



W.A.(MD)No.61 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 16.08.2023

CORAM

**THE HON'BLE MR. JUSTICE M.S.RAMESH
AND
THE HON'BLE MR. JUSTICE M.NIRMAL KUMAR**

**W.A.(MD)No.61 of 2023
and C.M.P.(MD)No.684 of 2023**

The Correspondent,
Seeniammal High School,
Chinthamani, Puliangudi,
Tenkasi District.

.. Appellant

Vs.

1.V.Ramesh

2.The Director of School Education,
DPI Complex College Road,
Chennai – 600 006.

3.The Chief Educational Officer,
O/o. Chief Educational Officer,
Tenkasi,
Tenkasi District.

4.The District Educational Officer,
O/o. District Educational Officer,
Sankarankovil Taluk,
Tenkasi District.

.. Respondents



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PRAYER: Writ Appeal filed under Clause 15 of Letter Patent against the order dated 07.11.2022 passed in W.P.(MD)No.14774 of 2021.

For Appellant : Mr.Raja Karthikeyan

For Respondents : Mr.Niranjana S.Kumar for R1
Mr.D.Sadiq Raja,
Addl. Govt. Pleader for R2 to R4

JUDGMENT

(Judgment of the Court was delivered by M.S.RAMESH,J.)

The first respondent herein was appointed as a Physical Education Teacher in the appellant's School on 13.08.2015, which appointment was approved by the competent authority. On 02.07.2018, the appellant had placed the first respondent on suspension. Pending the suspension, charges were framed against the first respondent on 09.07.2018. This charge memo was challenged by the first respondent in W.P.(MD).No.15341 of 2018. Pending this Writ Petition, the appellant had sent a proposal to the third respondent through the fourth respondent for surrender of the post of Physical Education Teacher, owing to the existence of surplus teachers. The third respondent herein, through his proceedings dated 04.12.2018,



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instructed the appellant to revoke the suspension order and withdraw all the pending cases and thereafter, submit the proposal for transfer of the first respondent to some other school. Accordingly, the appellant had revoked the suspension order on 26.12.2018. On the same day, the appellant had also addressed a letter to the third respondent herein informing about the revocation of suspension and seeking for redeployment of the first respondent to some other school.

2. Since the official respondents had not redeployed the first respondent to some other school, the first respondent had filed a Writ Petition before this Court in W.P.(MD).No.16972 of 2019 seeking for such re-deployment and for regularisation of his services from the date of the surrender of the post by the appellant School. By an order dated 01.08.2019, this Court had directed the official respondents to consider the first respondent's representation dated 15.03.2019, within a period of twelve weeks. Consequently, the third respondent herein, through proceedings dated 27.04.2021, had rejected the first respondent's representation, which came to be challenged before this Court in W.P.(MD).No.14774 of 2021,



with a consequential prayer for appointment of the first respondent as Physical Education Teacher in any of the school in Tenkasi District and for grant of arrears of salary and other benefits. Through an order dated 07.11.2022, the Writ Petition was disposed of by this Court with the following directions:

“4. In these circumstances, the following directions are issued:-

(I) The management is directed to pay the writ petitioner's subsistence allowance for the four months commencing from 02.07.2018. Release of grant will depend on the outcome of the disciplinary action.

(ii) The management has to pay full salary of the petitioner for the period from 01.11.2018 till 04.12.2018.

(iii) The department has to pay full salary of the writ petitioner for the period from 04.12.2018 till 31.08.2019.

(iv) The management has to pay full salary to the petitioner for the period from 31.08.2019 till passing of the order by the competent authority on the surrender proposal.

(v) The second respondent is directed to pass order on the management's proposal for surrendering the post of Physical Education Teacher.

(vi) The writ petitioner's right will abide by the terms of the order to be passed by the competent authority.



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(vii) The competent authority is directed to pass order on the said surrender proposal within a period of three weeks from the date of receipt of a copy of this order. Whether the surrender proposal is accepted or rejected, the management will be entitled to pass a final order on the disciplinary action initiated against the petitioner on merits and in accordance with law after due compliance of the statutory procedures.

5. The writ petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.”

3. The appellant School challenges the aforesaid order in the present Writ Appeal.

4. The Management is aggrieved against the order of the learned Single Judge, insofar as it orders of Management to pay the subsistence allowance / salary for the period prescribed therein.

5. Some of the crucial dates, as admitted by both the appellant as well as the first respondent herein are that the first respondent was suspended from his service on 02.07.2018. The suspension order came to be revoked



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on 26.12.2018. The appellant Management had submitted the surrender proposal of the post of Physical Education Teacher to the competent authority on 31.08.2019. Thereafter, the management had permitted the first respondent to join the service on 21.09.2019.

6. It is not in dispute that the subsistence allowance for the period of suspension of the first respondent herein between 02.07.2018 to 26.12.2018 was not paid by the Management. As such, the Management could be directed to pay the subsistence allowance for the said period.

7. After the revocation of the suspension order on 26.12.2018, there is a duty caused on the Management to restore the services of the first respondent and permit him to join the school. However, the Management had passed orders calling upon the first respondent to join the services only on 20.09.2019 and accordingly, the first respondent had joined on 21.09.2019. Thus, the period between 26.12.2018, when the suspension order was revoked and the Management permitted the first respondent to join duty on 21.09.2019, requires to be treated as a compulsory wait. Since



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there was a lapse on the part of the Management in not permitting the first respondent to join duty for the aforesaid period, they are duty bound to pay the full salary for these period between 26.12.2018 to 21.09.2019.

8. The Management had surrendered the post of Physical Education Teacher to the concerned authorities on 31.08.2019 and the proposal is said to be pending till date, for passing of orders. In the meantime, the first respondent herein had been continuing to serve as a Physical Education Teacher in the appellant school, without salary and thus, the Management is bound to pay full salary to the first respondent herein for this period from 31.08.2019, till the appropriate orders are passed by the competent authority on the surrender proposal submitted by them.

9. In the light of the above findings, the reasoning adopted by the learned Single Judge, holding the entitlement of the first respondent to receive the subsistence allowance / full salary for the suspension period and the period were he had joined the services and denied full salary cannot be found fault with.



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10. There appears to be some mistakes in recording the dates in the order of the learned Single Judge. For the sake of clarity, the liability of the Management / competent authority of the Education Department, are ordered as follows:

1. The Management is directed to pay the first respondent herein / writ petitioner the subsistence allowance from the date of suspension i.e., 02.07.2018 to the date of revocation of suspension order i.e., till 26.12.2018;

2. The Management shall also pay full salary to the petitioner for the period from 26.12.2018 to the date on which the first respondent / writ petitioner was permitted to join the school i.e., till 21.09.2019.

3. The Management shall pay full salary to the petitioner for the period from 31.08.2019 till final orders are passed by the competent authority on the surrender proposal;



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4. If the delay in passing orders in the surrender proposal is attributable to the competent authority of the Department of School Education, Government of Tamil Nadu, the Management is at liberty to claim for release of grant for the full salaries paid to the first respondent / writ petitioner from the date of submission of the surrender proposal for the post of Physical Education Teacher.

5. The competent authority is called upon to pass orders on the surrender proposal within a period of two weeks from the date of receipt of a copy of this order.

11. The order of the learned Single Judge, insofar as it fixes the liability to pay the subsistence allowance / full salary for the periods as stated above alone, shall stand modified through this order.



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12. The Writ Appeal is dismissed in all other aspects. No costs.

Consequently, connected miscellaneous petition is closed.

(M.S.R.,J.) (M.N.K.,J.)
16.08.2023
(1/2)

NCC : Yes / No
Index : Yes / No

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To

- 1.The Director of School Education,
DPI Complex College Road,
Chennai – 600 006.
- 2.The Chief Educational Officer,
O/o. Chief Educational Officer,
Tenkasi,
Tenkasi District.
- 3.The District Educational Officer,
O/o. District Educational Officer,
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