools (Regulation) Act is applicable. Consequently, the school ought to have obtained prior permission from the official respondents before imposing the punishment.

13. It is seen from the records that the petitioner is having some disputes with the Management regarding a chit fund payment. The main thrust of the petitioner is the chit fund issue and hence with vengeance, the Management had



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dismissed the petitioner. If there is a dispute in some private dealing, apart from the service in the post the petitioner is holding, then the Management cannot conduct a proper enquiry, there will be a bias. In such circumstances, the Joint Director ought to have taken into consideration whether the bias is there or not. On perusing the records, the Joint Director has not taken such aspect into consideration. Even if it is admitted that the sixth respondent is the Minority Institution, the Educational Officers can insist the Minority Institutions to conduct disciplinary proceedings without any bias. In TMA Pai Foundation case, the Hon'ble Supreme Court has held that, if it is affecting the service of the individual, even if it is a Minority Institution, then the authorities can interfere or insist the case ought to be heard by an independent body, like the Tribunal. As far as School Education Department is concerned, the Government has not come forward to constitute any Tribunal or the Tribunal is not functioning to resolve the disputes arising out of service issues. Even in Higher Education Department, the Government has not constituted Tribunal, thereafter based on the directions of this Court in W.P.(MD) No.11785 & 11786 of 2012, the Government reconstituted the Tribunal vide G.O.Ms.No.171, Higher Education (D2) Department, dated 24.11.2020. But in the said Government Order, again it is stated that the Act is not applicable to minorities institution. The affected teachers

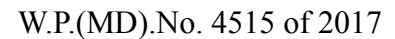


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and the non-teaching staff are entitled to some remedy where an independent body can resolve the issue. Under the Act as well as Judgment of TMA Pai Foundation, the Government is duty bound to constitute a Tribunal for all these litigations, hence there is a failure on the part of the official respondents especially the first respondent herein, who had failed to constitute Tribunal for educational institutions employees including minority institutions. The issue of constituting Tribunal for minority institutions was dealt with by this Court in W.P.(MD)No.20722 of 2013, wherein this Court has held that remedy before Tribunal is only regulatory and it would not amount to interfering in the constitutional right of “Right to administer”. Since the petitioner has attained superannuation, this Court is not inclined to remit the case to Tribunal and proceed to hear it on merits.

14. On merits of the case, on perusal of the enquiry report and the dismissal order, it is seen that the petitioner was not served with the complaint copy of the said teachers namely H.P.M.Suguna and A.Clara Sugirtha Bai. It is also seen that the respondents have not served the copy of the preliminary enquiry report. Further, the sixth respondent did not allow the petitioner to mark the receipt which was issued to the said H.P.M.Suguna and A.Clara Sugirtha Bai,



15. The petitioner has attained superannuation in December 2016. Therefore, there will not be any question of reinstatement. Admittedly, the petitioner was in service from 1978 to 1992.

(i) The impugned punishment of dismissal is modified as compulsory retirement.

(ii) The petitioner is entitled to full salary and service benefits for the period from 01.07.1978 to 05.06.1992.

(iii) For the period from 06.06.1992 until the date of superannuation, the petitioner is not entitled to any monetary benefits. However, the said period shall be taken for counting the pensionary benefits alone which would come to 24 years, the petitioner is entitled to pensionary benefits by calculating this 24 years.

(iv) The sixth respondent is directed to submit a pension proposal within a period of eight (8) weeks from the date of receipt of a copy of this order and the official respondents are directed to process the papers and grant all benefits to the petitioner within a period of eight (8) weeks from the date of submission of pension proposal.



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17. With the above direction, this Writ Petition is allowed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

15.02.2023

Index : Yes / No

Internet : Yes

Nsr

To

- 1.The Secretary,
The State of Tamil Nadu,
Department of School Education,
Fort St.George,
Chennai – 600 009.
- 2.The Director of School Education,
College Road,
Chennai – 600 006.
- 3.The Joint Director of School Education,
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S.SRIMATHY, J

Nsr

Pre-delivery Order made in
W.P.(MD).No. 4515 of 2017

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