



W.A.(MD) No.259 of 2020

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.07.2024

CORAM

JUSTICE N. SESHASAYEE

and

JUSTICE P.VADAMALAI

W.A.(MD) No.259 of 2020

A.Imam Hussain

... Appellant / Petitioner

Vs.

- 1.The Principal Secretary,
School Educational Department,
Secretariat, Chennai.
- 2.The Director of School Education,
Directorate of School Educational Office,
College Road, Chennai-600 006.
- 3.The Joint Director of School Education,
(Higher Education),
Joint Director of School Educational Office,
College Road, Chennai-600 006.
- 4.The Accountant General (Pension),
Office at Accountant General,
Chennai.



W.A.(MD) No.259 of 2020

5.The Chief Educational Officer,
Chief Educational Office,
Pattukkottai.

6.The District Educational Officer,
District Educational Office, Pattukottai.

7.Khadir Mohideen Boys Higher Secondary School,
Represented by its Secretary,
Adirampattinam, Thanjavur District.

... Respondents / Respondents

Prayer: Appeal filed under Clause 15 of Letters Patent Act to set aside the order passed by the learned Judge in W.P.(MD).No.14555 of 2012 dated 01.07.2019.

For Appellant	:	Mr.S.C.Herold Singh
For R-1 to R-3, R-5 and R-6	:	Mr.D.Sadiq Raja, Additional Government Pleader
For R-4	:	Mr.P.Gunasekaran
For R-7	:	Mr.R.S.Prabu

JUDGMENT

(Judgment of the Court was delivered by N.Seshasayee, J.)

This Appeal is directed against the order dismissing the Writ Petition in W.P.
(MD).No.14555 of 2012, dated 01.07.2019.



W.A.(MD) No.259 of 2020

2. The facts are as below:

- (a) The appellant herein was working as a Headmaster in the seventh respondent School. It is an aided minority school.
- (b) While so, on 03.12.2003, the seventh respondent / the Management of the School, has issued a charge memo to the appellant requiring him to show cause as to why he should not be terminated from service. Now, during the pendency of the said disciplinary proceedings, on 21.02.2004, the appellant herein tendered his resignation to the seventh respondent. On 24.02.2004, it was accepted by the seventh respondent and since the school is an aided school, in terms of the Tamil Nadu Recognized Private Schools (Regulation) Act, 1974, the papers were forwarded to the District Educational Officer concerned for his approval. When the matter was pending consideration of the District Educational Officer concerned, the appellant addressed a communication dated 19.04.2004 directly to the District Educational Officer withdrawing his letter of resignation. Subsequently, the appellant laid W.P.(MD).No.909 of 2004 challenging both the proceedings of the seventh respondent accepting the appellant's



W.A.(MD) No.259 of 2020

WEB COPY

resignation and also a Mandamus to direct the third respondent to let him continue in his employment.

(c) This petition came to be ordered by a learned Single Judge of this Court on 01.02.2005. In his order, the learned Single Judge would say that at the end of the day, the statutory obligation is on the District Educational Officer concerned to decide the issue and accordingly, directed the District Educational Officer to decide the same. Based on the same, on 11.04.2005, the District Educational Officer passed his proceedings, refusing to grant approval to the resignation of the appellant as recommended by the seventh respondent School.

(d) However, the appellant was not permitted to join duty by the School and hence, he was forced to institute W.P.(MD).No.8762 of 2005. This petition came to be decided by another learned Single Judge of this Court and vide his order dated 28.04.2006, he allowed the same, and has held that the appellant herein must be deemed to continue as a Headmaster from 02.02.2004 and that he is entitled for all monetary and other benefits. There was a further direction to the School to permit the appellant to join the duty.



W.A.(MD) No.259 of 2020

(e) The appellant however was not allowed to join duty and he promptly instituted a petition for initiating contempt against the School. Now, the School made a smart move and gave life to the charge memo that it had issued on 03.12.2003 and passed an order directing the dismissal of the appellant vide its proceedings dated 03.06.2006. This order of dismissal came to be challenged by the appellant in W.P.(MD).No.9559 of 2006. Alongside, this School also raised a demand for certain recovery of amounts and this came to be separately challenged by the appellant in W.P.(MD).No.10102 of 2006.

3.1. In the meantime, the seventh respondent School challenged the order of the learned Single Judge in W.P.(MD).No.8762 of 2005 in W.A.(MD).No.189 of 2006. The Division Bench before which W.A.(MD).No.189 of 2006 was pending, consolidated the other two Writ Petitions filed by the appellant for disposal. Now, during the pendency of the Writ Appeal, both the appellant as well as the seventh respondent entered into a compromise. The effect of the compromise is that the order of dismissal was decided to be withdrawn and it was to be replaced by an order permitting the voluntary retirement of the



appellant. The terms of the compromise are reduced to writing and in the context of the present case, the relevant clauses are 8 and 11 and they read as below:

“8. The 1st respondent is not claiming any arrears of salary for the period of non employment (no back wages) including 3 months wait period for receipt of voluntary retirement order from Director of School Education.

11. The period of non-employment of 1st respondent from 03.12.2003 until the order of retirement date shall be regulated as per the Government orders with all fixation of periodical increments for his service including for the period of non-employment and all other retirement benefits and the 1st respondent shall also work out the revised pay from 01.01.2006 as per the pay commission, increments and all other monetary benefits. On receipt of the same the appellant shall sanction the proposal and forward the same to the Government for being forwarded to the Accountant General.”



W.A.(MD) No.259 of 2020

The Division Bench disposed of W.A.(MD).No.189 of 2006, along with W.P.(MD).No.9559 of 2006 and W.P.(MD).No.10102 of 2006, by a common order dated 11.09.2009 and also the Contempt Petition in Cont.P.(MD).No.140 of 2006 which the appellant has instituted against the School for violating the order of the learned Single Judge directing the School to allow the appellant to join the duty as per its order in W.P.(MD).No.8762 of 2005, dated 28.04. 2006. This order, in effect, reproduces the terms of compromise and all the matters pending before the Court were disposed of based on the terms of compromise.

3.2. Subsequently, the order of dismissal was withdrawn on 14.09.2009, on which date, the appellant applied for voluntary retirement and pensionary benefits have been paid by the Government

4. The appellant however was not paid any salary for the period from 03.12.2003 to 14.09.2009. The issue really is how to deal with the period of non-employment from 03.12.2003 to 14.09.2009. The appellant would now apply to the School for giving effect to Clause 11 of the compromise in order



W.A.(MD) No.259 of 2020

to get the intervening increment and also any revision of salary that had taken place during the interregnum between 03.12.2003 and 14.09.2009 for computing the loss of salary, and to fix the pensionary benefits based on the loss on salary so arrived. The School promptly forwarded his proposal to the Government vide its proceedings dated 18.07.2012.

5.1. The Government came out with its order in G.O. (2D) 29, School Education Department, dated 18.07.2012, incorporating the entire terms of compromise, but, on the aspect of the proposal pending before it in order to regularize the period of non-employment, it chose to treat it as leave on loss of pay to enable the Government to consider the past services of the employee for pensionary benefits.

5.2. This came to be challenged by the appellant before the learned Single Judge in W.P.(MD).No.14555 of 2012. The learned Single Judge vide his order dated 01.07.2019 chose to dismiss it essentially on two grounds:

- (a) that a compromise between the appellants and the School Management, is a bilateral agreement and cannot bind the Government; and



W.A.(MD) No.259 of 2020

WEB COPY

(b) that inasmuch as the appellant has not served the School no burden can be imposed on public exchequer to meet the pensionary demands.

6.1. Heard both sides. Mr.S.C.Herold Singh, learned counsel appearing for the appellant submitted that the Compromise Memo arrived at must be appreciated.

6.2. Here is the scenario, the Court has held the reinstatement of the appellant from 02.02.2004 and it was only thereafter, the School had chosen to dismiss him. When the compromise was arrived at between the appellant and the School (during the pendency of W.A.(MD).No.189 of 2006 and the connected two Writ Petitions) the Division Bench took into account both the orders of the learned Single Judge in W.P.(MD).No.8762 of 2005, and also the order of dismissal subsequently passed by the School. The intent behind the Compromise Memo was to give the appellant honourable exit and the only arrangement arrived as between the parties was that the appellant would not be entitled to salary during the period of non-employment, but, not the pensionary benefits that would arise out of it.



W.A.(MD) No.259 of 2020

6.3. This Court is now informed that in terms of FR 56(3), unless an individual has attained the age of fifty years or has completed twenty years of qualifying service, he is not entitled to tender voluntary retirement. Now, if the period of non-employment is not regularized, the appellant would have lost the advantage of his past services and may well have the risk of losing his pensionary benefits altogether. So, here, the Government has done the appellant a favour. The second favour which the Government appears to have done is in giving the appellant exemption from three months notice which he is required to give for voluntary retirement. However, in the context of the prayer of the appellant, the Government refused to accede to the same on that ground in the compromise memo that the appellant had agreed not to claim any backwages and that he has also agreed that his pensionary benefits etc., during the period of non-employment in terms of the Government Orders and there is no specific order dealing with the situation.

6.4 When the Government regularized his services vide G.O.(2D).No.29, School Education Department, dated 18.07.2012, by treating the period of non-employment as leave on loss of pay, it only implied that he would be



W.A.(MD) No.259 of 2020

entitled to salary for the period, but, not the increment and any revision of pay due to the implementation of any Pay Commission recommendation.

7. The learned Single Judge has noted that even as the Government has condoned the interruption in service by treating the period of non-employment from 03.12.2003 to 14.09.2009 as a period of leave on loss of pay, yet when it calculated the pensionary benefits it has reckoned everything as on 01.01.2006. In terms of Rule 24(1) and 25(2) of the Tamil Nadu Pension Rules, 1978, the actual period of interruption in service cannot be counted for pension. Therefore, the appellant technically cannot have a grievance since all his grievance has already been addressed. What is not allowed under the Pension Rules, the Court cannot extend.

8. Accordingly, the Writ Appeal stands dismissed. No costs.

(N.S.S., J.)

(P.V.M., J.)

08.07.2024

NCC : Yes/No

Index : Yes/No

Internet : Yes

TSG



W.A.(MD) No.259 of 2020

To

1. The Principal Secretary,
School Educational Department,
Secretariat, Chennai.
2. The Director of School Education,
Directorate of School Educational Office,
College Road, Chennai-600 006.
3. The Joint Director of School Education,
(Higher Education),
Joint Director of School Educational Office,
College Road, Chennai-600 006.
4. The Chief Educational Officer,
Chief Educational Office,
Pattukkottai.
5. The District Educational Officer,
District Educational Office, Pattukottai.



WEB COPY



W.A.(MD) No.259 of 2020

N. SESHASAYEE, J.
and
P.VADAMALAI, J.

TSG

W.A.(MD) No.259 of 2020

08.07.2024