



W.A.(MD)Nos.2195 of 2023 and 302 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserving the Judgment	Date of Pronouncing the Judgment
18.03.2024	28.03.2024

CORAM:

**THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN
and
THE HONOURABLE MR.JUSTICE C.KUMARAPPAN**

**W.A.(MD)Nos.2195 of 2023 and 302 of 2024
and
C.M.P.(MD)Nos.17636 & 17637 of 2023 in W.A.(MD)No.2195 of 2023
and
C.M.P.(MD)No.2886 of 2024 in W.A.(MD)No.302 of 2024**

W.A.(MD)No.2195 of 2023:-

- 1.The Secretary,
M.S.P. Solai Nadar Memorial Higher Secondary School,
Dindigul District.
- 2.The Headmaster,
M.S.P. Solai Nadar Memorial Higher Secondary School,
Dindigul District.

... Appellants

vs.

- 1.P.Ramesh
- 2.The Commissioner of School Education,
O/o. the Commissioner of School Education,
DPI Campus, Chennai.



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3.The Chief Educational Officer,
O/o. the Chief Educational Officer,
Dindigul District.

... Respondents

Prayer : Writ Appeal filed under Clause 15 of the Letters of Patent, against the order dated 01.12.2023, made in W.P.(MD)No.22342 of 2023.

For Appellants : Mr.H.Lakshmi Shankar

For R1 : Mr.M.Ajmalkhan
Senior Counsel
for M/s.Ajmal Associates

For R2 and R3 : Mr.D.Sadiq Raja
Additional Government Pleader

W.A.(MD)No.302 of 2024:-

1.The Commissioner of School Education,
O/o. the Commissioner of School Education,
DPI Campus, Chennai.

2.The Chief Educational Officer,
O/o. the Chief Educational Officer,
Dindigul District.

... Appellants

vs.

1.P.Ramesh

2.The Secretary,
M.S.P. Solai Nadar Memorial Higher Secondary School,
Dindigul District.



W.A.(MD)Nos.2195 of 2023 and 302 of 2024

3.The Headmaster,

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Prayer : Writ Appeal filed under Clause 15 of the Letters of Patent, against the order dated 01.12.2023, made in W.P.(MD)No.22342 of 2023.

For Appellants

: Mr.D.Sadiq Raja
Additional Government Pleader

For R1

: Mr.M.Ajmalkhan
Senior Counsel
for M/s.Ajmal Associates

For R2 and R3

: Mr.H.Lakshmi Shankar

COMMON JUDGMENT

DR.G.JAYACHANDRAN, J.

and

C.KUMARAPPAN, J.

These two intra-court appeals are preferred by the Management of MSP Solai Nadar Memorial Higher Secondary School, Dindigul and the Commissioner of School Education respectively, being aggrieved by the order passed by the learned Judge in W.P.(MD)No.22342 of 2023 filed by the first respondent herein P.Ramesh, P.G. Assistant (Accounts) in the M.S.P. Solai Nadar Memorial Higher Secondary School.

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2. The grievance of the respondent projected in his writ petition for the relief of Certiorarified Mandamus was that, M.S.P.Soali Nadar Memorial Higher Secondary School is a non-minority Government Aided School. He was working as P.G. Assistant in that School and his superannuation fell on 30.06 2023. As per G.O.(Ms)No.261, School Education Department, dated 20.12.2018 and G.O. (Ms)No.115, School Education Department, dated 28.06.2022, he is entitled as well as eligible for re-employment till the end of the academic year that is up to 31.05.2024. Therefore, on 25.05.2023, he made a request to the Chief Educational Officer (CEO) through the Headmaster of his School. The Chief Educational Officer, vide letter dated 05.06.2023, declined to entertain his request, since the request not emanated from the School Management along with proposal for re-employment. Then, he filed W.P.(MD)No.16280 of 2023, seeking Mandamus, for direction to the School Management and the Educational Authorities to provide re-employment. The Hon'ble High Court in the said Writ Petition, directed the School Management to forward the proposal to the Educational Authority within period of two weeks and such proposal to be disposed of in accordance with the Government Orders within a period of two weeks.



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3. Pursuant to the direction of the High Court, in his first Writ Petition, the School Management reported the Educational Authority about their unwillingness to consider the request for re-employment citing the past conduct of the writ petitioner, who went on medical leave for 59 days at a crucial time during the months of February – March, just before the Public Examination for the 12th Standard students. But just for the purpose of getting re-employment till the end of next academic year, had produced medical fitness certificate and joined duty. After retirement, he has made false allegations against the Management, therefore, his conduct is not satisfactory to the Management. Since the Management refused to re-engage the writ petitioner for the reasons stated in it's communication, dated 10.08.2023, the Chief Educational Officer, vide proceedings in Na.Ka.No.3660/A2/2023, dated 22.08.2023, declined to entertain the request of the writ petitioner seeking re-employment till the end of the academic year 2024.

4. The said rejection order of the C.E.O. was impugned in the second writ petition W.P.(MD)No.22342 of 2023. Stating that the impugned order will not stand the scrutiny of law. The reason stated by the Management to refuse



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re-employment is without any basis. He after recovery from the injuries sustained in the road accident, was medically fit and was permitted to join duty by the Management without any objection or reservation about his fitness. There is no disciplinary proceeding pending against him. Because, he approached the Court for redressal, as per law, he had been victimized by declining re-employment, with malice.

5. The writ petition was contested by the Management as well as the Educational Authorities. The learned Judge on considering the facts and the law governing the right of a teaching staff to get re-employment on attaining the age of superannuation in the middle of the academic year, allowed the Writ Petition, vide order dated 01.12.2023, holding that the records reveals, the writ petitioner met with an accident and got his right leg fractured. He was on medical leave from 01.02.2023 to 29.03.2023 and joined duty on 01.04.2023 on production of fitness certificate. The Management cannot attribute motive for his leave during the examination period after sanctioning leave and allowing him to join duty after expiry of the leave period. The writ petitioner after resuming duty in fact, had taken classes for the Students during the month of June, 2023, which indicates



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that he was medically fit to take classes. It is not the case of the Management that the writ petitioner facing any disciplinary proceedings. Therefore, when the writ petitioner is eligible for re-employment, he has right to seek re-employment. The Educational Authority cannot reject his request merely based on the objections raised by the Management.

6. The Writ Petition was allowed with direction to the authorities to grant re-employment to the petitioner till 31.05.2024 with all monetary benefits and the order should be passed within a period of six weeks from the date of receipt of the order copy. This order is under challenge in these Writ Appeals.

7. The learned counsel appearing for the Management in W.A.(MD)No. 2195 of 2023 submitted that re-employment of teaching staff, who retires in the mid of the academic year on attaining the age of superannuation, is not an absolute right. Once the Employer - Employee relationship gets severed on his retirement, the suitability of re-employment depends on several factors. Medical fitness and absence of disciplinary proceedings alone will not make a teaching staff to get re-employment, even if he is otherwise not found suitable in the



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opinion of the Management. The satisfaction or otherwise of the Employer cannot be ignored, if it is justifiable. The Government Orders, in fact, indicates the minimum requirement to recommend re-employment and it is not the only requirement for re-employment. It is incorrect to say that all teaching staff medically fit and no disciplinary proceedings pending should automatically be re-employed, if his superannuation date fall in the middle of the academic year.

8. The learned counsel for the Management submitted that, the object behind Government Orders relied has to be taken into account while considering re-employment of a teaching staff. The spirit behind these Government Orders is to safeguard the interest of the students and to ensure seamless continuity of teaching without any interruption in the running of school to appoint a suitable teacher immediately. To avoid such sufferings, in the interest and welfare of the students the Government Order was passed and Courts have always taken into account the object behind the Government Order, passed orders suitable to the facts and circumstances of the case.



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9. In the instant case, admittedly, the service of the writ petitioner was not available to the students at the crucial point of time, who were pursuing their 12th public examination in the year 2023. During the relevant crucial period *i.e.*, in month of February and March, the entire two months, he went on medical leave. The Management made alternate arrangement and deployed a teacher under its Management self-finance scheme. In the instant case, the writ petitioner without making his request for re-employment through the Management, forwarded his application directly to the Chief Educational Officer. Hence, it was returned with a direction to forward through Management. To cover up his lapse, he hurriedly filed Writ Petition after being relieved on his superannuation. In that Writ Petition, he made allegations against the Management that he was forced to sign the relieving order, which according to the Management, is absolutely false.

10. According to the Management, his request for re-employment was considered dispassionately and the Management thought fit that upon his previous conduct of abdicating his responsibility to teach the students during the crucial period citing accident due to self fall from two wheeler make him unsuitable for re-employment. The learned counsel for the Management further



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submitted that in the interregnum, the School Management has passed a Resolution to seek permission of the Government to make fresh appointment for the said post and their proposal was pending since July, 2023. Due to pendency of the Writ Petition, the Government has not passed any order and thereby, the Students and Management is under sufferance.

11. The learned Additional Government Pleader representing the Commissioner of School Education in W.A.(MD)No.302 of 2024, apart from reiterating the submissions of the learned counsel for the Management, has also submitted that the first respondent/writ petitioner cannot claim re-employment as a matter of right, if the Management is not inclined to engage him. His application was returned by the Educational Authority, since it was not sent through proper channel. The writ petitioner first sent his application directly to the Educational Authority. It was informed to him that he should sent his representation through proper channel. Next time, he forwarded his representation through the Head Master, who is not the proper channel. He ought to have forwarded his application through the School Management, who is his employer. The Management has discretion in sending proposal for re-employment, subject

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to the satisfactory service of the teacher. Only the School Management will be in a better position to assess the need of the student and the requirement of the service of the teacher, who attains superannuation during middle of the academic year. Since representation of the writ petitioner was not sent through proper channel and with the recommendation of the Management, he was allowed to retire on attaining the age of superannuation.

12. While sending the proclivity of the representation, he first sent the representation directly to the Educational Authorities, then, send his representation to the Headmaster instead of Correspondent of the School and only after attaining the age of superannuation, he made request properly to the Management, who is employer. According to writ petitioner, any deprivation of re-employment has to be attributed only to the conduct of the writ petitioner and the Government cannot be mulcted with paying salary to him without being any service rendered by him. Pointing the fact that, the writ petitioner was not permitted to join duty, in spite of an interim order in his favour and in this regard, the writ petitioner has moved Contempt Petition and the same is pending and submitted that, the State should not be mulcted with financial responsibility to



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pay the teacher/petitioner, who had failed to follow the procedure. Any order to pay monetary benefit would only become unlawful enrichment.

13. The learned Senior Counsel for the first respondent/writ petitioner submitted that the learned Judge on considering the material relied by the Management and the writ petitioner had rightly held that the Management refused to forward proposal positively is bad and contrary to the guidelines mentioned in the Government Order. Even, in case, the Management is not inclined to re-employ a teacher for any unjustifiable reason, the Educational Authority cannot simply accept the same and deprive the service of an experienced teacher. The Educational Authority ought to have overruled the opinion of the Management and should have followed G.O.(Ms)No.261, School Education Department, dated 20.12.2018 and G.O.(Ms)No.115, School Education Department, dated 28.06.2022, scrupulously as directed by the learned Judge in the first Writ Petition. Therefore, according to the writ petitioner, rejecting the request for re-employment is not in accordance with law. The writ petitioner was always willing to render his service, it was the Management, which denied the request to serve in spite of interim order passed by the Court. Therefore, for the willful default of the

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Management, the first respondent/writ petitioner should not be deprived of his lawful entitlement.

14. The learned Senior Counsel representing the first respondent/writ petitioner further submitted that in umpteen number of judgments, Courts have held that the service of a teacher cannot be curtailed in the middle of the academic year. Their service has to be extended till the end of the academic year in order to maintain and improve the standard of education of the students. In support of this submission, the following judgments relied:-

(i) **Correspondent, Secretary and Managing Trustee, Salem vs. M.Rajagopal and others** reported in (2008) 1 MLJ 312.

(ii) **The Secretary, Gandhi Aided Primary School, Chozhiavilagam, Thiruppananthal Range, Tanjore District vs. R.Girija and another** reported in 2012 SCC OnLine Mad 1622.

(iii) **Reynold Jayasekaran vs. Director of School Education and others** [W.A.No.1885 of 2011, dated 30.04.2015].



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(iv) **The Director of School Education and others vs. K.R.Komalam**
[W.A.Nos.259 of 2020 etc. batch, dated 10.12.2021].

15. Records placed before this Court reveals that the first respondent in the Writ Appeals, joined M.S.P. Solai Nadar Memorial Higher Secondary School as B.T. Assistant on 17.07.2007. He was promoted as P.G. Assistant on 01.06.2015 and attained the age of superannuation on 30.06.2023. The representation of the first respondent/Ramesh for re-employment was sent to the authorities on 25.05.2023. On receiving representation, the Headmaster of the School, in his letter, dated 31.05.2023 has directed Ramesh to approach authorities concerned for re-employment. Hence, he gave another representation dated 02.06.2023, requesting them to provide re-employment. However, the Secretary and Headmaster of the School refused to provide him with re-employment and returned the proposals.

16. Then, the first respondent/Ramesh approached the High Court filing a Writ Petition for Mandamus to consider his representation, since under G.O. (Ms)No.261, School Education Department, dated 20.12.2018 and G.O.(Ms)No.



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115, School Education Department, dated 28.06.2022, teachers are entitled to get re-employment till the end of the academic year in case their superannuation falls in the middle of the academic year.

17. The said Writ Petition was disposed of on 19.07.2023 with the following directions:-

"7. Considering the fact that G.O.Ms.No.261 School Education Department, dated 20.12.2018 and G.O.Ms.No.115, School Education Department, dated 28.06.2022 mandate that whoever retires in the middle of the academic year are entitled to get re-employment till the completion of the academic year, this Court directs the 3rd respondent to forward the representation made by the petitioner on 25.05.2023 to the respondents 1 and 2 for appropriate action within a period of two (2) weeks from the date of receipt of a copy of this order. On receipt of such a proposal from the 3rd respondent, the 2nd respondent shall dispose of the same in accordance with law in the light of G.O.Ms.No.261 School Education Department, dated 20.12.2018 and G.O.Ms.No.115, School Education Department, dated 28.06.2022 within a period of two weeks from the date of receipt of the proposal from the 3rd respondent."

18. The Management did not consider the representation of the first respondent/Ramesh positively. The report of the Management taken into



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consideration by the Educational Authorities to reject the representation of Ramesh seeking re-employment.

19. When the rejection order was challenged in W.P.(MD)No.22342 of 2023, this Court held in favour of the first respondent/writ petitioner (Ramesh) and passed order on 01.12.2023 as under:-

"11. When a teacher has satisfied all the conditions as per prevailing Government Orders for re-employment, just because the management has raised some objections without considering the validity or genuineness of those objections, the Educational Authority cannot reject the request for reemployment. In the present case, without considering the medical leave Educational Authority simply rejected the request for re-employment solely based upon the objections raised by the School management. Therefore, this Court does not find that the order impugned in the writ petition is legally sustainable.

12. The order impugned in the writ petition is set aside and the respondent authorities are directed to grant re-employment to the writ petitioner till 31.05.2024 with all monetary benefits and pass orders to the said effect within a period of six weeks from the date of receipt of a copy of this order."

20. Re-employment of teacher, who attain superannuation in the middle of the academic year are normally re-employed till the end of academic year been in



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vogue for several years. Several Government Orders been issued from time to time in this regard and the latest Government Order, which is relevant for consideration in this case is one issued on 20.12.2018 in G.O.(Ms)No.261, School Education Department, and another issued on 28.06.2022 in G.O.(Ms)No. 115, School Education Department. The object for extending the service of a teacher, who retires in the middle of the academic year, been succinctly explained by this Court in **Reynold Jayasekaran's case** [cited supra], as below:-

"12. The object of providing extension of service to teachers till the completion of the academic session is to cope up with the curriculum, as the students should not suffer in the middle of the academic session, for want of a teacher. The change in the teaching skill and the efficiency of the teacher may affect the fruitful result as a whole. In addition, there will also be much inconvenience for the educational institutions and the management, who are in charge of affairs of the education. Therefore, the teachers, who are retiring in the middle of the academic year, would normally be asked to continue till 31st May i.e., till the end of the academic year. The said object was sought to be achieved by the Government vide G.O.Ms.No.452, Education Department, dated 24.02.1970."

21. The Government Orders passed in respect of re-employment extending service till the end of the academic year makes clear that any request for re-employment must emanate from the teacher concern (G.O.(Ms)No.170, School



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Department, dated 23.10.2014). There is a reference about G.O.(Ms)No.170, School Education Department, dated 23.10.2014, in the subsequent G.O.(Ms)No. 261, School Education Department, dated 20.12.2018 and the subsequent G.O. (Ms)No.261, School Education Department, dated 20.12.2018, says that the re-employment is permitted only if

(i) the character and conduct of the teacher is satisfactory ;

(ii) Must be medically fit to continue the job. These are the prerequisites prescribed by the Government to make eligible for a teaching staff for re-employment, on his retirement due to superannuation, during the middle of the academic year.

22. In Correspondent, Secretary and Managing Trustee, Salem vs. M.Rajagopalan and others [cited supra] relied on by the learned Senior Counsel for the first respondent, the Division Bench of this Court following the earlier judgments rendered in **S.Sundaram vs. Secretary, C.S.I., Diocese of Madras [W.A.No.1179 of 1993]** and **R.Muthurkrishnan vs. Secretary, Aided Middle School, Korranattu, Karupur, Kumbakonam and the District Educational**



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Officer, Thanjavur [1998 WLR 77] relying on G.O.Ms.No.452, dated 24.03.1970, had observed that as per the said Government Order (**i.e., G.O.Ms.No.452, dated 24.03.1970**), there is no question of any teacher asking for continuation. The institutions are to continue them till the end of academic year. (Emphasis added)

23. This judgment relied on by the learned Senior Counsel for the first respondent cannot be applicable to the case in hand, since, G.O.Ms.No.452, issued in the year 1970 is no more in vogue and same been superseded/ supplanted by subsequent G.O.(Ms)No.170, School Education Department, dated 23.10.2014, which mandates the request for re-employment must emanate from the teacher. In G.O.(Ms)No.261, School Education Department, dated 20.12.2018, there is specific reference to G.O.Ms.No.170, dated 23.10.2014 in Paragraph 7 (iii).

24. In the instant case, obviously and admittedly, the request for re-employment emanated from the writ petitioner only on 25.05.2023 hardly a month before his superannuation. That request was not made through the



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Management, who is empowered to scrutinise the request and satisfy that the pre-requisite mentioned in G.O.(Ms)No.261, School Education Department, dated 20.12.2018. By the time, when the first respondent/writ petitioner submitted his request to the Management for re-employment, he has almost reached the date of superannuation.

25. The G.O.(Ms)No.115, School Education Department, dated 28.06.2022, has not brought much change in the requirement for considering re-employment, except clarifying the care to be taken to avoid any disturbance in learning and teaching process to the students in view of retirements in the middle of the academic year and reiteration of earlier G.O.(Ms)No.261, School Education Department, dated 20.12.2018.

26. The re-employment of a teacher retiring in the middle of the academic year is based on the need and the eligibility. In case of surplus teachers, the need may not arise. In case the teacher is found not medically fit or his character and conduct not satisfactory, he may not be eligible for re-employment.



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27. A Division Bench of this Court in a batch of writ appeals in **Chief Educational Officer, Dindigul and others vs. P.S.Rajavel Durai [W.A. (MD)Nos.107 of 2020 etc. batch, dated 16.03.2021]** while dealing the policy decision of the Government not to extend the benefit of re-employment to teachers, who retire from the School, which has surplus teachers and the validity of G.O.(Ms)No.261, School Education Department, dated 20.12.2018, held that when the Government has taken a policy decision, Court cannot either interpret it in a different way or go contrary to that. Re-employment is not a matter of right. The moment, a teacher attains the age of superannuation, the relationship between master and servant gets terminated. When a permission is either sought for a Government teacher or aid is sought for an aided Institution, post-axiomatic conditions attached will have to be followed.

28. Subsequently, in yet another batch of Writ Appeals decided by the Division Bench of this Court on 10.12.2021 in **Director of School Education and others vs. K.R.Komalam [W.A.Nos.259 of 2020 etc. batch]**, it has been again reiterated that re-employment is not a matter of right and once the teacher



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attains the age of superannuation, the relationship between master and servant ceases.

29. One of the pre-requisite mentioned in G.O.(Ms)No.261, School Education Department, dated 20.12.2018, is satisfaction of the character and conduct. It does not say that the teacher must be free from disciplinary proceedings. The character and conduct in this context must be subject to the satisfaction of the Management. When the Management have expressed their opinion about the conduct of the teacher not fit for consideration, then, their opinion cannot be substituted through Writ Court unless it is tainted with *mala fide*.

30. In this case, the first respondent Ramesh has given a handwritten medical leave letter on 01.02.2023 along with medical certificate. The medical records reveal that he suffered a self fall and met with an accident and sustained fracture on right leg both bone fracture and fracture of left forearm both bone. Then, surgery was conducted on 02.02.2023 and got discharged on 06.02.2023. On 30.03.2023, he joined duty after getting fitness certificate. On 25.05.2023, he



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gave representation to the Secretary of the School Management through the Headmaster and marked copy to Chief Educational Officer. On receipt of the representation, the Chief Educational Officer had returned it on 05.06.2023 to be represented along with the recommendation of the School Secretary. The Headmaster has informed the first respondent/writ petitioner on 31.05.2023 that he is not the authority competent to grant re-employment. Before he could make his representation to the School Secretary, he got relieved on 30.06.2023. Then, he filed the first Writ Petition on 04.07.2023 to consider his representation, which seeks re-employment till the end of the academic year. Court has granted interim injunction on 05.07.2023.

31. A teacher, who had attained the age of superannuation, cannot be deemed to be in service unless a positive order is passed by a competent authority, more so, when he has already relieved from service. The communication gap and lapse in making representation in time to the Management and the Educational Authority is in fact has caused the trouble to the writ petitioner.



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32. While G.O.(Ms)No.170, School Education Department, dated 23.10.2014, mandates the request for re-employment must emanate from the teacher concern, such request cannot be an improper request or at the eleventh hour. The Management as well the teacher know that the date of superannuation and if re-employment or extension not granted, the post will go vacant and for the interest of the students, alternate arrangement has to be made.

33. In this case, when the teacher *i.e.*, the first respondent/writ petitioner went on leave during the month of February and March, 2023 itself, the Management had made alternate arrangement to ensure continuity of teaching the syllabus. On 06.07.2023, the School Committee had met and resolved to appoint fresh candidate and had sought permission of the Chief Educational Officer. Therefore, the first respondent/writ petitioner cannot claim any legitimate expectation for re-employment without exercising his option in time and pursuing it.

34. The examination for this academic year has almost come to an end. As a consequence, the service extension of the first respondent/writ petitioner will noway satisfy the object of the Government Order. Hence, the plea of the first



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respondent/writ petitioner cannot be considered, when the purpose and object of the extension Government Order has not met with. Therefore, he also cannot be conferred with monetary benefit, since it will be a premium for his own wrong.

35. Though it has been canvassed that the legitimate expectation of the first respondent cannot be deprived unreasonably, this Court is of the view that his own conduct has impaired his legitimate expectation. He made known about his willingness to serve beyond the date of superannuation only during the last week of May when he was about to retire at the end of the succeeding month. Further, his representation was not through proper channel.

36. Therefore, this Court holds that when the orders of the Government, permitting re-employment keeping in mind the welfare of the students, the said object cannot be obtained by confirming the writ petition order. The monetary benefit without any work is unjust, since the reason for rejecting his request is due to his own fault of delay in making representation and for not making the representation through the appropriate authority.



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37. In the above facts and circumstances, it is appropriate to set aside the order of the learned Judge, dated 01.12.2023, in W.P.(MD)No.22342 of 2023 and allow the Writ Appeals. Accordingly, W.A.(MD)No.2195 of 2023 and W.A.(MD)No.302 of 2024 stand allowed. No order as to costs. Consequently, connected Miscellaneous Petitions are closed.

Index : Yes
NCC : Yes
smn2

[G.J., J.] & [C.K., J.]
28.03.2024

To

- 1.The Commissioner of School Education,
O/o. the Commissioner of School Education,
DPI Campus, Chennai.
- 2.The Chief Educational Officer,
O/o. the Chief Educational Officer,
Dindigul District.



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DR.G.JAYACHANDRAN, J.
and
C.KUMARAPPAN, J.

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PRE-DELIVERY COMMON JUDGMENT MADE IN
W.A.(MD)Nos.2195 of 2023 and 302 of 2024

28.03.2024

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