



W.P.(MD).Nos.19402 of 2017 and 5489 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 19.06.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

**W.P.(MD).Nos.19402 of 2017 and 5489 of 2018
and
W.M.P.(MD).No.15717 of 2017**

W.P.(MD).No.19402 of 2017:

S.P.Unnamalai

... Petitioner

Vs.

- 1.The State of Tamil Nadu,
Represented by its Principal Secretary,
Department of School Education,
Fort St.George,
Chennai – 09.
- 2.The Director of School Education,
Chennai – 06.
- 3.The Chief Educational Officer,
Pudukottai,
Pudukottai District.
- 4.The District Educational Officer,
Pudukottai,
Pudukottai District.



W.P.(MD).Nos.19402 of 2017 and 5489 of 2018

5.VV Higher Secondary School,
Represented by its Secretary,
Ponnamaravathi,
Pudukottai District – 622 407.

... 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 pertaining to the impugned order of termination in Na.Ka. No.69/2017-2018 dated 30.09.2017 on the file of the Respondent No.5 and quash the same as illegal and consequently to direct the Respondent No.5 to re-instate the petitioner with all service and monetary benefits within the time stipulated by this Court.

W.P.(MD).No.5489 of 2018:

S.P.Unnamalai

... Petitioner

Vs.

1.The State of Tamil Nadu,
Represented by its Principal Secretary,
Department of School Education,
Fort St.George,
Chennai – 09.

2.The Director of School Education,
Chennai – 06.

3.The Chief Educational Officer,
Pudukottai,
Pudukottai District.



W.P.(MD).Nos.19402 of 2017 and 5489 of 2018

4.The District Educational Officer,
Pudukottai,
Pudukottai District.

5.VV Higher Secondary School,
Represented by its Secretary,
Ponnamaravathi,
Pudukottai District – 622 407.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing the respondent No.5 to regularize the wrongfully terminated period from 01.10.2017 to 08.11.2017 and disburse the pay and all due allowances of the petitioner for the same with continuity of service and monetary benefits within the time.

(In Both Writ Petitions):

For Petitioner	: Mr.G.Karthik, For M/s.Lajapathi Roy and Associates.
For R-1 to R-4	: Mr.V.Omprakash, Government Advocate.
For R-5	: No Appearance.



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W.P.(MD).Nos.19402 of 2017 and 5489 of 2018

COMMON ORDER

The Writ Petition in W.P.(MD)No.19402 of 2017 is filed challenging the impugned order of termination order dated 30.09.2017 and consequently direct the fifth respondent to reinstate the petitioner with all service and monetary benefits.

2. The petitioner was appointed as Post Graduate Assistant (Physics) at the fifth respondent school on 23.01.1996. Due to retirement of one P.Ravindran on 31.05.2014, the Headmaster post became vacant in the school. A senior most teacher namely, N.Rajendran, Post Graduate Assistant (Botany) was posted as in-charge Headmaster and after a period of 3 months, the said Rajendran declined to continue in the post. From 04.09.2014, one Tamil Selvan was working as in-charge Headmaster and from November 2014 onwards, he claims to be permanently appointed as Headmaster and signed the attendance register as Headmaster.



W.P.(MD).Nos.19402 of 2017 and 5489 of 2018

WEB COP

3. The contention of the petitioner is that under Rule 15(4) of the Tamil Nadu Private Schools (Regulation) Rules, 1974, the said post ought to be filled up based on merit and ability. Hence, the petitioner submitted a representation dated 21.02.2015 seeking to consider the petitioner's name for promotion. Since no action was taken by the respondents, the petitioner was constrained to file W.P.No.5659 of 2015 seeking declaration to declare the promotion of the said Tamil Selvan as illegal. Aggrieved by filing of court case, the school has not provided the service benefits applicable to the petitioner and Service Register of the petitioner was also missing. The Selection Grade arrears from January 2006 to January 2007, salary and other allowances for unearned medical leave from 01.08.2013 to 06.09.2013, Grade Pay arrears from 01.01.2007 to 31.05.2013, were also withheld and till date, the benefits are not disbursed. The petitioner also claims that he is entitled for the second incentive increment for M.Phil. qualification with effect from 11.05.2011. Since there was no response, the petitioner filed W.P.(MD)No.1639 of 2016 seeking for the service benefits and the same was disposed vide order dated 27.01.2016 by directing the respondents to consider and pass orders.



W.P.(MD).Nos.19402 of 2017 and 5489 of 2018

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4. The petitioner claimed promotion to the post of Headmaster by approaching this Court and this has triggered the fifth respondent, to issue charge memo dated 18.09.2017 levelling 3 charges pertaining to changing of examination hall, going out of examination hall and informing the DEO for missing of the petitioner's Service Register. Moreover, the respondents have referred a report of the Secretary in the charge memo and the petitioner has sought for the copy from the respondents. Based on the aforesaid incidents the petitioner and the school relationship were strained. Therefore, the petitioner sought to transfer from this place. In the meanwhile, the fifth respondent conducted an enquiry and another charge memo dated 17.02.2014 was issued pertaining to alleged action against the interest of students. The respondents finally imposed the punishment of termination vide order dated 30.09.2017. Aggrieved over the same, the present Writ Petition is filed with consequential relief to reinstate the petitioner.

5. At the time of admission, in W.P.(MD)No.19402 of 2017, this Court has granted interim order of stay. Based on the interim stay, the petitioner is still continuing in the service of the fifth respondent. Subsequently the



W.P.(MD).Nos.19402 of 2017 and 5489 of 2018

respondents 1 to 4 had brought the school under direct payment and till today, the school is running under direct payment.

6. Pending Writ Petition, the petitioner has filed another Writ Petition in W.P.(MD)No.5489 of 2018 for Mandamus directing the fifth respondent to regularize the termination period from 01.10.2017 to 08.11.2017 and grant continuity of service and other monetary benefits.

7. The official respondents 1 to 4 have filed counter affidavit stating that the fifth respondent is a Private Aided Non-Minority School, hence, the Tamil Nadu Private Schools Regulations Act and Rules are applicable to the said School. Before passing order imposing major punishment, the fifth respondent School ought to obtain prior permission from the official respondents. The fourth respondent has filed a counter stating that the proposals for terminating the service for the petitioner was received on 23.10.2017 by the fourth respondent and the same was submitted to the third respondent vide communication dated 03.11.2017. It is further submitted that without obtaining prior permission from the competent authority, the fifth respondent School Management has imposed the punishment of termination from service vide



W.P.(MD).Nos.19402 of 2017 and 5489 of 2018

order dated 30.09.2017 and the same is against the Section 22 of the Tamil Nadu Private Schools Regulations Act. The fifth respondent had stated in the order that the order of ratification would be obtained from the department itself shows that prior permission was not obtained. Based on the interim orders the petitioner is continuing in the service and the final orders would be passed after disposal of the writ petition. Hence the respondents 1 to 4 prayed to pass appropriate orders.

8. In spite of notice served to the fifth respondent, he has not appeared before this Court.

9. After hearing rival submissions, this Court has given its anxious consideration. The fifth respondent being Private Aided Non-Minority institution is bound by the Tamil Nadu Private Schools Regulations Act. Whenever a post is filled up by promotion, the school is bound to follow section 15(4) of the Act. Since the petitioner was not granted an opportunity to prove his merit and ability, the petitioner submitted application. In the meanwhile, the fifth respondent had initiated disciplinary proceedings by alleging that there is dereliction of duty and the allegation is that the petitioner



W.P.(MD).Nos.19402 of 2017 and 5489 of 2018

changed the examination hall, the petitioner left the examination hall. More interestingly the school was annoyed, when the petitioner informed the DEO that the petitioner's Service Register is missing. In the disciplinary proceedings, the enquiry officer has held the allegations are proved, then the report was placed before Committee and it was resolved in termination of the petitioner from service. Thereafter, the school has passed the impugned termination order. Admittedly the said order is passed without obtaining prior permission from the officials, hence the impugned order is against the section 22 of the Act and the same is liable to be quashed.

10. The learned counsel appearing for the petitioner brought to the knowledge of this Court that the fifth respondent has destroyed the petitioner's service book. The fifth respondent has also destroyed another employee service book namely, A.Subramanian. When the complaint was preferred by the aggrieved persons, the authorities have conducted enquiry and inspected the premises on 15.07.2016. It has been reported that the Secretary of the said School was in possession of the said Service Register of the petitioner and the said Subramanian. Therefore, this Court directs the Secretary of the school to hand over the Service Register to the fourth respondent. If the Secretary fails to



W.P.(MD).Nos.19402 of 2017 and 5489 of 2018

produce the Service Register, then the official respondents are at liberty to reconstitute the Service Register of the petitioner and the said Subramanian.

11. As far as the punishment of termination from service is concerned, this Court is of the considered opinion that the punishment is disproportionate. The allegation against the petitioner is that the petitioner had changed the examination hall, going out of examination hall and informing the DEO for missing of the petitioner's Service Register and for these allegations the punishment is definitely disproportionate. Having held the punishment is disproportionate, generally the case is ought to be remitted back to the school for imposing lesser punishment. But the school is under direct management, hence this Court is imposing a punishment of warning alone.

12. Based on the interim order, the petitioner is reinstated into service and as of now the petitioner is in service. The petitioner shall continue in the service until his superannuation. As far as the regularization of the service from 01.10.2017 to 08.11.2017 is concerned, the official respondents shall regularize the same. The learned counsel appearing for the petitioner submitted that because of pendency of the writ petition, the petitioner was not disbursed any



W.P.(MD).Nos.19402 of 2017 and 5489 of 2018

other benefits apart from salary. The fourth respondent shall consider the same and if the petitioner is entitled to any benefits, the same shall be granted to the petitioner. The respondents shall not decline the benefits by citing that the school is under direct management. The order shall be implemented and completed within a period of twelve (12) weeks from the date of receipt of a copy of this order.

13. Hence, the Writ Petitions are allowed on above terms. No costs. Consequently, connected miscellaneous petition is closed.

19.06.2023

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



W.P.(MD).Nos.19402 of 2017 and 5489 of 2018

To
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W.P.(MD).Nos.19402 of 2017 and 5489 of 2018

S.SRIMATHY, J.

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W.P.(MD).Nos.19402 of 2017 and 5489 of 2018

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