



W.P.(MD).No.369 of 2016

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.04.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

**W.P.(MD).No.369 of 2016
and
W.M.P.(MD).No.395 of 2016**

P.Muthukaruppan (Died)

1.Meena

2.Kamatchidevi

3.Thamaraiselvi

4.Kalaiselvi

.... Petitioners

*(P-1 to P-4 are substituted vide Court Order dated 11.04.2023 in
W.M.P.(MD).No.7557 of 2023 in W.P.(MD).No.369 of 2016)*

Vs.

1.The Principal Secretary,
School Education Department,
Secretariat,
St.George Fort,
Chennai – 600 009.



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- 2.The Director of Elementary School Education,
College Road,
Chennai – 600 006.
- 3.The Deputy Director of Elementary School Education,
(Aided Schools and Appellant Authority),
College Road,
Chennai – 600 006.
- 4.The District Elementary Educational Officer,
Virudhunagar.
- 5.The Assistant Elementary Educational Officer,
Thiruchulli at M.Reddiapatti,
Thiruchulli Union,
Aruppukottai Taluk,
Virudhunagar District.
- 6.The Secretary,
Nadar Elementary School,
Kullampatti,
Kulloorani Post,
Aruppukottai Taluk,
Virudhunagar District.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records relating to the Impugned Government Letter (1D) No.260 dated 05.07.2012 of the first respondent and the impugned order of dismissal dated 30.11.2012 of the sixth respondent and to quash the same and consequently directing the respondents to reinstate the petitioner in service with back wages and with all other attendant benefits.



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For Petitioner : Mr.J.David Ganesan
For R-1 to R-5 : Mr.V.Omprakash,
Government Advocate.
For R-6 : Mr.G.Karthik,
For M/s.Lajapathi Roy & Associates.

ORDER

This Writ Petition is filed to quash the Government Letter dated 05.07.2012 and the order of dismissal dated 30.11.2012 and consequently directing the respondents to reinstate the petitioner in service with backwages and with all other attendant benefits.

2. The writ petitioner joined the service as Secondary Grade Assistant Teacher in the sixth respondent School on 09.06.1988, which is an Aided Non-Minority Educational Institution and promoted as Headmaster on 01.02.2004. The petitioner was suspended from service for a period from 12.04.2005 to 21.04.2005 and then was extended vide proceedings dated 22.04.2005. A charge memo dated 30.09.2005 was issued alleging 5 charges and the charges are misappropriation and unauthorized absence. The charges are extracted hereunder:



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(a) Charge No.1: That the petitioner misappropriated a sum of Rs.2,000/- of SSA Fund for the academic year 2003-2004 received from the 6th respondent.

(b) Charge No.2: That the petitioner misappropriated a sum of Rs.2000/- of SSA Fund for the academic year 2004-2005 received from the 6th respondent.

(c) Charge No.3: That the petitioner took leave from January 2005 to 12.04.2005 without permission of the 6th respondent, whereas myself marked the leave as medical leave in the attendance register without producing any medical certificate.

(d) Charge No.4: That the petitioner misappropriated a sum of Rs.6,000/- received from the students under Small Savings Scheme and did not open any account in the Post Office.

(e) Charge No.5: That the petitioner misappropriated a sum of Rs.1,900/- received from 19 students for opening Post Office account including a sum of Rs.500/- given under the educational scheme.

3. The petitioner submitted an explanation dated 18.10.2005. In spite of reply, the 6th respondent did not conduct any enquiry and did not allow the petitioner to discharge his duty. Hence, the petitioner filed W.P.(MD)No.10803 of 2005 challenging the suspension order dated 22.04.2005. The contention thereunder was since the respondents did not complete the enquiry within 2 months, the suspension cannot be extended. This Court vide order dated 27.06.2006 allowed the writ petition with a direction to reinstate the petitioner



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with effect from 12.06.2005 and also directed the 6th respondent to grant adequate opportunity to the petitioner in the enquiry proceedings and complete the enquiry proceedings within a period of 4 weeks. The sixth respondent conducted enquiry hurriedly without appointing any independent enquiry officer. The sixth respondent is the person who has issued a charge memo and he himself acted as an enquiry officer. Thereafter, the sixth respondent through his letter dated 24.07.2006 sought approval of the proposed punishment for dismissal from service. The fourth respondent vide proceedings dated 11.09.2006 rejected the application for approval. As against the same, the School preferred an Appeal before the third respondent and the same was rejected on 03.09.2007. In spite of the same, the petitioner was not permitted to discharge his duty and the petitioner submitted various representation and filed W.P.(MD)No.4857 of 2007 and this Court vide order dated 31.05.2007 directed the fourth respondent to consider and pass orders within a period of two weeks. Thereafter, the fourth respondent through proceedings dated 14.06.2007 rejected the statutory appeal filed by the sixth respondent School. Hence, the petitioner filed another Writ Petition in W.P.(MD)No.6498 of 2007 quashing the impugned order dated 14.06.2007 and directed the respondents to allow the petitioner to join the service. This Court vide order dated 12.09.2007 directed



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to consider the representation and also directed to pay salary for a period from 07.07.2006 to 04.10.2006. Hence, the petitioner was permitted to join duty on 15.10.2007. But the sixth respondent did not assign any duty, further the sixth respondent caused hindrance to perform his duty. Hence, again the petitioner filed several representations and filed W.P.(MD)No.5522 of 2008.

4. Pending this Writ Petition, the Joint Director has passed an order after conducting an enquiry and verifying the records and granted approval of dismissal from service. Aggrieved over the same, the present Writ Petition is filed.

5. The respondents have filed a counter stating that the charges against the petitioner is misappropriation, wherein, the petitioner has collected the amount from the students under small savings scheme but did not open any account in the Post Office and misappropriated the said amount. Since the charges were very serious, the respondents imposed the punishment of dismissal from service which is proportionate and after giving sufficient opportunity, the punishment was imposed and therefore, there is no violation of principles of natural justice.



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6. The sixth respondent has filed a counter stating that the sixth respondent has passed an order dismissing the petitioner from service. However, the respondents did not grant any approval against which the School had preferred Appeal before the Joint Director. The Joint Director conducted an enquiry after verifying the records and has approved the punishment. Therefore, there is no disproportionate punishment. The petitioner has committed a serious misappropriation whereby he has collected money from the children who are studying in the School. The children belong to Elementary School and collecting money from Elementary students and misappropriating the same cannot be pardoned. Hence, the sixth respondent prayed to dismiss this Writ Petition.

7. Pending Writ Petition, the writ petitioner died on 23.04.2020. The learned counsel appearing for the petitioner had preferred W.M.P.(MD). No.7557 of 2023 to substitute the legal heirs of the petitioner and the same is allowed vide order dated 11.04.2023.



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8. Heard Mr.J.David Ganesan, learned counsel for the petitioner, Mr.V.Omprakash, learned Government Advocate for the respondents 1 to 5 and Mr.G.Karthik, for M/s.Lajapathi Roy & Associates, learned counsel for the 6th respondent and perused the records.

9. It is seen from the records that the deceased petitioner has served from 1988 onwards. The allegations against the deceased petitioner is that he has collected money from the elementary students and has misappropriated the amount, thereby collected more than Rs.15,000/-, during the academic year 2003-2004 and 2004-2005. When it was found that the deceased petitioner has committed such serious crime, after giving sufficient opportunity, the deceased petitioner was imposed with the punishment. The contention of the learned counsel for the petitioner is that the Secretary without forming any Committee has conducted an enquiry on himself and he has acted as an enquiry officer himself and imposed the punishment. Therefore, there is serious violation of principles of natural justice. However, this contention was refuted by the respondents by stating that the Committee was formed and the Committee has conducted enquiry. Moreover, on Appeal the Joint Director himself visited the School and perused all the records. After verifying the records, the Joint



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Director has approved the punishment of dismissal from service. Therefore, the fact that misappropriation is proved through the documentary evidence. Hence, the sixth respondent submitted that the punishment may be confirmed.

10. It is seen that the deceased petitioner has served from 09.06.1988 onwards and has completed more than 22 years of service. The deceased writ petitioner is having 3 daughters and as on date the writ petitioner died. Therefore, this Court is of the considered opinion that the punishment of dismissal shall be modified as the compulsory retirement. The date of dismissal i.e. 01.12.2012 shall be fixed as the date of compulsory retirement. Hence, the impugned order is quashed. The respondents shall implement this order by modifying the punishment of dismissal as compulsory retirement. The deceased petitioner's service shall be taken from 09.06.1988 to 01.12.2012 and consequently all service and monetary benefits shall be disbursed to the legal heirs of the deceased writ petitioner. The said exercise shall be completed within a period of eight (8) weeks from the date of receipt of a copy of this order.



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11. This Writ Petition is allowed on above terms. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

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



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S.SRIMATHY, J.

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