
(2016) 06 MAD CK 0157
In the Madras High Court
Case No : W.A.(MD)No. 793 of 2010

Miss. M. Jegajothi

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 30-06-2016

Acts Referred:

Citation : (2016) 6 MLJ 409

Hon'ble Judges : Mr. K.K. Sasidharan and Mr. B. Gokuldas, JJ.

Bench : Division Bench

Advocate : Miss. M. Jegajothi, Party-in-Person, for the Appellant; Mr. Aayiram K. Selvakumar, Government Advocate, for the Respondent No. 1 to 3; Mr. R. Govindaraj, Advocate, for the Respondent No. 4

Final Decision : Allowed

Judgement

Mr. K.K. Sasidharan, J.—This is a classic case of victimisation of a Headmistress, stated to be a spinster, on account of her refusal to comply with the direction of the Management of National Girls Higher Secondary School, Rasipuram, Salem, to promote the children of two influential persons. Even at the age of 74 and 16 years after retirement, this elderly person is still wandering in the corridors of this Court fighting against the mighty State and a highly influential Management of a private School.

Brief Facts:

2. The appellant was initially appointed as B.T. Assistant in Nadar Saraswathi Girls High School, Theni, on 05 June, 1963. Subsequently, she joined National Girls Higher Secondary School, as Headmistress on 05 June, 1967. It is the case of the appellant that she refused to promote two girl students who are the wards of two highly influential parents, in spite of pressure exerted by the Management. The misunderstanding on account of the said incident prompted the Management to suspend the appellant from service, by order dated 18 June, 1977. The appellant was later removed from service, by order dated 13

November, 1978 with effect from 15 November, 1978. The order of termination was challenged by the appellant before the appellate authority. The appeal was dismissed. Thereafter, she filed a second appeal before the Sub Court, Namakkal. The appeal was allowed. The Management challenged the said order before the appellate authority as well as before the High Court in W.P.No.8184 of 1984. The appellant, on her part, filed W.P.No.98 of 1984 claiming arrears of salary from 18 June, 1977. The appellant filed another Writ Petition in W.P.No.11284 of 1985 challenging the order dated 26 May, 1983, permitting the Management to engage a Headmaster in her place. The Writ Petitions were dismissed by giving liberty to claim monetary benefits and other reliefs separately. The Writ Petition filed by the Management was dismissed as withdrawn.

3. The appellant, thereafter, submit a representation for regularisation of the period of suspension. The representation was partly rejected by the Director of School Education. The said order was upheld by the Government. The Writ Petition filed by the appellant in W.P.(MD)No.2950 of 2005 was dismissed by the learned Single Judge. Feeling aggrieved, the appellant come up with this intra-court appeal.

4. The fourth respondent filed a counter-affidavit justifying the order passed by the Director of School Education and the appellate order passed by the Government. According to the fourth respondent, in view of the order passed by the learned Single Judge dated 15 November, 1990 in W.P.Nos.98 of 1984, 11284 of 1985 and 8184 of 1984, nothing survives for adjudication.

5. Though sufficient time was given, respondents 1 to 3 have not filed counter-affidavit.

Submissions of Parties:

6. The appellant appeared before us in person and submit that during the pendency of the appeal preferred by the Management before the appellate authority, challenging the order passed by the original authority, directing her reinstatement, the Management invented a device to make it appear that they have offered employment to her. The Management approached the Education Department and obtained an order on 26 May, 1983 and sent a communication to her to join duty. The said communication was not sent to her. It was sent to her mother and she received it just two days before the last date prescribed for joining duty. The fourth respondent, without giving extension of time, appointed another Headmaster and thereby, denied employment to her. According to the appellant, the statutory appeal was dismissed subsequently. This fact was not taken note of by the learned Single Judge and as such, the impugned order is liable to be set aside.

7. The learned Government Advocate justified the proceedings culminated in filing the Writ Petition.

8. The learned counsel for the fourth respondent placed reliance on the earlier

order passed by the learned Single Judge dated 15 November, 1990 and submit that the appellant no justifiable claim against the fourth respondent.

Discussion:

9. The appellant was appointed as Headmistress by the National Girls Higher Secondary School, fourth respondent herein on 05 June, 1967. The appellant, in her affidavit filed in support of the Writ Petition in W.P.(MD)No.2950 of 2005, made a specific allegation that the Management wanted to promote two girl students who failed to secure cut-off marks. The appellant refused to promote them. The Secretary of the School took it as a prestige issue as the parents involved in those two matters were highly influential Government officials. The appellant was brutally attacked by the brother of the Secretary on 04 June, 1977. She was suspended from service on 18 June, 1977 without framing specific charges. Thereafter, she was removed by order dated 13 November, 1978.

10. The order of termination dated 13 November, 1978 was challenged by the appellant before the appellate authority. The appeal was dismissed on 18 August, 1979. The appellant filed a second appeal before the Sub Court, Namakkal. The Sub Court, by judgment dated 14 April, 1981, in P.S.S.A.No.1 of 1979 allowed the appeal and remanded the matter to the first appellate authority for fresh disposal.

11. The appellate authority, by order dated 17 February, 1983, allowed the appeal. The Management was directed to reinstate the appellant into service. The Management refused to obey the said order. The Management filed appeal before the Tribunal on 26 March, 1983.

12. The Management, after filing statutory appeal against the order dated 17 February, 1983, directing reinstatement of the appellant into service, made a request to the Joint Director of School Education to permit them to appoint another person in the place of the appellant, as according to them, the appellant failed to join service, even after the order passed by the appellate authority. It was really a mala fide action to make a ground to appoint another person in the place of the appellant. The Joint Director of School Education passed an order on 26 May, 1983, instructing the appellant to join duty at National Girls Higher Secondary School, Rasipuram. The Management was permitted to appoint a suitable person as Headmaster in the place of the appellant, in case she failed to join duty. It is worth-mentioning here that the fourth respondent herein submit an application on 07 April, 1983 to the Education Department to permit them to appoint another person as Headmaster only during the currency of the appeal before the Tribunal preferred against the order directing reinstatement of the appellant into service. The appellant taken up a contention that the order dated 26 May, 1983, was sent only to her mother and she received it just two days before the cut-off date. The appellant made a request to extend the time for joining duty. However, the request was not considered. The Management

appointed another Headmaster without giving reasonable opportunity to the appellant to join service. Thereafter, the statutory appeal challenging the order directing reinstatement of appellant was not pressed. Accordingly, the appeal was dismissed by the Tribunal on 30 July, 1983.

13. The appellant, in the meantime, filed W.P.No.98 of 1984 claiming arrears of salary. The Management filed W.P.No.8184 of 1984 challenging the order dated 17 February, 1983, whereby and where under, direction was issued to reinstate the appellant into service, notwithstanding the dismissal of statutory appeal preferred against the very same order on 30 July, 1983. The Writ Petition filed by the Management challenging the order directing reinstatement of appellant was later dismissed as withdrawn. The Writ Petition filed by the appellant challenging the order dated 26 May, 1983 was also dismissed by the learned Single Judge. We are, therefore, not inclined to deal with the legality and correctness of the order dated 26 May, 1983 on the file of Joint Director of School Education.

14. The learned Single Judge in the order dated 15 November, 1990 made certain remarks against the Education Department. The relevant paragraph reads thus:

"The facts and circumstances of the case disclose that not only the writ petitioner been acting indifferently, the authorities have also not properly dealt with the matter. The authorities concerned have not given any appropriate directions as to what would happen to the petitioner's position or her claim for being appointed in some other institution. The Department could have passed some specific orders as to whether it is possible to accommodate her as she requests or otherwise to give appropriate directions or advice of the first respondent to take necessary action against the writ petitioner for abandoning her position. Nothing of these have been done by the Department too."

15. The learned Single Judge given liberty to the appellant to claim monetary benefits from the Management by taking proceedings in the manner known to law. Similar liberty was given to her to claim promotion, taking into account the representation submit earlier.

16. The Director of School Education passed an order on 10 July, 2002, calling upon the Management to pay the salary during the period of suspension. The Director of School Education instructed the Chief Educational Officer to take necessary steps for regularisation of the service of the appellant through the Management for the period from 18 June, 1977 to 01 May, 1978. The request made by the appellant for sanction of pay in the scale of Headmaster of Higher Secondary School for the period from 06 February, 1981 to 31 August, 1999 was rejected on the ground that she joined the post of Post Graduate teacher in a Government institution on 06 February, 1981. It was the said order which was challenged before the Government.

17. The Government dismissed the appeal primarily on the ground that the Management was permitted by proceedings dated 26 May, 1983 to appoint a

Headmaster, in case the appellant failed to join duty within 15 days.

18. There are certain vital aspects which were omitted to be considered by the learned Single Judge. There was an order passed by the Director of School Education, as early as on 10 July, 2002, directing the Management to pay the salary for the period from 18 June, 1977 to 01 May, 1978. The Director of School Education made it very clear that it was the responsibility of the Management to pay salary for the period from 18 June, 1977 to 01 May, 1978. The fact remains that the Management not complied with the said direction so far.

19. The fourth respondent is relying on the order dated 26 May, 1983, directing the appellant to join service and the dismissal of the Writ Petition challenging the said order. There is absolutely no merit in the contention taken by the fourth respondent. The fourth respondent, without withdrawing the appeal filed before the Tribunal against the order dated 17 February, 1983, directing reinstatement of the appellant into service, approached the Joint Director of School Education seeking permission to appoint another Headmaster. The Joint Director of School Education, without making an attempt to consider the background facts included the pendency of the appeal, permitted the Management to fill up the post of Headmaster, in case the appellant failed to join, within a period of fifteen days. Thereafter, strangely, the Management filed a Writ Petition in W.P.No.8184 of 1984 challenging the order directing reinstatement of the appellant. The Writ Petition was pending till 1990. In view of the dismissal of the Writ Petition in W.P.No.8184 of 1984 on 15 November, 1990, the order directing reinstatement of the appellant dated 17 February, 1983, become final. The appellant was, therefore, correct in her contention that the issue become final only on 15 November, 1990 and as such, she should have been reinstated into service thereafter with all the consequential benefits. This vital aspect was not considered either by the Government or by the learned Single Judge.

20. The appellant was a Headmistress appointed by the fourth respondent. The direction for reinstatement was passed by the appellate authority on 17 February, 1983. The direction was only to the Management to reinstate the appellant into service. The fourth respondent, without complying with the said order, filed an appeal. The Management invented a novel device to overcome the order passed by the appellate authority. The Joint Director of School Education assisted the Management to deny the appellant benefits of the order directing her reinstatement.

21. The Management resorted to two parallel proceedings. The order dated 17 February, 1983, was challenged before the statutory Tribunal. It was dismissed on 30 July, 1983. The very same order was, thereafter, challenged in W.P.No.8184 of 1984. The Writ Petition was dismissed as not pressed on 15 November, 1990. The initiation of statutory appeal and its dismissal were not disclosed to the Writ Court. The Management played a hide and seek game to oust the appellant from service.

22. The appellant was accommodated by the Government as Post Graduate Assistant in Government Higher Secondary School, Thiruchengode. The appellant, on attaining the age of superannuation, retired from service on 31 August, 1999. She worked as Post Graduate teacher till 31 May, 2000, being the last date of the academic year.

23. The affidavit filed in support of the Writ Petition in W.P. (MD)No.2950 of 2005 contains a specific statement that the request made by the appellant seeking extension of time to join duty was not considered by the Management. None of the allegations made by the appellant in her affidavit filed in support of the Writ Petition were denied by the Government or the Management by filing a counter-affidavit before the Writ Court.

24. The Management, for reasons best known to them, humiliated the appellant, to the extent possible. Not even a single order passed by the Education Department was obeyed by the Management. The Education Department danced to the tune of the Management by giving permission to appoint another Headmaster, notwithstanding the pendency of the statutory appeal filed by the very same Management, challenging the order directing reinstatement. Even while granting permission, by order dated 26 May, 1983, there was no direction given by the Government to the Management to pay the arrears of salary to the appellant. It was a unilateral decision taken by the Government to assist the Management to get rid of a teacher who was not prepared to comply or implement their illegal orders. The earlier orders passed by the Education Department included the order directing reinstatement of the appellant into service dated 17 February, 1983 clearly show that the appellant was not treated fairly both by the Government and Management. We are, therefore, of the view that the appellant must succeed.

25. The Director of School Education, by order dated 10 July, 2002, direct the Management to regularise the period of suspension from 18 June, 1977 to 01 May, 1978 and pay the appellant the arrears of pay. Even though 14 years have passed, still the Management not complied with the said direction. The Management is bound to pay the appellant salary till 26 May, 1983, the date of order permitting them to appoint another person as Headmaster. We are, therefore, of the view that the Management is liable to pay arrears of salary with interest to the appellant.

26. The Government played its part to deny the appellant the benefits of the order passed by the appellate authority, directing her reinstatement. Even though the appeal filed by the Management challenging the order directing reinstatement was pending before the Tribunal, still the Government permitted the Management to fill up the post. The Management is placing reliance on the order dated 26 May, 1983, to justify the appointment of a Headmaster in the place of the appellant. We have perused the service particulars of the appellant. In case the Management taken prompt action to reinstate the appellant into service, pursuant to the order dated 17 February, 1983, she would have been

subsequently promoted as Headmistress of Higher Secondary School, entitled to the revised pay scale fixed by the Sixth Pay Commission.

Direction To The Fourth Respondent/management:

27. The fourth respondent is direct to pay arrears of salary to the appellant from 18 June, 1977 to 26 May, 1983, along with interest at 12% per annum. The amount shall be paid, on or before 18 July, 2016, along with a sum of Rs. 50,000/- (Rupees Fifty Thousand only) as cost.

Direction To The Government:

28. The respondents 1 to 3 are direct to fix the pension of the appellant treating her as retired from service as a Headmistress, Higher Secondary School, on 31 May, 2000, and taking into account the Sixth Pay Commission report. In short, the appellant should be considered as a Headmistress of Higher Secondary School as on the date of her retirement on 31 May, 2000 making her eligible to claim the benefits of periodical revision of pension and more particularly, revision made pursuant to the Sixth Pay Commission report. The pension shall be re-fixed, as expeditiously as possible and in any case, on or before 29 July, 2016. The appellant shall be paid the arrears of pension for the period from 01 June, 2000 with interest at the rate of 12% per annum. The payment shall be made on or before 08 August, 2016. There shall be a further direction to the respondents to report compliance before the Registry on or before 10 August, 2016.

29. The intra-Court appeal is allowed as indicated above.