

(2017) 08 MAD CK 0074
In the Madras High Court
Case No : 606 of 2004

Antony

APPELLANT

Vs

The Chief Educational Officer, & Ors.

RESPONDENT

Date of Decision : 11-08-2017

Acts Referred:

[Code of Civil Procedure, 1908](#), [Order 21 Rule 11](#), [Order 21 Rule 32](#)

Citation : (2017) 08 MAD CK 0074

Hon'ble Judges : T.Ravindran

Bench : SINGLE BENCH

Advocate : T.Ravindran

Final Decision : Dismissed

Judgement

1. The revision petitioner / plaintiff had instituted the suit, in O.S.No.997 of 1994, seeking for a decree of mandatory injunction to reinstate him in the second respondent / second defendant School, grant him salary with all allowance, declare the cancellation of his approval order passed by the first respondent / first defendant as null and void and for a decree of injunction restraining the respondents 1 and 2 / defendants 1 and 2 from preventing the plaintiff from working in the second defendant School as Single Part-Time Instructor and signing in the attendance register and for the other reliefs.

2. It is found that the above suit has come to be laid by the petitioner as against the Chief Educational Officer, Nagercoil, arrayed as the first defendant and the Headmaster, St.Joseph Higher Secondary School, Aasaripallam, arrayed as the second defendant and other defendants. It is found that admittedly the Correspondent, St.Joeph Higher Secondary School, Asaripallam, Kanyakumari District and the Director of School Education, College Road, Chennai-600 006, have not been impleaded as party defendants in the suit. It is further found that the suit laid by the petitioner has come to be decreed as prayed for on 23.12.1999. It is further seen that the petitioner along with three other persons

have also been granted the relief by this Court holding that they are entitled to get the appointment as Single Part-Time Teachers in the four Single Part-Time Teacher posts and as per the Government Orders, they would also be entitled to get the regular time scale of pay according to their seniority in W.P.Nos.16249 of 1992 and 6525 of 1993, vide order dated 08.12.1999. Inasmuch as the above mentioned defendants 1 and 2 have not complied with the terms of the decree passed in the suit, it is seen that the petitioner has preferred E.P.No.45 of 2000, on the file of the Principal District Munsif Court, Nagercoil, under Order XXI Rules 11(2) and 32 C.P.C., seeking for a direction to them to comply with the above said terms of the decree.

3. The Chief Educational Officer, Nagercoil, has taken a stand in the execution petition that the execution petition is not maintainable as against him inasmuch as there is no decree passed against him and he being only a formal party.

4. The second defendant / Headmaster had taken a stand in the execution petition that he cannot take any independent decision as he being under the control of the Correspondent of the School and only the Correspondent is competent to appoint, suspend or dismiss the employee and therefore, the petitioner ought to have taken appropriate steps to get the reliefs from the Correspondent and hence, the execution petition is liable to be dismissed as against him.

5. On a consideration of the rival contentions put forth by the respective parties and also on the basis of the materials placed, it is found that the Executing Court, after elaborately going through the Judgment of the Court, which had passed the decree, had come to the conclusion that there is no specific direction either in the Judgment or in the decree as to from what date the petitioner should be reinstated in the service of the concerned School and further, noting that the petitioner was only in the job of the School concerned as a Part-Time Teacher and also that the Judgment is not clear as to whether the petitioner is entitled to get the wages during the period of non-employment or the period when he has not done any work in the School being under the Government as an Aided School and during the pendency of the proceedings, the petitioner having come to be taken into the employment with effect from 27.08.2001 with all benefits as directed in the Judgment and Decree and finding that the Judgment and Decree are operative from the date on which the Judgment was pronounced i.e. 23.12.1999, however finding that the first defendant had already passed an order admitting the petitioner in employment with effect from 27.08.2001 and also noting that the second defendant is not the proper person against whom, the petitioner can enforce the remedy by the execution of the Judgment and Decree of the suit, finally concluded the matter holding that insofar as the entitlement of the petitioner for getting salary / wages for the period from 23.12.1999 to 27.08.2001, he has to approach the Director of School Education and obtain the appropriate orders and thereby execute the Judgment and Decree and accordingly, dismissed the execution petition preferred by the petitioner.

Aggrieved over the same, the present civil revision petition has been laid.

6. It is found that during the course of this civil revision petition, at one stage of the matter, the Correspondent of the School concerned and the Director of the School Education have been impleaded as party respondents and notices have also been sent to them so as to enable them to give their response to the claim of the petitioner as per the Judgment and Decree of the Court below.

7. The Correspondent of the School concerned and the Director of the School Education have taken a stand that insofar as they are concerned, admittedly the Judgment and Decree of the Court below have not been directed against them in any manner and that apart, it is also contended by the learned Additional Government Pleader that taking into consideration the facts and circumstances of the case, the Judgment and Decree of the Court below and the orders passed by this Court in the above mentioned writ petitions, the Joint Director (Technical Education) has passed the proceedings, dated 25.11.2008, directing the regularization of the petitioner's service with effect from 16.10.1992 with monetary benefits from 24.06.2004. The said fact has not been controverted by the petitioner. It is, therefore, found that in due compliance of the Judgment and Decree passed in the suit and also the orders passed by this Court in the above mentioned writ petitions, the proceedings, dated 25.11.2008, have been issued for the regularization of the petitioner's service with effect from 16.10.1992 with all monetary benefits. Therefore, it is to be seen as to whether the petitioner is entitled to get the salary / wages as per the Judgment and Decree of the Court below for the period from 23.12.1999 and 23.06.2004 and whether he is entitled to maintain the execution petition on the said score as such.

8. As rightly put forth by the learned counsel appearing for the Correspondent of the School concerned as well as the learned Additional Government Pleader appearing for the respondents 1 and 4, it is found that inasmuch as the Judgment and Decree of the Court below are silent as to from what date the petitioner is entitled to get the salary benefits and when it is rightly found by the Executing Court that the petitioner would be entitled to seek the operation of the Judgment and Decree with effect from 23.12.1999 and accordingly, it is further found that as per the proceedings, dated 25.11.2008, the petitioner's service has been regularized with effect from 16.10.1992 with all monetary benefits from 24.06.2004 and considering the right determination of the Executing Court as to the absence of any indication in the Judgment and Decree as to when from the petitioner would be entitled to get the monetary benefits, particularly, when the petitioner's service was only temporary and whether at all the petitioner would be entitled to get the monetary benefits, in case of no work put in by the petitioner, as rightly determined by the Court below, it is seen that the petitioner at the best would be entitled to approach the Director of School Education or the Director of Technical Education for further remedies as provided under law.

9. It is also not clear as to whether at all the petitioner seeks for the enforcement of the Judgment and Decree passed in the suit in O.S.No.997 of

1994 or the orders passed in his favour in W.P.Nos.16249 of 1992 and 6525 of 1993 or W.P.No.22541 of 2005. It is seen that as found from the counter affidavit of the second defendant, the petitioner has also moved the High Court in W.P.No.22541 of 2005 seeking for a writ of mandamus directing the Director of School Education and the District Educational Officer, Thuckalay, to pay the regular time scale of pay to him as per the orders of this Court in W.P.Nos.16249 of 1992 and 6525 of 1993, dated 08.12.1999. Therefore, even the petitioner is not sure as to which order he seeks to execute in the execution petition and further as rightly pointed out by the Court below that the Judgment and Decree would become operative from 23.12.1999 and only from that date onwards, the petitioner is entitled to get the benefits, if at all and considering the non-impleadment of the Correspondent of the concerned School and the Director of the School Education in the suit proceedings, as rightly held by the Court below, the petitioner has to approach only the above said respondents, in particular, the Director of School Education for further appropriate remedies.

10. In the light of the above position, I do not find any infirmity or error in the impugned order of the Court below and accordingly, the civil revision petition is dismissed. However, considering the facts and circumstances of the case, there is no order as to costs.