



W.P(MD)No.27050 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.04.2023

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**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN**

W.P(MD)No.27050 of 2022

and

W.M.P.(MD)Nos.5578 of 2023 & 21213 of 2022

J.Earnest Jabin

... Petitioner

**Vs.**

1.The Director of Government Examinations,  
Directorate of Government Examinations,  
Chennai-600 006.

2.The Joint Director of Government Examinations,  
Directorate of Government Examinations,  
Chennai-600 006.

3.The Chief Educational Officer,  
Office of the Chief Educational Office,  
Kanyakumari District.

4.The District Educational Officer,  
Office of the District Educational Office,  
Thiruvattar, Kanyakumari District.

5.The Correspondent,  
Aided Higher Secondary School,  
Kallupalam, Edaicode Post,  
Kanyakumari District.

... Respondents



**W.P.(MD)No.27050 of 2022**

**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 order passed by the 3<sup>rd</sup> respondent CEO in Na.Ka.No.9853/Aa1/2021, dated 25.11.2022 and the consequential order of removal from service passed by the 5<sup>th</sup> respondent school in Ref.No.260/2022, dated 25.11.2022, quash the same as illegal, null and void and further direct the respondents to allow the petitioner to continue in service as P.G.Assistant (History) in the 5<sup>th</sup> respondent school with continuity of service and all attendant benefits including arrears of salary and allowances.

For Petitioner : Mr.Isaac Mohanlal  
Senior Counsel  
for M/s.Isaac Chambers

For Respondents : Mr.N.Satheesh Kumar  
Additional Government Pleader for R1 to R4  
: Mr.S.C.Herold Singh for R5

## **ORDER**

Heard the learned counsel on either side.

2. While entertaining the writ petition, the following interim order was passed on 30.11.2022:-

“The learned senior counsel draws my attention to the order dated 09.11.2022 made in W.P.(MD)No.9420 of 2022. Paragraph No.8 of the said order is as follows:-



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*“8.In this view of the matter, the writ petition is allowed. The matter is remitted to the file of the first respondent. The first respondent will issue fresh notice to the writ petitioner and after enquiring the petitioner in person, pass order afresh on merits and in accordance with law. The first respondent will approach the issue entirely uninfluenced by the stand taken in the counter affidavit. When the writ petition was admitted, an interim order of status quo was granted in favour of the writ petitioner. Now that the order passed by the official respondents have been set aside, the petitioner will be restored to his earlier position. The petitioner will allowed to continue as P.G. Assistant (History) and his salary will continue to be paid till the conclusion of the enquiry. No costs. Consequently, connected miscellaneous petitions are closed.”*

2.It is pointed out by the learned senior counsel that the order copy was made ready on 24.11.2022. Even before that, the petitioner was issued with enquiry notice dated 18.11.2022 calling upon him to appear before the second respondent on 23.11.2022 at 10.30 am. The petitioner was served with a questionnaire. Based on the said response, once again adverse conclusion was arrived at in respect of the petitioner's 12<sup>th</sup> standard certificate. The Chief Educational Officer had issued proceedings dated 25.11.2022 holding that the 12<sup>th</sup> standard certificate furnished by the petitioner is not genuine and called upon the school Correspondent to terminate the petitioner's service. Based on the said proceedings, the impugned order of removal has been passed by the school management.

3.I consciously refrain from going into the merits of matter. Suffice to say that direction was given by this Court only to the Director of Government Examination to issue notice, hear the petitioner in person and thereafter take a call in the matter. But the second respondent had issued the enquiry notice and based on his report, the Chief Educational Officer had issued the proceedings, based on which the school management had terminated the petitioner from service. I am conscious that orders of suspension, removal or dismissal are almost never stayed. But where the breach of the Court's direction is apparent and flagrant, the Court cannot keep quiet. The learned senior counsel draws my attention to the decision



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reported in (2000) 4 SCC 625 (*Government of A.P. and Others Vs. Gudepu Sailoo and Others*) holding that where a Mandamus is issued to a particular authority, it is the said authority who has to comply with the same and if any other authority acts thereafter, he or she will have no jurisdiction. Applying the aforesaid ratio, I have to necessarily hold that all the orders impugned in the writ petition are patently without jurisdiction.

4. In this view of the matter, the impugned orders are stayed. The respondents are directed to comply with the direction given by this Court in Paragraph No.8 in W.P.(MD)No.9420 of 2022.”

3. The respondents have filed both the counter affidavit as well as the petition for vacating the interim stay. However during the intervening period, the Directorate of Government examinations held an enquiry. The learned Additional Government Pleader produces the copy of the communication dated 10.02.2023 issued by the Director to the Chief Educational Officer, Kanyakumari District. But till date, no formal order has been communicated directly by the Director to the petitioner. The impugned order thus suffers from vice pointed out in the interim order passed by this Court. The order impugned in this writ petition alone is set aside. It is for the petitioner herein to question the order that may be formally passed by the first respondent.

4. The Writ Petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

**26.04.2023**

Index : Yes / No  
Internet : Yes/ No  
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**G.R.SWAMINATHAN, J.**

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