



WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.09.2024

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

W.P(MD)No.3418 of 2023

and

W.M.P(MD)Nos.3176 & 3179 of 2023

J.Kopperuncholan

... Petitioner

Vs

1.The Chief Educational Officer,
Thanjavur.

2.The District Educational Officer,
Thanjavur.

3.The Administrator,
Khadir Mohideen Boys Higher Secondary School,
(M.K.N.Madharasa Trust-waqf)
Adirampattinam – 614 701,
Thanjavur District.

4.Khadir Mohideen Boys Higher Secondary School,
(M.K.N.Madharasa Trust)
Rep. by its Secretary/Administrator,
Adirampattinam – 614 701,
Thanjavur District.



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5.Hajee S.Muhammad Meerasahib,
Secretary,
Khadir Mohideen Boys Higher Secondary School,
(M.K.N.Madharasa Trust)
Adirampattinam – 614 701,
Thanjavur District.

6.The Headmaster,
Khadir Mohideen Boys Higher Secondary School,
Adirampattinam – 614 701,
Thanjavur District.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus, to call for the records pertaining to the order Na.Ka.No.1062/2022 dated 06.12.2022 passed by the 5th respondent (the then incumbent 4th respondent) and quash the same and consequently, direct the 4th respondent to reinstate the petitioner into service and grant all the service and monetary benefits from 25.10.2018.

For Petitioner : Mr.T.Sakthikumaran

For Respondents : Mr.J.Ashok
Additional Government Pleader
for R1 & R2

ORDER

The instant writ petition has been filed by a B.T. Assistant(Tamil) Teacher working in an aided minority institution, challenging his order of dismissal, dated 06.12.2022.

2/8



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2.The petitioner herein was originally appointed as B.T. Assistant (Tamil) on 26.10.2009 and the said appointment was also approved by the District Educational Officer, Thanjavur District, vide proceedings, dated 23.09.2010.

3.The petitioner aspired to be promoted as a P.G. Assistant in the same school. However, another person namely R.Rasuludeen was appointed. Though the petitioner had raised certain objections with regard to the appointment of the said R.Rasuludeen, they were not considered.

4.The petitioner had filed O.S.No.172 of 2011, on the file of the District Munsif, Mannargudi, seeking him relief of declaration of his date of birth is 26.09.1978 instead of 15.07.1976 and sought for consequential relief of mandatory injunction to alter the date of birth in his service records.

5.The trial Court by judgment and decree dated 24.08.2012, had allowed the prayer for declaration, but rejected the prayer for mandatory injunction, seeking alteration of the date of birth in his service records.



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6. Pursuant to the civil Court decree, the petitioner has approached the school management seeking alternation of his date of birth. However, the petitioner was dismissed from service on 25.10.2018 by the school management on the ground that the petitioner has given a different date of birth at the time of appointment in service. The said order was challenged by the writ petitioner in W.P.(MD)No.2308 of 2019.

7. Pending writ petition, the school management was taken over by the Deputy Collector and he had chosen to cancel the order of dismissal on 04.01.2021. This prompted the petitioner to withdraw the writ petition.

8. The petitioner was reinstated in service on 10.01.2021. A proposal was sent by the management for approving the reinstatement. However, the proposal was returned by the Educational authority on the ground that the management has not obtained prior approval for effecting the dismissal of service. It was also pointed out by the Educational authority that the management has to pay the salary for the period from 25.10.2018 to 09.01.2021. This order has not been challenged either by the Management or by the writ petitioner.



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9.The fifth respondent in the writ petition has again issued a show cause notice on 13.09.2022, why the petitioner should not be permanently dismissed from service for providing erroneous date of birth. In the said show cause notice, the Secretary has contended that the Former Administrator had erroneously cancelled the order of dismissal order. For the said show cause notice, the petitioner has submitted his explanation. Rejecting the said explanation, the present impugned order has been passed by the fifth respondent herein, dismissing the petitioner from service w.e.f.06.12.2022. Challenging the same, the present writ petition has been filed.

10.Though the fifth respondent has been served and his name is printed in the cause list, so far they have not to chosen to appear either in person or through the Counsel. After passing of the impugned dismissal order, the administration of the school has been taken over by the Waqf Board.

11.Heard the learned Counsel appearing for the Waqf Board and the learned Additional Government Pleader appearing for the first and second respondent.



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12.The facts narrated above will clearly indicate that without issuing a charge memo or conducting an enquiry, the fifth respondent is continuously passing dismissal orders as against the writ petitioner due to some vengeance.

13.The learned Additional Government Pleader appearing for the first and second respondent contended that the order is illegal, in view of the fact that no prior permission has been obtained from the authority concerned before passing the order of dismissal. He further contended that during the period, when the petitioner was out of service, and in case, if he is reinstated, his salary for the said period has to be paid only by the Management and not by the State.

14.Considering the above said facts, this Court passes the following order:

(a)The order impugned in the writ petition is hereby set aside and the respondents are directed to reinstate the petitioner forthwith;

(b)As far as arrears of salary is concerned, for the period between 25.10.2018 to 09.01.2021, the salary has to be paid only by the management;



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(c)The salary for the period between 07.12.2022 till the date of reinstatement, has to be paid by the Management;

(d)After the petitioner is reinstated in service, the educational authority shall continue to disburse the educational grant to the writ petitioner; and

(e)The salary for the period between 10.01.2021 to 06.12.2022 has to be adjudicated upon in a separate proceeding.

15.With the above said observations, this writ petitions stands allowed.

No costs. Consequently, connected miscellaneous petitions are also closed.

05.09.2024

Index : Yes / No

Internet : Yes / No

RJR

To

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Thanjavur.

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Thanjavur.



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R.VIJAYAKUMAR,J.

RJR

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