

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 04.07.2013

CORAM

THE HONOURABLE THE ACTING CHIEF JUSTICE
AND
THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

W.A.No.932 of 2013
and M.P.Nos.1 to 4 of 2013

1.S.R.M.University,
Rep. by its Registrar,
Kattankulathur-603 203.

2.The Director,
Faculty of Sciences and Humanity,
S.R.M.University,
Kattankulathur-603 203. .. Appellants

Vs.

Dr.Janet Jeyapaul .. Respondent

Prayer:- Writ Appeal filed under Clause 15 of the Letters Patent against the judgment dated 08.04.2013 made in W.P.No.12676/2012. Petition under Article 226 of the constituted of India , praying for the issue of a writ of certiorari, calling for the records relating to the order No.SRMV/Reg./Faculty 499.SOE/2012/1211 dated 4.4.2012 passed by the first respondent and quash the same.

For Appellants : Mr.V.T.Gopalan, Senior Counsel
for M/s.B.Saraswathi

For Respondent : Respondent/Party-in-Person

J U D G M E N T

The respondents in the writ petition are the appellants herein. The writ petitioner/respondent herein filed the writ petition praying for issuance of a Writ of Certiorari calling for the records relating

to the order of termination dated 04.04.2012 passed by the first appellant herein and quash the same. The writ petition, after contest, was allowed on 08.04.2013 and the respondents therein was directed to reinstate the writ petitioner into service and liberty was also granted to the respondents to continue the enquiry from the stage at which the irregularities crept in and further direction was given to the appellants herein to furnish copies of the documents, summon the witnesses for cross-examination by the respondent herein and proceed to pass orders afresh. The respondents in the writ petition, aggrieved by the said order allowing the writ petition, have filed this writ appeal.

2. The facts necessary for the disposal of this writ appeal are as follows:

2.1. The writ petitioner/respondent herein is holding M.Sc., and Ph.D. in applied Biology and according to her, she was working in the areas of Cancer Biology, Immunology and Molecular Biology between 1989 and 2000 in the capacity as a Scientist and she was posted as Postdoctoral fellow at the Wistar Institute of Anatomy, Philadelphia, USA between 1998 and 1992 and thereafter, worked in various prestigious universities and institutions in USA until 1999. The writ petitioner/respondent herein after returning to India, working as Head of the Department of Biotechnology and Asian Institute of Management and Information Technology between 2000 and 2004 and at the time of filing the writ petition, she was involved in the research of metastasis of breast cancer and related ailments.

2.2. It is stated by the writ petitioner that on 21.06.2008, she was appointed as Lecturer in the Department of Biotechnology in the Faculty of Sciences and Humanities in the first appellant University, which is a deemed University under Section 3 of the University Grants Commission Act, 1956 (in short 'UGC') and according to her, right from the inception of her entering into service in the above capacity, she was discharging her duties to the utmost satisfaction of her superiors and her research also brought laurels to the first appellant University and she has never been visited with any adverse remarks or memos etc.

2.3. The writ petitioner would further aver that she was promoted as Senior Lecturer by the first appellant herein vide order 05.05.2010. The writ petitioner is also a Ph.D guide for 7 lecturers, consisting of 3 full time and 4 part time lecturers. The writ petitioner/respondent herein also made a request to to the first appellant herein to grant promotion as Associate Professor in view of her academic credentials, but it was not favoured with any response.

2.4. It is stated by the writ petitioner that she received a memo dated 14.02.2012 from the Dean of the Faculty of Sciences and Humanities of the first appellant University calling upon her to submit her explanation on or before 20.02.2012 as to why disciplinary action as per the service rules should not be taken for her alleged failure to take classes for III year B.Sc., and I year M.Sc., since January 2012, which is considered as dereliction of duty. The petitioner submitted her response denying the same and further stated that she had taken the classes and there was no dereliction of duty on her part. However, she was issued with another memorandum dated 24.02.2012 referring to certain complaints given by the students and the writ petitioner/respondent herein also submitted her explanation dated 29.02.2012 refuting the allegations and also given a detailed explanation.

2.5. The first appellant University, not satisfied with the explanation, constituted an Enquiry Committee and the writ petitioner/respondent herein appeared before the said Committee and stated that she did not receive copies of complaint or documents relied on to the charges, however the said representation was not taken into consideration and she was questioned orally in respect of the allegations made and no witnesses were examined in her presence and no opportunity whatsoever was provided to her to cross-examine the students and after conclusion of the enquiry, no enquiry report was also furnished. Thus, according to the writ petitioner, the enquiry was sham and nominal and not even a semblance of opportunity was provided to her to know the contents of the documents, statement of witnesses and other materials placed by the appellants herein to prove the charges. However, to her shock and surprise, an order came to be passed on 04.04.2012 stating that she would be relieved from the services of the first appellant University with effect from 04.05.2012 on account of administrative reasons and it was received by her on 16.04.2012.

2.6. The writ petitioner/respondent herein, challenging the legality and vires of the said order, filed a writ petition, wherein it was averred among other things that since first appellant University is a deemed University under Section 3 of the UGC Act, it has statutory obligation to act in a fair and reasonable manner and she has been denied fair and reasonable opportunity of defending herself in the departmental enquiry. It is further contended by the writ petitioner/respondent herein that the charge memo is vague and it does not contain the list of documents or witnesses relied on by the first appellant University to prove the charges and during the course of enquiry also, none of the witnesses were examined in her presence and she was also denied opportunity to cross-examine them. It is also contended by the writ petitioner/respondent herein that

not even a copy of the enquiry report was furnished to her and in order to get over the lacuna and lapses on their part, the first appellant has chosen to terminate her service without taking into consideration of her academic and research credentials and also her excellent track record.

2.7. A Single Bench of this Court vide order dated 04.05.2012 granted interim stay of the operation of the impugned order of termination for a period of eight weeks and on 04.05.2012, the first appellant herein sent a letter to the writ petitioner/respondent herein stating that in accordance with the earlier notice dated 04.04.2012, she is relieved of her duties on the afternoon of 04.05.2012.

2.8. The first appellant herein/first respondent in the writ petition has filed a counter affidavit stating among other things that as per Clause 6 of the letter of appointment, it has been made very clear that in case the administration is not satisfied with her performance, one month notice will be given to her before terminating the services and the said power has been exercised to terminate the writ petitioner/respondent herein.

2.9. The first appellant herein/first respondent in the writ petition, on merits of the charge memo, stated that the students of III year B.Sc., Biotechnology as well as the students of I year M.Sc., had given representations stating that the writ petitioner has not taken classes for a particular period and the Lab Instructor has also complained that the writ petitioner/respondent herein always used to shout at him and the Ph.D students, registered with her, also made complaints that they have not received proper guidelines and taking into consideration of the same, she was issued with a show cause notice in the form of official memorandum dated 14.02.2012 for which explanation submitted by the writ petitioner/respondent herein was not satisfactory. Hence, Enquiry Committee was constituted consisting of (1) Dean, IIIC, (2) Dean, School of Bioengineering, (3) HOD, Department of Biotech, Faculty of Science and Humanities and (4) Professor, Maths, E & T as members. It is further stated in the counter affidavit that the Enquiry Committee has adopted fair and proper procedure and found that the research progress as well as her teaching methodology are not up to the satisfactory level and in order to maintain efficiency and good working atmosphere, a decision has been taken to terminate her in terms of Clause 6 of her appointment order dated 21.06.2008 and accordingly, the order of termination came to be passed on 04.04.2012 and on 04.05.2012, she was terminated from service and hence, prayed for dismissal of the writ petition and also filed a petition to vacate the interim order.

2.10. The learned Judge was of the view that the main writ petition is to be taken up for final disposal and accordingly, fixed the date as 05.06.2012 for final disposal. The respondent herein/writ petitioner in response to the counter affidavit, filed her rejoinder and also additional affidavit reiterating the stand taken by her in the writ petition and stated that she holds Ph.D with 20 years of teaching and research experience and her style of teaching also motivated the learning challenged students. On behalf of the first respondent in the writ petition, an additional counter affidavit and reply was filed stating that the writ petitioner/respondent herein is not authorized to change the teaching methodology and that her credentials are sought to be verified and one of the institutions in which the writ petitioner had worked stated that no such person worked with them. The petitioner made a request for taking back her M.Sc., and Ph.D certificates and the said certificates were also given back to her on 10.09.2012.

2.11. The learned Judge taken up the writ petition for final disposal and a primary objection was raised on behalf of the appellants herein/respondents in the writ petition as to the maintainability of the writ petition for the reason that it is a self financing University and therefore, the writ petition, challenging the order of termination passed by them, is not maintainable. The learned Judge taken up the question with regard to maintainability of the writ petition as a primary issue and taking into consideration the decisions rendered by the Hon'ble Supreme Court of India, Andhra Pradesh High Court, Delhi High Court and Jharkhand High Court, held that by virtue of Section 3 of the UGC Act, 1956, the recruitment of teachers to them is certainly a public function, governed and regulated by Statute and hence, it not open to deemed Universities like the first appellant herein to question the jurisdiction of this Court, in matter of this nature and held that the writ petition is maintainable.

2.12. On merits of the case, the learned Judge found that as per the charge memo it was a case of disciplinary action and the misconduct complained was one of dereliction of duty and though enquiry was held, the appellants herein did not chose to impose any penalty and on the contrary, chose a shortcut to terminate the services of the writ petitioner by invoking Clause 6 of the appointment order and such a course of action was not available to them. The learned Judge further found that the impugned order cannot be termed as an order of termination simpliciter in terms of Clause 6 of the letter of appointment and it was only a camouflage for an order of penalty and citing the said reason, set aside the order of termination and ordered de novo enquiry, vide final orders dated 08.04.2013.

2.13. The respondents in the writ petition, aggrieved by the same, have filed this writ appeal.

3. Mr.V.T.Gopalan, learned Senior Counsel appearing for Mrs.B.Saraswathi, learned counsel for the appellants herein/respondents in the writ petition submitted that the reasons assigned in the impugned order are unsustainable on facts and in law for the reason that admittedly, the first appellant University is a deemed University under Section 3 of the UGC Act, 1956 and it is a self-financing institution and in the absence of performance of any public duty, it is not amenable to the jurisdiction of this Court and further that the order of termination came to be passed against the writ petitioner/respondent herein by invoking Clause 6 of her appointment order dated 21.06.2008 and the said appointment was being contractual and having accepted the terms of appointment and joined the post, it is not open to her to turn around and take a diametrically opposite stand. It is further submitted by the learned Senior Counsel that during the course of enquiry, the writ petitioner/respondent herein failed to raise any tenable objection and having participated in the enquiry, it is not open to her to contend that the enquiry was not fair and proper. It is further contended by the learned Senior Counsel that it is not practically possible to hold de novo enquiry for the reason that most of the students who have given evidence left the college after finishing their studies and it is impossible to send notices for their appearance for giving evidence in the enquiry. Lastly it is submitted by the learned Senior Counsel appearing for the appellants that though it was open to the appellants herein to pass a stigmatic order, taking into sympathetic consideration of her qualification and work experience, it has been decided to pass a non-stigmatic order and accordingly, the impugned order of termination came to be passed in terms of Clause 6 of the appointment order and the learned Judge has not properly appreciated the settled position of law with regard to the maintainability of the writ petition against the private institutions and decided the case in favour of the writ petitioner/respondent herein and therefore, for the said reasons, the learned Senior Counsel prayed for setting aside the impugned order passed in the writ petition and consequential order of dismissal of the writ petition. The learned Senior Counsel, in support of his submissions, placed reliance upon the following decisions:

(1) K.Krishnamacharyulu and Others v. Sri Venkateswara Hindu College of Engineering and Another [(1997) 3 SCC 571]

(2) Sushmita Basu and Others v. Ballygunge Siksha Samity and Others [(2006) 7 SCC 680]

(3) Order dated 19.07.2007 passed in C.A.No.1382/2006 [S.K.Varshney v. Principal, Our Lady of Fatima H.S.S and Others]

(4) Satimbla Sharma and Others v. St. Pauls Senior Secondary School & Others [(2011) 13 SCC 760]

4. Per contra, the respondent herein/party-in-person made a passionate plea by submitting that the appellants herein had treated her like a lame duck and terminated her without any valid or sustainable reason. It is further submitted by the respondent/party-in-person that her academic credentials and work experience in various prestigious institutions in USA was taken into consideration by the first appellant herein at the time of appointment and he was also given promotion and she had taken classes for undergraduate and postgraduate students with all sincerity and for their future welfare and she was also a guide for 7 research students and she had also guided them properly and therefore, the allegation that she had not taken classes for them is per se false and defamatory. As regards the maintainability of the writ petition, it is submitted by the respondent/party-in-person that the profession of teaching amounts to discharge of public duty and also involves public interest and the first appellant University is a deemed University under the Statute, namely, UGC Act and since it failed to act in a fair and proper manner, its acts can be challenged/questioned before this Court under Article 226 of the Constitution of India and hence, the writ petition filed by her is maintainable and the learned Judge, on a threadbare analysis of factual and legal position, has also correctly reached the conclusion that the writ petition is maintainable and the impugned order of termination is liable to be quashed and in the absence of any infirmity, the well considered finding rendered in the writ petition need not be disturbed. The respondent/party-in-person also filed M.P.No.3/2013 to direct the appellants herein to pay her backwages and M.P.No.4/2013 to pass an order of conviction against the appellants herein for filing a false affidavit.

5. This Court has carefully considered the submissions made by the learned Senior Counsel appearing for the appellants and the respondent/party-in-person and considered the materials available on record.

6. The primordial question that arises for consideration is as to whether the writ petition, challenging the order of termination passed by the first appellant/deemed University/Self-financing institution against the respondent/party-in-person/writ petitioner, is maintainable?

7. In K.Krishnamacharyulu and Others v. Sri Venkateswara Hindu College of Engineering and Another [(1997) 3 SCC 571], the facts of the case read that the appellants therein and 6 others were appointed on daily wages to the course of Lab Assistants as non-teaching staff of a private college, namely, Venkateswara Hindu College of Engineering and they were paid daily wages. The appellants therein

filed writ petition praying for equal pay and it was dismissed and challenging the same, they filed an appeal. The question arose for consideration before the Hon'ble Supreme Court of India was that when there are no statutory rules issued in that behalf, and the institution, at the relevant point of time, being not in receipt of any grants-in-aid; whether the writ petition under Article 226 of the Constitution of India is not maintainable? The Hon'ble Supreme Court of India in the facts of the case found that all the other persons who have filed the writ petition along with the appellant had withdrawn the writ petition and thereafter, the respondent/management paid salaries on par with the Government employees and since it was denied to him, he filed the writ petition which was dismissed. The Hon'ble Supreme Court of India, under the above said facts and circumstances, found that the teacher duly appointed to a post in the private institution is also entitled to seek enforcement of the orders issued by the Government and when an element of public interest is created and the institution is catering to that element, the teacher, being the arm of the institution, is entitled to avail of the remedy provided under Article 226 of the Constitution of India, as the jurisdiction part is very wide and ultimately held that the writ petition is maintainable.

8. A careful analysis of the above said decision would disclose that other persons who were similarly placed like that of the appellant therein were paid salaries by the private college management on par with the Government employees and taking into consideration this vital aspect, the Hon'ble Supreme Court of India found that since it was denied to the appellant, who was also similarly placed, held that the writ petition is maintainable.

9. In *Sushmita Basu and Others v. Ballygunge Siksha Samity and Others* [(2006) 7 SCC 680], the appellants therein are teachers of a recognized private school and initially, they along with 26 others filed writ petition on the file of the High Court of Calcutta praying for appropriate direction directing the authorities of the school to fix the salaries of teaching and non-teaching staff of the school and to remove all anomalies in the scale of pay as recommended by the Third Pay Commission. Some of them had withdrawn the writ petition and five others pursued the writ petition. A Single Bench of the Calcutta High Court allowed the writ petition and directed the Director of School Education to enforce pay parity and it was challenged by the management and a Division Bench of the said Court allowed the appeal and further challenge was made before the Hon'ble Supreme Court of India. The Hon'ble Supreme Court of India has taken into consideration *Krishnamacharyulu* case (cited supra) and held that the writ petition against a private education institution would be justified only if a public law element is involved and if it is only a private law remedy, no writ petition would lie and therefore, upheld the decision of the Division Bench of the Calcutta High Court.

10. Similar view was taken by the Hon'ble Supreme Court of India in the order dated 19.07.2007 made in C.A.No.1382/2006 [S.K.Varshney v. Principal, Our Lady of Fatima H.S.S and Others].

11. In Satimbla Sharma and Others v. St. Paul's Senior Secondary School and Others [(2011) 13 SCC 760], the question arose for consideration was whether teachers of the private recognized aided schools are entitled to same salaries as received by the counterparts working in the Government schools and a writ petition was filed claiming the said relief and it was allowed by a Single Bench of the High Court of Himachal Pradesh and challenging the same, a Letters Patent Appeal was filed and the order allowing the writ petition was set aside and the writ petition was dismissed and hence, an appeal was preferred before the Hon'ble Supreme Court of India. The Hon'ble Supreme Court of India has taken into consideration Krishnamacharyulu case (cited supra) and other decisions and held as follows:

16. In our considered opinion, the Division Bench the High Court has rightly held in the impugned judgment that the teachers of private unaided minority schools had no right to claim salary equal to that of their counterparts working in Government schools and Government aided schools. The teachers of Government schools are paid out of the Government funds and the teachers of Government aided schools are paid mostly out of the Government funds, whereas the teachers of private unaided minority schools are paid out of the fees and other resources of the private schools.

....

25. Where a statutory provision casts a duty on a private unaided school to pay the same salary and allowances to its teachers as are being paid teachers of Government aided schools, then a writ of mandamus to the school could be issued to enforce such statutory duty. But in the present case, there was no statutory provision requiring a private unaided school to pay to its teachers the same salary and allowances as were payable to teachers of Government schools and therefore a mandamus could not be issued to pay to the teachers of private recognized unaided schools the same salary and allowances as were payable to Government institutions.

26. In K. Krishnamacharyulu v. Sri Venkateswara Hindu College of Engg. [(1997) 3 SCC 571], relied upon by the learned counsel for the appellants, executive instructions were issued by the Government that the scales of pay of Laboratory Assistants as non-teaching staff of private colleges shall be at par with the government employees and this Court held that even though there were no statutory

rules, the Laboratory Assistants as non-teaching staff of private college were entitled to the parity of the pay-scales as per the executive instructions of the Government and the writ jurisdiction of the High Court under Article 226 of the Constitution is wide enough to issue a writ for payment of pay on par with government employees. In the present case, there are no executive instructions issued by the Government requiring private schools to pay the same salary and allowances to their teachers as are being paid to teachers of Government schools or Government aided schools.

27. We cannot also issue a mandamus to respondent nos.1 and 2 on the ground that the conditions of provisional affiliation of schools prescribed by the Council for the Indian School Certificate Examinations stipulate in clause (5)(b) that the salary and allowances and other benefits of the staff of the affiliated school must be comparable to that prescribed by the State Department of Education because such conditions for provisional affiliation are not statutory provisions or executive instructions, which are enforceable in law. Similarly, we cannot issue a mandamus to give effect to the recommendations of the report of Education Commission 1964-66 that the scales of pay of school teachers belonging to the same category but working under different managements such as government, local bodies or private managements should be the same, unless the recommendations are incorporated in an executive instruction or a statutory provision. We, therefore, affirm the impugned judgment of the Division Bench of the High Court.

12. In *M.K.Gandhi and Others v. Director of Education (Secondary) and Others* reported in [2005 (4) ESC 2265], before the High Court of Allahabad, teachers of Delhi Public School at Ghaziabad had challenged the order of termination passed by the said school on the ground that they were terminated without conducting any enquiry or afforded any opportunity. The writ petition came up for hearing before the learned Single Judge and having noted the difference of opinion between two Division Bench decisions of the same Court, the case was referred to the Larger Bench to resolve the dispute. The Full Bench of the High Court of Allahabad framed the following points for determination:

(i) Whether the D.P.S. School is a State within the meaning of Article 12 of the Constitution.

(ii) Whether the Board is a State within the meaning of Article 12 of the Constitution of India.

(iii) Whether the 'Affiliation bye-laws' have statutory force.

(iv) In case the answer to the second question is in negative

then, whether the affiliation bye-laws are still binding on the schools affiliated to the Board

(v) Whether the Committee of Management of the School, while dealing with the service matters of its employees or the teachers, is performing public duty.

(vi) Whether a writ petition is maintainable against a privately managed school for violation of the service rules.

(vii) Whether a writ petition is maintainable against the Board for non-observance of its bye-laws.

(viii) Whether the petitioners are entitled to any relief.

The Full Bench of the Allahabad High Court, while dealing with question Nos.4 to 6, has taken into consideration the Krishnamacharyulu case (cited supra) and other decisions and after elaborately considering the facts and law, reached the following conclusions:

"76. Our conclusions are as follows:

(a) The D.P.S. School is not the State within the meaning of Article 12 of the Constitution.

(b) The Central Board of Secondary Education, (the Board) is the State within the meaning of Article 12 of the Constitution.

(c) In case service conditions have not been framed, then

Chapter VII of the affiliation bye law relating to service condition shall be deemed to have been adopted by the school; and

The agreement between the parties-unless any other format is prescribed by the State/U.T. Act shall be deemed to be in the same format as Appendix-III to the affiliation bye-laws.

(d) The service rules and the agreement-whether framed by a school and agreed between the parties by an agreement or deemed to be adopted by them and agreement to be in the same format as Appendix-III of the affiliation bye-laws as held in the case-are merely private contract between the schools and the teachers. They do not have statutory force. The writ petition is not maintainable against the school to enforce them.

(e) In case any school does not follow the service rules framed by it, or the bye-laws deemed to be adopted as held

in this case then the school has to pay penalty for violating the same namely withdrawal of its affiliation.

(f) The Board is bound to follow its bye-laws and in case of any violation it has to take action under its bye-laws to disaffiliate the school. A writ petition is maintainable against the Board in case it fails to perform its duty.

(g) In the present case, there has been violation of the bye-laws deemed to be adopted as service conditions by the D.P.S. School. The Board has failed to perform its duty by not taking any action on the complaint filed by the petitioners. The Board should take action under the affiliation bye-laws against the D.P. School.

The Full Bench of the Allahabad High Court, for reaching the said conclusion, found that with regard to the facts of the case, there is no Government or statutory rule/regulation/order as was in the Krishnamacharyulu case (cited supra) or in Anadi Mukta Sadguru Trust v. U.R. Rudani [(1989) 2 SCC 691] and found that the observations of those cases have to be confined only to the facts of the said cases and are not applicable the case before it. However, the Full Bench, after answering the reference, has partly allowed the writ petition and directed the CBSE board to issue show cause notice to D.P.S. School as to why it may not be disaffiliated by terminating the petitioners therein contrary to the bye-laws and other directions. Aggrieved by the same, the Committee of Management, Delhi Public School and another preferred an appeal before the Hon'ble Supreme Court of India in Civil Appeal No.339/2007 and the Hon'ble Supreme Court of India held that the High Court having found that the D.P.S. School is not a State within the meaning of Article 12 of the Constitution of India, writ petition is not maintainable, there was no necessity for giving a direction to the CBSE which virtually amount to granting a declaration in favour of the appellants therein whose services have been terminated and accordingly, set aside the said portion of the said order vide order dated 16.08.2007. The respondents/teachers in the said appeal filed a Review Petition and it was also dismissed by the Hon'ble Supreme Court of India on 25.10.2007.

13. This Court, keeping in mind the ratio laid down in the above cited decisions, has carefully scrutinized and considered the materials placed before it.

14. The learned Judge taking into consideration Krishnamacharyulu case (cited supra) and the judgment rendered by the Delhi High Court in Amir-Jamia and Others v. Desharath Raj [ILR 1969 Delhi 202], held that the recruitment of teachers to Universities by virtue of Section 3 of the UGC Act is certainly a public function governed and regulated by Statute and hence, it is no more open to

the Universities like the first appellant herein to question the jurisdiction of the this Court, in matters of this nature and held that the writ petition is maintainable.

15. It is not disputed that the first appellant is a deemed University under Section 3 of the UGC Act, 1956 and it is a self-financing institution. The writ petitioner/respondent herein was appointed as Lecturer, Department of Bio-Technology in the Faculty of Sciences and Humanities, Kattankulathur by appointment order dated 21.06.2008 subject to following conditions:

1. She should surrender all the degree certificates in Original at the time of joining duty.

4. She should not absent himself from duty without prior permission of the Director, Faculty of Science & Humanities, Kattankulathur campus.

6. She should abide by the rules and regulations of this University in force and subsequent modifications, if any.

8. She will be on probation for a period of one year from the date of joining duty in this University.

10. In the event of leaving, one month notice shall be given by her to this University.

12. In case, administration is not satisfied with her performance, one month notice will be given to her before terminating her services in this University. Resignation in the middle of the Academic Year will not be permitted.

14. She is liable for transfer in the corresponding post within the jurisdiction of this University.

16. She is to report before the Director, Faculty of Science & Humanities, Kattankulathur.

18. Medical facilities and transport facilities as per University rules shall be made available on request.

The Dean of the first appellant University having found that she has not engaged or taken classes for III year B.Sc., and I year M.Sc., from January 2012, issued a memo calling upon her to submit her explanation and the writ petitioner/respondent herein has also submitted an explanation deying the same. The first respondent not satisfied with the explanation, decided to hold a departmental enquiry and accordingly, constituted a Committee vide memo dated 22.02.2012. However, a decision has been taken to terminate the

services of the respondent/writ petitioner and accordingly, the terminated order dated 04.04.2012 has been served on her stating that she will be relieved from the services of the first appellant University with effect from the afternoon of 04.05.2012 on account of administrative reasons and it may be taken as one month notice and challenging the vires of the same, she filed a writ petition and obtained an interim order on 04.05.2012 and on that date, she was relieved from the services. Thereafter, the respondent herein has also collected her M.Sc., and Ph.D. Certificates.

16. It is the stand of the respondent herein that no proper enquiry has been conducted and the principles of natural justice has been given a total go-by and she has not been communicated with the result of the enquiry and like a bolt from the blue, she was issued with the impugned order dated 04.04.2012. However, the appellants herein took a stand that though the enquiry found that research progress as well as teaching methodology adopted by the respondent herein is not up to the satisfactory level, decided to invoke Clause 6 of the appointment order and accordingly, relieved her from service with effect from 04.05.2012 and passed the order of termination "simpliciter". It is the submission of the learned Senior Counsel appearing for the appellants that though it was open to the appellants herein to pass a stigmatic order, taking into consideration her academic credentials and her future prospects, decided to invoke Clause 6 of the appointment order and accordingly, she was terminated from service and would further submit that there is no public law element involved and consequently the writ petition challenging the order of termination simpliciter is not at all maintainable.

17. This Court finds considerable force in the submissions made by the learned Senior Counsel appearing for the appellants. It is not in doubt that the first appellant is a self-financing institution and a deemed University under Section 3 of the UGC Act and though it initiated departmental action against the respondent herein/writ petitioner, later on decided to invoke Clause 6 of the appointment order and accordingly, invoked the same and passed the order of termination.

18. Simply because the first appellant is a deemed University in terms of Section 3 of the UGC Act, it cannot come under the definition of "Other Authorities" under Article 12 of the Constitution of India. Insofar as the service conditions of the teachers employed like the respondent herein/writ petitioner, the first appellant has chosen to invoke Clause 6 of the appointment order and accordingly, passed the order of termination simpliciter and it cannot be termed as a statutory function.

19. The options available to the writ petitioner/respondent herein are not foreclosed to challenge the said order of termination and the only bar is that the said order is amenable to judicial review under Article 226 of the Constitution of India. The appellants as well as the respondent are bound by the terms of the appointment order which are purely contractual and any deviation or violation will not cloth them with any right to challenge it under Article 226 of the Constitution of India.

20. A perusal of voluminous materials placed before this Court by the respondent herein/writ petitioner would disclose that she has done a very good research work in the filed of breast cancer and served as a postdoctoral fellow in various institutions in USA for many number of years, but the fact remains that the order of termination passed against her is not amenable to judicial review at the hands of this Court in exercise of its jurisdiction under Article 226 of the Constitution of India and it is always open to her to challenge the legality and vires or otherwise of the said order before a competent forum.

21. Though this Court sympathizes for the respondent herein/writ petitioner, in view of the above said legal bar, it is not possible to grant her any relief in exercise of its jurisdiction under Article 226 of the Constitution of India. Insofar as the redressal of the grievances of the teachers of the aided and unaided institutions are concerned, the Hon'ble Supreme Court of India in T.M.A. Pai Foundation and Others v. State of Karnataka and Others [(2002) 8 SCC 481], in answer to question No.5(c) at para 161, has suggested as follows:

"For redressing the grievances of employees of aided and unaided institutions who are subjected to punishment or termination from service, a mechanism will have to be evolved, and in our opinion, appropriate tribunals could be constituted, and till then, such tribunals could be presided over by a judicial officer of the rank of District Judge."

22. This Court, taking note of the fact that there are number of deemed Universities in the State, is of the considered view that it is the high time that appropriate Tribunals have to be constituted by the authorities concerned as expeditiously as possible for redressal of the grievances of the employees of aided and unaided institutions like the respondent herein/writ petitioner, so that it will be of great relief to them. This Court is very much optimistic that right steps in this direction will be taken as early as possible.

23. Hence, for the reasons assigned above, this writ appeal is allowed and the order dated 08.04.2013 made in W.P.No.12676/2012 is set aside and consequently, the writ petition is dismissed. However, in the circumstances of the case, there shall be no order as to costs. Consequently, the connected miscellaneous petitions are closed.

24. It is made clear that the findings/observations made herein are only for the purpose of dealing with the question with regard to the maintainability of the writ petition and this Court has not touched upon the merits of the challenge projected by the writ petitioner/respondent herein in respect of the termination order passed against her.

Sd/-
Assistant Registrar

/True copy/

Sub-Asst.Registrar

jvm

+ 1 cc to M/s. B. Sarasuathi, Advocate Sr.3345

W.A.No.932 of 2013

KM(CO)
Eu 5.7.13



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