



W.P.(MD)Nos.17543 of 2016 batch

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Judgment Reserved On	Judgment Pronounced On
22.11.2022	23.01.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

**W.P.(MD)Nos.17543 & 20626 of 2016, 2794 &
20441 of 2017 & 13951 of 2018**

and

**W.M.P.(MD)Nos.12667, 14744 & 16986 of 2016, 2298, 15294 &
16715 of 2017, 12673 of 2018 & 1899 of 2022**

A.Manivannan

... Petitioner in WP(MD)Nos.17543 &
20626 of 2016, 2794/2017 & 13951 of 2018

The Secretary,
South Street Hindu Nadar Higher Secondary School,
Muhavoor Post – 626 111,
Rajapalayam Taluk,
Virudhunagar District.

... Petitioner in WP(MD)No.20441 of 2017

Vs.

1.The Director of School Education,
College Road,
Chennai – 600 006.



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2.The Chief Educational Officer,
O/o. The Chief Educational Officer,
Collectorate, Virudhunagar Post & District.

3.The District Educational Officer,
O/o. The District Educational Officer,
Srivilliputhur, Virudhunagar Post & District.

4.The Secretary,
South Street, Hindu Nadar Higher Secondary School,
Muhavoor Post – 626 111,
Rajapalayam Taluk,
Virudhunagar District.

... R1 to R4 in WP(MD)Nos.17543 &
20626 of 2016, 2794 of 2017
& 13951/2018

5.T.Thiruppathiraj,
Advocate / Enquiry Officer
of Muhavoor South Street, Hindu Nadar Higher Secondary School,
No.123/50, South Car Street,
Srivilliputhur – 626 125,
Virudhunagar District.

... R5 in WP(MD)No.2794 of 2017

1.The Chief Educational Officer,
O/o. The Chief Educational Officer,
District Collectorate Campus,
Virudhunagar.

2.The District Educational Officer,
O/o. The District Educational Officer,
Srivilliputhur,
Virudhunagar District.



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3.A.Manivannan

... Respondents in WP(MD)No.20441
of 2017

PRAYER in WP(MD)No.17543 of 2016: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus direct the 4th Respondent to promote the Petitioner to the post of Lab Assistant in S.S.Hindu Nadar Higher Secondary School, Muhavoor, Virudhunagar District by way of internal selection and consequently Direct the Respondents 1 to 3 to approve the same within a stipulated time may be fixed by this Court.

PRAYER in WP(MD)No.20626 of 2016: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus to call for the records in pursuant to the impugned order passed by the 4th respondent in his proceedings dated 08.10.2016 and quash the same and consequently direct the respondents to regularize period of suspension as duty and to grant all attendant benefits.

PRAYER in WP(MD)No.2794 of 2017: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari to call for the records in pursuant to the impugned order passed by the 4th respondent in his proceedings dated 04.02.2017 and Quash the same.



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PRAYER in WP(MD)No.20441 of 2017: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus to call for the entire records connected with the impugned order passed by the 2nd respondent in Na.Ka.No.2522/A2/2016 dated 27.10.2017 and Quash the same and direct the 1st respondent to grant prior permission for the major punishment awarded to the 3rd respondent as per Rule 17 (1) of Tamil Nadu Recognized Private Schools (Regulation) Rules 1974 by considering the resolution of Petitioner's school committee dated 23.02.2017 and representation made by the petitioner school dated 24.02.2017.

PRAYER in WP(MD)No.13951 of 2018: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus to direct the Respondents to disburse the monthly salary due to the Petitioner from February 2017 to till date immediately and to grant all other attendant service benefits and bonus amount.

In WP(MD)Nos.17543 & 20626/2016,

2794/2017 & 13951/2018:

For Petitioner : Mr.M.Saravana Kumar

For Respondents : Mr.J.John Rajadurai (R1 to R3)
Government Advocate

Mr.K.K.Kannan (R4)



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In WP(MD)No.20441 of 2017:

For Petitioner : Mr.K.K.Kannan

For Respondents : Mr.J.John Rajadurai (R1 & R2)
Government Advocate

Mr.M.Saravana Kumar (R3)

COMMON ORDER

WP(MD)Nos.17543 & 20626 of 2016, 2794/2017 & 13951 of 2018

have been filed by one Manivannan, to quash the impugned orders dated 08.10.2016 and 04.02.2017 passed by the Secretary, Hindu Nadar Higher Secondary School and seeking for consequential direction to the fourth respondent to regularize period of suspension as duty, to grant all attendant benefits, to disburse the monthly salary due to the Petitioner from February 2017 to till date immediately and bonus amount and to promote the Petitioner to the post of Lab Assistant in S.S.Hindu Nadar Higher Secondary School, Muhavoor, Virudhunagar District, by way of internal selection and seeking for a consequential direction to the respondents 1 to 3 to approve the same.



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2. The Secretary, South Street Hindu Nadar Higher Secondary School, has filed a writ petition in ***WP(MD)No.20441 of 2017***, to quash the order of the District Educational Officer, Srivilliputtur, in Na.Ka.No.2522/A2/2016 dated 27.10.2017 and consequently to direct 1st respondent therein to grant prior permission for imposing major punishment to the 3rd respondent therein, namely Manivannan, as per Rule 17 (1) of Tamil Nadu Recognized Private Schools (Regulation) Rules 1974, by considering the resolution of Petitioner's school committee dated 23.02.2017 and representation made by the petitioner school dated 24.02.2017.

3. For the sake of convenience A.Manivannan is referred as petitioner and the Hindu Nadar Higher Secondary School is referred as the respondent school.

4. The facts as stated in the affidavit are that one Mr. Ramasamy was working as Night Watchman in the 4th respondent school and on his superannuation, the petitioner was appointed as Night Watchman on 11.06.2004



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that he will not claim promotion in future. Since the petitioner refused, he was threatened and compelled to submit a resignation letter. Hence, he has filed a writ petition in W.P(MD)No.17543 of 2016 with the prayer to direct the 4th respondent to promote the petitioner as Lab Assistant. The 4th respondent after receiving notice, insisted the petitioner to withdraw the writ petition, since he refused a dispute arose between the petitioner and the 4th respondent. Based on the said clash, the 4th respondent restrained the petitioner from signing in the attendance register and also restrained from discharging his duty. Because of the torture, the petitioner's health was affected and submitted a medical leave letter from 01.10.2016 to 31.10.2016 along with medical report. The petitioner has submitted a representation to the District Collector and Educational Authorities and it was directed to conduct an enquiry on the petitioner's representation. Thereafter, the 4th respondent passed a suspension order, dated 08.01.2016 and in the suspension order, it is alleged that at the time of joining in the service on 11.06.2004 the petitioner stated that he has failed in 9th standard, even though he had appeared in the 10th examination in the year 2002 and the said fact was suppressed.



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6. The contention of the petitioner is that, the petitioner studied 9th standard as a regular student and failed, thereafter, he left the school and appeared in 10th standard examination as “private candidate” in the year 2012 and passed the 10th examination in the year 2012. Hence, there was no suppression as alleged by the 4th respondent. The criminal case referred in the impugned suspension order was closed by the High Court on 03.12.2012, by recording the compromise memo filed by the then Secretary of the 4th respondent school. Hence, the suspension order was issued with malafide intention to penalize the petitioner. Hence, the present writ petition is filed.

7. Thereafter, the petitioner filed series of writ petitions. The W.P. (MD)No.17543 of 2016 has been filed for *Mandamus* directing the 4th respondent to permit the petitioner as Lab Assistant and consequently, direct the 1 to 3 respondents to approve the same.

8. The writ petition in W.P(MD)No.2794 of 2017 has been filed to quash the impugned order, dated 04.02.2017. In the said writ petition, the



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petitioner / Manivannan has submitted an explanation to the charge memo, vide communication, dated 21.11.2016 and 17.12.2016 with the request to withdraw the entire proceedings. But, the 4th respondent appointed as Advocate as Enquiry Officer to enquiry into the charges.

9. The contention of the petitioner is that the enquiry officer acted as prosecutor and without examining any of the independent witnesses and without providing adequate opportunity to cross examine the witnesses, the enquiry officer himself put a question and close the enquiry within a day. Hence, the Enquiry officer acted in biased manner and submitted the enquiry report to the disciplinary authority. The Secretary has issued impugned notice dated 04.02.2017, calling for further explanation based on the enquiry report and also called upon the petitioner to submit his explanation for the proposal to impose major penalty.

10. At the time of admission, this Court has directed the petitioner to file an amendment petition, but there is no stay of the impugned second notice.



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Thereafter, the school has filed a writ petition in W.P(MD)No.20441 of 2017 to quash the impugned order, dated 21.10.2017 and with a consequential relief to direct the 1st respondent to grant prior permission to impose major punishment to the petitioner Manivannan as per Rule 17 (1) of Tamil Nadu Recognized Private Schools (Regulation) Rules 1974 by considering the resolution of School Committee dated 23.02.2017 and based on the representation made by the petitioner school dated 24.02.2017.

11. In the meanwhile, the petitioner has filed one more writ petition in W.P(MD)No.13951 of 2018 for *Mandamus* to direct the Respondents to disburse the monthly salary due to the Petitioner from February 2017 onwards.

12. Hence, all the five writ petitions were taken up together for final hearing and the Common Order is passed.

13. The contention of the school is that A.Manivannan was charged with serious charges of suppression of his educational qualification at the time of appointment. Moreover, there was an allegation against the petitioner that he has



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committed theft of Lap-top and mobile phone in the school and in-subordination to orders and failed to attend duty as Night Watchman. The further contention of the school is that the said A. Manivannan has submitted false information that he has failed in 9th standard. At the time of promotion, the petitioner has enclosed certificates that he has passed 10th standard. With these allegations, departmental proceeding was initiated. A criminal case was also prosecuted. Therefore, the School prays to dismiss the writ petition.

14. Heard Mr.M.Saravana Kumar, learned counsel appearing for A.Manivannan, who is the petitioner in *WP(MD)Nos.17543 & 20626/2016, 2794/2017 & 13951/2018*, Mr.J.John Rajadurai, learned Government Advocate, appearing for the Education Department and Mr.K.K.Kannan, learned Counsel for the School. Perused the material documents available on record.

15. As far as the allegation of submitting false information that the petitioner has failed in 9th standard is concerned, the petitioner has submitted an explanation that he was studying as a regular student until 9th standard and he failed in the 9th standard and has left the school. Thereafter, the petitioner has



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appeared SSLC examination as a “private student” and completed in the year 2012. The petitioner was appointed in the school on 11.06.2004. The further contention of the petitioner is that, he attended the examination in the year 2002 as a private student in 10th standard, but he was failed in that examination, subsequently, again he attempted in the year 2012 and has passed the examination in the year 2012 only. On considering these facts, this Court is of the considered opinion that the contention of the petitioner is that he has passed 10th standard after joining the service in the year 2012 by appearing as a private student is acceptable and the claim is sustainable in law. Therefore, the said allegation against the petitioner is erroneous and the petitioner is in advantageous position.

16. The next contention raised by the respondent school is that the petitioner was working as a Night Watchman. The school was having lap tops belonging to the Government. One day, there was a theft and the lap-tops were stolen. The respondent school has preferred a criminal complaint before the authorities concerned and the same was registered in Crime No.325 of 2012. While, preferring the complaint, the respondent school has not mentioned any names, however, on investigation the police had submitted a report that the



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petitioner while working as a Night Watchman has stolen lap tops by opening the window of the school laboratory. Based on the report, disciplinary proceeding was initiated. But, the contention of the petitioner is that, he denied, he has stolen the laptop and has filed Criminal Original Petition before this Court. The Secretary of the respondent school had appeared before this Court and filed a compromise memo. Based on the compromise memo, the Criminal Original Petition was allowed on 03.12.2012 and the First Information Report was quashed. The contention of the school is that the then Correspondent had entered into compromise without consulting the School Committee and the school is intended to file review petition against the order dated 03.12.2012 passed in Criminal Original Petition. A specific question was put to the school whether the review is filed, but the Learned Counsel appearing for the school submitted but no review was filed, but the school is intending to file review. Any review petition ought to be filed within prescribed time and in the present case the school ought to have filed within two years and the time prescribed also lapsed. The school is intending to file cannot be a ground to entertain the plea of the school. Since there is an order passed by this Court in the Criminal Original Petition which quashed the First Information Report, the respondent school cannot take a stand against



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the order of this Court and make a submission it was erroneously closed. Hence this Court is of the considered opinion that this plea cannot be entertained.

18. The next contention put forth by the respondent school is that the petitioner has stolen mobile phone of the student. When a search was conducted and it was recovered from the petitioner's bag, but this allegation was refuted by the petitioner, by stating, since there was no proper relationship between the petitioner and the respondent school, the respondent school has taken steps to somehow throw him from the school and has created a false allegation of theft of mobile phone of the student.

19. The next contention is the insubordination of the petitioner. The petitioner has failed to do the night duty and he being the Night Watchman, had not attended the night duty. The contention of the petitioner is that he had taken two days leave without informing the respondent school and he was staying at home in the night hours, instead of the petitioner's duty in the night hours the petitioner's father was acting as a Night Watchman in the school. The school submitted that the petitioner's father interference in the petitioner's service and



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that was also one of the problems. But the petitioner submitted his father had never interfered in his job. The further contention of the school is that on two occasions without informing the petitioner a surprise visit was conducted in the school premises and it was found that the petitioner was not on duty. The petitioner denied such allegation.

20. Except for the allegation the petitioner absented for two days, the other allegations were not proved. Even for this allegation of two days leave the petitioner submitted his father had guarded the school. Hence this Court is of the considered opinion that the petitioner is of the 37 years old, this Court is inclined to consider the petitioner's claim and grant one more opportunity to do his duty as per law.

21. Therefore, the punishment order passed by the 4th respondent is hereby quashed. The suspension order is revoked and the suspension period shall be treated as duty period. The school is directed to reinstate the petitioner and the petitioner is entitled to continuity of service. However, the petitioner is not entitled any back wages for the period of non-employment based on the principles



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of '*No work No pay*'. The said exercise shall be completed, within a period of six weeks, from the date of receipt of a copy of the order.

22. In the result, these Writ Petitions are disposed of. No Costs.
Consequently, connected Miscellaneous Petitions are closed.

Index : Yes / No
Internet : Yes
KSA

23.01.2023

To

- 1.The Director of School Education,
College Road, Chennai – 600 006.
- 2.The Chief Educational Officer,
O/o. The Chief Educational Officer,
Collectorate, Virudhunagar Post & District.
- 3.The District Educational Officer,
O/o. The District Educational Officer,
Srivilliputhur, Virudhunagar Post & District.



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S.SRIMATHY, J

KSA

Common Order made in
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