



W.P.Nos.28235 & 29276 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.01.2024

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.Nos.28235 & 29276 of 2023 and
WMP.Nos.27753 & 28893 of 2023

WP.No.28235 of 2023

The School Secretary,
Kumara Raja Muthiah Higher Secondary School,
No.4, Crescent Avenue Road,
Gandhi Nagar, Adyar,
Chennai 600 020

... Petitioner

Vs.

- 1.The Principal Secretary,
Department of School Education,
Government of Tamilnadu,
Fort St.George,
Chennai
- 2.The Director of School Education,
College Road,
Nungambakkam, Chennai 600 006
- 3.The Chief Educational Officer,
Chief Educational Office,
Presidency Girls Higher Secondary School Campus,
Egmore, Chennai 600 008
- 4.The District Educational Officer,
Chennai(Central), Saidapet,
Chennai 600 015
- 5.A.Kalyani

... Respondents



W.P.Nos.28235 & 29276 of 2023

PRAYER:

Writ Petition is filed under Article 226 of Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records of the order / proceedings of the 4th respondent in Na.Ka. No.2571/ AA2/ 2022 dated 03.08.2023 and Na.Ka. No.2571/A3/ 2022 dated 25.08.2023 and quash the same as illegal, arbitrary, unconstitutional and ultra vires to the provisions contemplated under both Tamil Nadu Recongnized Private Schools (Regulation) Act 1973 and its Rules, 1974 and Tamil Nadu Recognized Priavte Schools (Regulation) Act 2018 and its Rules, 2023 and consequently direct the 4th respondent to confirm the proceedings of suspension dated 12.12.2019 followed by the dismissal dated 19.04.2022 initiated by the petitioner against the 5th respondent as per the provisions contemplated under the Tamil Nadu Recognized Private Schools (Regulation) Rules, 1974.

For Petitioner : Mr.V.Raghavachari,
Senior Counsel
for Mr.T.Balaji

For Respondents
For R1 to 4 : Mr.S.Arumugam,
Government Advocate



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For R5 : Mr.V.Sivalingam
for M/s.C.S.Associates

WP.No.29276 of 2023

A.Kalyani

... Petitioner

Vs.

- 1.The Director of School Education,
College Road, Nungambakkam,
Chennai 600 006
- 2.The Chief Educational Officer,
Presidency Women Higher Secondary School,
Egmore High Road,
Egmore 600 008
- 3.The District Educational Officer,
Chennai(Central),
Chennai 600 15
- 4.The School Secretary,
Kumararajah Muthiah Higher Secondary School,
No.4, Crescent Avenue Road,
Gandhi Nagar, Adyar,
Chennai 600 020

... Respondents

PRAYER:

Writ Petition is filed under Article 226 of Constitution of India praying to issue a Writ of Mandamus directing the fourth respondent to reinstate the petitioner into service conferring all the consequential benefits to the petitioner by implementing the order passed by the third respondent in his proceedings in Na.Ka.No.2571/A3/2022 dated 25.08.2023.

For Petitioner : Mr.V.Sivalingam



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For Respondents : Mr.S.Arumugam,
Government Advocate

COMMON ORDER

The writ petition in WP.No.28235 of 2023 has been filed challenging the orders passed by the fourth respondent dated 03.08.2023 and 25.08.2023 thereby revoked the order of suspension and directed to reinstate the fifth respondent with subsistence allowance subject to the result of the criminal case.

2. The petitioner school is fully aided by the State Government and governed by the Tamilnadu Recognized Private Schools (Regulation) Act and its Rules, 2023. It is run by Public Charitable Society established by Rajah Sir M.A.Muthiah Chettiar of Chettinad. The fifth respondent was working in the petitioner school as Tamil Pandit from the year 2009 onwards. She was absent by herself from 22.11.2019. While being so, the petitioner had received communication from the Inspector of Police, District Crime Branch, Madurai intimating that the fifth respondent was arrested and remanded to judicial custody in



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pursuant to the registration of FIR in crime No.10 of 2018 for the offence under Sections 120(b), 406, 420 r/w 34 of IPC alleging that the fifth respondent involved in a job racketing case and received huge amount from general public. Therefore, the petitioner issued notice calling upon the fifth respondent to submit her explanation for her unauthorised long absence. It was also duly communicated to the second and fourth respondents herein. Thereafter, the petitioner passed resolution by its minutes dated 12.12.2019 thereby suspended the fifth respondent under Rule 16(1) of the Tamilnadu Recognized Private Schools (Regulation) Rules, 1974 and the same was duly served to the fifth respondent by registered post with acknowledgment due. It was duly communicated to the fourth respondent for approval. Subsequently, the fifth respondent submitted representation to revoke the order of suspension. She also submitted representation for payment of subsistence allowance and for pending salary. The petitioner rejected the request made by the fifth respondent by its communication dated 05.03.2020. The petitioner also informed that in respect of the order for subsistence allowance, communication was already sent to the fourth respondent and it is



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pending for consideration. The balance salary for 21 days for the month of November 2019 was also pending with the fourth respondent.

2.1 The fifth respondent filed writ petition before this Court challenging the order of suspension and also made claim for payment of subsistence allowance in WP.No.26088 of 2021. In the meanwhile, the fifth respondent was also charged by the Inspector of Police, Egmore Police in crime No.813 of 2019 on the allegation that she cheated the general public and also committed forgery by issuing fake appointment order. Therefore, the fifth respondent was once again issued show cause notice seeking explanation by the petitioner. Once again, the petitioner by its minutes dated 21.02.2022, conducted domestic enquiry and issued notice to the fifth respondent. Thereafter, enquiry was conducted and as per the enquiry report, the fifth respondent was asked to submit her explanation since the criminal cases are pending against the fifth respondent. Enquiry Committee recorded violation of the Code of Conduct in conformity with the Tamilnadu Recognized Private Schools (Regulation) Rules, 1974. In the meanwhile, this Court directed the fifth



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respondent to make fresh representation and also to give opportunity of hearing to the fifth respondent. However, the fifth respondent did not submit her explanation for the notice issued by the petitioner on the strength of the enquiry report. Therefore, the petitioner was left with no other option to recommend for dismissal of the fifth respondent and thereby the petitioner had sent communication dated 19.04.2022 to the third and fourth respondents seeking prior approval. However, so far no order has been passed by respondents 3 and 4 herein and did not accord any approval to pass final order.

2.2 On the other hand, the fifth respondent filed contempt petition before this Court in Cont.P.No.1991 of 2022 for non compliance of the order passed by this Court by respondents 3 and 4 herein. In order to avoid the contempt proceedings, in a haste and hurried manner, the third and fourth respondents produced their proceedings dated 03.08.2023 signed on 04.08.2023. However, this Court was not satisfied with the order and as such, once again the fourth respondent passed order on 25.08.2023 thereby revoked the order of suspension imposed on the



fifth respondent.

3. Mr.V.Raghavachari, the learned Senior Counsel appearing for the petitioner submitted that though on two occasions, the petitioner's Committee passed resolution and had sent the same for approval to the fourth respondent, it is still pending without passing any orders on approval. That apart, in the year 2023, the fifth respondent was once again arrested in the second case and remanded to judicial custody. Without even considering the same, the third and fourth respondents, in order to escape from the contempt proceedings, mechanically allowed the representation submitted by the fifth respondent and set aside the order of suspension.

4. The fifth respondent filed counter and Mr.V.Sivalingam, the learned counsel appearing for the fifth respondent submitted that only on the confession statement of co-accused, the fifth respondent has been falsely implicated as accused. So far, no charge sheet has been laid by the Police Officials, though this Court while dismissing the quash petition to



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quash the FIR registered in crime No.10 of 2018 on the file of the Inspector of Police, District Crime Branch, Madurai, directed the investigation officer to complete the investigation and file final report within a period of eight weeks. No charge sheet has been laid even from the year 2018 onwards. Therefore, the order of suspension cannot be sustained and it was rightly revoked by the fourth respondent and directed to reinstate the fifth respondent into service. He also referred the Section 22(3)(a) of the Tamilnadu Recognized Private Schools (Regulation) Act, 1973. Accordingly, no such suspension shall remain in force for more than a period of two months from the date of suspension and if such enquiry is completed within that period, such teacher or other person shall, without prejudice to the enquiry, be deemed to have been restored as teacher or other employee. Therefore, the fifth respondent also filed writ petition in WP.29276 of 2023 for direction directing the petitioner to comply with the order passed by the fourth respondent dated 25.08.2023.

5. Heard, the learned counsel appearing on either side.



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6. On perusal of the counter filed by the third respondent revealed that there is no whisper about the communication sent by the petitioner seeking approval of the fifth respondent's removal from service. The petitioner had sent approval petitions before the third and fourth respondents. Even then, no order has been passed so far and it is pending to accord approval.

7. Admittedly, two FIR's have been registered against the fifth respondent. The charge are very serious in nature. She committed crime as against the general public, that too collecting huge amount from the general public in order to get job in Education Department. In pursuant to the registration of both the FIR's, the fifth respondent was arrested and remanded to judicial custody on two occasions. In pursuant to the registration of FIR in crime No.10 of 2018 on the file of the District Crime Branch, Madurai, the fifth respondent was arrested and remanded to judicial custody. Though she was released on bail, in pursuant to registration of subsequent FIR in crime No.813 of 2019 on the same set



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of allegations, once again the fifth respondent was arrested and remanded to judicial custody. Therefore, there is absolutely no question of revoking the order of suspension since once again the fifth respondent was arrested and remanded to judicial custody. Both the crimes are pending for investigation. Further, the petitioner also passed resolution and issued notice to the fifth respondent along with enquiry report. However, the fifth respondent failed to submit any explanation and as such, the petitioner resolved to dismiss her from service. The said resolution was sent for approval to respondents 3 and 4. However, no order has been passed so far.

8. In the meanwhile, the fifth respondent submitted representation to revoke her order of suspension and this Court directed to consider the representation of the fifth respondent. It was not complied with and as such, the fifth respondent filed contempt petition. In order to comply with the order, the fourth respondent, without considering the above facts and circumstances, mechanically ordered to reinstate the fifth respondent into service revoking the order of suspension. That apart, the



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fourth respondent passed the impugned order as per Tamilnadu Recognised Private Schools (Regulation) Act, 2018 and Rules, 2023. It came into force only from 13.01.2023. It cannot be applied to the fifth respondent's case since the recommendation of the fifth respondent's suspension dated 12.12.2019 and the dismissal proposal was forwarded to respondents 3 and 4 only under the Old Rules. Accordingly, the prior approval for suspension and for approval of any disciplinary action has to be approved by the competent authorities and the competent authority in the case of the petitioner school is the fourth respondent.

9. It is needless to say that once the delinquent was arrested and detained in prison more than 48 hours in a criminal case, the delinquent is deemed to be suspended. The Code of Conduct implicated in the Regulations especially for the teachers, is only to scale down persons involving themselves in immoral and illegal activities, who are undeserving or becoming to be a teacher. They are supposed to be performing a divine job. Therefore, a person who is charged with moral turpitude and with tainted image cannot be allowed to serve such divine



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service. Section 22 sub-section (1) of the Tamilnadu Recognized Private Schools (Regulation) Act, 1973 says that subject to any Rule that may be made in this behalf, no teacher or other person employed in any private school shall be dismissed, removed or reduced in rank nor shall his employment be otherwise terminated except with the prior approval of the competent authority. Therefore, in compliance with the said provision, the petitioner already had send its recommendation for approval to the fourth respondent. However, it is still pending with the fourth respondent without passing any orders.

10. Further, as per the Rule 16(1) of the Tamilnadu Recognised Private Schools (Regulation) Rules, the teachers and other persons employed in private schools shall be governed by the Code of Conduct as specified in Annexure-II. Rule 16(2) specifies that a teacher or other person employed in a private school shall be liable to disciplinary action and punishment if he violates any provision of the Code of Conduct which may include, dismissal or removal of termination of service or reduction in rank. Annexure-II prescribes that a teacher or other person



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except employee in a private school who becomes involved in a criminal case, shall inform the School Committee of such proceedings. Though the petitioner had also passed its recommendation for dismissal to the competent authority and it is pending without passing any orders.

11. In view of the above, the impugned orders passed by the fourth respondent cannot be sustained and the same are liable to be quashed. Accordingly, the impugned orders passed by the fourth respondent dated 03.08.2023 and 25.08.2023 are quashed and the writ petition in WP.No.28235 of 2023 is allowed. Consequently, the fourth respondent is directed to pass appropriate orders on the proposal sent by the petitioner within a period of four weeks from the date of receipt of copy of this order.

12. In view of the above order passed in WP.No.28235 of 2023, the writ petition in WP.No.29276 of 2023 filed by the fifth respondent in WP.No.28235 of 2023 to implement the order passed by the fourth respondent in WP.No.28235 of 2023 is dismissed.



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Consequently, connected miscellaneous petitions are closed. There shall be no order as to costs.

22.01.2024

Internet: Yes
Index: Yes/No
Speaking/Non-speaking order
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G.K.ILANTHIRAIYAN, J.

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To

- 1.The Principal Secretary,
Department of School Education,
Government of Tamilnadu,
Fort St.George,
Chennai
- 2.The Director of School Education,
College Road,
Nungambakkam, Chennai 600 006
- 3.The Chief Educational Officer,
Chief Educational Office,
Presidency Girls Higher Secondary School Campus,
Egmore, Chennai 600 008
- 4.The District Educational Officer,
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