

(1999) 11 MAD CK 0063

In the Madras High Court

Case No : Writ Petition No. 10389 of 1996 and W.M.P. No. 13749 of 1996

S. Banumathi

APPELLANT

Vs

The District Elementary Educational Officer, Madras-6,
Assistant Elementary Educational Officer, Royapuram,
Madras-13 and B. Subbaroyan Middle School

RESPONDENT

Date of Decision : 12-11-1999

Acts Referred:

Tamil Nadu Private Schools Regulation Act, 1973 — Section 22

Citation : (1999) 11 MAD CK 0063

Hon'ble Judges : E. Padmanabhan, J

Bench : Single Bench

Advocate : S. Kamadevan for Mr. C. Setvaraju, for the Appellant; N. Subramani, Government Advocate for Respondents 1 and 2 and Mr. Jeremiah for Respondent 3, for the Respondent

Final Decision : Allowed

Judgement

E. Padmanabhan, J.—The petitioner prays for the issue of Writ of Mandamus directing the respondents to pay salary for the period 15.5.1991 to 12.8.1991, after deducting the subsistence allowance already paid as directed by the first respondent in his proceedings Na.Ka. No. 1121/A3/95 dated 27.7.1995. Notice of motion was ordered on 24.7.1996. The respondents have been served.

2. Heard Mr. S. Kamadevan for the Writ Petitioner, Mr. N. Subramani, Government Advocate for the respondent Nos. 1 & 2 and Mr. Jeremiah, learned counsel for the 3rd respondent.

3. Petitioner's Case:- The petitioner, a Secondary Grade Teacher came to be promoted as Headmistress on 15.11.1974 in the 3rd respondent school. On 15.5.1991, the petitioner was placed under suspension. Challenging the order of suspension, the petitioner filed W.P. No. 10398 of 1991. This Court admitted the Writ Petition and ordered issue of rule nisi. The 3rd respondent by order dated 12.8.1991 revoked the order of suspension and the petitioner had been taken

back to duty on 12.8.1991 itself. Hence, the Writ Petition came to be dismissed as in fructuous. The Writ petitioner had reached the age of superannuation on 30.6.1995 and she was allowed to retire.

4. According to the petitioner, she was being paid subsistence allowance during the said period of suspension and the 3rd respondent management had not initiated any disciplinary proceedings and the entire proceedings was dropped. However, the period of suspension from 15.5.1991 to 12.8.1991 was not regularised by the management and consequently, petitioner's benefit had not been settled. The petitioner represented to the first respondent about the non-settlement and the first respondent by proceedings dated 27.7.1995, directed the 3rd respondent School Management to regularise the said period of 89 days and to pay full salary for the said period.

5. The said order had become final, but the 3rd respondent had not paid the arrears of salary. According to the petitioner, a sum of Rs. 7783/- is due to the petitioner for the period of 15.5.1991 to 12.8.1991. For the inaction on the part of the 3rd respondent, there is no reasonable cause and as the petitioner had reached the age of superannuation, the 3rd respondent should be directed to pay salary due to the petitioner for the period of suspension after deducting the subsistence allowance.

6. Case of the Respondents 1 & 2:- So far as the respondents 1 and 2 are concerned, the Government Advocate while referring the communication of the first respondent pointed out that the 3rd respondent school is liable to pay arrears of wages for the period in question and the first respondent had rightly directed the 3rd respondent to pay arrears by the proceedings dated 27.7.1995. It is also pointed out by the learned Government Advocate that the 3rd respondent school had not chosen to challenge the proceedings dated 27.7.1995 passed by the first respondent who directed disbursement of salary for the period 15.5.1991 to 11.8.1991 and it is the 3rd respondent school who has to pay the full salary for the period in question..

7. Case of the 3rd Respondent:- The 3rd respondent filed a counter affidavit admitting that the petitioner was placed under suspension by the school committee. The 3rd respondent further stated that the petitioner had submitted an explanation after a delay of two months and in the meantime the two months period stipulated u/s 22.3(b) of the Tamil Nadu Private Schools Regulation Act had expired and the 3rd respondent also applied for extension of suspension by two months from the competent authority. But the competent authority had not passed the orders.

8. However, the school committee on 10.8.1991 considered the explanation submitted by the Writ Petitioner and rejected the same holding that the petitioner is guilty of all charges, but taking into consideration of the past services rendered by the Writ Petitioner and also the retirement of the petitioner shortly did not impose any further punishment while treating the period of

suspension as punishment. But the same has been communicated to the competent authority. It is stated by the 3rd respondent that the petitioner had not disclosed the development subsequent to the order on 27.7.1995.

9. According to the 3rd respondent, the disciplinary proceedings were not dropped and the School Committee after considering the explanation had resolved to reject the same and decided to treat the period of suspension as substantive punishment on the petitioner and not to impose any further penalty or punishment. The order has been passed on 27.7.1995 by the first respondent on the representation made by the Writ Petitioner without affording an opportunity to the 3rd respondent school. The 3rd respondent had appraised the first respondent of the proceedings of the first respondent and the first respondent had dropped further action. While in service, the Writ Petitioner did not make any claim and in fact the petitioner had accepted the penalty proceedings.

10. It is contended that the petitioner is not entitled to the relief sought for. It is also pointed out that under Rule 17(3)(i), the management of a School is bound to pay the teacher full pay and allowances, only when it is found that the suspension was not justified. The suspension according to the 3rd respondent is warranted as the charges are serious in nature and it is also contended that the charges were not dropped and merely because no further punishment had been imposed on the petitioner, the petitioner cannot contend that her suspension was not justified. The order of suspension is valid and the petitioner is not entitled to claim salary and the petitioner is not entitled to any payment as claimed in the Writ Petition.

11. It is further pointed out that in any event the petitioner is not entitled to any relief and the 3rd respondent is not liable to pay any salary and it is only the respondents 1 and 2 who are liable to pay.

12. Point for Consideration:- The only point that arises for consideration is as to whether the Writ Petitioner is entitled for payment of full salary for the period of suspension?

13. This Court on facts finds that the petitioner had been exonerated and the disciplinary proceedings against the petitioner is dropped, it follows automatically that the Writ Petitioner is entitled to the relief prayed for.

14. This Court called upon the counsel for the 3rd respondent to produce the copy of the charges framed against the Writ Petitioner as well as the ultimate order passed by the 3rd respondent on 28.6.1991. The Writ Petitioner had filed a detailed objection to the charges framed against her. It is to be pointed out that after considering the objection, the order of suspension had been revoked on 15.5.1991 and the petitioner had been taken back to duty. In fact, the 3rd respondent while dropping the disciplinary proceedings had merely indicated that the petitioner shall discharge her functions in future without giving room to any complaint.

15. The 3rd respondent also in the said proceedings had added that the explanation submitted by the Writ Petitioner though unacceptable in its entirety, but taking into consideration of the petitioner's service, the order of suspension had been revoked and all further proceedings were dropped. As such though charges have been framed no penalty as provided in the Tamil Nadu Recognised Private Schools Regulation Act and the Rules framed thereunder had been imposed.

16. The order of suspension has been revoked and the petitioner had been taken back to duty. But for the Order of suspension, the petitioner would have attended office. It is not as if the period of suspension has been ordered to be treated as substantial punishment as seen from the order. Section 22 of the Tamil Nadu Private Schools Regulation Act provides that penalty of dismissal, removal, or reduction in rank or suspension shall be imposed except with the prior approval of the competent authority. (sic.) There is no provision to impose the period of suspension as substantial punishment either in the Act or the Rules.

17. Section 22(3)(a) provides for suspension of a teacher employed in a private school when an enquiry into grave misconduct is contemplated and such suspension shall not be for more than a period of two-months from the date of suspension and if such enquiry is not completed within the period, such teacher or other person shall, without prejudice to the inquiry, be deemed to have been restored as teacher or other employee. However, the competent authority for reasons to be recorded in writing may extend the said period of two months for a further period not exceeding two months, if in the opinion of the competent authority, the enquiry could not be completed within the said period of two months for reasons directly attributable to such teacher or other person.

18. In terms of Section 22 as well as 17, there is no provision to impose suspension as substantial punishment. Hence the contention of Mr. Jeremiah that the period of suspension had been treated as substantial suspension cannot be countenanced. That apart factually also, no such order had been passed. The period of suspension is to be regularised and when obviously no penalty had been imposed and the proceedings were dropped, it follows automatically that the Writ Petitioner is deemed to be in service for all purposes and the Writ Petitioner is entitled to full salary for the period of suspension. While no penalty had been imposed it follows automatically that the order of suspension is neither called for nor warranted on the facts of the case.

19. The very dropping of the proceedings would indicate that the 3rd respondent had accepted the explanation and dropped the proceedings. Further, there is no communication that the 3rd respondent had imposed any penalty much less treating the period of suspension as substantial punishment. Hence, it is axiomatic that the 3rd respondent has to pay full salary for the period of suspension after deducting the subsistence allowance already paid to the Writ Petitioner.

20. The period of suspension has to be regularised as one spent on duty as obviously no penalty had been imposed much less any penalty whatsoever. In the circumstances as, rightly directed by the first respondent, the 3rd respondent is bound to pay full salary for the period of suspension. Further there was no cause for placing the petitioner under suspension on the very imputations and it is not as if the petitioner had to be kept out of office.

21. That apart the 3rd respondent had not challenged the directions issued by the first respondent directing the 3rd respondent School to regularise the period of suspension as one spent on duty and to pay the arrears of salary.

22. In the result, the Writ Petition is allowed and there will be a direction to the 3rd respondent to pay the balance salary payable for the period 15.5.1991 to 12.8.1991, as in terms of Rule 17(3)(i) such suspension being not justified the management, namely, the 3rd respondent herein has to pay full salary with allowances to the Writ Petitioner, which she would have drawn but for her suspension, less the amount she had drawn as subsistence allowance.

23. In view of this statutory rule, the 3rd respondent is directed to pay the salary to the petitioner for the period 15.5.1991 to 12.8.1991 after deducting the subsistence allowance already paid for the period of suspension within two months from the date of communication of this order. If the 3rd respondent fails to pay the said amount within two months, the 3rd respondent will be liable to pay interest on the entire amount at the rate of 12% per annum commencing from 13.8.1991 till date of payment. If the third respondent fails to pay even after lapse of six months, the Respondents 1 and 2 shall stop the entire grant till the arrears ordered hereby is paid. The Writ Petition is allowed and the Parties shall bear their respective costs. Consequently, the connected W.M.P. is dismissed.