



W.P.(MD).No.26371 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.09.2023

CORAM

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD).No.26371 of 2022

and

W.M.P(MD)No.20552 of 2022

V.Dheivanayagam

... Petitioner

Vs.

**1.The Principal Secretary to Government,
Education Department,
Secretariat,
Chennai.**

**2.The Commissioner of School Education,
College Road,
Chennai-6.**

**3.The Joint Director of School Education,
College Road,
Chennai-6.**

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, call for the records relating to impugned G.O.No.412, dated 03.12.2012 on the file of first respondent and Na.Ka.No.72398/A4/e3/2019, dated 06.01.2020 on the file of third respondent Joint Director of School Education, dated 06.01.2020 and



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quash the same and direct the respondents to regularized petitioner punishment period from 06.11.2001 to 24.11.2002.

For Petitioner : Mr.J.Gunaseelanmuthiah

For Respondents : Mr.N.Ramesh Arumugam
Government Advocate

ORDER

The present writ petition has been filed for a Writ of Certiorarified Mandamus, call for the records relating to impugned G.O.No.412, dated 03.12.2012 on the file of first respondent and Na.Ka.No.72398/A4/e3/2019, dated 06.01.2020 on the file of third respondent Joint Director of School Education, dated 06.01.2020 and quash the same and direct the respondents to regularized petitioner punishment period from 06.11.2001 to 24.11.2002.

2. Heard the learned Counsel for the petitioner and the learned Government Advocate for the respondents and carefully perused the materials available on record.



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3. The petitioner was appointed as Record Clerk on 25.04.1975 at Ayyamayagipuram, Government High School, Vilathikulam, Thoothukudi District. Later he was transferred from the said Vilathikulam to Kadayanallur, Pullukattuvalasai, Keelapavoor Chathiram, V.K.Pudur, Anaikulam, Oothumalai, Panpoli and Tenkasi within 20 years. While so, he was promoted as Junior Assistant, during his service, at Oothumalai Government School. While he was serving at Tenkasi, he was transferred on 30.10.2001 from Tenkasi Assistant Elementary Education Office to Thiruvarur District, Kulikarai Government School. Following which, he was relieved from Tenkasi Assistant Elementary Education Office on 05.11.2001. Challenging the said transfer, the petitioner filed original application No.7749 of 2001 before the State Administrative Tribunal, Chennai and got interim stay against his transfer order, dated 06.12.2001 and the aforesaid interim order was extended on 18.01.2002 making it absolute until further orders. The respondents ought to have revoked his transfer order and permitted him to join duty as Tenkasi Assistant Elementary Education Office based on the said stay order. However, without doing the said exercise, the respondents immediately appointed another person in the place of the petitioner, namely, Gerald Vashikaran at Tenkasi



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Assistant Elementary Education Office. Despite the petitioner's hectic efforts to join duty at Tenkasi Assistant Elementary Education Office based on the Tribunal order, dated 06.12.2001, he was not able to succeed.

4. Pursuant to the same, the petitioner made several representations but in vain and in the meanwhile on attaining the age of superannuation, he retired from service on 31.12.2012. For his absence from the period 06.11.2001 to 24.11.2002, the respondents' Department took action by way of departmental proceedings. A departmental enquiry was conducted by the appointment of an enquiry officer. Though the enquiry officer's report concluded that the charges were not proved as against the petitioner, the final order was passed in the disciplinary proceedings punishing the petitioner by imposing a punishment of reduction in one stage in the time scale of pay for a period of 6 months without cumulative effect. Assailing the said order of punishment, the petitioner filed an appeal before the second respondent (i.e.,) the Director of School Education, Chennai and the punishment was modified and reduced as censure. Thereafter, the petitioner filed a revision before the Government of Tamil Nadu Education Department before the first respondent and the revised order was passed by the



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Government observing the period from 06.11.2001 to 24.11.2002 as non-duty vide G.O(Ms)No.412 of the School Education (R.2) Department, dated 03.12.2012. Assailing the same and a subsequent proceeding of the Joint Director of School Education Department, dated 06.01.2020, this writ petition came to be filed.

5. The learned Government Advocate for the respondents had filed a counter and he submitted that admittedly from 06.11.2001 to 24.11.2002, the writ petitioner did not discharge his duty and hence, the question of treating the said period as duty period does not arise at all. Though the writ petitioner was imposed at the first instance with the punishment of reduction of one stage of time scale of pay for a period of six months, later that punishment was reduced to censure on appeal and on revision before the Government, it was further reduced to be treated as non-duty period and the said punishment is in proportionate to the charges levelled as against the petitioner and hence, the same need not be interfered. He further submits that the petitioner has filed this writ petition after a prolonged delay of nearly 11 years from the date of the



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impugned G.O and on the basis of laches alone this writ petition has to be dismissed.

6. However, the learned Counsel for the petitioner filed an additional affidavit and he categorically submitted that the question of delay and laches will never arise because the petitioner continuously submitted his objections and representations to the respondents from the date of G.O(Ms)No.412 (i.e.,) from 03.12.2012. Immediately after the order passed by the Government in revision on 03.12.2012, the petitioner preferred a review vide his application, dated 28.03.2013 and thereafter, the said review application was pending before the Government for consideration. Having received the said application on 15.07.2013, the first respondent sought for detailed explanation along with supporting documents to be submitted before them to consider the review application of the petitioner, dated 28.03.2013. All the required documents along with the petitioner's explanation was also further submitted in response to the aforesaid letter, dated 15.07.2013. Thereafter, the petitioner continuously made several representations to the Government and the last of which was on 25.04.2019. Hence, it is not the Joint Director of School Education, who ought



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to have passed an order rejecting the review application but it is the Government, which is the competent authority to pass an appropriate order on the review application and on that basis sought the interference of this Court.

7. However, a perusal of the impugned order, dated 06.01.2020 would reveal that the said proceedings of the Joint Director of School Education has been passed only in response to the petitioner's last representation, dated 25.04.2019 and the petitioner's review petition, dated 28.03.2013 is still kept pending.

8. Considering the limited judicial review available for this Court to interfere with the punishment imposed by the disciplinary authority that too only in cases where such penalty is found to be shocking to the conscience of the Court, this Court will be not inclined to interfere with the punishment imposed by the Government vide G.O(Ms)No.412 of the School Education Department, dated 03.12.2012. However, in view of the fact that the petitioner's review, dated 28.03.2013 is still kept in abeyance without proper consideration by the respondents, this Court is inclined to direct the first respondent to pass



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appropriate orders on the review application, dated 28.03.2013, which is pending before the first respondent, within a period of twelve (12) weeks from the date of receipt of a copy of this order.

9. This writ petition stands disposed of, accordingly. There shall be no order as to costs. Consequently, connected Miscellaneous Petition stands closed.

21.09.2023

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

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L.VICTORIA GOWRI, J.

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