

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.4.2016

CORAM

THE HONOURABLE MR.JUSTICE V.RAMASUBRAMANIAN
AND

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Writ Appeal No.2522 of 2013,

M.P.No.1 of 2013, M.P.No.1 of 2014 and
M.P.No.1 of 2015

1. The Prist University,
rep. by its Registrar,
147, Greams Road,
Chennai 600 006.
 2. The Chancellor,
Prist University,
147, Greams Road,
Chennai 600 006.
 3. The Deputy Registrar,
Prist University,
147, Greams Road,
Chennai 600 006.
- Appellants

Versus

1. Dr.S.Subramanian
 2. University Grants Commission,
rep. by its Chairman,
Bahadur Shah Zafar Marg,
New Delhi 110 002.
 3. The Regional Director,
University Grants Commission,
Southern Eastern Regional Office,
5-9-194, Chirag Ali Lane,
Hyderabad 500 001.
- ... Respondents

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent
against the order dated 29.11.2013 in Writ Petition No.21022 of
2013.

Writ Petition filed Under Article 226 of the Constitution of India for the issuance of a Writ of Mandamus Directing the respondents 3-5 to return the Original Educational Certificates of the Petitioner namely 1. M.Com Degree Certificate (P41420043) 2. M.Phil Convocation (90PT-2142) 3. SLST Certificate (0501) 4. MBA Degree Certificate (64771020) & 5. MBA Provisional Certificate (S-16981) forthwith to the Petitioner.

For Appellants : Mr.S.Jayakumar for
Mr.P.Velmurugan

For R1 : Mr.M.Kalyani
For RR2 and 3 : Mr.P.R.Gopinathan

JUDGMENT

(Judgment of the court was delivered by V.RAMASUBRAMANIAN, J.)

This appeal, under Clause 15 of the Letters Patent, is filed by a University which is deemed to be a University in terms of section 3 of the University Grants Commission Act, challenging the order passed by the learned Judge in a writ petition filed by the first respondent, who was formerly employed as Faculty Member, directing the appellant University to return all certificates relating to the educational qualifications.

2. Heard Mr.S.Jayakumar, learned counsel for the appellant, Mr.M.Kalyani, learned counsel for the first respondent and Mr.P.R.Gopinathan, learned counsel for the University Grants Commission.

3. The first respondent in this writ appeal was originally selected and appointed in the appellant-University as an Assistant Professor, by an order of appointment dated 10.11.2008. It appears that he left the services of the appellant University on 30.6.2011. According to the appellant, the first respondent left the services without giving a notice of termination of contract. According to the first respondent, he gave a notice in accordance with the terms and conditions of the order of appointment.

4. We do not think that we will, at present, go into this disputed question of fact whether a notice was issued before the first respondent left the services or not.

5. The sheet anchor of the case of the appellant is that as per the terms and conditions of the order of appointment, any employee, who wanted to leave the services of the University, should give a notice of a duration of six months in advance or in the alternative, deposit three months gross salary in lieu of such notice. It is the case of the appellant that this contractual obligation was not complied with by the first respondent and that therefore, the appellant was entitled to retain the certificates relating to the educational qualifications submitted by the first respondent, until the money payable viz., three months gross salary is paid. It is also the case of the appellant that inasmuch as the appellant is a deemed University and the relationship between the appellant and the first respondent arose out of a contract, a writ of mandamus under Article 226 will not lie. The grievance of the appellant is that overlooking the above two facts, the learned Judge allowed the writ petition of the first respondent and directed the appellant to return the certificates of the first respondent.

6. We have carefully considered the above submissions.

7. The question of maintainability of the writ petition can be easily disposed of now, in view of the decision of the Supreme Court in Dr. JANET JEYAPPAUL v. S.R.M. UNIVERSITY decided by the Supreme Court on 15.12.2015 in Civil Appeal No.14553 of 2015. Therefore, the question of maintainability has to be necessarily answered against the appellant and it is accordingly answered. The writ petition is maintainable.

8. Coming to the first contention of the appellant, it is seen from Annexure I to the order of appointment dated 10.11.2008 that there are two clauses relating to the termination of the contract of appointment. Clause 4 on which reliance is placed by Mr.S.Jayakumar, learned counsel for the appellant reads as follows:-

"If any appointee decides to leave the Institution, the appointee should give notice to the management 6 months in advance or else, they should remit 3 month's Gross Salary in lieu of such notice, before getting relief from the Institution."

9. But, clause 5 of the same agreement, which is the relevant clause insofar as the present case is concerned reads as follows:-

"The faculty members appointed in PRIST UNIVERSITY, should compulsorily be in service for a minimum period of 2 years. If any appointee of PRIST UNIVERSITY, decides to leave the Institution before the expiry of 2 years period, they should repay 3 month's Gross salary to the management before getting relief."

10. A careful look at clauses 4 and 5 would show that insofar as Faculty Members are concerned, it is not clause 4, but, only clause 5 that applies. There are two distinctions between clauses 4 and 5. The first distinction is that clause 4 applies to an appointee. Clause 5 applies to a Faculty Member. The second distinction is that appointees other than Faculty Members are always obliged to give a notice of a duration of six months in advance, without any restriction regarding the time limit. But, insofar as Faculty Members are concerned, they are obliged to give a notice of duration of six months in advance only if they leave the institution within two years of appointment.

11. In this case, the first respondent was appointed by the order dated 10.11.2008, and he left the services with or without notice in June 2011 i.e., after completion of two years. Therefore, the reliance placed upon clause 4 of the appointment order is wrong. Clause 5 does not impose an obligation upon the first respondent to give a notice of a duration of six months since the first respondent had already completed more than two years of service. Therefore, both the grounds of challenge to the order of the learned Judge are not sustainable. Hence, the writ appeal is dismissed. No costs. M.P.Nos.1 of 2013 and 1 of 2014 are dismissed. M.P.No.1 of 2015 is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

To:

1. University Grants Commission,
rep. by its Chairman,
Bahadur Shah Zafar Marg,
New Delhi 110 002.
2. The Regional Director,
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+1cc to M/S.M.Kalyani, Advocate, S.R.No.22931

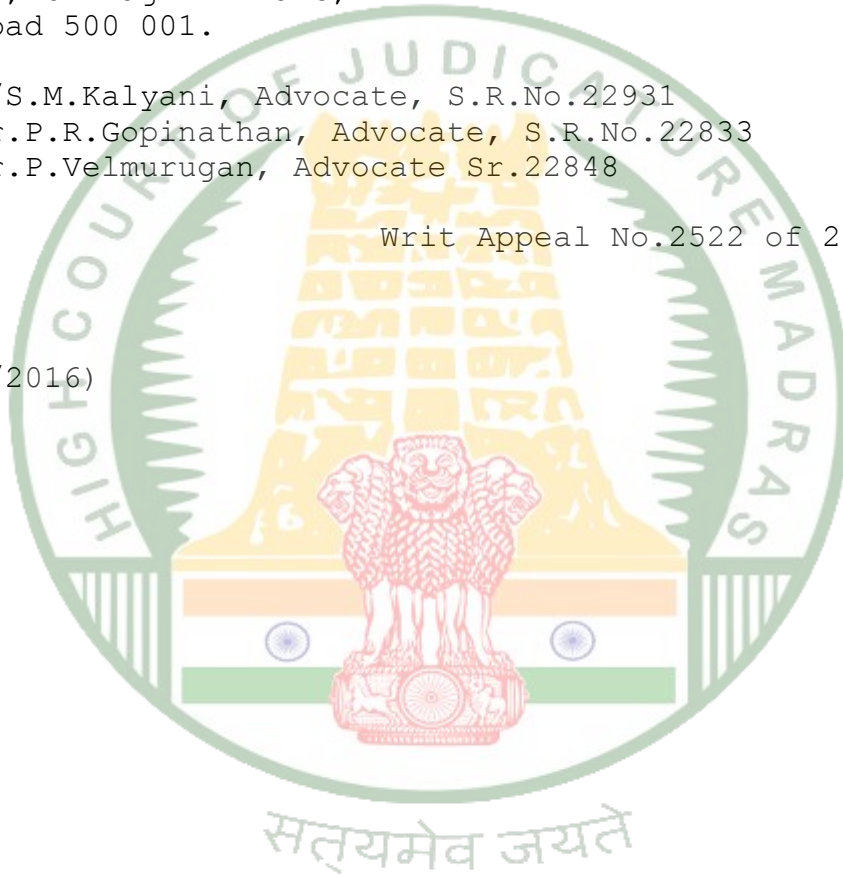
+1cc to Mr.P.R.Gopinathan, Advocate, S.R.No.22833

+1cc to Mr.P.Velmurugan, Advocate Sr.22848

Writ Appeal No.2522 of 2013

sns (CO)

srg (13/04/2016)



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