



W.P.(MD).No.10959 of 2024

**WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**ORDER RESERVED ON : 06.12.2024**

**ORDER PRONOUNCED ON : 19.12.2024**

**CORAM:  
THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR**

**W.P.(MD).No.10959 of 2024  
and WMP(MD).Nos.9749 & 9751 of 2024**

Sri Gopalakrishna Higher Secondary School  
Represented by its  
Secretary-cum-Correspondent  
E.M.G.S.Indrani  
W/o.E.M.G.Soundarajan  
Sirudur 625 014  
Madurai District

....Petitioner

**Vs**

1.The Joint Director of School Education  
Secretariat  
Chennai

2.The Chief Education Officer  
Secondary Education, Tallakulam  
Madurai District

3.The District Educational Officer  
Secondary Education  
Melur 625 016  
Madurai District

4.Mr.V.Ramakrishnan

....Respondents



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**Prayer :** This Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records related to the impugned proceedings of the first respondent viz., The Director of School Education (Secondary Education) in Na.Ka.No.31237/D2/E2/2023 dated 27.03.2024 and to quash the same.

For Petitioner : Mr.N.Dilipkumar

For Respondents : Mr.N.Satheesh Kumar  
Additional Government Pleader for R1 to R3

:Mr.K.Ragatheeshkumar  
For M/s.Isaac Chambers for R4

### **ORDER**

The instant writ petition has been filed by an Aided School Management challenging the order passed by the first respondent herein on 27.03.2024 wherein he had directed the School Management to pay the salary of the fourth respondent in the writ petition from their own funds.

**(A)Facts leading to the filing of this present writ petition are as follows:**

2.The fourth respondent herein who was working as a Drawing Teacher in the petitioner school was placed under suspension on 27.11.2017 on the ground that he had misbehaved and abused various members of the School Committee Meeting.



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3.A criminal case was also registered as against the fourth respondent in Crime No.343 of 2018 on the file of Thallakulam Police Station for the alleged offences under Section 294(b), 341 and 506(i) I.P.C. An Enquiry Officer was appointed and pursuant to the enquiry report, the fourth respondent was dismissed from service on 11.06.2018. The management has sent a proposal to the authorities to approve the order of dismissal. Since the same was kept pending, the petitioner management had filed W.P(MD).No. 5769 of 2019 seeking a mandamus to consider the said proposal. This Court by an order dated 12.03.2019 had directed the authorities to consider the proposal and pass order within a period of six weeks. However, so far no orders have been passed by the authorities on the proposal submitted by the management.

4.Before issuing the dismissal order, a communication was addressed by the management to the fourth respondent on 21.04.2018, cancelling the order of suspension and directing him to join duty. The fourth respondent was issued with a second charge memo on 13.07.2018 alleging that he had remained un-authorisedly absent despite cancellation of suspension order on 21.04.2018. The fourth respondent herein had filed WP(MD).No.17694 of 2018 seeking a mandamus directing the management to allow the petitioner to join duty and pay full salary with all monetary benefits. In the said writ



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petition, the learned counsel for the management submitted that they are ready to allow the petitioner to join duty and the teacher is entitled to receive salary from the date of joining duty. Recording the said facts, the writ petition was disposed of on 09.08.2018. Thereafter, the fourth respondent had joined duty on 10.08.2018.

5.The fourth respondent was again suspended on 16.02.2019 citing pendency of the second charge memo dated 13.07.2018. On 21.03.2020, the management has addressed a communication to the teacher calling upon him to join duty. Pursuant to the said letter, the fourth respondent has joined duty on 24.03.2020.

6.On 25.08.2020, the Chief Educational Officer, Madurai had issued proceedings re-deploying the fourth respondent to a different School on the ground that the fourth respondent is a surplus teacher in the petitioner School as per staff fixation order for the academic year 2019-2000. Accordingly, the fourth respondent had also joined another Aided School. The fourth respondent herein has given a representation to the School Management to disburse salary for the suspension period from 18.06.2019 to 24.03.2020. The said representation was rejected by the petitioner Management by way of an order dated 11.05.2022. Challenging the order of the School Management, the fourth respondent had filed WP(MD).No.7142 of 2020 seeking full salary for the suspension period. The writ petition was disposed of, granting liberty



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to the teacher to file an appeal before the first respondent under Section 23(b) of the Tamil Nadu Recognized Private Schools (Regulation) Act 1973. This Court had directed the authorities to consider and pass appropriate orders within a period of six weeks from the date of filing of an appeal after affording opportunity of hearing to the teacher and the manager.

7.Pursuant to the orders of this Court, the fourth respondent herein had preferred an appeal before the first respondent on 08.04.2023. On 04.10.2023, the first respondent had addressed a communication to CEO, Madurai to inform both the parties to appear for personal hearing on 10.10.2023. On 10.10.2023 the teacher/appellant had not appeared, but the President of the petitioner School had appeared and submitted his explanation. On 11.03.2024, the first respondent has addressed a communication to CEO Madurai calling for various particulars. The CEO, Madurai, in turn had called for those particulars from the petitioner management. The petitioner management has submitted their explanation to CEO Madurai on 15.03.2024. Based upon the said reply, the CEO, Madurai has addressed a communication to the first respondent herein on 18.03.2024 along with their opinion. An opportunity of personal hearing was granted to the fourth respondent on 27.03.2024 through video conferencing. The first respondent herein had passed the impugned order on 27.03.2024 relying upon the written explanation submitted by the first respondent on 09.10.2023 and



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another explanation submitted to CEO Madurai on 15.03.2024.

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8. In the impugned order, the first respondent had mulcted the liability to pay a salary to the fourth respondent, on the petitioner management, on the ground that the School Management had kept the fourth respondent under suspension from February 2019 onwards for more than 1 ½ years without taking any further action. The authorities further found that the School has never addressed any communication calling upon the teacher to join duty. It further found that the period between 18.02.2019 to 23.03.2020 cannot be considered to be an unauthorized absence. It further found that the School Management had not justified the suspension and therefore, the management is liable to pay salary for the entire suspension period between 18.02.2019 to 23.03.2020. This order is put to challenge in the present writ petition by the petitioner management.

**(B)Contention of the learned counsels appearing on either side are as follows:**

9. The first and foremost contention of the learned counsel for the petitioner is that the order impugned in the writ petition has been passed in violation of the principles of natural justice for the following reasons:

(a) This Court in its order dated 10.01.2023 in WP(MD).No.7142 of 2020 had directed the first respondent to pass orders after affording opportunity of hearing to the petitioner as well as the teacher. However,



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opportunity of oral hearing was given only to the teacher on 27.03.2024.

Such an opportunity was not given to the management. In fact, no enquiry was conducted on the first date of hearing namely 10.10.2023 in view of absence of the appellant/teacher.

(b)Even assuming that the management side was heard on 10.10.2023, it was by a different officer namely Mrs.Uma. Thereafter, the present officer namely Mr.Boopathy has heard the fourth respondent in person through video conference and has proceeded to pass order.

10.The learned counsel for the petitioner had relied upon a judgment of the Hon'ble Supreme Court reported in **(2014) 6 SCC 564 ( Union of India and others Vs. Shiv Raj and others)** and a judgment of this Court reported in **(2024) 6 MLJ 60 (V.Jayaprakash Vs. State of Tamil Nadu Rep.by its Secretary, Home (Transport) Department, Fort.St.George, Chennai and others)** to contend that unless the officer who heard the matter passes the order, it should be treated as violation of the principles of natural justice.

11.In the impugned order, the first respondent has relied upon the report of CEO, Madurai dated 18.03.2024, a copy of which has not been furnished to the writ petitioner. The non-furnishing of documents which are relied upon in the impugned order would clearly be violation of principles of natural justice.



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12.The learned counsel for the petitioner herein had contended that several requests made by the petitioner management, the fourth respondent has not chosen to report for duty. In such circumstances, the liability to pay salary cannot be mulcted upon the management, especially when the teacher is at fault.

13.The learned for the petitioner had further contended that as per Section 22(3)(b) of Tamil Nadu Recognised Private Schools (Regulation) Act, 1973, the suspension cannot remain in force for more than a period of two months and it can be extended for a further period of two months by the competent authority, if enquiry could not be completed within the additional period of two months. Therefore, after expiry of four months period, the suspension will not remain in force and therefore, the fourth respondent ought to have rejoined the duty after a period of four months. However, the fourth respondent has neither joined duty nor sent any complaint to any of the authority that he was prevented from attending duty. In such circumstances, the petitioner management cannot be made liable to pay salary for the above said period.

14.The learned counsel for the petitioner had further contended that the petitioner institution being a charitable institution, cannot be fastened with such a huge liability for payment of salary for a period of one year without extracting any work from the fourth respondent who had remained



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un-authorisedly absent. The learned counsel had further contended that only by way of some reconciliation, the Drawing Teacher post was surrendered and the fourth respondent was redeployed to another aided School. After joining in the other School, the fourth respondent has belatedly raised a claim for payment of salary for the non-employment period in the petitioner School. Therefore, such a request ought not to have been considered by the authorities.

15.The learned counsel for the petitioner had further contended that in view of violation of principles of natural justice, the order impugned in the writ petition may be set aside and the matter may be remitted back to the file of the first respondent herein for fresh consideration so that the management would be in a position to place all the materials before the first respondent which would disentitle the fourth respondent from seeking salary from the management.

16.Per contra, the learned Additional Government Pleader appearing for the respondents herein had contended that an appeal under Section 23(b) of Tamil Nadu Recognized Private Schools (Regulation) Act, is summary in nature and therefore, non-granting of personal hearing would not vitiate any order. He had further contended that the petitioner's explanation submitted to CEO is reflected in the report of CEO submitted to the first respondent. That apart, the petitioner himself has appeared for the enquiry on 10.10.2023 and



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submitted their written explanation. Since the teacher was not present, he was given an opportunity on 27.03.2024. Therefore, the order does not suffer from violation of principles of natural justice.

17.The learned Additional Government Pleader had further contended that though the management contends that they have sent several communications to the fourth respondent calling upon him to attend duty, they are not able to produce any communication prior to 21.03.2020. He had further contended the competent authority has considered the fact that the fourth respondent was placed under suspension by the management between 18.02.2019 to 23.03.2020 and the teacher was never called upon to attend duty. These facts are not in dispute. Therefore, providing personal hearing is not going to improve the case of the management.

18.The learned Additional Government Pleader had further contended that the first respondent herein is the appellate authority and he had relied upon the written submissions of the petitioner management and the oral submission of the fourth respondent and has proceeded to pass orders. Therefore, merely because the officers have changed, that were not vitiate or affect the validity of the order impugned in the writ petition.

19.The learned Additional Government Pleader relying upon the reply submitted by the petitioner management to CEO Madurai dated 15.03.2024 contended that the School management has never recalled the order of



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suspension dated 18.02.2019 and therefore, considering the absence of the fourth respondent as an un-authorised absence is not factually correct. He relied upon the judgment of the Hon'ble Supreme Court reported in **(2005) 1 SCC 13 ( Ganesh Santa Ram Sirur Vs. State Bank of India and another)** and contended that when the personal hearing is not provided in a statute, not giving such a personal hearing would not vitiate the order impugned in the writ petition. Hence, he prayed for dismissal of the writ petition.

20.The learned counsel appearing for the fourth respondent had contended that the second suspension order issued by the management on 18.02.2019 only reveals that it is based upon a charge memo and not on the ground of un-authorised absence. He had further contended that in the writ petition, there is no averment to the effect that any communication was sent by the management to the teacher calling upon him to report for duty after the order of suspension dated 18.02.2019.

21.It is an admitted fact that a communication was addressed by the management to the teacher only on 21.03.2020 and hence, the petitioner has joined duty immediately on 24.03.2020. In such circumstances, the allegation as against the teacher that he had not attended for duty after the expiry of the suspension period is not factually correct. He had further contended that when the order of suspension is in force, unless the management revokes the order of suspension or calls upon the teacher to attend duty, the teacher



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cannot attend duty. The suspension is unjustified and therefore, the management is liable to pay salary for the said period. He had further contended that the post of drawing teacher was not surrendered by the management on their own, but only due to the fact that the said post was declared as surplus by the educational authority. This is reflected in the order of deployment. Hence, he prayed for dismissal of the writ petition.

22.The learned counsel for the petitioner by way of reply submitted that even assuming that the Act does not provide for personal hearing, this Court had directed the authorities to give personal hearing to the parties. That apart, when the authority himself has called both the parties for personal hearing 04.10.2023, they cannot now contend that providing personal hearing is not contemplated under the Act. He had further contended that the report of CEO Madurai to the first respondent is not mere collation of facts, but his opinion has also been expressed which he has been relied upon by the first respondent while passing the impugned order. In such circumstances not providing a copy of the said report would vitiate the proceedings.

23.I have considered the submissions made on either side and perused the material records.

24.The fourth respondent herein was formerly working as a Drawing Teacher in the petitioner School. On certain allegations, he was placed under suspension on 27.11.2017 and a charge memo was issued to him on



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20.12.2017. Due to non completion of the enquiry, the management has addressed a communication to the fourth respondent on 21.04.2018 informing that the suspension order has been revoked and he was directed to join duty. Accordingly, the fourth respondent has also joined duty. The fourth respondent was dismissed from service on 11.06.2018 and the order of dismissal is yet to be approved by the authority.

25. The fourth respondent was issued with a second charge memo on 13.07.2018 alleging that he had remained un-authorisedly absent despite cancellation of suspension order on 21.04.2018. The fourth respondent had filed WP(MD).No.17694 of 2018 seeking a mandamus directing the petitioner management to permit him to join duty. In the said writ petition, the petitioner management submitted that they are ready to allow the petitioner to join duty and they would disburse the salary from the date of joining duty. Recording the same, the writ petition was closed on 09.08.2018 and the fourth respondent had joined duty on 10.08.2018. However, he was again suspended on 16.02.2019 citing pendency of the second charge memo dated 13.07.2018. Thereafter, the management has issued a communication on 21.03.2020 calling upon the teacher to report for duty. Accepting the same, the fourth respondent had joined duty on 24.03.2020.

26. On 25.08.2020, the Chief Educational Officer, Madurai had deployed the fourth respondent to a different Aided School. After joining in



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another School, the fourth respondent has given a representation to the petitioner management to disburse salary for the suspension period. This representation was rejected by the management on the ground that the petitioner had remained unauthorisedly absent and therefore, the salary could not be paid. This order was put to challenge by the fourth respondent in WP(MD).No.7142 of 2020. This Court disposed off the writ petition, granting liberty to the teacher to file an appeal before the Joint Director under Section 23(b) of Tamil Nadu Recognized Private Schools (Regulation) Act 1973. Pursuant to the said order, the first respondent had passed the impugned order directing the School management to pay salary for the suspension period. This order is under challenge in the present writ petition. The facts narrated above are not in dispute.

27.The primary contention of the learned counsel for the petitioner is that no opportunity was provided to the management by the first respondent to put forward their case. That apart, one of the officers had received the explanation, but the impugned order was passed by another officer. It is further contended on the side of the petitioner that a report of the Chief Educational Officer Madurai which is relied upon by the Joint Director in the impugned order, has not been furnished to the petitioner management. Hence, he prayed for setting aside the impugned order and for remitting the matter back to the first respondent.



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28.The issue that arises for consideration is whether the matter has to be decided on its merits or it has to be remitted back to the first respondent for alleged violation of principles of natural justice.

29.The fourth respondent teacher has been issued with a second charge memo on 13.07.2018. When the fourth respondent approached this Court in WP(MD).No.17694 of 2018 alleging that he was not permitted to join duty, the management submitted that they are willing to allow the petitioner to join duty. Pursuant to the said submissions, the writ petition was disposed of on 09.08.2018. The fourth respondent had joined duty on 10.08.2018. However, the fourth respondent was again suspended on 16.02.2019 citing issuance of charge memo dated 13.07.2018. Even when the management made the submission before this Court in WP(MD).No.17694 of 2018, the second charge memo was pending. However, the management had given an undertaking that they will permit the teacher to join duty. Thereafter, the management has placed the fourth respondent under suspension on 16.02.2019 citing the second charge memo dated 13.07.2018. Therefore, it is clear that the second suspension order is clearly in violation of the undertaking given by the management before this Court.

30.The management addressed a communication on 21.03.2020 calling upon the petitioner to join duty and the fourth respondent had joined duty on 24.03.2020. Therefore, the petitioner was under suspension for the period



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between 16.02.2019 till 23.03.2020. For the first four months, the petitioner has received salary from the Government through grant-in-aid. For the period between 18.06.2019 to 23.03.2020, the petitioner has sought for salary from the management.

31.It could be seen from the records that the order of suspension dated 16.02.2019 was never recalled. The petitioner's suspension order for the first two months period or for the next two months period was not approved by the authorities. It is the contention of the management that the fourth respondent had remained unauthorisedly absent for the above said period and hence, he is not entitled for the salary. Though it is contended on the side of the management that several letters were addressed to the fourth respondent to join duty, none of the documents have been placed either before the first respondent or before this Court. Therefore, it is clear that the management has addressed a letter to the fourth respondent only on 21.03.2020 to rejoin duty and the fourth respondent had immediately joined on 24.03.2020. Hence, it is clear that the fourth respondent was not unauthorisedly absent.

32.It is further contended on the side of the petitioner that the suspension period would get revoked automatically after the first two months, unless it is extended. Therefore, the fourth respondent ought to have reported for duty either after expiry of two months or immediately after expiry of four months period. The said argument has to be noted only to be rejected. It is



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settled position of law that the management is entitled to keep an employee under suspension even after four months period, provided they pay the salary. When the fourth respondent was suspended for the first time on 27.11.2017, an order of revocation of suspension was issued on 27.04.2018. However, when the fourth respondent was suspended for the second time, no such revocation or any letter calling upon the fourth respondent to join duty has been issued. Therefore, such an argument is not sustainable.

33.The petitioner management had further contended that no proper opportunity has been granted by the first respondent to put forward their case and hence, they have prayed for remitting the matter back to the first respondent for fresh consideration.

34.It should be borne in mind the first respondent is not the original authority but an appellate authority under Section 23(b) of the Tamil Nadu Recognized Private Schools (Regulation) Act 1973. Therefore, strict compliance of natural justice is not warranted. The management has submitted their written explanation to the Joint Director on 09.10.2023. Thereafter, the Joint Director has called for a report from Chief Educational Officer, Madurai by his proceedings dated 11.03.2024. In turn, the CEO, Madurai has called for a report from the petitioner management. The petitioner management has submitted their reply to CEO, Madurai on 15.03.2024 which has been forwarded by CEO, Madurai to the Joint Director



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on 18.03.2024 in the format of a tabular column. The explanation submitted by the petitioner management on 09.10.2023 and the report of CEO Madurai dated 18.03.2024 (which reflected the explanation of the petitioner management) have been considered by the first respondent and the present impugned order has been passed.

35.A perusal of the impugned order reveals that there is no factual dispute with regard to the dates, between the petitioner as well as the fourth respondent teacher. The only issue is whether the fourth respondent was unauthorisedly absent during the relevant period and whether he is entitled to receive salary from the management or not. This Court in the preceding paragraphs, based upon the pleadings and documents filed on either side has already arrived at a finding that the fourth respondent was not unauthorisedly absent and the management has not received the approval of the authorities for suspension of the fourth respondent dated 16.02.2019. In such circumstances, the order of the first respondent is liable to be sustained.

36.In view of the above said facts, the contention of the learned counsel for the petitioner that, no proper opportunity has been granted to the petitioner management is not acceptable. In view of the admitted dates and events, remitting the matter back to the first respondent would only be an empty formality which would not improve the case of the petitioner management. In such circumstances, this Court is not inclined to be carried



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away by the submissions of the petitioner management that the impugned order has been passed in violation of the principles of natural justice.

37.In view of the above said deliberations, there are no merits in the writ petition and the writ petition stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

**19.12.2024.**

Internet : Yes/No  
Index : Yes/No  
NCC : Yes/No  
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**R.VIJAYAKUMAR, J.**

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Pre-delivery order made in

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