

(2010) 10 MAD CK 0009

In the Madras High Court

Case No : Writ Petition (MD) No. 79024 of 2010 and M.P. (MD) No's. 1 to 3 of 2010

K. Ramachandran

APPELLANT

Vs

The District Elementary Education Officer, The Additional Assistant Elementary Education Officer, (School Secretary in Charge), The Head Master, AVM Middle School and The Director of Elementary Education

RESPONDENT

Date of Decision : 27-10-2010

Acts Referred:

Citation : (2010) 10 MAD CK 0009

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : P. Natarajan, for the Appellant; R. Janakiramulu, Special Government Pleader for R1 to R3 in W.P. (MD) No. 79024 of 2010 and M.P. (MD) Nos. 1 to 3 of 2010 and R. Janakiramulu, Special Government Pleader in Contempt Petition (MD) No. 557 of 2010, for the Respondent

Judgement

K. Chandru, J.—The petitioner in the main writ petition seeks to challenge the order dated 12.06.2010, wherein the petitioner's

representation dated 12.06.2010, to continue him in service on reemployment basis, has been rejected on the ground that the petitioner's post

itself had become surplus and hence he is not eligible for any reemployment till the end of the academic year.

2. In the writ petition, notice of motion was ordered. Pending notice of motion, an interim stay for a period of four weeks was granted. On

19.08.2010 it was further extended by four weeks. The petitioner, conscious of the fact that he was not in employment, had filed M.P.(MD). No.

2 of 2010, to permit him to continue in service in the said school. The official respondents have filed M.P.(MD). No. 3 of 2010, seeking for

vacating the interim stay granted, together with the supporting counter affidavit dated 19.07.2010.

3. In the counter affidavit filed by the first respondent, it is claimed that the petitioner had reached the age of superannuation on 30.06.2010, but

even earlier he was suspended on 27.07.2008 by the Secretary of the School and the suspension continue till 05.07.1999. It was on the direction

issued by the Director of Elementary Education, Chennai, namely the fourth respondent, the petitioner was restored to service, without prejudice to

the disciplinary proceeding initiated against the petitioner and he also joined in the school on 06.07.1999. The two contentions were raised are that

the petitioner did not satisfy the condition of reemployment, inasmuch as the disciplinary proceedings are not concluded. Therefore, the petitioner's

character and conduct cannot said to be satisfactorily. Even though he might have produced the medical certificate to prove that he was physically

fit to continue the services, which is a second requirement for reemployment. A substantial defence was also raised namely in the third respondent

school one post of Secondary Grade Teacher post was found to be surplus in the academic year 2009-2010 and therefore, there was no necessity

to continue the service of the teacher, when surplus teacher was also working in the said school. It is also claimed that the petitioner earlier moved

this Court in W.P.(MD). No. 11118 of 2006 seeking for regularisation of the interregnum period of suspension and this Court by order dated

13.12.2006 directed that the petitioner's representation dated 14.08.2006 to be disposed of on merits.

4. The stand of the department was that the disciplinary proceeding against the petitioner was pending and the school management informed that

the petitioner was not cooperating with the management in completing the enquiry process. It was further added that the petitioner did not disclose

these facts in the earlier affidavit. With reference to the service aid of the teacher in the school in paragraph 7 it was averred as follows;

The school was visited by AEEO, Madurai West on 21.06.2010 to verify the eligibility of teachers as on date. At the time of visit, the average

attendance of the pupils were I to V = 28+22 = 50, VI to VII = 27+18 = 45. As per the average attendance is eligible for 4 teachers only, now

there is a teacher strengths of 8 teachers (one BTHM, one Tamil Pandit, one PET, one PVI, Four Secondary Grade Teachers) Hence, there is

one surplus teacher as per norms prescribed in G.O.Ms. No. 525 Education.

5. Though the petitioner claimed that the junior most have to be redeployed, so far as the department is concerned they have declared that post as

surplus, so that there won't any exit of another teacher from the School. It is to be noted that G.O.Ms. No. 452, Education Department, dated

24.03.1970 granting reemployment of service for the teachers was enacted not with a view to offer benefits of extension of service to teachers. On

the other hand, it is intended to protect the interest of the students who may be affected, if there was a sudden disruption in the academic continued

by a teacher being withdrawn during the middle of the academic year. Therefore, when the respondents have stated that the disciplinary

proceeding against the petitioner is pending, it cannot be said that the petitioner's conduct and character are well and good and it comes within the

beneficial order of the Government. The substantial contention that one teacher has been found surplus in the school has also to be seen in this

context. Though the petitioner claims that he was not the junior most, since another teacher was working in the school beyond the norms, the

Government cannot pay salary for two teachers without there being any necessity for the same.

6. In the light of the same, this Court do not find any merit in the writ petition and the writ petition stands dismissed. Consequently, M.P.(MD).

Nos. 1 & 2 of 2010 are also stand dismissed. M.P.(MD) No. 3 of 2010 has become infructuous since the main writ petition itself has dismissed

and the same is dismissed. No costs.

7. Contempt Petition (MD). No. 557 of 2010 came to be filed by the petitioner to punish the respondents for the alleged disobedience of the

interim order passed by this Court. When the case came up on 07.09.2010, this Court directed that the main writ petition to be posted along with

this contempt petition. Accordingly they were listed together and by consent, the writ petition was taken up for hearing and the main writ petition

has been dismissed on merits. Apart from that, the stand of the learned Special Government Pleader is that since they have filed the vacate stay

application, they want to know the out come of the same, before giving effect to the interim order and they have a right to seek for modification of

the order and therefore, there is no willful disobedience. The contention of the

learned Special Government Pleader, is well founded. Therefore, the petitioner cannot pursue the contempt especially when no notice of contempt was given to the respondents. Accordingly, the contempt petition is closed.