



W.P.(MD)No.11650 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.09.2024

CORAM

THE HON'BLE MR.JUSTICE ABDUL QUDDHOSE

W.P.(MD)No.11650 of 2017

S.Ramanujam

: Petitioner

Vs.

1.The District Educational Officer,
Virudhunagar.

2.The Joint Director of School Education,
(Higher Secondary),
D.P.I.Compound,
College Road,
Chennai – 600 006.

3.The State of Tamil Nadu,
Rep. by Secretary to Government,
School Education Department,
Fort St. George,
Chennai – 600 009.

: Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying for a Writ of Certiorarified Mandamus, calling for the records of the third respondent in G.O.(4D)No.1 School Education (Pa.Ka.6(1) Department dated 09.01.2015, quash the same and



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direct the first respondent to return the amount of Rs.6,53,533/- together with interest at 12% from 28.06.2007 till date of repayment.

For Petitioner : Mr.A.Sivaji

For Respondents : Mr.T.Amjad Khan

Government Advocate

ORDER

This Writ Petition has been filed challenging the order dated 09.01.2015 passed by the third respondent rejecting the petitioner's request for the return of the amount of Rs.6,53,553/- together with interest at 12% from 28.06.2007, which according to the petitioner was wrongly recovered from him.

2.The petitioner has raised several grounds for challenging the impugned order but however, the primary ground raised by him is that the first respondent has not followed the procedure contemplated under Section 45(2) of "the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973" [hereinafter 'the Act' for brevity], by giving an opportunity of hearing to him prior to the passing of the impugned order. Under the impugned order, the third respondent has rejected the petitioner's revision filed under Section 45 of the Act by confirming the order of the first respondent.



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3.According to the petitioner, a sum of Rs.6,53,553/- was wrongly recovered from him and under those circumstances, a representation was made to the first respondent seeking for return of the said sum which was rejected by the first respondent through his order and the same was challenged by filing an appeal before the second respondent and the second respondent also confirmed the order of the first respondent dismissing the appeal. Thereafter, a representation was filed before the third respondent under Section 45 of the Act which has been dismissed on 09.01.2015, which is sought to be quashed in this Writ Petition.

4.Learned Government Advocate appearing for the respondents would submit that subsequent to the passing of the impugned order, the petitioner has been dismissed from service and the same was challenged by the very same petitioner by filing a writ petition which also came to be dismissed in W.P.(MD)No.17185 of 2013 and the same was also challenged by the petitioner in W.A. (MD)No.1291 of 2013 and the Writ Appeal also came to be dismissed.

5.The submission made by the learned Government Advocate appearing for the respondents has also not been disputed by the learned Counsel for the petitioner who has appeared through



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video conferencing today. However, necessarily, the first respondent will have to adhere to the statutory procedure contemplated under Section 45(2) of the Act. Admittedly, in the case on hand, an adverse order has been passed against the petitioner which is prejudicial to his interest, through the impugned order. Section 45 of the Act reads as follows:

“45. Revision. - (1) The Government may call for and examine the record of any authority or officer prescribed for the purpose of section 41 in respect of any proceedings to satisfy themselves as to the regularity of such proceeding, or the correctness, legality or propriety of any order made, decision taken or direction issued therein; and, if, in any case, it appears to the Government that any such order, decision or direction should be modified, annulled, reversed or remitted for reconsideration, they may pass orders accordingly.

(2) No order prejudicial to any person shall be passed under sub-section (1) unless such person has been given an opportunity of making his representations.

(3) The Government may, pending the exercise of their power under sub-section (1), pass such interlocutory orders as they deem fit.”



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6.As seen from Section 45(2) of the Act, it is clear that whenever any order prejudicial to any person is passed, such a person has to be given opportunity of making his representation. Though, the learned Government Advocate appearing for the respondents would contend that only based on the representation of the petitioner, the revision under Section 45 of the Act was taken on file. The said contention has to be rejected in view of the fact that Section 45(2) of the Act makes it clear that only after the revision is taken on file and in the event of the revisional authority deciding to pass an order prejudicial to the interest of the petitioner, an opportunity of hearing must be granted to the petitioner and therefore, this Court is of the considered view that the third respondent ought to have granted an opportunity of hearing to the petitioner prior to the passing of the adverse order against him. Under the impugned order, the petitioner's request for the return of money as stated supra has been rejected, which is certainly prejudicial to the interest of the petitioner. Therefore, as per Section 45(2) of the Act, the third respondent ought to have granted an opportunity for the petitioner to make his representation prior to the passing of the impugned order. No notice of hearing was given to the petitioner in the impugned proceedings prior to the passing of the impugned order. Therefore, the provisions of Section 45(2) of the Act has not been adhered to by the third respondent.



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7.Though, learned Government Advocate appearing for the respondents in the course of his submission had submitted that the non-adherence of Section 45(2) of the Act will not have any impact since the petitioner has already been dismissed from service, this Court is of the considered view that whenever, any statutory procedure has not been adhered to, necessarily the impugned order passed by not following the said procedure has to be quashed. The contentions of the Government Advocate as raised in this Writ Petition during the course of his submissions can very well be considered by the third respondent once the matter is remanded back to the third respondent for fresh consideration on merits and in accordance with law.

8.Only on the ground that the third respondent has not adhered to the provisions of Section 45(2) of the Act, by not giving an opportunity of hearing to the petitioner prior to the passing of the impugned order, this Court is quashing the impugned order and remanding the matter back to the third respondent for fresh consideration on merits and in accordance with law, by granting an opportunity of hearing to the petitioner and by following the procedure as contemplated under Section 45(2) of the Act. This Court has not given its opinion on the merits of the petitioner's contentions. It is for the third respondent to consider the same on



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merits and in accordance with law while passing final orders. The third respondent is directed to pass final orders within a period of three [3] months from the date of receipt of a copy of this order.

9.With the aforesaid direction, this Writ Petition stands disposed of. There shall be no order as to costs.

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Index :Yes / No

Internet : Yes / No

NCC : Yes/No

MR



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ABDUL QUDDHOSE, J.

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