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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 27.01.2021

Coram::

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

A.S.No.251 of 1993
& C.M.P.Nos.4677 & 9235 of 1993

The Correspondent,
Singaram Pillai Girls Higher Secondary School,
Villivakkam, Madras - 49.

...Appellant/1st Defendant

/versus/

Anuradha,
W/o.P.Balasubramanian,
M/46-E, 2nd Floor SMIG Flats,
Periyar Nagar,
Madras - 600 080.

...Respondent/Plaintiff

Prayer: Appeal is filed under Section 96 r/w Order 41 Rule 1 of Civil Procedure Code, against the decree and judgment passed in O.S.No.3857 of 1987 dated 28.09.1992 on the file of II Additional Judge, City Civil Court, Madras.

For Appellant : No appearance
For Respondent: Mr.B.Dinesh Kumar,
for Mr.V.Manisekaran

J U D G M E N T

This Appeal suit is filed by the Correspondent of a Private School being aggrieved by the money decree passed against the school Management by the Trial Court.

2. The brief facts of the case necessary for deciding this Appeal is as follows:-

One B.Anuradha wife of P.Balasubramaniam was employed as a Clerk in the Appellant School during the month of October 1967. Her service was governed by Tamil Nadu Private School Regulation Act and Rules. When there was change of Correspondent to the



school, the new correspondent with ulterior motive to appoint his own relatives, started harassing the staff members making false allegation against them. The plaintiff Anuradha, was charged for furnishing false entry regarding community of the students. In spite of proper explanation, she was terminated from service without affording proper opportunity. The said termination order was challenged as arbitrary and illegal before the statutory authority, who is the 2nd defendant.

(ii). The Appeal preferred against the illegal termination was allowed by the 2nd defendant vide order dated 26.10.1982 with a direction to the Management to reinstate the plaintiff with backwages and continuity of service. In spite of order passed by the Appellate Authority, same was not given effect by the Management, but they preferred W.P.No.5609 of 1983 before the High Court challenging the order passed by the Appellate Authority and obtained exparte stay. Then the plaintiff filed separate W.P.No.12842 of 1984 for implementation of the reinstatement order passed by the 2nd defendant. The said writ petition was allowed directing the 2 & 3 defendants namely Joint Director of School Education and State of Tamil Nadu represented by Commissioner and Secretary to Government, Education Department. To post her in any other institute. Accordingly she was employed in a different school on 05.06.1985. However, her pay and allowance during the period of suspension, till reinstatement was not paid. Hence, representation was given to pay the arrears. The Management failed to pay the arrears for the period she was illegally put under suspension. Hence, after issuing notice under Section 80 of C.P.C, the suit for recovery of Rs.47,772/- with 18 % interest was laid. The statement of account for the said amount was annexed with the plaint.

3. The 1st Appellant in their written statement contested the suit stating that the plaintiff was charged for changing the caste name of the students with ulterior motive. When same came to the notice of the management, she was asked to show cause why action should not be taken for her grave mis-conduct. Her explanation was not satisfactory so, she was placed under suspension. After conducting enquiry, she was terminated her from service, as per Tamil Nadu Private School Regulation following the principle of natural justice. However, in the appeal preferred by the plaintiff, the 2nd dependant without proper appreciation of the facts and the illegality committed by the plaintiff, set aside the dismissal order and issued direction to reinstate her from service. In any event based on work no pay principle for the suspension period, till the



reinstatement, the plaintiff is not entitled for backwages. She had been provided posting in other institute following G.O.Ms.No.1664/1978 therefore, there is nothing for the plaintiff to claim.

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4. In the additional written statement filed by the 1st defendant, plea of limitation was raised. It was contended that the plaintiff was suspended from service on 29.01.1981 and same was set aside by the 2nd defendant Appellate Authority on 28.10.1982. The stay granted in the Writ Petition filed by the Management was in force only upto 07.07.1983. The limitation period for recovery of money is 3 years, therefore, the suit ought to have been filed on or before 06.07.1986. Whereas, the plaint was presented only on 28.04.1987 therefore, the suit is hopelessly barred by limitation.

5. In the written statement filed by the 2nd respondent, the liability to pay the suit amount was denied and it was contended that having found that the plaintiff was terminated illegally without proper opportunity, the termination order has been duly set aside and same is under challenged by way of Writ Petition filed by the Management. Therefore, the money suit for recovery of backwages is pre-matured.

6. The Trial Court, on considering the pleadings framed the following issues and additional issues:-

1. Whether the plaintiff is entitled to claim the sum of Rs.47,712/- or any other sum against the first defendant or the other defendants?

2. Whether the suit is bad for misjoinder of first defendant?

3. Whether the suit as framed is maintainable?

4. To what other reliefs the parties are entitled to?

Additional Issues:-

1. Whether the first defendant has to pay the plaintiff as per G.O. Passed in G.O.Ms.No.1664/1978?

2. Whether the suit is barred by limitation?

7. Before the Trial Court, one witness on behalf of the plaintiff and one witness on behalf of the defendant were examined. 28 Exhibits were marked in support of the plaint and one Exhibit was marked on behalf of the defendant.

8. The Trial Court, on appreciation of evidence, allowed the suit passed by the Trial Court directing the defendants 1 to 3 to pay the plaintiff a sum of Rs.47,772/- with 18% interest from the date of plaint till the date of realisation.



9. The Management has preferred the present appeal on the ground that the Trial Court failed to appreciate the facts properly. The Appellant being a non-fees levying School running with the aid of the State cannot be jointly and severally held liable to pay the staff members. The Appellant is only a dispersing Authority. Hence, Trial Court should have dismissed the suit as against the appellant. As far as the conduct of the plaintiff, stating that she has altered the community certificate of the students illegally and when the said misconduct came to light, appropriate charges were framed and enquiry was conducted in accordance with law. Having found that she has committed serious misconduct, termination order was issued. During the suspension period, till the reinstatement period, the Management is not under the legal obligation to pay the salary. If at all she is entitled for any backwages and attender charges, it is the other defendants namely Joint Director of School Education and the State alone is liable. Under the Regulation Act, it is suffice to intimate the Authorities about the termination of the staff paid under the grant. Furthermore, there is no obligation on the part of the management. While so, holding the management for backwages is not in consonance with law. Therefore, the Trial Court ought to have exonerated the management. The statement furnished by the plaintiff is annexed to the plaint is not substantiated by any evidence. The self serving statement ought not to have been relied by the Trial Court.

10. On considering the pleadings, this Court formulated the following point for determination:-

- (i). Whether the Appellant is entitled for any exoneration from liability?
- (ii). Whether the suit is barred by limitation?
- (iii). Whether the pendency of Writ Petition will save the limitation?

11. The specific case of the plaintiff is that she was appointed in the Appellant School in the year 1967. The new correspondent in order to replace them with his own relative, frivolous charges were framed against the staff as one of the victim, is the plaintiff. The specific charge against her was that, she has altered the caste of some people. The enquiry conducted by the Management leading to termination of service found to be illegal and the Statutory Authority ordered reinstatement with backwages. Against this order the Appellant herein has not preferred any further Appeal before the Tribunal constituted under the Tamil Nadu Private School Regulation Act,



instead, they filed a writ petition before the High Court and obtained an interim order. The plaintiff was forced to file a Writ Petition for implementation of reinstatement order passed by the 2nd defendant. Pursuant to the order passed in her writ petition, the defendants 2 & 3 had provided her appointment in an alternate School. The order of reinstatement passed by the 2nd defendant has come to a logical end after dismissal of the writ petition filed by the Management. When there is no further appeal reversing the reinstatement order, mere reinstatement of the plaintiff in a different school without payment of arrears is only partial compliance of the order. The backwages during the period of suspension till reinstatement ought to be paid. Whether the liability to pay should be fastened on all the defendants as ordered by the Trial Court are only against the Management is the point to be decided.

12. The evidence placed before this Court clearly shows that the termination order passed by the Appellant herein is without affording fair opportunity. Same has been held to be illegal and set-aside by the 2nd defendant. Despite the order of reinstatement, the said order was not obeyed only pursuant to the order passed by this Court in a writ petition filed by the plaintiff, the defendants 2 & 3 has provided her alternate appointment. There cannot be any liability fastened on the defendants 2 & 3 for paying the backwages. If the Management has complied the order passed by the 2nd defendant by reinstating her in their own institute, the stand taken by the Appellant herein that they are not liable to pay the arrears may carry some merit. When they have totally disobeyed the order of the 2nd defendant, despite the order of reinstatement, the liability to pay the plaintiff for the period of non-service become the personal liability of the Management which has mal-administer its affairs with ulterior motive defying the principle of natural justice. Therefore, this Court is of the view that the decree passed by this Court as against all the defendants ought to be restricted only against the 1st defendant, who is the appellant herein.

13. The defendants 2 & 3 has preferred a separate appeal challenging the order of the Trial Court fastening liability on them jointly and severally.

14. The Learned Counsel for the respondent/plaintiff would submitted that in the order passed by this Court in C.M.P.Nos.4677, 9235 and 9840 of 1993 dated 25.08.1993, the appellant was directed to deposit 50% of the decree amount together with costs and out of it 50% was permitted to be



withdrawn. Accordingly, the plaintiff/1st respondent withdrew 50%. Thereafter, Letter Patent Appeal LPA. No.216 of 1995 was filed before the Division Bench by the plaintiff/respondent, wherein, the Division Bench has directed the appellant to deposit the remaining 50% of the decretal amount in Tamil Nadu State Co-operative Bank with direction the accrued interest shall be paid to the appellant, pending First Appeal. Further, the respondent was also permitted to withdraw the balance 50% of the amount already deposited by the appellant in pursuant to the order in C.M.P.Nos. 4677, 9235 and 9840 of 1993. In such circumstances, The Appeal is dismissed. The respondent herein is permitted to withdraw the money lying in the deposit on filing proper application.

15. Accordingly, the Appeal is dismissed. Consequently, connected Miscellaneous Petitions are closed. With costs.

Sd/-
Assistant Registrar

// True Copy//

Sub Assistant Registrar

bsm

To:-

1.The II Additional Judge, City Civil Court,
Madras.

Copy to
The Section Officer,
V.R.Section, High Court, Madras.

+1 CC to Mr.B.Dinesh Kumar, Advocate sr 4900

A.S.No.251 of 1993

VGI (CO)
SP(24/11/2021)