



W.P.No.16653 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	27/3/2024
Delivered on	25/4/2024

C O R A M

THE HONOURABLE Dr.JUSTICE D.NAGARJUN

Writ Petition No.16653 of 2016

Arockiamary ... Petitioner

Vs

1. The Government of Tamil Nadu
rep. By the Secretary
Department of School Education
Fort St. George
Chennai 600 009.
2. The Director of Elementary Education
DPI Campus, College Road
Chennai 600 006.
3. The District Elementary Education Officer
Office of the District Elementary Education Officer
Coimbatore.
4. The Assistant Elementary Education Officer
Office of the Assistant Elementary Education Officer
Coimbatore.



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5. The Secretary
Kadhimills Primary School
Otterpalayam, Sulur
Coimbatore 641 016.

...

Respondents

Prayer: Petition filed under Article 226 of the Constitution of India for the issuance of a writ of certiorarified mandamus to call for the records pertaining to the impugned proceedings dated 29/6/2015 in R.C.No.1/2015-2016 and the consequential proceedings dated 30/12/2015 in R.C.No.1/2015-16 on the file of the fifth respondent and the consequential proceedings dated 25/2/2016 in Na.Ka.No.4976/A4/2015 on the file of the third respondent and quash the same, directing the respondents to permit the petitioner to join duty with all attendant benefits.

For petitioner

...

Mr.Gautam S. Raman
for M/s.Raman Associates

For respondents

...

Mr.R.U.Dinesh Raj Kumar
Additional Government Pleader
for R.R.1 to 4

Mr.Kowsick
for R.5

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ORDER

This writ petition is filed seeking for certiorarified mandamus to quash the impugned proceedings dated 29/6/2015 made in R.C.No.1/2015-2016 and the consequential proceedings dated 30/12/2015 in R.C.No.1/2015-16 on the file of the fifth respondent and further, consequential proceedings dated 25/2/2016 in Na.Ka.No.4976/A4/2015 on the file of the third respondent and further, direct the respondents to permit the petitioner to join duty with all attendant benefits.

2. The facts of the cases in brief as per the affidavit of the writ petition are as follows:-

The petitioner joined as a Trainee Graduate in St.Antony Middle School on 15/6/1989. After 12 years of service, as per the Proceeding dated 14/9/2002 of the third respondent, she was deployed in fifth respondent non-Minority School. The petitioner was granted increments for acquiring higher qualifications. However, the said increment was withdrawn and the petitioner was directed to pay the money drawn by her towards increments. The petitioner has challenged



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the said order in W.P.No.26795 of 2004 and this Court, vide, order dated 13/3/2013 has quashed the impugned order therein. The respondents were directed to pay back the increments to the petitioner. The respondent Management was not happy that the petitioner has approached this Court and obtained orders.

3. Father and grand father of a student by name M.Kanmani have filed a complaint before the DEEO stating that the petitioner has ill treated the girl student by mentioning her caste name. A show cause notice was issued to the petitioner for which the petitioner has issued suitable reply. In the meanwhile, father of the girl student has withdrawn the complaint.

4. On 21/6/2015, on completion of her summer vacation and leave, the petitioner came to School, however, she was not allowed to sign the attendance register. Later proceedings were issued on 29/6/2015, suspending her from service. The petitioner has submitted an explanation on 2/7/2015 denying the allegations. The petitioner was directed to submit a representation to the fifth respondent requesting to transfer her to P.S.G Primary School, Coimbatore. Fifth respondent has issued No



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Objection Certificate and submitted a letter to the third respondent.

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5. The petitioner went to the School to attend the enquiry by the School Committee but there was no one in the School. She has sent letter to fifth respondent stating that there were none in the School. The petitioner was not paid subsistence allowance. Her request to reinstate her was not considered, thereby the petitioner has filed W.P.No.28326 of 2015 seeking reinstatement. This Court by way of an order dated 10/9/2015 directed the Management to pass orders on the representations of the petitioner. An enquiry Officer was appointed to conduct an enquiry. Enquiry Officer has submitted a report stating that all the charges were proved against the petitioner. Enquiry report was considered by the School Committee and as per the Resolution No.7 of the School Committee proposing the petitioner to dismiss the petitioner from service. The Resolution of the fifth respondent School Committee has submitted for confirmation to the third respondent. However, third respondent/DEEO instead of giving approval for dismissal of the petitioner has proposed that the petitioner be transferred to some other School. The third respondent has asked the petitioner to submit an application for transfer within three days. As there was no response, the



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petitioner was transferred to sixth respondent School.

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6. It is submitted by the learned counsel for the petitioner that prolonged suspension of the petitioner with effect from 20/6/2015 without any subsistence allowance is in violation of Section 22 (3) r/w. Rule 17 of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 and Rules, 1974, It is further submitted that as per the order of this Court dated 10/9/2016, Management was directed to pass orders on the representation of the petitioner within four weeks. However, without complying with the said order, respondents have appointed Enquiry Officer. Therefore, initiation of disciplinary proceeding are in violation of principles of natural justice.

7. Fifth respondent has filed counter affidavit stating among other things that while the petitioner was working in fifth respondent School, she has committed mis conduct on which she was placed under suspension on the complaint of the father of the child who was abused by mentioning the caste name, as per the proceeding dated 29/6/2015 and an Enquiry Officer was appointed. During the course of enquiry, petitioner has also participated and enquiry report was filed by the Enquiry Officer



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11. The main contention of the petitioner is that the suspension of the petitioner on 29/6/2015 in R.C.No.1 of 2016 is erroneous on many counts including on the ground of subsistence allowance was not paid. Section 3 of the Tamil Nadu Payment of Subsistence Allowance Act, 1981 speaks about the payment of superannuation during the period of suspension of an employee. According to the learned counsel appearing for the fifth respondent, subsistence of allowance was initially paid for some time but subsequently, it was stopped. Further, suspension period cannot be continued for a longer period even if disciplinary proceedings are pending unless the specific reasons are mentioned.

12. The petitioner has filed W.M.P.Nos.14391 and 14392 of 2016 in W.P.No.16653 of 2016 to stay the suspension order and to grant subsistence allowance. Interim orders were passed staying the suspension orders, directing the fourth respondent to pay the subsistence allowance to the petitioner within a period of two weeks from the date of receipt of a copy of the order dated 29/4/2016. The fifth respondent without payment of subsistence allowance as required under Payment of Subsistence Allowance Act, without revoking the suspension, continued the disciplinary proceeding and third respondent has deployed the



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Therefore, it is landed in a situation where though enquiry report speaks of nine charges were proved on account of not giving consent by the third respondent DEEO as required under the provisions of Tamil Nadu Government Private Schools Regulation Act, 1973 punishment could not be inflicted.

15. In fact, third respondent DEEO has got every right either to accept or reject the report of the Enquiry Officer and also to reject the Resolution passed by the fifth respondent. Accordingly, third respondent having considered the records perhaps has decided not to take any action against the petitioner and decided only to transfer the petitioner from fifth respondent to sixth respondent School. However, nothing is found in the proceeding of transferring the petitioner from sixth respondent School that the said transfer is on account of finding the petitioner guilty of nine charges that means transferring the petitioner from fifth respondent to sixth respondent School is nothing to do with the proving of nine charges during the course of enquiry. Therefore, since no action was taken against the petitioner on the enquiry report, it is deemed that the charges against the petitioner are not proved at all and finally, petitioner has reported to sixth respondent School on receipt of transfer order.



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16. Once the petitioner was reinstated without any punishment, it is deemed that she was exonerated of all the charges. Once the petitioner against whom nine charges were framed and the petitioner who was suspended on account of nine charges and disciplinary proceedings were though withdrawn, since no action was taken against her and since the petitioner was reinstated back in service without even minor punishment, normally entire period of her suspension has to be treated as a duty period. In this writ petition, the petitioner has not sought for relief and thereby, it is for the petitioner to take steps for treating the suspension period as duty period.

17. As already observed, in spite of pendency of suspension orders, the petitioner was deployed in sixth respondent School and accordingly, the petitioner has also reported to duty in sixth respondent School on 26/7/2019. Admittedly, disciplinary proceedings were concluded and the petitioner was though found guilty of all the nine charges, the third

respondent has declined to accept the same, thereby, the prayer of the petitioner to quash the suspension proceeding becomes infructuous.



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18. The petitioner has also sought for quashing the proceeding dated 30/12/2015 in R.C.No.1 of 2015 of fifth respondent through which fifth respondent has accepted the enquiry report and passed the Resolution dismissing the petitioner. The prayer to quash these proceedings also becomes infructuous on account of the fact that the request of the fifth respondent to third respondent to give approval for dismissal of the petitioner was not accepted by the third respondent.

19. Similarly, last prayer of the petitioner in this writ petition is to quash the proceeding of the third respondent dated 25/2/2016 in Na.Ka.No.4976/A4/2015. This prayer also has become infructuous as the petitioner after obliging the impugned order dated 25/2/2016 of the third respondent has reported to duty at sixth respondent School. Therefore, once the petitioner has reported to sixth respondent School as per the impugned proceeding of the third respondent dated 25/2/2016, the said proceedings cannot be quashed.

20. In view of the discussion made above, all the three prayers sought for by the petitioner has become infructuous. Accordingly writ petition is



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dismissed as infructuous. No costs.

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Index: Yes/No

Neutral Citation: Yes/No

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Pre-delivery common order in
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