

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.11.2016

CORAM:

THE HONOURABLE MR. JUSTICE R.SUBBIAH

Writ Petition No.37605 of 2016

K.Balaji

... Petitioner

vs.

1. The Director of Technical Education,
Chennai 600 025.
2. The Chairman,
Krishnasamy Memorial Polytechnic College,
T.Kumarapuram,
Cuddalore - 607 109.
3. The Principal,
Krishnasamy Memorial Polytechnic College,
T.Kumarapuram,
Cuddalore - 607 109.

... Respondents

Writ petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified mandamus calling for the records relating to the 2nd respondent herein in Roc.No.78/2016/KMPTC, dated 21.10.2016 and quash the same and consequently direct the 2nd respondent herein to reinstate the petitioner into service with all service benefits.

For Petitioner : Mr.R.S.Anandan

For R1 : Mr.K.Dhananjayan,
Special Government Pleader

For R2 & R3 : Mr.N.Karthikeyan

ORDER

The petitioner has come up with this Writ Petition challenging the order dated 21.10.2016 passed by the 2nd respondent vide proceedings in Roc.No.78/2016/KMPTC and for a consequential direction to the 2nd respondent herein to reinstate him into service with all service benefits.

2. According to the petitioner, he joined the services as a Lecturer in the year 2004. Then, he was conferred with the

post of Head of the Department of Electrical and Electronics Engineering Department in the year 2009. While so, on 26.08.2016, he was served with a call notice to attend Staff Enquiry Committee. Accordingly, the petitioner attended the enquiry on 26.08.2016. On 01.09.2016, he was served with a suspension order by the 2nd respondent vide proceedings in Roc.No.78/2016/KMPTC. Thereafter, an Enquiry Committee was constituted and an enquiry was conducted on 26.08.2016 and some prima facie case was found against the petitioner.

3. The case of the petitioner is that he has not been permitted to attend his work from 23.08.2016 and also not paid with salary from then onwards. Even after placing him under suspension on 01.09.2016, the petitioner was not paid with the subsistence allowance for his survival. On 07.09.2016, the petitioner submitted a representation to the second respondent to furnish a copy of the Staff Enquiry Committee Report or permit him to peruse the same. Accordingly, the second respondent as per his Letter dated 08.09.2016 permitted to peruse the records relating to his request on 14.09.2016. Then, he submitted his explanation on 17.09.2016 refuting the allegations made against him. Thereafter, no charge memo was framed against him and nothing was served on him. It is the further case of the petitioner that the fact finding enquiry obtained statements from the petitioner and based on the same, a report was submitted, but, none were allowed to cross-examine the petitioner.

4. It is the grievance of the petitioner that had he been allowed, he would have elicited the truth and proved that their statements are false and he would have disproved the charge by producing his defence witness and other documentary evidence. But, without framing charges and conducting enquiry in accordance with law, the petitioner has been kept under prolonged suspension. Therefore, the petitioner submitted a representation on 05.10.2016 to the 2nd and 3rd respondents to revoke the suspension and to reinstate him in service and pay the arrears of salary. But, the 2nd respondent without considering the same, issued the impugned show cause notice in Roc.No.78/2016/KMPTC, dated 21.10.2016 to submit his explanation within three days from the date of receipt of the notice as to why he should not be terminated from service on account of the charges which were proved by the Enquiry Committee. Hence, having no other efficacious alternative remedy, the petitioner has approached this Court.

5. When the matter is taken up for consideration, learned counsel for the petitioner contended that only a fact finding enquiry was conducted by the Staff Enquiry Committee and in that enquiry, no one was examined in the presence of the petitioner and no opportunity was given to cross-examine the witnesses to

elicit the truthfulness of the statement given. Also, no opportunity was given to submit his defence witnesses to disprove the allegations. He further contended that the respondents ought not to have placed him under suspension without framing charges and without getting explanation on the charges based on the fact finding enquiry in which no witnesses are examined in his presence.

6. Learned counsel appearing for the respondents 2 and 3, by filing a detailed counter affidavit, submitted that the Writ Petition is not maintainable as against the 2nd and 3rd respondents, as Krishnasamy Memorial Polytechnic College is a self-financing Institution with no grant from the Government and

that the Institution has been granted recognition by the Directorate of Technical Education, Chennai. Except for regulating the technical education imparted to the students, the said institutions do not have any authority or control over the 2nd and 3rd respondent Institutions. In all matters relating to administration, funding, appointment of staff and running the Institution, the 1st respondent has no authority or control. Hence, he submitted that the petitioner has purposely impleaded the 1st respondent as a party merely to come within the jurisdiction of this Court.

7. With regard to the factual aspects, learned counsel submitted that the complaint has been made by a lady lecturer of the Institution alleging that the petitioner had made allegations against her personal character to the students in the Computer Department and besides this, certain girl students have also submitted complaints about the behaviour of the petitioner, like directing the girl students to sit in a separate room in the lab, asking personal mobile number of the girl students, taking photographs of the girl students, etc. Based on the complaint given by the students as well as the lecturer, the Institution appointed Dr.K.Vairamanickam and Dr.G.Nirmala as Enquiry Officers to conduct enquiries on the complaints received.

8. It is further stated in the counter that the Enquiry Officer examined the complainant and several students and other lecturers in the Department. Even the petitioner and another staff of his department were examined. Based on the statement given by the witnesses namely, the students and other lecturers, the Enquiry Officers submitted their report on 29.08.2016. Based on the report of the Enquiry Officers, the petitioner was placed under suspension on 01.09.2016. After the report, an explanation was called for from the petitioner. The petitioner requested for perusal of the records which was permitted and the petitioner examined the records on 14.09.2016 and submitted his

explanation on 17.09.2016. Subsequently, the Enquiry Committee took up the defence statement, considered the issue in its entirety and submitted a Final Report on 29.09.2016. In the final report, the Committee has clearly stated that the continuance of the petitioner in service would create an unhealthy atmosphere in the minds of the students and recommended termination of his services. Subsequent to the Final Report, another Show cause notice dated 04.10.2016 was issued to the petitioner for which the petitioner submitted a reply dated 05.10.2016.

9. Pursuant thereto, the complainant submitted another complaint on 09.10.2016 and a complaint was also filed before the local Police Station. Therefore, in the best interest of the Institution and to maintain harmony

between the students and the teaching staff, the show cause notice dated 24.10.2016 was issued. Hence, taking into account the above circumstances, the Institution was bound to institute an immediate enquiry and based on the findings, suspended the petitioner immediately.

10. Heard the submissions made by the learned counsel on either side and perused the material documents available on record.

11. The only contention raised by the learned counsel for the petitioner is that based on an anonymous complaint, action was taken against him. It is his grievance that no opportunity was given to him to elicit the veracity of the statement given and to disprove the allegations against him. Even assuming that the allegation against the petitioner is false, the petitioner ought to have clearly stated in the affidavit as to what is the actual charge against him. He has only stated that an enquiry into the charge against him is contemplated. This conduct of the petitioner shows that he has not approached this Court with clean hands. Moreover, this Court does not find any demerits in the enquiry conducted by the 2nd respondent.

12. In view of the above, this Court holds that the Writ Petition is devoid of merits and is accordingly dismissed. No costs. Consequently, connected W.M.P.No.32239 and 32260 of 2016 are closed.

Sd/-
Asst.Registrar (CCC)

/true copy/

Sub Asst. Registrar

To :

The Director of Technical Education,
Chennai 600 025.

+1 cc to Govt.Pleader,sr.65316

+1 cc to M/s.N.karthikeyan,advocate,sr.65045

+1 cc to M/s.R.S.anandan,advocate,sr.65072

nri(co)
krd 12/1

W.P.No.37605 of 2016



WEB COPY