



W.P.No.43232 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.43232 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, Suler
Coimbatore 641 016.

6. The Correspondent
Gandhi Aided Primary School
Mola Kalipalayam
Coimbatore District.

...

Respondents

Prayer: Petition filed under Article 226 of the Constitution of India for the issuance of a writ of certiorari to call for the records pertaining to the impugned order dated 1/12/2016 in Na.Ka.No.4296/A4/2015 on the file of the third respondent and quash the same.

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

No appearance for R.6

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ORDER

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This writ petition is filed for issuance of a writ of certiorari to quash the impugned order dated 1/12/2016 in Na.Ka.No.4296/A4/2015 on the file of the third respondent.

2. The facts in brief as per the affidavit enclosed to the writ petition are as under:-

The petitioner is a trained graduate with M.A. B.Ed qualification. She was appointed in St.Antony Middle School on 15/6/1989 and her appointment was approved by third respondent/District Elementary Educational Officer on 15/2/1990. After twelve years of service, petitioner was deployed to fifth respondent/Kadhimills Primary School, which is a non Minority School, as per the Proceeding dated 14/9/2002 of the third respondent. The petitioner was awarded increments on account of her higher qualifications. However, the said increment was withdrawn and the petitioner was directed to refund the increment amount drawn by her. The petitioner has challenged the said order of recovery by filing writ petition in W.P.No.26795 of 2004. This Court, vide, order dated 13/3/2013 passed the following order:-



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“The Recovery Order of the third respondent in Na.Ka.No.137-A1/2003 dated 18/11/2003 and the letter of the fourth respondent dated 25/8/2004 are hereby quashed and the writ petition is allowed. The respondents are further directed to pay the petitioner Rs.12,350/- the amount left out in awarding increment to the petitioner for the period from 1/6/1998 to 31/12/2000.”

3. Since the petitioner has moved the High Court against the recovery order, Management was not happy. The petitioner has requested for implementation of the order of High Court but the said order was not complied.

4. On 16/3/2015 and on 24/3/2015, one Mr.Paulraj and Mr.Manimaran who were grand father and father, respectively of a student by name M.Kanmani have filed a complaint against the petitioner before the DEEO stating that the petitioner has ill treated the said student by mentioning her caste name. Fifth respondent has issued a show cause notice to the petitioner dated 30/4/2015 directing the petitioner to submit



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her explanation to the third respondent. However, in the meanwhile, Manimaran, father of the student has withdrawn his complaint made against the petitioner as per the letter dated 22/4/2015. The petitioner has submitted her explanation to the third respondent on 4/5/2015 denying all the charges and also mentioned in the said explanation that father of the student has already withdrawn his complaint.

5. The petitioner was prevented from signing the Masters' attendance register from 22/6/2015 to 28/6/2015 and finally, on 29/6/2015, petitioner was placed under suspension. The petitioner has submitted her explanation to fifth respondent on 2/7/2015, denying the allegations made in the suspension order including mentioning that father of the student has already withdrawn the complaint against him. Fifth respondent acknowledged the receipt. Later, the petitioner was forced to seek transfer to some other School and the petitioner was directed to submit a representation to fifth respondent requesting transfer to P.S.G.Primary School, Coimbatore. The petitioner has given letter to fifth respondent who in turn submitted No Objection Certificate on 27/7/2015 to the third respondent in respect of request of transfer of the petitioner on the very same day.



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6. The petitioner has attended enquiry on 4/8/2015, however, there was no one in the School. The petitioner has sent letters to the fifth respondent by Registered Post on 10/8/2015 and 4/9/2015, informing that though she was present in the School for enquiry on 4/9/2015, until 5.15 p.m., there was nobody. As the subsistence allowance was not paid, the petitioner has submitted a representation to the fifth respondent on 19/8/015 requesting for grant of subsistence allowance. Fifth respondent as per the letter dated 1/9/2015 directed the petitioner to submit documents in proper format for subsistence allowance. Accordingly, the petitioner has submitted all the required documents to fifth respondent on 5/9/2015 and 8/10/2015, and requested to release subsistence allowance. However, the petitioner was neither paid subsistence allowance nor she was reinstated, on which she has filed W.P.No.28326 of 2015, for a direction to reinstate the petitioner back in service. The said writ petition was ordered on 10/9/2015 directing the Management to pass orders on the representation of the petitioner dated 2/7/2015 and 19/8/2015 on merits. The petitioner has submitted one more representation to the third respondent to implement the directions of this Court, however without implementing the directions of this Court, Enquiry Officer was appointed



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by the Management. Enquiry was conducted. On 30/12/2015, fifth respondent has passed an order stating that charges levelled against her were proved.

7. On 25/2/2016, proceedings were issued in Na.Ka.No.4976/A4/2015 stating that she will be transferred to some other School and she was asked to submit her application for transfer within three days. The petitioner has submitted her application on 4/3/2016 requesting to transfer her within the city of Coimbatore. Third respondent as per the Proceeding dated 18/3/2016 directed the petitioner to submit another application for transfer. The petitioner has accordingly submitted two more applications requesting either retain the petitioner in fifth respondent School or transfer her within the City of Coimbatore.

8. Since the petitioner was under prolonged suspension with effect from 29/6/2015, filed W.P.No.16653 of 2016 challenging the suspension order and consequential disciplinary proceedings. Interim stay was granted in the said writ petition vide order dated 29/4/2016 in W.M.P.Nos.14391 and 14392 of 2016 and the respondents were directed to pay subsistence allowance to the petitioner within a period of two



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weeks from the date of receipt of the order. The petitioner has submitted number of representations on various dates to comply with the interim order passed by this Court on 29/4/2016 in W.M.P.Nos.14391 and 14392 of 2016 in W.P.No.16653 of 2016 and to release the subsistence allowance. The respondents however have paid subsistence allowance of only Rs.84,980/- and failed to pay the balance of subsistence allowance of Rs.2,78,998/- upto 30/6/2016 and also failed to pay subsequent subsistence allowance.

9. The third respondent DEEO has issued proceeding in Na.Ka.No.4296/A-4/2015 dated 1/12/2016 stating that post of the petitioner has become surplus in fifth respondent School. The third respondent has colluded with fifth respondent and has issued deployment order dated 1/12/2016 ignoring the stay order passed by this Court on 29/4/2016. The petitioner is not the junior most person in the fifth respondent School and even if deployment is made on account of surplus staff, the junior most person should have deployed and that the respondents have victimised the petitioner thereby filed this writ petition to quash the proceeding, in Na.Ka.No.4296/A4/2015 dated 1/12/2016 deploying the petitioner to sixth respondent School.



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10. The third respondent has filed counter affidavit, the gist of which is as under.

The petitioner is a trained graduate and she was appointed at St.Antony's Middle School, with effect from 15/6/1989 and deployed in fifth respondent Non-minority School on 14/9/2002. The petitioner has committed grave mis conduct of caste based discrimination by addressing the student of third standard using caste name. On a complaint given by one Mr.Paulraj and Mr.Manimaran grand father and father of the child who was subjected to oral abuse by the petitioner. The fifth respondent acting in the best interest of child's safety has suspended the petitioner on 29/6/2015. The petitioner has filed W.P.No.28326 of 2015 challenging the suspension order and the same was disposed of on 10/9/2015 with a direction to the respondents to consider representation of the petitioner within four weeks from the date of order.

11. Pursuant of the judgment of this Court in W.P.No.28326 of 2015, the School Management has appointed the Enquiry Officer on 26/10/2015 and initiated disciplinary proceedings. The said Enquiry Officer, on conclusion of the enquiry has submitted report of the



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management on 23/12/2015. Basing on the said report, School Committee has passed a Resolution on 30/12/2015 dismissing the petitioner. Necessary Notification dated 2/1/2016 informing the decision of the School management to dismiss the petitioner was also despatched to the petitioner and also to the District Elementary Educational Officer on 2/1/2016 by the Management.

12. The District Educational Officer did not accept the dismissal order and issued written communications were sent to the petitioner offering her transfer to some other School and directed the petitioner to respond within three days. The District Educational Officer has transferred the petitioner to sixth respondent School as per the order dated 1/2/2016 after obtaining no objection from fifth respondent School.

13. The transfer orders was served on the petitioner but there was no response from the petitioner. The sixth respondent School submitted a non joining letter to the DEO. The petitioner has not preferred appeal against her transfer before the relevant authorities. The petitioner has however approached the High Court, by way of the instant writ petition, challenging the transfer order issued by DEO on 1/12/2016.



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14. The fifth respondent has filed counter affidavit stating among other things that on receiving of a complaint against the petitioner about ill treatment of a student by taking caste name, she was placed under suspension by the fifth respondent on 29/6/2015. She was asked to appear before the School Committee for enquiry at 4.30 p.m., on 10/8/2015. She has failed to appear, even though the Committee was available between 4 to 5 p.m. However, she has sent a representation that nobody was present when she tried to appear before the School Committee.

15. An Enquiry Officer was appointed and the Enquiry Officer has submitted a report basing on which School Committee has decided to dismiss the petitioner from service. The fifth respondent Management has submitted records to the third respondent for grant of approval of the dismissal of the petitioner. The third respondent has not given the approval for the dismissal of the petitioner, however, the third respondent has passed orders transferring the petitioner in fifth respondent School. The third respondent has not taken any prompt action on the request of the fifth respondent for approval of dismissal of the petitioner. Peculiar



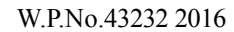
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behaviour and conduct of the petitioner is not conducive for the fifth respondent to continue her in the said School. Therefore, sought for dismissal of the writ petition.

16. Additional counter affidavit is filed by the third respondent stating that from the date of issuing the transfer order till the date of her reinstatement, there was a loss of 377 working days which goes to 31 months 17 days which consists of 3850 teaching periods, thereby, huge loss was incurred to the less privileged student Community.

17. Heard both sides and perused the materials available on record.

18. On the allegation that the petitioner has committed misconduct of discriminating a student by mentioning the caste name, fifth respondent School has framed nine charges on 20/10/2015, calling for her explanation. The petitioner accordingly has submitted explanation. Having found the explanation was not satisfactory, an Enquiry Officer was appointed. The petitioner has participated in the enquiry and finally, Enquiry Officer submitted a report to the fifth respondent School Management holding that all the charges framed against her were proved.



19. The third respondent/DEEO has issued written communication on 22/1/2016, 9/3/2016 and 17/3/2016 to the petitioner offering her to transfer and requesting her to respond within three days. The petitioner has failed to respond on which the third respondent/DEEO transferred the petitioner to sixth respondent School on 1/12/2016 by way of impugned



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order in Na.Ka.No.4296/A4/2015. This transfer order was issued after obtaining no objection certificate from the sixth respondent School and that the petitioner has also given willingness to transfer her.

20. It is submitted by the learned counsel for the petitioner that the petitioner has not sent any request to the third respondent or respondent Nos.5 and 6 to transfer her from the fifth respondent School and that earlier representation given by her requesting for transfer was considered and transferred her to sixth respondent.

21. It is also submitted by the learned counsel for the petitioner that third respondent DEEO has issued proceeding transferring her from fifth respondent School to sixth respondent School on the ground that there were surplus staff, however, it is submitted further that if at all there was surplus offer, juniors of the petitioner should have been deployed and not the petitioner. It is also further submitted that the petitioner was under suspension as per the order issued by the fifth respondent and that stay order was granted in W.M.P.Nos.14391 and 14392 of 2016 in W.P.No.16653 of 2016 inspite of which order has been issued.



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22. There is no record that petitioner has sent her request for transfer.

However, third respondent DEEO has got power to transfer the petitioner depending upon the exigencies. But when transfer is effected on the ground of excess staff, junior most staff member has to be transferred and not the senior member. The petitioner is admittedly not the junior most member. Hence, her transfer appears to be irregular.

23. In addition to that the petitioner has filed W.P.No.16653 of 2016 questioning the suspension and this Court has passed stay order in W.M.P.No.14391 of 2016 and 14392 of 2016. That means, in spite of stay orders passed by this Court, transfer orders have been issued. Hence these transfer orders are irregular.

24. However, it is seen that this writ petition is filed when the petitioner has received order of deployment on 1/12/2016. As on the date of issuance of impugned deployment order by the third respondent deploying the petitioner from fifth respondent School to sixth respondent School, the petitioner was under suspension. However, suspension order was also firmly not revoked and that the disciplinary proceedings were though concluded, final order has not been passed, since the third



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respondent DEEO has not given consent for the proposal of fifth respondent to dismiss the petitioner from service. The petitioner was not paid subsistence allowance fully. The petitioner has challenged the impugned order dated 1/12/2016, aggrieved by her deployment in sixth respondent School and that she has not reported as per the impugned order. However, ultimately, on 26/7/2019, petitioner has reported in the sixth respondent School during the pendency of this writ petition and subsequently, retired from service also. Since writ petition is filed challenging her deployment order to sixth respondent and that since the petitioner has already reported in the sixth respondent School during the pendency of this writ petition on 26/7/2014, the relief sought for by the petitioner in this writ petition has become infructuous.

25. In view of the discussion made above, writ petition has become infructuous. No costs.

25/4/2024

mvs.

Index: Yes/No

Neutral Citation: Yes/No



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Pre-delivery order in
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