



W.P.(MD)No.13451 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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RESERVED ON : 29.10.2024

PRONOUNCED ON : 27.01.2025

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD)No.13451 of 2020

and

W.M.P.(MD)Nos.11226 and 11227 of 2020

V.K.Peter Rajan

... Petitioner

Vs.

1.The Joint Director of School
Education,
Higher Education Department,
Chennai-06.

2.The Chief Educational Officer,
Sivagangai District,
Sivagangai.

3.The Secretary / School Committee,
Ramanathan Chettiyar Hr.Sec.School,
Puduvayal,
Sivagangai District.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for records pertaining to the impugned order of the 3rd respondent dated 19.02.2004 in R.No:R.C.H.S.S. and the consequential impugned



W.P.(MD)No.13451 of 2020

order dated 13.09.2019 in Na.Ka.No.51841 / W5/ E2 /2018 on the file of the 3rd respondent and the impugned order passed by the 2nd respondent dated 18.09.2019 in Na.Ka.No.6830/ Aa3 / 2019 and quash the same as illegal and consequently direct the respondents to permit the petitioner to retire from service with all back wages within the time stipulated by this Court.

For Petitioner : Mr.T.Lajapathiroy,
Senior counsel,
For Mr.T.Thirumurugan

For R-1 & R-2 : Mr.M.Sarangan,
Additional Government Pleader

For R-3 : Mr.M.Rajaraman

ORDER

Heard the learned Senior Counsel, Mr. Lajapathy Roy for Mr. T.Thirumurugan for the petitioner, the learned Additional Government Pleader, Mr.M.Sarangan for the respondents 1 and 2 and Mr.Rajaraman for the third respondent and carefully perused the materials available on record.

2.Challenging the order of dismissal, dismissing the petitioner from the service of the third respondent school as a PG Assistant by order dated 19.02.2004 in R.No:R.C.H.S.S dated 19.02.2004 issued by



W.P.(MD)No.13451 of 2020

the third respondent and the consequential order passed by the first respondent in proceedings in Na.Ka.No.51841/W5/E2/2018 dated 13.09.2019, pursuant to the order passed by this Court in W.P.(MD)No. 15385 of 2017 and the consequential order passed by the second respondent dated 18.09.2019 in Na.Ka.No. 6830/A3/2019, this petition is filed.

3.The petitioner joined as a teacher in Ramanathan Chettiar Higher Secondary School, Puduvayal, Sivagangai district on 10.03.1982. Thereafter, he became P.G. Assistant in Commerce in the same school. He originally applied medical leave for the period from 06.11.1999 to 05.12.1999 along with a medical certificate. The school authority referred the medical certificate to the medical board and also directed the petitioner to appear before the medical board to get sanction for medical leave. Thereafter, the petitioner continuously applied for medical leave and failed to attend the school and also he failed to produce proper medical certificates in this regard. The petitioner did not attend the school for nearly 4 years. However, the petitioner claimed that he was sick and was undergoing medical treatment whereas the third respondent school had framed charges as against the petitioner that he was involved in real estate business and



W.P.(MD)No.13451 of 2020

criminal cases and also in political activities and he committed disobedience to the order of the third respondent school and continuously remained unauthorizedly absent.

4. Therefore, the third respondent school resolved to dismiss the petitioner from service and sought permission from the Chief Educational Officer, Sivagangai, in this regard. Finally, on 08.02.2004, the permission was granted by the Chief Educational Officer, Sivagangai, for dismissing the petitioner from service. Accordingly, the third respondent passed the impugned order of dismissal dated 19.12.2004, dismissing the petitioner from service. As against the same, the petitioner preferred an appeal before the Joint Director of School Education, Higher Education Department, Chennai. The said order of the third respondent dated 19.12.2004 was confirmed in the appeal before the Joint Director of School Education. Accordingly, the Joint Director of School Education, confirmed the approval given by the second respondent and rejected the appeal preferred by the petitioner by an order dated 20.09.2006 in proceedings bearing Mu.Mu.No. 60719/W29/2003. Pursuant to the same, the petitioner filed a writ petition in W.P.No.42044 of 2006 before this Court.



W.P.(MD)No.13451 of 2020

5.However, this Court passed an order directing the petitioner to avail efficacious alternative remedy under Section 24 of the Private Schools Regulations Act, 1973. Following which, the petitioner approached the learned Private School's Appellate Tribunal, that is, the Subordinate Judges Court at Devakottai, in C.M.A.No.2 of 2008. Even thereafter, he failed to attend the Court and the case was dismissed by order dated 11.06.2009. In the interregnum, he filed W.P.(MD)No.15385 of 2017 seeking to call for the records on the file of the Private Schools Appellate Tribunal / Subordinate Judges Court, Devakottai in C.M.A.No.2 of 2008 dated 13.02.2017 and to quash the same. This Court, by order dated 08.09.2017, observed that the Chief Educational Officer, Sivagangai, who gave approval to the order of dismissal of the petitioner dated 19.12.2004 passed by the third respondent school happened to be the Appellate Authority in view of his promotion as Joint Director of School and hence, he should not have sat as an Appellate Authority in an order of approval which was confirmed by him in the capacity of the Chief Educational Officer, Sivagangai.

6.Accordingly, the order of dismissal of appeal was set aside by this Court and was further remanded back to the first respondent to rehear the appeal filed by the petitioner within a period of 3 months



W.P.(MD)No.13451 of 2020

from the date of receipt of a copy of the order in the aforesaid writ petition. Following which the first respondent issued proper directions to the second respondent, that is, the Chief Educational Officer, Sivagangai, the third respondent school and the petitioner to appear before the Joint Director's office for personal hearing on 03.09.2018. The Chief Educational Officer, Sivagangai, offered his detailed remarks on the issue in Na.Ka.No.6530/AA3/2019 dated 12.09.2019. The third respondent school also duly submitted their explanation. Thereafter, the first respondent passed an order rejecting the appeal preferred by the petitioner by order dated 20.09.2006 and aggrieved by these orders, the petitioner has filed this writ petition.

7.The claim of the petitioner is that, he was awarded with the capital punishment of removal from service on the ground of unauthorized absence without following the procedure contemplated under the Tamil Nadu Private Schools Regulations Act, 1973 and Rules, 1974. He categorically claimed that an Enquiry Officer was not appointed in the case of the petitioner's dismissal and a proper enquiry report was also not furnished to him for facilitating him to submit his explanation and on that guise, claiming that an order of dismissal passed without furnishing a copy of enquiry report is illegal, the counsel



W.P.(MD)No.13451 of 2020

for the petitioner pressed for setting aside the impugned order of dismissal.

8.I am of the considered opinion that this is the third round of litigation before this Court and a parallel litigation was also availed by the petitioner before the learned Private School Appellate Tribunal / Subordinate Judges Court, Devakottai, in this regard in C.M.A.No.2 of 2008, however, unsuccessfully. The petitioner was appointed as P.G. Assistant Teacher in the 3rd respondent school on 10.06.1982. He went on earned leave for two days on 04.11.1999. However, he continued his medical leave from 06.11.1999 to 05.12.1999 by producing a medical certificate. The school committee framed charges against the petitioner on the ground that he went on leave without making any application for leave. Though he produced medical certificate for the period from 06.11.1999 to 05.12.1999, he continued to be on leave without any application and without any medical certificate from 06.11.1999 to 26.06.2000 and from 27.06.2000 onwards and stayed away from the duty of the school without any information from 18.09.2003. He submitted various medical certificates in a piece-meal manner which is not acceptable.



W.P.(MD)No.13451 of 2020

9.It also came to the notice of the third respondent school that he was running a commercial institution in the name of Surya Associates running a real estate business against the school conduct rules and was also involved in a criminal case in which he was arrested and remanded to custody till 23.10.2002. Hence, the same would amount to violation of code of conduct, the third respondent school issued a show cause notice to the petitioner on 08.11.1999. The petitioner submitted his explanation on 19.11.1999. Since the petitioner had taken unauthorized leave without proper medical certificate, he was directed to appear before the medical board to access his medical condition as claimed by him. Another show cause notice was issued to him on 22.01.2000 and his letter dated 05.01.2000 and 19.01.2000 seeking leave without any medical certificate was further rejected on the same day of show cause notice, that is, on 22.01.2000. The petitioner responded by a letter dated 11.02.2000 for the show cause notice dated 22.01.2000 and the letter rejecting the petitioner's leave application dated 22.01.2000.

10.The petitioner continuously evaded from appearing before the medical board, but further had sent a letter dated 15.05.2000 seeking grant of leave on medical grounds from 28.04.2000 to 26.06.2000.



W.P.(MD)No.13451 of 2020

Since the petitioner had already availed leave for more than 60 days without appearing before the medical board, another show cause notice was issued on 28.11.2000 to submit his explanation within 21 days. On receipt of the same, no explanation was submitted by the petitioner for the third show cause notice which was issued within a period of 2 years for his unauthorized absence. Hence, under such circumstances the school committee further issued a letter dated 03.01.2001 to the second respondent seeking permission to dismiss the petitioner from service. After further reminder letters dated 18.04.2001, 14.05.2001, 26.11.2001, 10.04.2002, 05.07.2002 and 17.04.2003 to the second respondent, the second respondent granted permission on the basis of the resolution of the school dated 03.01.2001 by order dated 18.02.2004.

11.Following which, fourth show cause notice dated 19.12.2003 was issued by the third respondent school to the petitioner, for which no explanation was submitted by him. Thereafter, the school committee of the third respondent school decided to terminate the service of the petitioner by the impugned order dated 19.02.2004. Accordingly, the third respondent school sent proposals for obtaining prior permission of the Chief Educational Officer for the said punishment to be



W.P.(MD)No.13451 of 2020

implemented with reference to Rule No.17 of the Tamil Nadu Recognized Private Schools Regulation Rules, 1974. On perusal of the same, the Chief Educational Officer decided to grant approval for terminating the services of the petitioner in the third respondent school and due prior permission was granted by order dated 18.02.2004 made in Mu.Mu.No. 7635/A3/2002 of the second respondent. Accordingly, the petitioner was dismissed from service by an order dated 19.02.2004 of the third respondent school and his application for voluntary retirement was also rejected.

12.As against the order of dismissal, the petitioner preferred a statutory appeal to the Joint Director of School Education, Chennai, as per the provision in Rule 23 of the Tamil Nadu Recognized Private Schools Regulation Rules, 1974. The Joint Director of School Education observed that the petitioner went on leave from 06.11.1999 without any proper leave application and also failed to attend the medical board as and when directed by the third respondent school. Further recording the fact that the petitioner went on leave from 22.07.2002 to 17.09.2002 without any medical certificate and the fact that he never returned to duty thereafter and even failed to make an application for leave and stayed away from duty and marking his unauthorized



W.P.(MD)No.13451 of 2020

absence for a prolonged period of time and that he was out of employment for a period of more than 3 years for which taking disciplinary action is mandatory as per rules, the first respondent confirmed the approval given by the second respondent for the purpose of dismissing the petitioner from service and rejected the appeal preferred by the petitioner by an order dated 20.09.2006. Challenging the said rejection order, the petitioner filed a writ petition in W.P.No. 42044 of 2006 before this Court and this Court directed the petitioner to avail efficacious alternative remedy under Section 24 of the Private Schools Regulations Act, 1973.

13. Accordingly, the petitioner approached the learned Private Schools Appellate Tribunal, that is, the Subordinate Judges Court at Devakottai in C.M.A.No.2 of 2008. However, the learned Private Schools Appellate Tribunal, Devakottai, was pleased to dismiss the aforesaid appeal by judgment dated 13.02.2017 on the ground that the petitioner failed to avail the various opportunities given by the third respondent school to appear before the medical board and also to submit his proper explanation for his unauthorized absence. Challenging the same, the petitioner filed a writ petition in W.P.(MD)No.15385 of 2017. However, this Court without going into the merits of the judgment passed by the



W.P.(MD)No.13451 of 2020

learned private Schools Appellate Tribunal, Devakottai in C.M.A.No.2 of

2008 dated 13.02.2017 disposed of the said writ petition on 08.09.2017

and the operative portion of the same is extracted as follows:

“The learned counsel for the petitioner would submit that the petitioner was appointed as a Teacher in the third respondent school on 10.03.1982, went on leave with result he suffered disciplinary proceedings. Finally he submitted his request for voluntary retirement from service on 18.09.2002 along with fitness certificate. His request for voluntary retirement was rejected on 09.05.2003 and it was finally dismissed by order dated 19.02.2004. Subsequently, approval petition, seeking approval of the order of dismissal, was filed before the Chief Educational Officer, Sivagangai. The approval was granted to the order of dismissal on 19.02.2004.

2.Subsequently, as against the order of dismissal, the petitioner preferred an appeal before the Joint Director, Higher Secondary Education, Chennai on 04.03.2004. When the appeal was preferred, the very same Chief Educational Officer, who passed the aforesaid dismissal order, on promotion came to be posted as Joint Director, Higher Secondary Education, Chennai, overlooking his own order, granting order of approval to the order of dismissal, confirmed his own order of dismissal. Mr.Karuppasamy, who was the Chief Educational Officer, Sivagangai granted approval to the order of dismissal dated 19.12.2004, ought not to have sat as an appellate



W.P.(MD)No.13451 of 2020

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authority.

3. On instructions the learned Additional Government Pleader submitted that the very same Chief Educational Officer, Mr. Karuppasamy, who passed the dismissal order, on promotion was posted as Joint Director, Higher Secondary Education and also confirmed the order of dismissal.

4. Further it was submitted that Mr. Karuppasamy, has been transferred from the post of Joint Director, Higher Secondary Education to another post. Therefore, there is no difficulty to re-hear the appeal by another officer.

5. In view of the above submissions, the order, dismissing the appeal filed by the petitioner is liable to set aside and accordingly, the same is dismissed. Further, the first respondent is directed to re-hear the appeal filed by the petitioner and pass appropriate orders on merits in accordance with law, within period of three months from the date of receipt of a copy of this order.”

14. It is interesting to understand that this Court in W.P.(MD)No. 15385 of 2017, a writ petition which was filed challenging the judgment of the learned Private Schools Appellate Tribunal / Subordinate Judges



W.P.(MD)No.13451 of 2020

Court at Devakottai in C.M.A.No.2 of 2008 dated 13.02.2017 has not gone into the merits of the aforesaid order, instead held that the order of the first respondent dismissing the appeal filed by the petitioner is liable to be set aside on the ground that it was the very same Chief Educational Officer, one Thiru.Karuppasamy who confirmed the dismissal order in the capacity of CEO on promotion dealt with the same matter in appeal as Joint Director, Higher Secondary Education and confirmed the order of dismissal.

15.Pursuant to the same, the first respondent, after receiving elaborate memorandum from the Chief Educational Officer of Sivagangai District and also affording an opportunity of hearing to the third respondent school and the petitioner for personal hearing on 03.09.2018 finally rejected the appeal preferred by the petitioner and confirmed that there is no infirmity in the orders issued on 20.09.2006 by the directorate in giving approval to the third respondent school for removing the petitioner from service. That apart, this Court in W.P. (MD)No. 15385 of 2017 by order dated 08.09.2017 has not interfered with the judgment of the Subordinate Judge, Devakottai / Private Schools Appellate Tribunal, Sivagangai, confirming the impugned order of dismissal dated 19.02.2004. I am of the considered view that the petitioner claim that a proper enquiry was not conducted by the third



W.P.(MD)No.13451 of 2020

respondent school when he did not even come forward to submit his proper explanation for the third show cause notice issued on 28.11.2000 and when he did not even turn up to appear before the medical board for proper medical examination having remained on unauthorized leave from duty for more than three and a half years cannot be sustained. Until and unless the petitioner submitted a proper explanation to the show cause notice issued by the third respondent school for the third time on 28.11.2000, the third respondent school is not at an obligation to appoint an Enquiry Officer to further look into the matter of unauthorized absence of the petitioner for a prolonged period of three and a half years in the absence of proper explanation and non-cooperation from the petitioner to appear before the medical board for proper medical examination.

16. That apart, I am of the considered view that in the writ petition in W.P.(MD)No.15385 of 2017 filed before this Court challenging the judgment of the learned Private Schools Appellate Tribunal dated 13.02.2017, this Court has not set aside the same but had proceeded to set aside the earlier order of the first respondent dated 20.09.2006. Pursuant to the said order, the first respondent had further reconsidered the petitioner's appeal and had confirmed the earlier proceedings of the first respondent dated 20.09.2006 giving approval to



W.P.(MD)No.13451 of 2020

the third respondent school to remove the petitioner from service. Since the order passed by the learned Private Schools Appellate Tribunal in C.M.A.No.2 of 2008 stands good even now, this Court is not inclined to interfere with the impugned order.

17. Accordingly, the writ petition fails and the writ petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

27.01.2025

NCC : Yes / No

Index : Yes / No

Internet : Yes

Sml

To

1. The Chairman,
Tamilnadu Electricity Board,
Anna Salai,
Chennai-600 002.
2. The Chief Engineer/Personnel,
Tamilnadu Electricity Board,
Anna Salai,
Chennai-600 002.
3. The Superintending Engineer,
Trichy Electricity Distribution Circle,
Tamilnadu Electricity Board,
Trichy.
4. The Superintending Engineer,
Tamilnadu Electricity Board,
Ramanathapuram Electricity
Distribution Circle,
Ramanathapuram.



WEB COPY



W.P.(MD)No.13451 of 2020

L.VICTORIA GOWRI, J.,

Sml

W.P.(MD)No.13451 of 2020

27.01.2025