

**C. Harris Vs. the District Elementary Educational Officer and the Assistant Elementary Educational Officer**

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**Court :** Chennai

**Decided On :** Feb-11-2006

**Reported in :** (2006)1MLJ652

**Judge :** N. Paul Vasanthakumar, J.

**Appeal No. :** Writ Petition No. 27025 of 2005

**Appellant :** C. Harris

**Respondent :** The District Elementary Educational Officer and the Assistant Elementary Educational Officer

**Advocate for Def. :** D. Malarvizhi, Government Adv.

**Advocate for Pet/Ap. :** A. Amalraj, Adv.

**Judgement :**

ORDER

**N. Paul Vasanthakumar, J.**

1. In this writ petition, petitioner seeks to quash the proceedings of the first and second respondents dated 30.9.1999 and 2.3.1999 respectively and for consequential direction to the respondents to disburse salary for the period of his

re-employment from 1.1.1999 to 31.5.1999 with all allowances and other attendant benefits together with interest at the rate of 12% per annum.

2. The facts that are necessary for disposal of this writ petition are as follows.

(a) Petitioner joined in service as Assistant Teacher in the Panchayat Union Elementary School, Velleri on 2.7.1962 and subsequently his services were regularised by the Commissioner, Gudalur Panchayat Union by proceedings dated 14.2.1963 with effect from 2.7.1962, the date of his initial appointment. Subsequently he was posted as Elementary School Head Master and after 37 years of service, he attained the age of superannuation on 31.12.1998.

(b) According to the petitioner as he was in teaching profession, as per various Government Orders, he was entitled to continue in service till the end of academic year on re-employment basis from 1.1.1999 to 31.5.1999. The second respondent by his proceedings dated 7.1.1999 granted extension of service on the basis of re-employment from 1.1.1999 to 31.5.1999.

(b) Whilesso, the first respondent herein issued a charge memo dated 14.1.1999, which was served on the petitioner on 28.1.1999, and called upon him to submit his explanation as to why disciplinary action should not be initiated against him for four charges. The main charge alleged against the petitioner was that the petitioner directly gave reply to the first respondent during inspection instead of giving reply through the Head Master of the school on 23.12.1998. Petitioner submitted a detailed explanation on 28.1.1999 and stated that he had already sent a reply as early as on 6.1.1999 for the query raised by the second respondent in December, 1998, narrating the circumstances under which the petitioner gave reply to the first respondent directly. According to the petitioner, the second respondent, after going into the allegations and perusing the explanation, granted extension of service to the petitioner on re-employment basis from 1.1.1999 to 31.5.1999 by his order dated 7.1.1999 and as per the re-employment order the petitioner also continued to work from 1.1.1999.

(c) Petitioner further states that the second respondent by proceedings dated 2.3.1999 abruptly cancelled the re-employment order without assigning any

reason. Petitioner preferred an appeal to the first respondent through proper channel and requested the first respondent to cancel the order of second respondent dated 2.3.1999. Petitioner also sent a complaint to the Chief Minister's Special Cell, which was forwarded to the first respondent and the same was treated as appeal. First respondent passed an order on 30.9.1999 rejecting the appeal and refused to grant of extension of service and payment of salary for the period for which the petitioner worked i.e., from 1.1.1999 to 31.3.1999. The said orders of the second respondent dated 2.3.1999 and the consequential order of the first respondent dated 30.9.1999 are challenged in this writ petition.

3. Though the respondents were served as early as on 10.3.2000, as on date no counter affidavit was filed by them.

4. The learned counsel appearing for the petitioner argued that the petitioner has put in 37 years of unblemished service and as a teaching staff, he is entitled to get extension of service on reemployment basis till the end of the academic year as his date of superannuation fell on 31.12.1998. According to the learned counsel, the petitioner is entitled to re-employment from 1.1.1999 to 31.5.1999 as per the Government Orders and that the second respondent, only after satisfying himself with the unblemished service records of the petitioner, granted extension of service by his order dated 7.1.1999. Learned counsel also pointed out that the allegations levelled against the petitioner was already considered by the second respondent and therefore the said allegations cannot be a ground for cancelling the reemployment order already passed. Learned counsel for the petitioner further argued that the impugned order of the second respondent dated 2.3.1999 is a non-speaking order and neither notice nor opportunity of hearing was given to the petitioner before passing that order, which is in violation of the principles of natural justice. The learned counsel further argued that the first respondent passed orders on the appeal preferred by the petitioner only on 30.9.1999, that is after completion of the period of re-employment on 31.5.1999 and therefore he is entitled to get full salary and other benefits from 1.1.1999 to 31.5.1999.

5. The learned Government Advocate argued that based on the charge memo and after perusing the explanation of the petitioner, the first respondent directed the

second respondent to cancel the order granting re-employment to the petitioner and consequently dismissed the appeal filed by the petitioner and therefore the petitioner is not entitled to get salary as claimed.

6. I have considered the rival submissions made by the learned counsel appearing for the petitioner as well as the learned Government Advocate.

7. The right of the petitioner to continue in service till the end of academic year as his date of retirement fell in the middle of the academic year cannot be disputed. In fact the said right flows from the orders of the Government issued in o.249 dated 9.2.1959, G.O.Ms.No.452 dated 24.3.1970, G.O.Ms.No.2529 dated 18.11.1981 and G.O.Ms.No.1643 dated 27.10.1988. In the said Government Orders, the Government directed the Education Department to re-employ the teaching staff till the end of the academic year, if their date of retirement falls in the middle of the academic year. Continuity of such service was ensured only for the benefit of the students, so that they can have the benefit of teaching from the same staff till the end of that particular academic year. The reason for issuing the said Government Orders are that 'the Government of India in the Ministry of Education have suggested that school teachers, who reach the age of superannuation during the middle of the school year should be allowed to continue till the date of closure of the school for the summer vacation in order to ensure continuity of staff.'

8.(i) An attempt was made by the Minority Educational Institutions to retire the teaching staff on the date of superannuation itself, without giving re-employment as per the above mentioned Government Orders. In W.A. Nos. 1179 of 1993, etc. (S. Sundaram v. The Secretary, CSI Diocese of Madras, Chennai and Ors.), a Division Bench of this Court by judgment dated 6.9.1994 held that the said Government Orders are applicable even to the minority institutions and the teachers are entitled to get re-employment till the end of the academic year for continuity of education to the students.

(ii) The said judgment was followed by the Hon'ble Mr.Justice AR. Lakshmanan (as he then was) in the decision reported in 1996 WLR 259 (C. David Thampi Dhas v. The Governing Body of N.M. Christian College, etc. and Ors.), wherein a college teacher who was denied re-employment, was granted the benefit of re-

employment till the end of academic year.

(iii) His Lordship Mr. Justice Shivaraj Patil (as he then was), in the decision reported in (A. Karunanidhi v. The Secretary and Correspondent, Poompuhar College, Melaiyur) rendered a similar findings.

(iv) Mr. Justice P.D. Dinakaran in the decision reported in 1998 WLR77 (R. Muthukrishnan v. The Secretary, Aided Middle School, Korranattu Karuppur, Kumbakonam and Anr.) took a similar view.

(v) Mr. Justice P. Sathasivam in his order dated 29.8.2003 in W.P. No. 3 7538 of 2002 (S. Vijayalakshmi Amma v. The Government of Tamil Nadu rep. by its Secretary, School Education Department), considered a similar issue of refusing re-employment and granted relief to the petitioner therein.

(vi) The above said order was challenged before a Division Bench of this Court, but the writ appeal was dismissed and the same is reported in . In the said judgment, an earlier finding of a learned single Judge of this Court in an unreported order in W.P.No.10791 of 1996 dated 30.10.2002, wherein the learned single Judge took a view that extension of service cannot be claimed as a matter of right, was specifically overruled. The Division Bench in paragraph 3 of the judgment held that the teaching staff retiring in the middle of the academic year is entitled to continue till the end of the academic year on re-employment basis.

(vii) The above referred Division Bench decision was followed by Mrs. Justice Prabha Sridevan in W.P. No. 26463 of 2004 dated 5.11.2004 (P. Jeyaraj v. The government of Tamil Nadu rep. By its Secretary, School Education Department and Ors.). The writ appeal - W.A.No.407 of 2005 filed against the said decision was dismissed on 28.2.2005 by the First Bench of this Court following the earlier decision of this Court reported in (cited supra).

Thus, the right of a Teacher to continue in service till the end of the academic year in case of his/her date of retirement falls in the middle of the academic year, is well settled by the decisions referred above.

9. Here in this case, following the Government Orders, the second respondent rightly granted extension of service to the petitioner on re-employment basis by his order dated 7.1.1999 till the end of academic year i.e., till 31.5.1999. However the said order was cancelled by the second respondent himself by order dated 2.3.1999, purported to be under the instructions of the first respondent. A perusal of the order dated 2.3.1999 clearly establishes the fact that the said order was passed without giving notice or opportunity of hearing to the petitioner. Hence the said order of second respondent is in violation of principles of natural justice, as it takes away the vested right of the petitioner to continue in service till 31.5.1999, which was originally granted by order dated 7.1.1999. The second respondent's order dated 2.3.1999 also suffers due to non-mentioning of reason for cancelling his earlier order dated 7.1.1999, which only states that as per instruction of the first respondent cancellation order is issued. First respondent's order stated to be relied on by the second respondent, is also not communicated to the petitioner. The appeal preferred by the petitioner before the first respondent, was also dismissed only on 30.9.1999. Pension payment order is issued by the Principal Accountant general, Tamil Nadu, on 6.6.2000 contains an endorsement that the petitioner was re-employed upto 31.5.1999. Therefore, the petitioner is entitled to get salary till 31.5.1999 as he was not paid pension from 1.1.1999 to 31.5.1999 due to his re-employment by order 7.1.1999. The petitioner based on the order of re-employment worked from 1.1.1999 to 3.3.1999. According to the affidavit filed by the petitioner, thereafter the petitioner was prevented from serving as teacher due to the impugned order passed by the second respondent, which is found to be illegal.

10. In view of the erroneous order of the second respondent dated 2.3.1999 and in the light of series of decisions referred above, I have no hesitation to hold that the impugned orders of the respondents are liable to be set aside and the petitioner is entitled to get salary and other benefits upto 31.5.1999 as per the re-employment order dated 7.1.1999.

11. In the result, the writ petition is allowed in part. The impugned orders of of the second respondent dated 2.3.1999 and that of the first respondent dated 30.9.1999 are quashed. The arrears of salary payable to the petitioner for the

period from 1.1.1999 to 31.5.1999 is ordered to be disbursed by the respondents within a period of four weeks from the date of receipt of copy of this order. No costs.

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