



W.A.MD) No.543 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

Reserved on : 01.04.2025
Delivered on : 08.04.2025

CORAM:

THE HONOURABLE **DR.JUSTICE G.JAYACHANDRAN**

AND

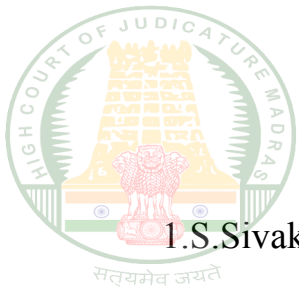
THE HONOURABLE **MS.JUSTICE R.POORNIMA**

W.A(MD)No.543 of 2021
and
C.M.P(MD)No.2424 of 2021

- 1.The Secretary to the Government,
School Education,
Tamil Nadu Government,
Chennai-600 009.
- 2.The Director of School Education,
College Road,
Chennai-600 006.
- 3.The Joint Director of School Education,
College Road,
Chennai-600 006.
- 4.The Chief Educational Officer,
Tirunelveli.
- 5.The District Educational Officer,
Cheranmahadevi
at Tirunelveli.

... Appellants/Respondents

-Vs-



W.A.MD) No.543 of 2021

1.S.Sivakalaperumal

...1st Respondent/Writ Petitioner

2.The Secretary,
Hindu Higher Secondary School,
Kannankulam and Post,
Tirunelveli District.

... 2nd Respondent/6th Respondent

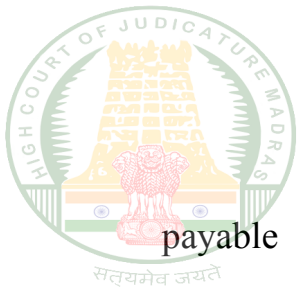
PRAYER: Writ Appeal filed under Clause XV of the Letters of Patent Appeal, against the order of this Court dated 21.01.2019 made in W.P(MD)No.10366 of 2010.

For Appellants	: Mr.V.Om Prakash, Government Advocate
For R1	: Mr.S.Sivakalaperumal (Party-in-person)
For R2	: Mr.T.Sundaravadanam

JUDGMENT

DR.G.JAYACHANDRAN, J.
AND
R.POORNIMA, J.

The State through its Secretary, School Education Department has filed the intra-court appeal being aggrieved by the order of the learned single Judge dated 21.01.2019 in W.P.(MD)No.10366 of 2010 declaring the order confirming the termination of the First Respondent herein/the Writ Petitioner Mr. Sivakalaperumal by him on 09.06.2000 as illegal and further to sanction minimum pension to the writ petitioner from the date of the order, with cost of Rs 25,000/-

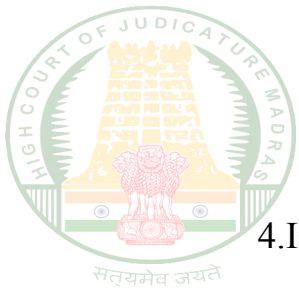


W.A.MD) No.543 of 2021

payable by the Second Respondent herein /Secretary of the Hindu Higher Secondary School, Kannankulam.

2.For the Appellants, the learned Government Advocate submitted that, the first respondent/writ petitioner was appointed as BT Assistant on 26.06.1985 in the 2nd Respondent School run by a private Management. Due to litigation between the members of the School Committee, particularly between the erstwhile Secretary Appadurai and his successor Ramachandran, the school management was temporarily taken over by the Government and staff were paid directly by the Government from 01.01.1990.

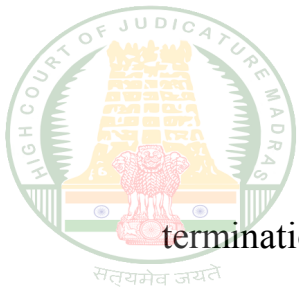
3.The writ petitioner alleges that his promotion as Head Master of the School from 04.01.1989 by the Secretary Appadurai but the request for approval of his promotion as Head Master was kept pending by the Government, in view of the pendency of civil suit between the rival group in the management and he was not allowed to function as the Head Master of the School from 03.10.1990 nor permitted to enter the school.



W.A.MD) No.543 of 2021

4. In fact, due to his absence unauthorisedly from 29.08.1990, the Secretary to the School in his letter dated 30.10.1991 sought permission of the Chief Educational Officer, Tirunelveli to terminate the writ petitioner Sivakalaperumal, BT Assistant from service. Taking into consideration the fact that the said Sivakalaperumal while working as in-charge of the Head Master of the School asked to render account for the money collected from the students and submit the records. Thereafter, he had not turned up for duty. He refused to receive the letter sent to him to hand over the records and other articles kept in his possession. He failed to participate in the disciplinary proceedings initiated against him. Therefore, the CEO, Tirunelveli, issued proceedings dated 18.03.1992 according approval for terminating Sivakalaperumal, BT Assistant, from 29.08.1991.

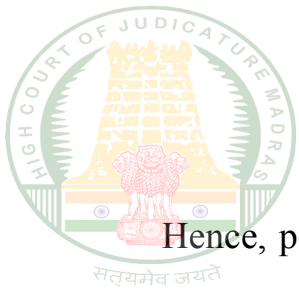
5. Without disclosing the order of the termination, the said Sivakalaperumal filed W.P(MD)No.7809 of 1992 seeking Mandamus to consider his representation to permit him to enter the School and discharge duty as the Head Master of the School by approving his appointment as Head Master. In this writ petition, the Hon'ble High Court, after perusing the counter filed by the State and the order of termination, recording the statement of the learned Senior Counsel appearing on behalf of the writ petitioner/Sivakalaperumal, disposed the W.P(MD)No.7809 of 1992 on 10.08.1994 giving liberty to the writ petitioner to challenge the



W.A.MD) No.543 of 2021

termination order dated 29.08.1991. Also, it directed the appellant to serve a copy of the termination order and to pay the legally payable terminal benefits for the service rendered by the said Sivakalaperumal within 8 weeks, without prejudice to his other contentions.

6. Contempt petition in Cont.P.No.250 of 1995 was filed by the writ petitioner alleging that he was not served with the termination order copy. Pending the said contempt petition, the termination order was served to him. The contempt petition was closed. Challenging the termination order, the writ petitioner preferred an appeal before the Joint Director, School Education and that appeal came to be rejected on 09.06.2000. As against the rejection of the first appeal, the Second Appeal before the Secretary, School Education Department filed and being aggrieved that the second appeal not disposed, the writ petitioner filed W.P(MD)No.406 of 2010 seeking Mandamus to dispose his second appeal which was pending before the Secretary to the Secretary, School Education Department, within a time frame fixed by this Court. This writ petition was disposed on 10.03.2010, with an observation that the School, in which, the writ petitioner employed is a private aided school and governed by the Private School Regulation Act, 1973. The second appeal, against the order passed by Joint Director of School Education, lies before the Tribunal and not to the Government.

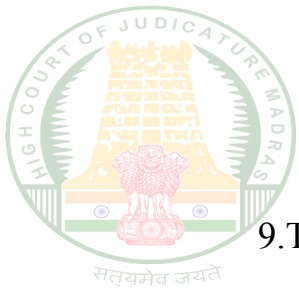


W.A.MD) No.543 of 2021

Hence, permitted the writ petitioner to take back his appeal papers from the first respondent/Secretary to the State and prefer appeal before the Special Tribunal notified under the said Act.

7.However, the said second appeal presented before the Special Tribunal at Trirunelveli was returned with an endorsement, that the Special Tribunal has been abolished by the Tamil Nadu Government, hence not maintainable. Therefore, the writ petitioner had come again to this Court seeking writ of Certiorified Mandamus in W.P(MD)No.10365 of 2010 to quash the order dated 09.06.2000 passed by the Joint Director, School Education dismissing the appeal and confirming the termination order dated 29.08.1991.

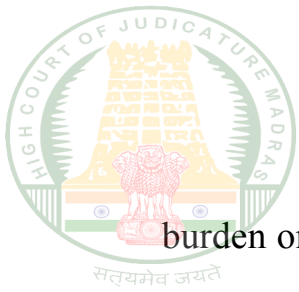
8.The learned single Judge taking note of the fact that though the relief sought is to quash the termination order and to reinstate in service, since the writ petitioner has crossed his age of superannuation, reinstatement is not possible. Payment of back wages also not justifiable, hence, ordered cost of Rs.25,000/- payable by the Management which failed to forward the request for the approval and directed the Government to pay the minimum pension, despite the writ petitioner not completed 10 years of qualified service to be eligible for pension.



W.A.MD) No.543 of 2021

9.The order is impugned on the ground that, the writ petitioner/first respondent is a deserter from service. When letter sent to him to handover the records and key, he refused to receive the letter. Only after waiting for more than a year, disciplinary action was taken against him. The postal endorsements on the covers containing letters dated 29.08.1990, 04.09.1990, 24.09.1990, 12.10.1990, 10.11.1990, 01.02.1991 and 14.09.1991 are ample proof that the writ petitioner deliberately refused to participate in the enquiry process. His misconduct and dereliction of duty is exposed from his own letter dated 08.10.1990 addressed to the School Secretary. His belated request dated 27.08.1999 to give opportunity to challenge the termination order was also acceded by the first appellant authority and on considering the conduct of the delinquent/writ petitioner, the appellant/authority, vide order dated 09.06.2000 dismissed his appeal.

10.The learned Government Advocate further submitted that, the learned Single Judge failed to consider the proven fact that the writ petitioner was not cordial with the Management and had failed to report duty even after notice. His explanations for the un-authorised absence not satisfactory to the Management and therefore, he was terminated from service. While so, the payment of pension for a person not completed the eligible period of 10 years unblemished service cannot be extended to the writ petition. The said order will be an unjustifiable



W.A.MD) No.543 of 2021

burden on the exchequer, for no fault of the Government. If at all any error on the side of the Management, it is the Management which should bear the consequence. In this case, the Management been imposed with cost of Rs.25,000/- for their fault. Whereas, the State been mulched with recurring expense of paying pension to a person, who deserted the service and not eligible even otherwise to get the pension, since he had not completing the required period of service.(10 years).

11.The first respondent/the writ petitioner viz., Mr..Sivakalaperumal, appeared in-person and submitted that since 1990 he had been driven pillar to post by the Management as well as the School Department Authorities. In the conflict between the two secretaries Mr. Appadurai and Mr.Ramachandran, he had been made a scapegoat. By force he was make to sign in certain papers and denied entry to the school. He also relied on the responses he received for his RTI queries, to emphasis that he was officiating as the Head Master of the School after Tmt. Annalakshmi left the job without any intimation. The entry in the post office pass book dated 04.01.1989 will prove the said statement. He also claims that DEO, Cheranmahadevi, approved his appointment as Head Master, vide order dated 29.06.1991. In the affidavit filed on 01.04.2025 he had averred that, the said Ramachandran was functioning illegally as Secretary, out of animosity he had



W.A.MD) No.543 of 2021

suppressed the records and created the records as if Tmt.Annalakshimi appointed to the post of Head Mistress of School.

12.The question for consideration is whether the writ petitioner/first respondent terminated from service was after following the due process of law and whether the order of the Joint Director of School Education dated 09.06.2000 bristles with illegality and whether, the writ petitioner/first respondent is entitle for minimum pension without completion of 10 years of service.?

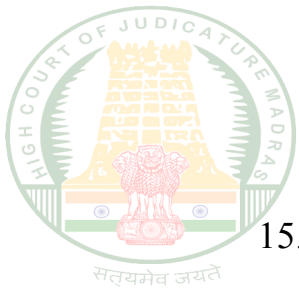
13.The records produced and reflected in the order of the Joint Director, Education Department clearly proves that the Sivakalaiperumal/the first respondent was called to report duty after his unauthorised absence from 28.09.1990. He had not responded to the letters and in fact refused to receive those letters. After framing charges for failure to render accounts of the money collected from the students, unauthorised absence, misbehaviour and other misconducts, he was called to participate in the enquiry. He did not participate in the enquiry, but suppressing the termination order, had approached the High Court for issuance of Mandamus in W.P.No.7809 of 1992. Even thereafter he had not taken recourse in accordance with law. His 17 pages explanation dated 23.06.2000 to the first appellate authority does not indicate any justification for his un-



W.A.MD) No.543 of 2021

authorised absence. Accusing the Secretary of the School restraining him to enter the school and his representation in this regard, are apparently belatedly invented and not raised with documents either in the belated explanation or in his earlier rounds of writ petitions.

14. One cannot lose sight of the fact that the writ petitioner was an employee in an aided school run by a private Management. The Private School Regulation Act, 1973 and the Rules framed thereunder governs his service, vesting autonomy of Management with the School Committee, represented by its Secretary. In this case, records clearly indicate that the first respondent failed to report duty. He remained absent without leave. When he was called to participate in the enquiry to defend the charges framed against him, he did not participate in the enquiry till he was terminated from service. Later, at the appellate stage, he participated and gave his explanation but not satisfactory, since his explanation revolved around victimisation, but no material to believe and accept his absence from duty for more than one year. It is also from the records, we find that the writ petitioner has put up less than 8 years of service and it is an incorrect statement from him that he was again allowed to join duty in the year 1997 and completed 10 years of service.



W.A.MD) No.543 of 2021

15.For the reasons stated above, we are of the considered view that, the termination of the first respondent is valid and done after following the due process of law. The explanations of the writ petitioner for his absence and alleged misconduct is not satisfactory and without any substance. Therefore, he cannot have the benefit of pension, since he had not completed 10 years of service which is mandatory to get pension.

16.As a result, the Writ Appeal No.543 of 2021 is allowed. The order in W.P (MD)No.10366 of 2010 dated 21.01.2019 to the extend of directing the appellants to consider payment of minimum pension to the first respondent/writ petitioner-Sivakalaperumal stands dismissed. No order as to costs.

[G.J., J.] & [R.P., J.]

08.04.2025

NCC : Yes / No

Index : Yes / No

Ns



WEB COPY



W.A.MD) No.543 of 2021

DR.G.JAYACHANDRAN, J.

AND

R.POORNIMA, J.

Ns

To

- 1.The Secretary to the Government,
School Education,
Tamil Nadu Government,
Chennai-600 009.
- 2.The Director of School Education,
College Road,
Chennai-600 006.
- 3.The Joint Director of School Education,
College Road,
Chennai-600 006.
- 4.The Chief Educational Officer,
Tirunelveli.
- 5.The District Educational Officer,
Cheranmahadevi
at Tirunelvlei.

Predelivery Judgment made in
W.A(MD)No.543 of 2021
and
C.M.P(MD)No.2424 of 2021

08.04.2025