



W.A(MD)No.786 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.03.2024

CORAM:

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN
and
THE HON'BLE MR JUSTICE K.K. RAMAKRISHNAN

W.A(MD)No.786 of 2017
and
C.M.P(MD)No.5607 of 2017

The District Educational Officer,
Melur Educational Trust,
Melur,
Madurai District - 625 106.

... Appellant

vs.

1. V.Nagarajan

2. The Secretary,
Sree Visalakshi Mills High School,
Visalakshi Nagar,
Madurai - 625 401.

... Respondents

PRAYER : Appeal filed under Clause XV of Letters Patent, against
the order passed in W.P(MD)No.179 of 2009 dated 28.10.2014.

For Appellant	: Mr.D.Sadiq Raja Additional Government Pleader
For R1	: No appearance
For R2	: Mr.S.Thamizharasan



W.A(MD)No.786 of 2017

JUDGMENT

[Judgment of the Court was made by
MRS.V.BHAVANI SUBBAROYAN.J.]

Challenging the order passed in W.P(MD)No.179 of 2009 dated 28.10.2014, the Education Department has filed this appeal.

2. The 1st respondent/writ petitioner was appointed as Physical Education Teacher in the 2nd respondent school in the year 1997. While so, his wife committed suicide on 29.05.2003. According to 1st respondent, a false case was foisted against him as if he had abtted the commission of suicide. Pending that criminal case, by order dated 02.07.2003, the 2nd respondent placed the 1st respondent under suspension which was also approved by the appellant. Ultimately, the criminal case ended in acquittal by judgment dated 30.04.2004 in S.C.No.622 of 2003 on the file of learned Sessions Judge, Mahila Court, Madurai. Hence, the 1st respondent requested the 2nd respondent to restore his service and based on the said request, the 2nd respondent also recommended to the appellant for restoration of the 1st respondent's service from 01.12.2004 without backwages which was also approved by the appellant.



W.A(MD)No.786 of 2017

Thereafter, based on G.O.Ms.No.544, Personnel and Administrative Reforms (FR III) Department, dated 19.06.1987, the 1st respondent made a representation to the appellant to treat his suspension period from 02.06.2003 to 30.11.2004 as duty period for all purposes and to pay full pay and allowances for the said period. Though the appellant rejected the said request stating that since the suspension of the 1st respondent has already been approved by him, the period of suspension cannot be treated as duty period, in the interest of the teacher, the appellant stated that the period of suspension can be treated as leave period as against the eligible leave of the 1st respondent. Challenging the said order, the 1st respondent filed writ petition.

3. Before the Writ Court, the appellant contended that the 1st respondent is a teacher employed in the 2nd respondent school which is a private school and therefore, he cannot seek the benefit of the said G.O on par with the government servants. The Writ Court finding that the impugned order was not issued citing that ground and further the appellant cannot be permitted to raise additional grounds in the counter affidavit to support the impugned order, set aside the order impugned and



W.A(MD)No.786 of 2017

allowed the writ petition with a direction to the appellant to treat the period of suspension from 02.06.2003 to 30.11.2004 as duty period for all practical purposes with full monetary and service benefits. Aggrieved by the said order, the District Educational Officer, Madurai, is on appeal.

4. Assailing the correctness of the order of the Writ Court, learned Additional Government Pleader appearing for the appellant contended that G.O.Ms.No.544 is applicable only to government servants whereas, the 1st respondent is employed in a private school and therefore, the Writ Court ought not to have allowed the writ petition. He further submitted that the provisions of the Tamilnadu Recognized Private Schools (Regulation) Act, 1973 and the Rules 1974 framed thereunder, alone are applicable to the 1st respondent and further, the suspension and subsequent reinstatement is by the 2nd respondent school management and therefore, it is the transaction between the respondents, for which, the appellant cannot be directed to pay the benefits. Thus, he prayed to quash the order of the learned Single Judge and to allow the appeal.



W.A(MD)No.786 of 2017

5. We have heard the learned counsel for the appellant as well as the 2nd respondent. Despite service of notice and the name being printed in the cause list, there is no representation on behalf of the 1st respondent either by himself or through counsel.

6. As rightly contended by the learned Additional Government Pleader appearing for the appellant, the 2nd respondent school, in which the 1st respondent was working, is a recognised non-minority private school fully aided by the Government and governed by the provisions of the Tamilnadu Recognized Private Schools (Regulation) Act, 1973 and the Rules 1974 framed thereunder.

7. Section 20(2) of the Act states that nothing contained in this section or any rule made thereunder shall apply to any person who, on or before the date of the commencement of this Act is employed as teacher or other employee in any private school. Section 23 of the Tamilnadu Recognized Private Schools (Regulation) Act, 1973, provides appeal against orders of punishment imposed on teachers and other persons employed in private schools, which reads as follows:-



W.A(MD)No.786 of 2017

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"23. Appeal against orders of punishment imposed on teachers and other persons employed in private schools. - Any teacher or other person employed in any private school –

(a) who is dismissed, removed or reduced in rank or whose appointment is otherwise terminated; or

(b) whose pay or allowances or any of whose conditions of service are altered or interpreted to his disadvantage, by any order, may prefer an appeal against such order to such authority or officer as may be prescribed; and different such authorities or officer as may be prescribed for different classes of private schools.

Explanation. - In this section, the expression "order" includes any order made on or after the date of the commencement of this Act in any disciplinary proceeding which was pending on that date."

8. Reading of Section 23 states that any teacher or other person employed in any private school who is dismissed, removed or reduced in rank or whose appointment is otherwise terminated or whose pay or allowances or any of whose conditions of service are altered or interpreted to his disadvantage, by any order, may prefer an appeal against such order under this Section.

9. Rule 18 of the Tamilnadu Recognized Private Schools (Regulation) Rules, 1974 speaks about who is the competent authority to deal with the appeal preferred under Section 23 of the Tamilnadu



W.A(MD)No.786 of 2017

Recognized Private Schools (Regulation) Act, 1973, which reads as follows:-

"18. Appeal against orders of punishment imposed on teacher and other person employed in private schools. - The competent authorities, to whom an appeal under section 23 of the Act shall be from any teacher or person employed in a private school against any order of dismissal, removal or reduction in rank or whose appointments otherwise terminated or whose pay and allowances or any of whose conditions of service are altered shall be the following, namely: -

(a) In respect of teachers and other persons employed in Pre-primary, Primary and Middle schools - The Chief Educational Officer;

(b) **In respect of a teacher and other person employed in High School [xxx] or Higher Secondary Schools (other than Headmaster, Post-Graduate Assistants (both Academic and Languages) or Physical Director - the Joint Director of School Education, (Secondary Education).**

(c) In respect of Headmaster, Post-Graduate Assistant (both Academic and Languages) or Physical Director employed in Higher Secondary School - the Joint Director of School Education (Higher Secondary).

(d) In respect of teachers and other persons employed in Teachers' Training Institutes -The Deputy Director (Teacher Education)."

10. The 2nd respondent is a High School and therefore as per Rule 18 of the said Rules, the competent authority to dispose of the appeal as contemplated under Section 23 of the Tamilnadu Recognized



W.A(MD)No.786 of 2017

Private Schools (Regulation) Act, 1973, is the Joint Director of School Education (Secondary Education).

11. Thus, we find that the order of the Writ Court is liable to be set aside. Accordingly, the order passed in W.P(MD)No.179 of 2009 dated 28.10.2014 is set aside and the Writ Appeal is allowed with liberty to the 1st respondent to file appeal under Section 23 of the Tamilnadu Recognized Private Schools (Regulation) Act, 1973. If such appeal is filed by the 1st respondent, the authority concerned shall exclude the period during which, the writ petition and the present writ appeal were pending, for the purpose of calculating limitation and dispose of the appeal in accordance with law. No costs. Consequently, connected miscellaneous petition is closed.

(V.B.S.J.,) (K.K.R.K.J.,)
21.03.2024

Index :Yes / No
Neutral Citation :Yes / No
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W.A(MD)No.786 of 2017

To

The District Educational Officer,
Melur Educational Trust,
Melur,
Madurai District - 625 106.



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and
K.K. RAMAKRISHNAN, J.

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