



W.P.(MD) No.5976 of 2021

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.02.2024

CORAM

THE HON'BLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

W.P.(MD) No.5976 of 2021

Joel R.H.Binni

... Petitioner

Vs.

1.The Chief Educational Officer
Nagercoil
Kanyakumari District

2.The District Educational Officer
Thiruvattar
Kanyakumari District

3.The Correspondent
St.Thomas High School
Netta
Kanyakumari District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records on the file of the 2nd respondent pertaining to its order bearing Na.Ka.No. 763/A2/2020 dated 12.02.2021 and to quash the same and consequently



W.P.(MD) No.5976 of 2021

direct the respondents to regularize the period of suspension from 10.07.2013 to 30.04.2016 by considering the proposal resubmitted by the 3rd respondent and grant all service and monetary benefits pursuant to the same within a stipulated time.

For Petitioner : Mr.Herold Singh S.C.

For Respondents : Mr.V.Om Prakash, Govt. Advocate
for R1 and 2

No Appearance for R3

ORDER

This Writ Petition is filed challenging the order passed by the 2nd respondent in Na.KA.No.763/A2/2020 dated 12.02.2021, wherein the proposal submitted by the 3rd respondent to regularise the period commencing from 10.07.2013 to 30.04.2016 being the period of suspension of the petitioner from service was negated.

2. The facts of the case are that, while the petitioner was working as Physical Education Teacher, in the 3rd respondent school, he involved in Crime No.23 of 2013 under Secs. 147, 406, 420 and 506(i) of IPC and Secs.3



W.P.(MD) No.5976 of 2021

WEB COPY

and 4 of the Dowry Prohibition Act at Kuzhithurai, All Women Police Station. Pursuant to the said criminal case, the petitioner was arrested on 10.07.2013. In view of the arrest of the petitioner and he being kept in judicial custody for more than 48 hours, the 3rd respondent issued orders suspending the petitioner from service with effect from 10.07.2013 through order dated 12.07.2013. After the release on bail in the said crime, the petitioner approached this Court by filing W.P.(MD).No.17443 of 2013, questioning the order of suspension. The said Writ Petition was finally came to be disposed of by an order dated 13.04.2016. The order passed by this Court reads as under:

“ The challenge in the writ petition is to the suspension order dated 12.07.2013. The petitioner is a physical education teacher due to some personal disputes, he was arrested and was behind bars more than 48 hours. The said act resulted in the suspension order being passed by the school. However, after the release of the petitioner from jail, he approached the school and made a representation which was graciously accepted by the school and the order of suspension dated 12.07.2013 was revoked on 05.09.2013. However, as promised, the petitioner did not turn to the



W.P.(MD) No.5976 of 2021

school and join duty. Therefore, look out notices were issued in newspapers directing him to give report to the school otherwise appropriate action will be taken legally which was returned as door locked.

2. In such circumstances, the second respondent school cannot be blamed. It is the petitioner he should have been vigilant in safeguarding his employment. However, considering the plight of the petitioner and the fact that there is no order of suspension as on date, it is open to him to approach the school and get himself reinstated. It is also open to the respondent school to take appropriate disciplinary proceedings for the unauthorised absence of the petitioner. The petitioner is also agreeable for the above said condition. Therefore, the petitioner is directed to approach the respondent school on or before 30.04.2016.

3.The writ petition is disposed of accordingly. No costs. Consequently, M.P(MD)Nos.1 and 2 of 2013 are closed.”

3. The said order has become final and the petitioner reported to duty after the disposal of the Writ Petition, he was allowed to join duty and he worked under the 3rd respondent school. As seen from the order passed by this Court, the order of suspension dated 12.07.2013 was already revoked by



W.P.(MD) No.5976 of 2021

the 3rd respondent on 09.08.2013. However, for the reasons best known to the petitioner, the petitioner has not chosen to report to duty in the 3rd respondent's school, necessitating the 3rd respondent to issue a paper notification calling upon him to join the duty. Ultimately on 30.04.2016, the petitioner has reported for duty. Thus, the petitioner is admittedly out of service from 10.07.2013 to 30.04.2016. The petitioner was kept under suspension only during the period 10.07.2013 to 09.08.2013.

4. As contended by the learned counsel for the petitioner, the petitioner was acquitted in the criminal case in S.T.C.No.49 of 2014 on 29.11.2018. The petitioner was kept under suspension only on the ground of his involvement in the criminal case which ultimately ended in acquittal on 29.11.2018. Except the said criminal case, there is no other disciplinary proceedings were initiated and the reason for suspension of the petitioner during the period 10.07.2013 to 09.08.2013 was only because of his involvement in criminal case and his arrest in the said crime. In view of the acquittal of the petitioner from the said crime by the competent Court, the petitioner cannot be denied regularisation of such suspension period.



W.P.(MD) No.5976 of 2021

WEB COPY

5. However, the proposal submitted by the 3rd respondent was negatived by the 2nd respondent without application of mind to the crucial aspect. In view of the same, this Court has no hesitation to hold that the petitioner is entitled for regularisation of the period commencing from 10.07.2013 to 09.08.2013 as leave for which the petitioner is otherwise entitled to.

6. In so far as the period from 10.08.2013 to 30.04.2016 is concerned, neither the 2nd nor the 3rd respondent is responsible for the absence of the petitioner during the said period. Further, the absence of the petitioner during the said period was also taken note of by this Court while disposing of the W.P.(MD).No.17443 of 2013 on 13.04.2016 and the said findings and conclusions recorded by this Court have become final.

7. In the light of the above, it is not open for the petitioner or the 3rd respondent to contend otherwise than the factual aspects that are taken note of by this Court while disposing of the W.P.(MD).No.17443 of 2013. In the light of the above, the Writ Petition is partly allowed directing the



W.P.(MD) No.5976 of 2021

respondents 2 and 3 to regularise the period commencing from 10.07.2013 to 09.08.2013 as leave period for which the petitioner is otherwise entitled to, and Writ Petition is partly dismissed in respect of period from 10.08.2013 to 30.04.2016. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

15.02.2024

NCC : Yes/No

Index : Yes/No

Internet : Yes

kpr

To

1.The Chief Educational Officer
Nagercoil
Kanyakumari District

2.The District Educational Officer
Thiruvattar
Kanyakumari District



WEB COPY



W.P.(MD) No.5976 of 2021

MUMMINENI SUDHEER KUMAR, J.

kpr

W.P.(MD) No.5976 of 2021

15.02.2024