

(2010) 11 MAD CK 0071

In the Madras High Court

Case No : Writ Petition No's. 1109 and 1192 of 2004

S.P. Suseela

APPELLANT

Vs

The District Educational Officer and Sri Ramakrishna Mission
Vidhyalaya Girls Higher Secondary School
S. Sampath
Vs The District Educational Officer and The Ramakrishna
Mission managing the Ramakrishna Mission Vidhyalaya Boys
Higher Secondary School

RESPONDENT

Date of Decision : 24-11-2010

Acts Referred:

Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974 — Rule 17(A)

Citation : (2011) 2 MLJ 86

Hon'ble Judges : P. Jyothimani, J

Bench : Single Bench

Advocate : A.S. Narasimhan, for the Appellant; Malarvizhi Udayakumar, Spl.
Govt. Pleader for Respondent 1 and J.R.K. Bhavanantham, for Respondent 2, for
the Respondent

Final Decision : Allowed

Judgement

P. Jyothimani, J.—While W.P. No. 1109 of 2004 is filed for a direction against the Respondents to claim and disburse the arrears of

difference in pay due from 1992 towards yearly increment, special grade increment and its equivalent pay as per v. Pay Commission report from

1.1.196 in terms of the representations of the Petitioner dated 11.2.2002, 2.5.2002, 30.12.2002, 4.3.2003 and 25.12.2003, failing which to

direct the second Respondent to pay interest at the rate of 12% per annum from the date on which the second Respondent has failed to claim and

disburse it, W.P. No. 1192 of 2004 is filed for a direction against the second Respondent to enter all the service particulars in the Petitioner's

service register, including the consequential monetary benefits, for approval by

the first Respondent and to claim arrears due to the Petitioner and disburse the same and also to pay the salary for the period as approved by the first Respondent for the period 15.6.1992 to 5.9.2000 by the second Respondent as per the orders of the Joint Director of School Education (Secondary) dated 19.12.1997 in RC. No. 89468/G6/97, failing which to direct the second Respondent to pay the amounts with interest at 12% per annum from the date it became due.

2.1. Both the Petitioners are employed in the second Respondent/ Management and are wife and husband respectively. The Petitioner in W.P. No.

1109 of 2004 joined the services of the second Respondent/ Management, which is an aided private school governed by the provisions of the

Tamil Nadu Recognized Private Schools (Regulation) Act, 193 (for brevity, "the Act"), as a Record Clerk in the year 1973, while her husband,

viz., the Petitioner in W.P. No. 1192 of 2004, had been working as a Teacher stated to be eligible for promotion as Assistant Head Master-cum-

Post Graduate Teaching Assistant.

2.2. The Petitioner in W.P. No. 1109 of 2004 was subsequently appointed as Secondary Grade Teacher on 17.10.1979 and she voluntarily

retired from service on 31.5.2006 and her pension has not been paid, except the provisional pension. It is the case of the Petitioner in W.P. No.

1109 of 2004 that her husband (the Petitioner in W.P. No. 1192 of 2004), who is working as a Teacher in the second Respondent/Management

is an association activist and as he raised certain issues against the second Respondent/Management, the second Respondent/Management has

developed grudge against both the Petitioners and it was in those circumstances, the Petitioner had to opt for voluntary retirement and she

requested for settlement of the monetary benefits and in spite of repeated representations, her dues have not been paid and the status of selection

grade has also not been conferred and the Petitioner was harassed and increments have also not been paid to her. In spite of the complaint made

by her to the educational authorities, no action has been taken. However, the Chief Educational Officer, Kancheepuram in the letter dated

20.1.2003 has directed the first Respondent to claim the amount due to the Petitioner in W.P. No. 1109 of 2004 and in spite of it there was no

response.

2.3. It is stated that in the year 2001, for the first time, the second Respondent has stated as if there was some punishment imposed on the Petitioner in W.P. No. 1109 of 2004 in the year 1992 in respect of which there was no enquiry conducted and that punishment was stated to be stoppage of increment for four years without cumulative effect. According to the Petitioner in W.P. No. 1109 of 2004, citing the said punishment, the second Respondent has not paid her pension and other monetary benefits due to her and hence, she has filed the present writ petition for the relief stated above.

2.4. The Petitioner in W.P. No. 1192 of 2004, as stated above, is a Teacher in the second Respondent/Management involved in the association activities to protect the interest of the teachers as per the provisions of the Act. In the year 1984, there has been a strike declared in the school against the removal from service of a teacher # P.S. Mani and due to the organization of the said strike, the second Respondent has started harassing the Petitioners by not granting leave, etc. It is stated that the said P.S. Mani, who was terminated, has approached this Court and thereafter the salary benefits were settled.

2.5. It is stated that the Petitioner in W.P. No. 1192 of 2004 was forced to be absent from the school in the year 1991 and the second Respondent has refused to sanction leave to which he was entitled to and also refused permission to join duty. It is stated that on 15.6.1992 when the Petitioner in W.P. No. 1192 of 2004 was directed to attend the school, under the guise of getting a signature in the attendance register, a resignation letter on a non-judicial stamp paper was obtained and that was notarised later and thereafter he was not allowed to work in the school from 16.6.1992.

2.6. The Petitioner in W.P. No. 1192 of 2004 thereafter made a complaint to the Chief Educational Officer, Kancheepuram disputing the resignation. The first Respondent has refused to accept the resignation of the Petitioner for want of legal sanction. It was against the order of the first Respondent, the second Respondent has preferred an appeal to the Chief Educational Officer, Kancheepuram, who rejected the appeal of the second Respondent on 6.1.1995. Thereafter, the second Respondent has filed W.P. No. 861 of 1995 and this Court, in the order dated

21.4.1997, has directed the Chief Educational Officer, Kancheepuram to give an opportunity to the second Respondent. Thereafter, on giving

opportunity, the Chief Educational Officer, Kancheepuram, by order dated 22.6.1997, has dismissed the appeal. It was as against the said order

of the second Respondent dated 22.6.1997, a further appeal has been filed to the Joint Director of School Education (Secondary) on 11.7.1997.

The Joint Director of School Education (Secondary), on 19.12.1997, has dismissed the appeal and directed the second Respondent to bear the

responsibility of payment of salary and all other allowances payable to the Petitioner during the said period.

2.7. The second Respondent, as against the order dated 19.12.1997, approached this Court by filing W.P. No. 3926 of 1998, which was

dismissed on 30.1.1999 and the writ appeal filed against the said order in W.A. No. 185 of 1999 was also dismissed on 1.8.2000. Thereafter, on

3.8.2000 itself the Petitioner has approached the second Respondent for reinstatement with all back-wages and monetary benefits. Even though

the second Respondent has directed the Petitioner to appear before a Committee, nothing happened. It was thereafter on 8.8.2000, the second

Respondent has stated that the Petitioner in W.P. No. 1192 of 2004 will be permitted to join subject to the approval of the Joint Director of

School Education (Secondary), who has already disposed of the appeal. It is stated that the first Respondent on 18.12.2000 has directed the

second Respondent to regularize the period of service of the Petitioner in W.P. No. 1192 of 2004 and to claim and pay all the amounts due to the

Petitioner without delay.

2.8. The second Respondent, thereafter, has sent a letter to the Medical Board on 19.1.2001 to verify the health condition of the Petitioner in

W.P. No. 1192 of 2004 for the period between 21.11.1991 and 26.4.1992, after nine years. In spite of the repeated representations when the

second Respondent has failed to regularize the services of the Petitioner in W.P. No. 1192 of 2004, he had to again give a complaint to the first

Respondent on 18.6.2001, followed by a notice dated 24.6.2001. However, a reply has been given stating that the second

Respondent/Management is waiting for approval from the Joint Director of School Education (Secondary), which, according to the Petitioner in

W.P. No. 1192 of 2004, is not required, since the appeal was disposed of by the Joint Director of School Education (Secondary) and the writ

petition and writ appeal were also dismissed, and it was intended to only harass the Petitioner in W.P. No. 1192 of 2004, who was sufficiently

harassed for a period of eight years. It is also stated that as against the salary of ` 13,000/- per month to which the Petitioner in W.P. No. 1192 of

2004 is entitled to, he was allowed to draw only ` 5,900/-. Therefore, it was clear that the educational authorities have found it difficult to make the

second Respondent act as per law.

2.9. It is stated that, curiously, the second Respondent in the letter dated 14.8.2003 has stated that the matter is pending with the authorities.

However, the increment up to 15.6.1992 was fixed based on the recommendation of the VI Pay Commission, but for the subsequent period there

was no fixation of any pay and increment. In these circumstances, the said Petitioner has filed W.P. No. 1192 of 2004 for the relief stated above.

3.1. In the counter affidavit filed by the second Respondent in respect of W.P. No. 1109 of 2004, it is stated that the said Petitioner was

appointed as a Record Clerk on 12.6.1973 and was promoted as a Secondary Grade Teacher on 17.10.1979 and she became selection grade

teacher after 10 years of service. It is stated that the said Petitioner has applied for voluntary retirement on 31.5.2006 and she was allowed to go

on voluntary retirement from 31.5.2006. It is stated that the Petitioner has been in continuous service from 12.6.1973 to 31.5.2006, except for a

break between 10.11.1991 and 14.6.1992 and she voluntarily retired from service on 31.5.2006.

3.2. It is stated that the said Petitioner was inflicted with a punishment of stoppage of increment for four years without cumulative effect and that

punishment was recorded in the service register and that was known to the Petitioner. It is stated that the Petitioner is not eligible for fixation of

increased pay from 1992 to 30.12.2002. It is stated that the punishment of stoppage of increased was effected on the Petitioner and in the affidavit

sworn to by her on 15.6.1992, she has accepted the charges and it is stated that the Petitioner is not eligible for increment as per Rules.

3.3. It is further stated that the Petitioner in W.P. No. 1109 of 2004 had obtained leave on loss of pay for 218 days; that she was on medical leave

for 501 days out of eligible 540 days; that she availed 119 days earned leave out of 180 days and that she had encashed 121 days; and that she availed half pay leave of 32 days.

3.4. It is stated that both the Petitioners have been running private chit fund and it is to avoid the payment to subscribers and creditors they have made various allegations against the second Respondent and they were frustrated and gave their resignation letters and have now turned against the same. It is also stated that the second Respondent is ready to forward the proposal claiming the dues in respect of the arrears, increment, special grade pay fixation, etc. in accordance with the Rules and as per her eligibility.

4. The first Respondent, in the counter affidavit in respect of the W.P. No. 1109 of 2004, has stated that the second Respondent has imposed a punishment of stoppage of increment for four years, originally with cumulative effect, which was subsequently modified as without cumulative effect vide resolution dated 6.11.1992 and a proposal was sent for approval of increment and the first Respondent has sought particulars from the second Respondent as to whether the said Petitioner has filed any appeal against the said order and the second Respondent was also directed to re-fix the pay of the Petitioner, for which the second Respondent has not given any reply so far. It is stated that the Petitioner has applied for voluntary retirement with effect from 31.5.2006 and that has been accepted by the second Respondent and approval was accorded by the first Respondent for the same. It is also stated that as and when the second Respondent sends proposal in correct shape for granting increments, special grade, pay fixation, etc., the same will be attended to by the first Respondent immediately.

5.1. In respect of W.P. No. 1192 of 2004, in the counter affidavit of the second Respondent, it is stated that the Petitioner in W.P. No. 1192 of 2004 has abstained from duty from 15.6.1992 to 5.9.2000 due to private chit fund activities. It is stated that the said Petitioner has voluntarily submitted his resignation with attestation of Notary Public, which was accepted by waiving three months notice as requested by him and the same was sent to the Chief Educational Officer and the first Respondent has refused to grant approval of the same on 23.6.1992, since there is non-compliance of Rule 17-A of the Tamil Nadu Recognised Private Schools

(Regulation) Rules, 1974 (for brevity, "the Rules"). The Chief

Educational Officer, Kancheepuram in his proceedings dated 6.1.1995 by quoting the said Rule has directed the second Respondent to reinstate

the Petitioner with continuity of service, stating that the resignation letter has been obtained and relieving order has been passed against the

provisions of the Rules.

5.2. It was against the said order, W.P. No. 861 of 1995 was filed and the matter was referred to the Chief Educational Officer for fresh disposal

and an appeal was filed to the Joint Director of School Education (Secondary) and that was dismissed stating that the second Respondent was

liable to pay back-wages from 15.6.1992 till reinstatement and that was challenged in W.P. No. 3926 of 1998, which was dismissed and the writ

appeal filed against the said order was disposed with a direction and as per the direction, the second Respondent has sent a representation to the

Joint Director and stated that the Petitioner in W.P. No. 1192 of 2004 is willing to forego the monetary benefits without prejudice to his rights and

there was no response from the Joint Director of School Education (Secondary).

5.3. In the meantime, the Director of School Education in the letter dated 9.10.2001 has called upon the second Respondent/management to give

explanation for non payment of salary to the Petitioner in W.P. No. 1192 of 2004 from 6.9.2000, even after the lapse of 15 months, for which a

reply was sent. It is stated that the second Respondent/ management has claimed salary of the said Petitioner and paid the same till the date of

voluntary retirement, viz., on 31.5.2002. It is stated that the said Petitioner is not entitled to salary or monetary benefits for the period from

15.6.1992 to 5.9.2000.

6.1. In the counter affidavit filed by the first Respondent in W.P. No. 1192 of 2004, it is stated that on the basis of resignation letter stated to have

been given by the said Petitioner on 15.6.1992, accepting the same the second Respondent has sent a proposal and approval was not granted by

the first Respondent and when that was challenged by the second Respondent/management it was held void by the High Court in W.P. No. 3926

of 1998 and W.A. No. 185 of 1999.

6.2. It is stated that thereafter, the said Petitioner in the letter dated 7.8.2000 addressed to the second Respondent stated that he may be permitted

to join duty without any loss of service and foregoing the monetary benefits, without prejudice to his rights and it was subsequently, by order dated

5.9.2000, the second Respondent has permitted the said Petitioner to join duty. Thereafter, it is stated that the Petitioner has tendered voluntary

retirement on 8.3.2006 and that was accepted by the second Respondent and also approved by the first Respondent on 8.3.2006 and he was

relieved from 8.3.2006 and it is stated that he is now getting monthly pension from the Government.

6.3. It is stated that while dealing with the appeal the Joint Director of School Education (Secondary) in the order dated 19.12.1997 rejecting the

appeal of the second Respondent has stated that the second Respondent has to pay the salary because of the disobedience of the direction by the

authorities. It is stated that the first Respondent in the order dated 26.3.2003 has informed the second Respondent to regularise the period of

absence of the Petitioner from 15.6.1992 to 5.9.2000, however the second Respondent has not replied so far and the second Respondent has to

pay the salary for the said period. It is stated that the Petitioner has joined duty without losing his right of service and he has not foregone the

monetary benefits and it is stated that the second Respondent has to regularise the services of the Petitioner from 15.6.1992 to 5.9.2000 and pay

back-wages to the Petitioner as per the order of the Joint Director of School Education (Secondary) dated 19.12.1997. However, the second

Respondent in the letter dated 23.2.2006 has stated that the management will not pay the amount on the basis of no work no pay and that it has no

objection for claiming salary for the period of no work in the school.

7.1. Mr. A.S. Narasimhan, learned Counsel for the Petitioners would vehemently submit that on the factual matrix of the entire case, it is a clear

case of harassment by the second Respondent. It is submitted that when the Joint Director of School Education (Secondary) has passed final

order, which has been confirmed by this Court, it is the duty of the second Respondent to regularise the service of the Petitioner in W.P. No. 1192

of 2004 from 15.6.1992 to 5.9.2000 and pay salary along with interest.

7.2. It is his submission that the first Respondent, being the educational authority, has a duty to enforce its order and therefore, the first Respondent

has to be directed to pay the amount and recover the same from the second

Respondent/management for having disobeyed their order.

7.3. It is his submission that entries in the service records should be made and all amounts due to the Petitioners have to be paid with interest.

8. On the other hand, it is the contention of the learned Counsel appearing for the second Respondent that the Petitioners have not come with clean

hands. It is submitted that as far as the Petitioner in W.P. No. 1192 of 2004 is concerned, he has given in writing foregoing his monetary benefits

and therefore, in spite of the order of the Joint Director of School Education (Secondary) there is no obligation on the part of the second

Respondent to regularise the service of the said Petitioner from 15.6.1992 to 5.9.2000.

9. I have heard the learned Counsel for the Petitioners and the learned Counsel for the second Respondent, apart from the learned Special

Government Pleader appearing for the first Respondent.

10.1. On the facts narrated above there is no much difference. As far as the Petitioner in W.P. No. 1109 of 2004 is concerned, admittedly, there

has been a punishment of stoppage of increment without cumulative effect for a period of four years in the year 1992 and the Petitioner therein has

worked till 31.5.2006, the date on which she has given voluntary retirement. Simply because there has been a punishment imposed in the year

1992, that cannot be at any cost a reasonable excuse on the part of the second Respondent in postponing the payment of monetary benefits due to

her. There is absolutely no difficulty to conclude, as submitted by the learned Counsel for the Petitioners, that the attitude of the second

Respondent is vindictive and intended to harass the Petitioners. There is absolutely no justification on the part of the second Respondent in not

settling the retirement benefits to the Petitioner in W.P. No. 1109 of 2004.

10.2 Showing a minor punishment imposed some time in the year 1992 for the purpose of depriving the Petitioner in W.P. No. 1109 of 2004 of

her right to get her benefits on voluntary retirement on 31.5.2006 can only be treated as inhuman and atrocious, which cannot be tolerated in a

civilized society. It is unfortunate that the second Respondent/ Organization which has got a worldwide reputation as a service organization, started

in the name of an unparallel person in the religious history of India in this century, has treated one of its teachers in this manner. Even if there are

some faults committed by the Petitioner in W.P. No. 1109 of 2004, the second Respondent, which is a mission started by a person like Swami

Vivekananda, should have stood as an example in treating its teachers. It is not known as to how the second Respondent has such a mind to deal

with its own teachers. While treating the Petitioners so, it is not as if their conduct which is unbecoming of teachers is being condoned. The conduct

of the second Respondent in dealing with the Petitioners cannot be accepted by any prudent person. For a flimsy reason of certain punishment

stated to have been inflicted on the Petitioner in W.P. No. 1109 of 2004 in the year 1992, the second Respondent cannot deny the right of the

said Petitioner to survive after her retirement. There is no other word to explain the conduct of the second Respondent than terming it as inhuman.

It is unfortunate that in spite of the educational authorities directing the second Respondent to act properly, the second Respondent has not chosen

to realise its status.

10.3. Therefore, I have no hesitation to hold that in respect of the Petitioner in W.P. No. 1109 of 2004, it is totally the second Respondent who is

responsible for the entire misdeed committed to her. However, taking note of the fact that the second Respondent/Organization is one of the

biggest organization in the world working for the cause of the poor and needy, I only feel that one more opportunity should be given to the second

Respondent to redress the grievance of the said Petitioner.

10.4. In such view of the matter, the second Respondent is directed to settle the entire claim of the Petitioner in W.P. No. 1109 of 2004 as per

law from the date of her recruitment till the date of her voluntary retirement, viz., 31.5.2006 and send the proposal to the first Respondent within a

period of two weeks from the date of receipt of a copy of this order and on the first Respondent receiving the said proposal, the first Respondent

shall grant proper approval by passing appropriate orders within a period of two weeks thereafter. This writ petition is allowed. It is made clear

that if the proposal is not sent by the second Respondent within the time stipulated above, the second Respondent shall be liable to pay interest for

the entire amount due to the said Petitioner for the said period till the date of voluntary retirement at the rate of 12% per annum.

11.1. In respect of the Petitioner in W.P. No. 1192 of 2004, on a narration of the

facts it is ex facie clear that the conduct of the second

Respondent in treating the said Petitioner cannot be accepted. In fact, in this case apart from harassment of the Petitioner, there has been a clear

case of disobedience of the orders of the educational authorities by the second Respondent. On fact, it is clear that the services of the Petitioner in

the second Respondent/School during 15.6.1992 to 5.9.2000 has to be regularized, as it has been directed by the Joint Director of School

Education (Secondary). The contention made by the second Respondent/management as if the Petitioner has given up his monetary benefits during

this period has no legal basis at all.

11.2. The original letter of resignation stated to have been given by the Petitioner on 15.6.1992 was found to be against Rule 17-A of the Rules.

As per the said Rule, which is as follows: ""Rule 17-A. Educational agencies not to obtain compulsorily resignation letter either at the time of

appointment or subsequently from the employees in their school.

(1)Whenever a teacher or other person employed in a private school, tenders his resignation of appointment, he shall inform the fact of his

resignation in writing by registered post with acknowledgement due to the District Educational Officer, Inspectress of Girls' School or the Deputy

Inspector of Schools concerned.

(2)No teacher or other person employed in a private school shall give to the educational agencies, at any time, undated or pre-dated resignation

letter.

(3)No educational agency shall insist or compel any teacher or other person employed in a private school to give, at any time, undated or pre-

dated resignation letter.

(4)No teacher or other person employed in a private school shall be relieved from service on the strength of resignation letter. The resignation letter

shall, on receipt, be sent to the Chief Educational Officer concerned in respect of teacher and other persons employed in High Schools, Higher

Secondary Schools and Teachers' Training Institutes and to the District Educational Officer concerned in respect of teacher and other person

employed in a Pre-primary, Primary and Middle Schools. The Chief Educational Officer or District Educational Officer concerned shall, in turn, get

the confirmation of the teacher or other person employed, as the case may be, as to the fact of such resignation and then accord his approval to

relieve the teacher or other person employed, as the case may be, from service.

(5) Entries regarding the date of acceptance of resignation of appointment shall be made by the Secretary of the School Committee, in the

Teachers' Service Registers of the teacher or in the Service Registers of the other persons employed in a private school under proper attestation

and duly countersigned by the District Educational Officer or the Inspectress of Girls' Schools, as the case may be.

(6) No substitute shall be appointed in the place of a teacher or other person employed in a private school who has been relieved on the basis of

the resignation letter tendered by him, without obtaining prior approval of the Chief Educational Officer concerned in respect of the teacher and

other person employed in High Schools, Higher Secondary Schools and Teachers' Training Institutions and the District Educational Officers

concerned in respect of teachers and other persons employed in Pre-primary, Primary and Middle Schools."", no teacher can be relieved on the

strength of such resignation letter. Such resignation letter has to be sent to the Chief Educational Officer concerned, who, in turn, after getting

confirmation from the teacher concerned has to accord approval, as it is clearly stipulated under Rule 17-A(4) of the Rules.

11.3. When the Petitioner in W.P. No. 1192 of 2004 is stated to have given a letter dated 15.6.1992 addressed to the second Respondent along

with an affidavit stated to have been attested by a Notary Public, on the very same day the second Respondent has passed a relieving order, which

is as follows:

The resignation letter dated 15.6.92 of Thiru S. Sampath, Secondary Grade Assistant, Sri R.K.M. Boys Hr. Section School, Chengalpattu is

hereby accepted and he is relieved of his duties with effect from this day afternoon (15.6.92 a.n.) His request to waive the condition regarding the

notice of 3 months salary in lieu of notice is accepted as a special case.

Therefore, on the face of it, such order is opposed to the said Rule 17-A(4) of the Rules. It was in those circumstances, the Chief Educational

Officer, Kancheepuram in his proceedings dated 6.1.1995 by quoting the said Rule has directed the second Respondent to reinstate the said

Petitioner with continuity of service, stating that the resignation letter has been obtained and relieving order has been passed against the provisions of the Rules.

11.4. It was challenging the said order dated 6.1.1995 of the Chief Educational Officer, the second Respondent has approached the High Court

by filing W.P. No. 861 of 1995. However, this Court, in the order dated 21.4.1997, considering the fact that such order was passed by the Chief

Educational Officer without giving opportunity to the second Respondent has remanded the matter to the Chief Educational Officer and thereafter,

the Chief Educational Officer after giving opportunity to the second Respondent, has passed fresh order dated 22.6.1997 directing the second

Respondent to reinstate the Petitioner immediately.

11.5. After that order was passed by the Chief Educational Officer, the second Respondent in spite of the fact that the resignation letter was

accepted against the Rules, has filed an appeal before the Joint Director of School Education (Secondary), who by order dated 19.12.1997, while

rejecting the appeal, has directed the second Respondent to reinstate the Petitioner forthwith and also directed that the salary and all other

monetary benefits due to the Petitioner for the period from the date of relieving of the Petitioner, namely 15.6.1992 till the reinstatement have to be

borne by the second Respondent/Management. In spite of the said order passed by the Joint Director of School Education (Secondary), since the

same has not been implemented, the Petitioner has made a complaint to the Chief Educational Officer, who in the proceedings dated 6.2.1998 has

reiterated the second Respondent to implement the order of the Joint Director of School Education (Secondary).

11.6. It is thereafter the second Respondent filed W.P. No. 3926 of 1998 against the said order of the Joint Director of School Education

(Secondary) dated 19.12.1997 and after elaborate discussion of the entire issue, this Court in the order dated 30.1.1999 has dismissed the writ

petition. In the writ appeal filed against the said order in W.A. No. 185 of 1999 by the second Respondent/Management, the Division Bench in the

judgment dated 1.8.2000 has dismissed the appeal with an observation. It is relevant to extract the judgment of the Division Bench, which is as

follows:

1. It is unnecessary to set out the facts in detail.
 2. The learned Counsel for the Appellant putforth two fold submissions.
 3. The first submission is that the fifth Respondent was terminated as per Clause 7(4) of the agreement dated 2.11.71 and hence there was no necessity for compliance of the provisions of Rule 17(a) of the Tamil Nadu Recognized Private Schools (Regulations) Rules, 1974. As far as this submission is concerned, we reject the same agreeing with the ruling of the Division Bench of this Court reported in 100 Law Weekly 543.
 4. The second submission is that the appellate authority namely the Joint Director of School Education (Secondary Grade Education) Chennai 6 in his order dated Na. Ka. No. 89488/06/97 dated 19.12.1997 in para 4 has observed that the Appellant compelled the 5th Respondent to give the resignation letter which is not based on any material and without holding any enquiry or giving an opportunity to the Appellant. The learned Counsel appearing for the 5th Respondent admitted that there was no enquiry in this regard. But, however, he would submit that from the circumstances and the documents available on record one can safely come to such a conclusion. In the absence of any opportunity to the Appellant to putforth its case and holding an enquiry in this regard, the appellate authority namely the Joint Director of School Education (Secondary Grade Education) Chennai 6 ought not to have come to such a conclusion. The said finding of the appellate authority namely the Joint Director of School Education (Secondary Grade Education) Chennai 6 shall stand vacated.
 5. With this observation the appeal is dismissed. Consequently, C.M.P. No. 2004/99 is also dismissed. No costs.
- 11.7. A reference to the judgment of the Division Bench shows that out of the two fold submission made on behalf of the second Respondent, the first submission that Rule 17-A of the Rules need not be followed in the light of Clause 7(4) of the agreement entered between the second Respondent and the Petitioner came to be rejected. The second point which is crucial is relating to paragraph (4) of the order of the Joint Director of School Education dated 19.12.1997, which is as follows:

VERNACULAR (TAMIL) PORTION DELETED

In the said paragraph, the Joint Director of School Education has come to the conclusion that the resignation letter dated 15.6.1992 came to be

obtained from the Petitioner by force and with pre-meditated intention by the second Respondent . The Division Bench found that the said finding

was given without conducting enquiry with the second Respondent and that fact has been admitted by the writ Petitioner, who was the fifth

Respondent in the writ appeal. It was in those circumstances, the said finding given in paragraph (4) of the order dated 19.12.1997 was vacated.

However, the Division Bench has dismissed the appeal, thereby not only confirming the learned Single Judge's order by which the writ petition

filed by the second Respondent was dismissed, but also confirming the order of the Joint Director of School Education dated 19.12.1997, except

insofar as the finding given in paragraph (4) stated above, which relates to the obtaining of resignation letter by compulsion. In all other respects,

the order of the Joint Director of School Education (Secondary) dated 19.12.1997 has been upheld and has become final.

11.8. The letter of the Joint Director of School Education (Secondary) clearly shows that the Petitioner should have been reinstated and for the

period of relieving of the Petitioner till the Petitioner is reinstated, the second Respondent has to bear the entire expenses, including the salary and

other increments, etc. However the District Educational Officer, namely the first Respondent, in his communication in Na. Ka. No. 1695/B3/97,

dated 18.12.2000 has directed the second Respondent to regularize the services of the Petitioner for the period from 15.6.1992 to 5.9.2000 and

fix all monetary benefits due to him and send the proposal for approval. The contents of the said letter of the first Respondent dated 18.12.2000

are as follows:

VERNACULAR (TAMIL) PORTION DELETED

11.9. It is stated that the Petitioner was reinstated by the second Respondent with effect from 6.9.2000 and ultimately he was also allowed to

retire on voluntary retirement with effect from 8.3.2006 and that has been approved by the educational authorities also. In the subsequent

communication of the first Respondent in Na. Ka. No. 10386/A2/03, dated 26.3.2003 also the first Respondent in a very detailed letter has

granted and approved various periods of leave of the Petitioner from 31.8.1984. The said letter is as follows:

VERNACULAR (TAMIL) PORTION DELETED

11.10. A reference to the said letter shows that for the period between 15.6.1992 to 5.9.2000, the second Respondent has not sent proposal for regularization. It is very strange to note that the second Respondent in the letter dated 23.2.2006 addressed to the first Respondent, which is as follows:

With the reference cited, we would like to place the following for your information.

Sri S. Sampth Se. Gr. Teacher did not attend the School from 08-11-1991 to 14-06-1992. As per the instructions given by the Joint Director of

Secondary Education, Chennai he was permitted to rejoin duty on 06-09-2000. From 16-06-1992 to 5-9-2000, he did not attend the school.

As the Management has been requested to pay the salary for the period in which he was not in the school, the management has clearly stated the

Director of School Education extending a copy to the Joint Director of Secondary Education that the management will not pay any amount to the

said teacher, on the basis of G.O. ""No work No Pay"" and he was permitted to join duty on humanitarian grounds on 06-09-2000. As he is a

teacher recognized by the Education Department and teaching Grant for his post is permitted, the Management has no objection in claiming the

salary for the period of his ""No work"" in the School from 08-11-1991 to 05-09-2000. The Management also knows that he has filed a case in this

regard in the Court of Law.

As the teacher himself voluntarily is willing to retire from his service on his family problems, the Management has accepted his Voluntary

Retirement and it was sent to the District Educational Officer for his concurrence. In the case of the teacher concerned he submitted his resignation

on 15-06-1992 and requested to relieve him, the managed relieved him from services on humanitarian grounds sending a copy of the letter to the

Chief Educational Officer, Kancheepuram. Later the said teacher appealed to the Chief Educational Officer, Kancheepuram that the Management

has compelled him to resign from the Post. To avoid such discrepancy this time too, a copy of his Voluntary Retirement application has been sent

to the Chief Educational Officer, Kancheepuram for information.

has taken a stand that for the period between 16.6.1992 and 5.9.2000, for which the second Respondent was directed to pay the salary, the

salary would not be paid because the Petitioner has not worked during the said

period, forgetting the fact that the Petitioner was actually not allowed to work during the said period because of the above said disputes and the narration of the facts would clearly make the fact that it was not

as if the Petitioner was not willing to work and it was based on the resignation letter, the second Respondent has not allowed him to join duty till

6.9.2000 because of the pendency of various proceedings initiated by it.

11.11. Inasmuch as the order of the Joint Director of School Education (Secondary) dated 19.12.1997 has become final insofar as it relates to the

direction to the second Respondent to pay the salary due to the Petitioner along with all monetary benefits from the date from which he was

relieved based on the resignation letter till the date of reinstatement, viz., 6.9.2000, and by taking note of the fact that the first Respondent has

subsequently by letter dated 18.12.2000 directed the second Respondent to send proposal for the said period from 15.6.1992 to 5.9.2000, I am

of the considered view that the second Respondent should be directed to send the proposal for regularization of the leave of the Petitioner from

15.6.1992 to 5.9.2000 to the first Respondent for approval so as to enable the first Respondent to release the grant during the said period.

11.12. In such view of the matter, W.P. No. 1192 of 2004 stands allowed with the following directions:

(i) the second Respondent shall send to the first Respondent proper proposal in respect of the service conditions of the Petitioner as per the letter

of the District Educational Officer dated 26.3.2003, including the proposal for regularization of the period of leave of the Petitioner from

15.6.1992 to 5.9.2000, within a period of two weeks from the date of receipt of a copy of this order and on receiving such proposal, the first

Respondent shall grant approval in accordance with law and release the monetary benefits due to the Petitioner, including the arrears of salary,

fixing the final pension, etc., and such orders shall be passed within a period of four weeks thereafter. It is made clear that if the proposal is not

sent by the second Respondent within the time stipulated above, the second Respondent shall be liable to pay interest for the entire amount due to

the Petitioner at the rate of 12% per annum.

(ii) On payment of the said amount due to the Petitioner as stated above, it is for the first Respondent to take all appropriate action against the

second Respondent for the deliberate disobedience of the directions of the educational authorities;

(iii) the second Respondent shall pay a cost of ` 10,000/- to the Petitioner.

In the result, both the writ petitions are allowed with the following directions:
W.P. No. 1109 of 2004:

(i) the second Respondent/management is directed to settle the entire claim of the Petitioner in W.P. No. 1109 of 2004 as per law from the date of

her recruitment till the date of her voluntary retirement, viz., 31.5.2006 and send the proposal to the first Respondent within a period of two weeks

from the date of receipt of a copy of this order and on the first Respondent receiving the said proposal, he shall grant proper approval by passing

appropriate orders within a period of two weeks thereafter and it is made clear that if the proposal is not sent by the second Respondent within the

time stipulated above, the second Respondent shall be liable to pay interest for the entire amount due to the said Petitioner in W.P. No. 1109 of

2004 for the said period till the date of voluntary retirement at the rate of 12% per annum; W.P. No. 1192 of 2004

(ii) the second Respondent shall send to the first Respondent proper proposal in respect of the service conditions of the Petitioner in W.P. No.

1192 of 2004 as per the letter of the District Educational Officer dated 26.3.2003, including the proposal for regularization of his period of leave

from 15.6.1992 to 5.9.2000, within a period of two weeks from the date of receipt of a copy of this order and on receiving such proposal, the first

Respondent shall grant approval in accordance with law and release the monetary benefits due, including the arrears of salary, fixing the final

pension, etc., and such orders shall be passed within a period of four weeks thereafter and it is made clear that if the proposal is not sent by the

second Respondent within the time stipulated above, the second Respondent shall be liable to pay interest for the entire amount due to the

Petitioner in W.P. No. 1192 of 2004 at the rate of 12% per annum;

(iii) on payment of the said amount due to the Petitioner in W.P. No. 1192 of 2004, as stated above, it is for the first Respondent to take

appropriate action against the second Respondent for the deliberate disobedience of the directions of the educational authorities; and

(iv) the second Respondent shall pay a cost of ` 10,000/- to the Petitioner in

W.P. No. 1192 of 2004.