



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.06.2016

CORAM :

THE HONOURABLE MR.JUSTICE NOOTY.RAMAMOHANA RAO

and

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

Writ Appeal (MD) No.120 of 2011

& M.P(MD)No.1 of 2011

1.The Correspondent,

Thiagarajar College of Engineering,
Madurai - 625 015.

2.The Principal,

Thiagarajar College of Engineering,
Madurai - 625 015.

..Appellants/Respondents 2&3

-Vs-

1.N.S.Mohanram

..Respondent/Writ Petitioner

2.The Director,

Office of the Director of Technical Education,
Chennai - 600 025.

..Respondent/1st Respondent

Appeal filed under Clause 15 of Letters Patent praying to set aside the order dated 02.11.2010 made in W.P.(MD)No.199 of 2008 on the file of this Hon'ble Court and allow this Writ Appeal.

Prayer in WP(MD). 199/ 2008 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus, to quash the impugned order passed by the 3rd respondent vide No.B2/98/3922 dated 10/11/1998 after calling for the records and pursing the same and direct the respondents to place the petitioner in the same position as laboratory Assistant who was appointed by an order vide Ref.No.B2/94/4630 dated 21/09/94 with the approval of the 1st respondent in his proceedings vide Proc.49488/C4/93 dated 17/08/84 , with all attended benefits and arrears of pay which was recovered for the period from 29-11-1991 to 31/10/1998 in 23 installments from petitioners salary within the time frame.

For Appellant : Mr.G.R.Swaminathan

For Respondent 1 : No appearance

For Respondent 2 : Mr.B.Pugalendhi

Special Government Pleader

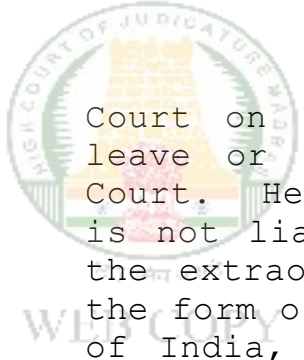
JUDGMENT

(Judgment of the Court was delivered by NOOTY.RAMAMOHANA RAO, J)

When this matter was called on 2nd June, 2016, there was no representation made on behalf of the first respondent, the writ petitioner. Though his name was called, he was not present. Hence, we adjourned the matter on our own more with a view to provide him an opportunity to turn up and contest the matter. Today also, when we have taken up the matter for hearing, there is no representation and Mr.N.S.Mohanram was not present.

2.This appeal is, in fact, preferred by the respondents 2 and 3 to the Writ Petition who are the Correspondent and Principal of the College of Engineering where the writ petitioner was stated to be employed as an Attender. The learned counsel for the appellants Mr.G.R.Swaminathan, has brought to our notice that against the orders passed by the Principal of the college on 10.11.1998, the writ petitioner Mr.N.S.Mohanram instituted W.P. (MD)No.3301 of 2007 before this Court. When the Writ Petition was heard on 11th April, 2007, the learned counsel appearing for the said Mr.N.S.Mohanram, sought permission of this Court to withdraw the writ petition. The learned counsel for the writ petitioner also made an endorsement to that effect in the court bundle on the said Writ Petition in W.P.(MD) No.3301 of 2007. In that view of the matter, the Writ Petition (MD) No.3301 of 2007 was dismissed as withdrawn. No liberty or leave has been sought for from the Court while withdrawing the said Writ Petition (MD)No.3301 of 2007. Without in so many words disclosing the fact that the said writ petition was instituted and withdrawn, another writ petition has been instituted in this Court i.e. W.P.(MD)No.199 of 2008. It is therefore urged by the learned counsel for the appellants that the present Writ Petition (MD)No.199 of 2008 is not maintainable. The learned counsel has also placed reliance upon a judgment rendered by the Hon'ble Supreme Court in *Sarguja Transport Service vs. State Transport Appellate Tribunal, M.P., Gwalior, and others* reported in (1987) 1 SCC 5. The Hon'ble Supreme Court, after considering the provisions contained under Order XXIII of the Code of Civil Procedure, has held that when a suit or a proceeding is withdrawn, thereafter, second suit or similar proceeding cannot be initiated. In that view of the matter, the institution of the present Writ Petition (MD) No.199 of 2008, without disclosing it faithfully amounts to approaching this Court with unclean hands.

3.The principles contained behind Order XXIII of the Code of Civil Procedure are principles of jurisprudence. They are not based on technicalities. They are intended to secure substantial justice to the parties. Therefore, wherever and whenever a suit or a proceeding is withdrawn without seeking leave and liberty, a second suit for the same relief is not liable to be entertained. In the instant case, when we have perused the order passed by this



Court on 11th April, 2007, in W.P.(MD)No.3301 of 2007, no such leave or liberty was sought for nor was that granted by this Court. Hence, we are of the opinion that W.P.(MD) No.199 of 2008 is not liable to be entertained. Further, any party, who seeks the extraordinary jurisdiction of this Court to be exercised in the form of writ proceedings under Article 226 of the Constitution of India, is required to approach this Court with clean hands. The process of justice delivery should not be permitted to be polluted. Half truth statements which are not faithful or accurate are not supposed to be made. Such statements will form the basis of the proceedings. They tend to dilute the purity of the institution and the justice delivery mechanism. Therefore, Courts have been consistently refusing to come to the aid and rescue of a party who does not approach the Court with clean hands.

4.For the aforementioned reasons, we have no hesitation to allow this Writ Appeal, setting aside the order passed in W.P.(MD) No.199 of 2008 and dismiss the said Writ Petition as not maintainable. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar(CS)
Madurai Bench of Madras High Court,
Madurai-23.

To

The Director, Office of the Director of Technical Education,
Chennai - 600 025.

+1cc to M/s.G.R.Swaminathan, Advocate in SR.28843

Writ Appeal (MD) No.120 of 2011
07.06.2016

srm

PBK/NGM-MP 23/06/2016 ::3P-3C::