

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.12.2016

CORAM:

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

W.P.No.43141 of 2016

S.Shanthi

.. Petitioner

vs.

1. The Additional Chief Educational Officer,
CEO office (SSA),
Sharva Siksha Abiyan, Room No.303,
3rd Floor, Collectorate Building,
Salem-636001.

2. The Supervisor (I/C),
Block Resource Centre,
Ayothiyapattinam, Salem District - 636 103.

3. The Joint Director of School,
College Road, DPI Complex,
Nungambakkam, Chennai.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records of the first respondent in A.Thi.Mu.Na.Ka.Enn.288/A.Ka.E1/2016 and dated 30.06.2016 quashing the order dated 30.06.2016 and directing the first respondent to forward the application to the third respondent to pass an order permitting the petitioner to pursue M.Phil Course in Annai Therasa University as per her application dated 20.07.2015.

For Petitioner : Mr.S.Vijayaraghavan

For Respondents : Mr.V.Anandhamoorthy
Additional Government Pleader

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O R D E R

By consent, this Writ Petition is taken up for final disposal.

2. The petitioner at present working as Block Resource Teacher Educator (BRTE) in Block Resource Centre, Ayothiyapattinam, Salem District - 636 103 and had put in 8 years of service. The petitioner would further state that she

is a graduate having completed B.Sc. Physics from Periyar University, Salem in April 2006 and thereafter, she has completed M.Sc. Physics from Annamalai University in December, 2010 and for the purpose of enhancing her educational qualification, she made an application to the first respondent through the second respondent, seeking permission from the third respondent for pursuing M.Phil Course by correspondence in Annai Therasa University for the Academic years 2015-16 and 2016-17 for a duration of two years. The second respondent forwarded the same to the first respondent and the first respondent, returned the same seeking certain clarifications and returns were complied with and resubmitted through proper channel. The petitioner would further state that in the interregnum, she was proceeded with departmentally and the same is pending and pendency of the disciplinary proceedings, the first respondent passed the impugned order dated 30.06.2015 refusing to forward the application of the petitioner to the concerned University. Challenging the legality of the same, the petitioner has come forward with this writ petition.

3. Mr.S.Vijayaraghavan, learned counsel appearing for the petitioner has drawn the attention of this Court to G.O.Ms.No.366, Personnel and Administrative Reforms (Per-A) Department dated 11.11.1992 and would submit that as per the said Government Order, *dehors* the suspension of the concerned employee, No Objection Certificate can be granted to a Government Servant to prosecute higher studies, provided the said qualification cannot be taken as a ground for seeking exemption from transfer from one place to another. It is the further submission of the learned counsel appearing for the petitioner that admittedly the petitioner is not placed under suspension and she is merely facing disciplinary proceedings and hence, there cannot be any impediment on the part of the first respondent to forward the application of the petitioner to Annai Therasa University for pursuing the M.Phil Course. The learned counsel appearing for the petitioner also submitted that as per G.O.Ms.No.200, Personnel and Administrative Reforms (A) Department dated 19.04.1996, the application of the petitioner is to be given disposal within a period of 15 days from the date of receipt of the application and if no order has been issued within the said period, it shall be deemed to have been accorded permission.

4. *Per contra*, Mr.V.Anandamoorthy, learned Additional Government Pleader would submit that since the petitioner is facing disciplinary proceedings, a fair decision has been taken by the first respondent refusing to forward the application of the petitioner to the concerned University.

5. This Court has considered the rival submissions and also perused the entire materials placed before it.

6. It is relevant to extract G.O.Ms.No.366, Personnel and Administrative Reforms (PER-A) Department dated 11.11.1992:

"GOVERNMENT OF TAMIL NADU
ABSTRACT

Public Services - Government servants under suspension from service - Joining part-time evening courses/correspondence courses etc. - No Objection from Heads of Departments/Head of Offices - Instructions - Issued.

PERSONNEL AND ADMINISTRATIVE REFORMS (PER-A) DEPARTMENT

G.O.Ms.No.366 Dated the 11th November, 1992.

Read the following:-

1. G.O.Ms.No.1341, Public (Services -A) Department, dated 27.8.1963
 2. G.O.Ms.No.328, P&A.R. (Per-A) Department, dated 9.4.1983
 3. Government Letter No.22536/84-1, P&A.R. (Per-A) Department, dated 22.9.1984.
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ORDER:

In the Government Order first read above, it was ordered that a Government servant should obtain prior permission of the Head of the Department concerned for joining a part-time evening course conducted out of office hours for acquiring Associate Membership of Institute of Engineers etc.

2. In Government Order second read above, it was ordered that a Government servant who joins the correspondence course conducted by various Universities should obtain prior permission of the Head of Departments concerned. In the Government letter third read above, the Secretaries to Government and the Heads of Departments have been informed that the power to grant permission to Government servant to join correspondence courses might be delegated to the Heads of Offices.

3. A question has arisen as to whether a Government servant under suspension from service shall be permitted by the Head of Department/Head of Office to join part-time evening courses/correspondence courses etc. was examined in detail. A

Government servant under suspension from service is debarred from exercising the powers and discharging the duties of his office during the period of suspension. He is allowed subsistence allowance. Even while under suspension from service, a Government servant continues to be a Government servant. Therefore, it is considered that there is no harm to grant "No Objection Certificate" to a Government servant to prosecute higher studies provided this is not taken as a ground for seeking exemption from transfer from one place to another.

4. The Government accordingly direct that the Head of Office, as the case may be, may permit a Government servant under suspension from service to join part-time evening courses/correspondence courses etc. provided that this is not taken as a ground for seeking exemption from transfer from one place to another.

(BY ORDER OF THE GOVERNOR)
T.V. VENKATARAMAN,
CHIEF SECRETARY TO GOVERNMENT.

To

All Departments of Secretariat, Madras -9.
All Heads of Departments,
The Registrar, High Court, Madras.
The Registrar, Tamil Nadu Administrative Tribunal, Madras-2.
The Secretary, Tamil Nadu Public Service Commission, Madras-2.

Copy to:

All Sections in Personnel and Administrative Reforms Department,
Madras-9.

/ Forwarded/ By Order/

SECTION OFFICER."

Para 3 of the above said Government Order provides that even if an employee is placed under suspension, there cannot be any impediment to grant No Objection Certificate to enable a Government Servant to prosecute higher studies and taking into consideration of the same, she cannot seek exemption from transfer to one place to another. In the case on hand, the petitioner has not made any such request.

7. In the light of the above said Government Order coupled with the facts and circumstances of the case, this Court is of the view that the impugned order of the first respondent warrants interference.

8. In the result, this Writ Petition is allowed and the impugned order of the first respondent in A.Thi.Mu.Na.Ka.Enn.288/A.Ka.E1/2016 dated 30.06.2016 is set aside and the first respondent is directed to forward the application of the petitioner dated 20.07.2015 to the third respondent so as to enable her to pursue M.Phil. Course through correspondence in Annai Therasa University for the academic years 2015-16 and 2016-17 and appropriate orders shall be passed in this regard within a period of three weeks from the date of receipt of a copy of this order and decision taken, be communicated to the petitioner. No costs.

-s/d-

Assistant Registrar (CS-I)

/true copy/

Sub-Assistant Registrar

jvm

To

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CEO office (SSA),
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+1 CC to Mr. S. Vijayaraghavan, Advocate SR 74070

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W.P.No.43141 of 2016

KSJ

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