

Reserved on : 04.09.2017

Delivered on : 13.09.2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:13.09.2017

CORAM

THE HON'BLE Mr. JUSTICE M.DURAI SWAMY

W.P.No.21444 of 2017 and
W.M.P.No.22425 of 2017

M.Venkatramanan

... Petitioner

Vs.

University of Madras,
rep by the Registrar,
"Centenary Buildings", Chepauk,
Chennai - 600 005.

... Respondent

Petition filed under Article 226 of The Constitution of India praying to issue a writ of mandamus directing the respondent to accord qualification approval as the Principal, Shree Chandraprabhu Jain College, Minjur as well as to continue the petitioner as an Ex-Officio Member in the Academic Council under Section 23(a) - Ex-Officio Members (7) of the Madras University Act, 1923 as well as the elected Member in the Senate and Syndicate countenancing his position as the Principal, Shree Chandraprabhu Jain College, Minjur.

For Petitioner : Mr.Haja Nazirudeen, Senior Counsel
for Mr.P.Tholgappian

For Respondent : Mrs.G.Thilagavathi, Senior Counsel
for Mr.R.Gopinath

ORDER

The petitioner has filed the above Writ Petition to issue a writ of mandamus directing the respondent to accord qualification approval as the Principal, Shree Chandrababhu Jain College, Minjur as well as to continue the petitioner as an Ex-Officio Member in the Academic Council under Section 23(a) - Ex-Officio Members (7) of the Madras University Act, 1923 as well as the elected Member in the Senate and Syndicate countenancing his position as the Principal, Shree Chandrababhu Jain College, Minjur.

2.The brief case of the petitioner is as follows:

(i)According to the petitioner, he is the elected Member of the Syndicate in the Madras University. The petitioner possesses M.A., M.Phil., and Ph.D., qualifications and rendered service for more than 30 years in D.G.Vaishnav College, Chennai - 600 029 and assumed charge as its Principal. Subsequent to attaining superannuation at the age of 58 years, his services in the said Vaishnav College ceased with effect from 31.05.2017 AN and without any loss of time, the petitioner joined as Principal in Pattammal Alagesan College of Arts and Science, Athur, Chengalpet on 01.06.2017 FN. Immediately, the factum of petitioner's assumption of charge as the Principal of Pattammal Alagesan College of Arts and Science,

Athur, Chengalpet was informed to the respondent on 01.06.2017 by the College and in response therefor, the respondent accorded necessary approval vide letter dated 12.06.2017 for the petitioner to continue as Ex-Officio Member in the Academic Council under Section 23(a) - Ex-Officio Members (7) of the Madras University Act, 1923 as well as to continue as a Member in the Senate and Syndicate by virtue of his holding position as the Principal of Pattammal Alagesan College of Arts and Science, Athur, Chengalpet, hence, there was no break in service. During his tenure as the Principal, D.G.Vaishnav College, Chennai, election was conducted for the purpose of Senate Members and after winning in the election from the Academic Council, again election was held for the Syndicate Members from the Senate. After getting elected from the Senate, he became a Syndicate Member of the University of Madras for a period of three years with effect from 28.03.2015.

(ii)Section 18 of the Madras University Act stipulates that for the Syndicate in addition to the Vice-Chancellor, even the elected and nominated Members of the Syndicate shall hold office for a period of three years with the right of possessing the eligibility for election or nomination. Proviso to Section 18 stipulates to inform the University to continue as a Member of Syndicate by virtue of the petitioner's continuation as Principal

without interruption within seven days from the date of taking charge of appointment as Principal. In the event of information, any Member, whether elected or nominated, shall cease to run (i.e.) he shall be deemed to have vacated his office as an elected or nominated Member. In the event of information being given within seven days from the date of appointment as Principal, the respondent shall issue an order in the form of communication according approval for continuance as Principal as well as continuance as a Member in Academic Council, Senate and Syndicate.

(iii) The petitioner, after attaining superannuation on 31.05.2017 in the D.G.Vaishnav College, joined as Principal in Pattammal Alagesan College of Arts and Science, Athur, Chengalpet on 01.06.2017 without any break in service, which was also informed to the respondent on the very same day. During the tenure as the Principal of Pattammal Alagesan College of Arts and Science, the petitioner was called upon to appear before the Select Committee for an interview for appointment as the Principal in Shree Chandrababhu Jain College, Minjur on 22.06.2017. During the Selection Committee Meeting, out of the five candidates, who were short-listed, three candidates were called for the interview and the Selection Committee resolved to appoint the petitioner as the Principal, Shree Chandrababhu Jain College, Minjur reckoning his qualification, experience and

performance in the interview.

(iv) The petitioner resigned from the post of Principal, Pattammal Alagesan College of Arts and Science, Athur, Chengalpet on 27.06.2017 and joined Shree Chandrababhu Jain College, Minjur on 28.06.2017 without any break in service. Subsequently, on 30.06.2017, within two days, the Secretary, Shree Chandrababhu Jain College, Minjur addressed a letter to the respondent furnishing all the necessary particulars relevant to the claim of choice of the petitioner by virtue of his appointment as the Principal, Shree Chandrababhu Jain College, Minjur and in consequence, the petitioner's continuance as an Ex-Officio Member in the Academic Council under Section 23(a) - Ex-Officio Members (7) of the Madras University Act, 1923 as well as his continuance as an elected Member in the Senate and Syndicate by virtue of his holding position as the Principal of Shree Chandrababhu Jain College, Minjur without any break in service with effect from 28.06.2017. But so far, the respondent has neither accorded any approval nor sent any communication countenancing the petitioner as an Ex-Officio Member in the Academic Council under Section 23(a) - Ex-Officio Members (7) of the Madras University Act, 1923 as well as his continuance as a Member in the Senate and Syndicate by virtue of his holding position as the Principal, Shree Chandrababhu Jain College, Minjur without any break

in his position as Principal, as it was given in the case of 2nd appointment of the petitioner as the Principal, Pattammal Alagesan College of Arts and Science, Athur, Chengalpet by the respondent's letter dated 12.06.2017.

(v) Pursuant to the meeting notice from the respondent, the petitioner attended the Syndicate Meeting on 05.07.2017 and Convocation on 15.07.2017 as a Syndicate Member. Whiles, all of a sudden, without according any approval to the petitioner to continue as a Member in the Academic Council under 23(a) as well as to continue as a Member in the Senate and Syndicate, the respondent, by letter dated 04.08.2017, informed that the petitioner's continuance as a Member of the Syndicate, Senate and Academic Council is pending for decision and the Syndicate Meeting proposed to be held on 11.08.2017 was withdrawn.

(vi) According to the petitioner, he is an elected Member from the Senate and by way of extending, postponing or deferring the decision to recognize the petitioner as the Member of the Syndicate, Senate and Academic Council without assigning any reason whatsoever, cloud is being created, thereby causing irreparable threatening injury on the petitioner's right of holding position as an elected Member in the Syndicate of the Madras University. In these circumstances, the petitioner has filed the Writ

Petition.

3.The brief case of the respondent is as follows:

(i)According to the respondent, the contention of the petitioner that he had been relieved from the post of Principal, Pattammal Alagesan College of Arts and Science, Athur, Chengalpet on 27.06.2017 AN and joined as Principal, Shree Chandrababhu Jain College, Minjur on 28.06.2017 is incorrect for the reason that the request for continuance as Ex-Officio Member in the Academic Council as contemplated under Section-23(1)(a)(7) of the Madras University Act was received only 13.07.2017 by the respondent. According to the respondent, the petitioner was relieved from the post of Principal, Pattammal Alagesan College of Arts and Science, Athur, Chengalpet on 27.06.2017 and he joined as Principal, Shree Chandrababhu Jain College, Minjur and the request was received from the Management on 07.07.2017 and a communication from the petitioner on 13.07.2017 to allow him to continue in his Membership in Senate, Syndicate and Academic Council.

(ii)Even before the University could grant approval of qualification and permission for continuation of Membership, he attended the Syndicate Meeting on 05.07.2017 and participated in the 159th Convocation of

University as a Senate Member on 15.07.2017.

(iii) As per the University Statute and Regulations, the election to the authority of the University viz., Syndicate will allow the Members to continue in the Senate and Academic Council with the approval of the University. The eligibility of the Principal as Ex-Officio Member cannot automatically entitle the Ex-Officio Member to continue his representation automatically when he shifts the College. A person, who has been duly elected for a term can continue, thereof, subject to proper approval of the University. As per the provisions of the University Act, the Member is elected to the Academic Council of a particular College as per Chapter-XIII(1)(a)(7) and as per Clause (C) to Section 23.

(iv) According to the respondent, the petitioner's discontinuance from Pattammal Alagesan College of Arts and Science, Athur, Chengalpet, disqualifies him to continue in the Academic Council of the University once he had assumed the position as Principal, Shree Chandrababhu Jain College, Minjur. The only manner in which the petitioner can have the benefit of continuance is the approval/permission of the University, which has not happened in the instant case as there is a huge gap of days from the

date on which he was relieved (i.e.) 27.06.2017 from Pattammal Alagesan College of Arts and Science, Athur, Chengalpet to the date on which the requisition reached the respondent (i.e.) 13.07.2017 for his continuance as the Ex-Officio of the Academic Council. In the intervening dates, he had participated in the Syndicate Meeting on 05.07.2017 and in the Convocation as a Senate Member on 15.07.2017 without the approval of the University.

(v) Without realizing the shift of the petitioner from Pattammal Alagesan College of Arts and Science, Athur, Chengalpet to Shree Chandrababhu Jain College, Minjur, the respondent in the normal course communicated the Syndicate Meeting to be held on 01.08.2017 and by letter dated 04.08.2017, the University informed that the communication sent for the Syndicate Meeting to him as a Member was withdrawn as his continuation of Member of Senate, Syndicate and Academic Council is pending final decision. By letter dated 09.08.2017, the respondent called for an explanation from the petitioner as to how he attended the Syndicate Meeting on 05.07.2017 without getting the approval of the University and continuation of his Membership in the Syndicate as he had joined as the Principal in Shree Chandrababhu Jain College, Minjur on 28.06.2017. In these circumstances, the respondent sought for dismissal of the Writ Petition.

4. Heard Mr.Haja Nazirudeen, learned Senior Counsel appearing for the petitioner and Mrs.G.Thilagavathi, learned Senior Counsel appearing for the respondent.

5.Mr.Haja Nazirudeen, learned senior counsel appearing for the petitioner submitted that when the petitioner had resigned from the post of Principal, Pattammal Alagesan College of Arts and Science, Athur, Chengalpet on 27.06.2017 and joined as Principal of Shree Chandraprabhu Jain College, Minjur on 28.06.2017 without any break in service and when the Secretary of Shree Chandraprabhu Jain College, Minjur has informed the same to the respondent on 30.06.2017 (i.e.) within two days, the respondent should have granted approval for his continuation of his Membership in the Syndicate and Academic Council. Further, the learned senior counsel submitted that without any valid reason, the respondent is withholding the approval till this date. The learned senior counsel further submitted that since the petitioner is in employment as Principal without any break in service, the respondent should have granted approval in accordance with the provisions of the Madras University Act.

5.1. In support of his contentions, the learned senior counsel relied upon a judgment reported in *AIR 2003 Supreme Court 2041 [Canara Bank and others Vs. Shri Debasis Das and others]* wherein the Apex Court held as follows:

“...

13. Natural justice is another name of commonsense justice. Rules of natural justice are not codified canons. But they are principles ingrained into the conscience of man. Natural justice is the administration of justice in a commonsense liberal way. Justice is based substantially on natural ideals and human values. The administration of justice is to be freed from the narrow and restricted considerations which are usually associated with a formulated law involving linguistic technicalities and grammatical niceties. It is the substance of justice which has to determine its form.

14. The expressions “natural justice” and “legal justice” do not present a water-tight classification. It is the substance of justice which is to be secured by both and whenever legal justice fails to achieve this solemn purpose, natural justice is called in aid of legal justice. Natural justice relieves legal justice from unnecessary technicality, grammatical pedantry or logical prevarication. It supplies the omissions of a formulated law. As Lord Buckmaster said, no form or procedure should ever be permitted to exclude the presentation of a litigants' defence.”

6. Countering the submissions made by the learned senior counsel for the petitioner, Mrs.G.Thilagavathi, learned senior counsel for the respondent submitted that since there is a break in service, the respondent University has not given approval to the petitioner. The learned senior counsel submitted that the petitioner was relieved from Pattammal Alagesan College of Arts and Science, Athur, Chengalpet on 27.06.2017, whereas, the respondent received the requisition only on 13.07.2017. The learned senior counsel submitted that since there is no continuation of service as Principal, the respondent has not given the approval so far.

6.1. In support of her contentions, the learned senior counsel relied upon a judgment report in *AIR 1988 Supreme Court 66 [Gujarat University Vs. Shri.N.U.Rajguru and others]* wherein the Apex Court held as follows:

“...

6. It is well settled that where a statute provides for election to an office, or an authority or institution and if it further provides a machinery or forum for determination of dispute arising out of election, the aggrieved person should pursue his remedy before the forum provided by the statute. While considering an election dispute it must be kept in mind that the right to vote, contest or dispute election is neither a

fundamental or common law right instead it is a statutory right regulated by the statutory provisions. It is not permissible to invoke the jurisdiction of the High Court under Art. 226 of the Constitution by-passing the machinery designated by the Act for determination of the election dispute. Ordinarily the remedy provided by the statute must be followed before the authority designated therein. But there may be cases where exceptional or extraordinary circumstances may exist to justify by-passing the alternative remedies. In the instant case, there existed no circumstance justifying departure from the normal rule as even the challenge to the validity of statute 10 was not pressed by the respondents before the High Court.”

7. On a careful consideration of the materials available on record and the submissions made by the learned senior counsel on either side and also the judgments relied upon by the learned senior counsel, it could be seen that the petitioner was working as Principal in D.G.Vaishnav College, Chennai and he had attained superannuation on 31.05.2017. The petitioner, during his tenure as the Principal of D.G.Vaishnav College, Chennai, contested the election for the Senate Members and was elected from the Academic Council. Thereafter, he was elected to the Syndicate from the Senate. After getting elected from the Senate, the petitioner became a Syndicate Member of the University of Madras for a period of three years

with effect from 28.03.2015.

7.1. After attaining superannuation on 31.05.2017, on the very next day, he joined as the Principal of Pattammal Alagesan College of Arts and Science, Athur, Chengalpet (i.e.) on 01.06.2017 FN. The factum of the petitioner's assumption of charge as the Principal, Pattammal Alagesan College of Arts and Science, Athur, Chengalpet was informed to the respondent on 01.06.2017 by the College and in response therefor, the respondent accorded necessary approval by their letter dated 12.06.2017 for the petitioner to continue as Ex-Officio Member in the Academic Council as well as to continue as the Member in the Senate and Syndicate by virtue of holding position as the Principal in Pattammal Alagesan College of Arts and Science, Athur, Chengalpet.

7.2. The proviso to Section 18 of the Madras University Act stipulates to inform the University to continue as a Member of the Syndicate within seven days from the date of taking charge as Principal. In the event of information not being given, the Member, whether elected or nominated shall cease to hold the office. In the event of information being given within seven days from the date of appointment as Principal, the University shall

issue an order in the form of communication, granting approval for continuance as Principal as well as continuance as a Member in the Academic Council, Senate and Syndicate. According to the petitioner, the Secretary of Shree Chandrababhu Jain College, Minjur had informed the respondent that the petitioner had joined Shree Chandrababhu Jain College on 28.06.2017 and also furnished all the necessary particulars relevant to the claim of choice of the petitioner by virtue of appointment as the Principal of Shree Chandrababhu Jain College.

7.3. It is not in dispute that the petitioner was relieved from the post of Principal, Pattammal Alagesan College of Arts and Science, Athur, Chengalpet on 27.06.2017. The respondent contended that the University received the communication only on 13.07.2017, therefore, it is beyond seven days from the date of joining the post of Principal of Shree Chandrababhu Jain College, Minjur. However, the petitioner has produced the Joining Report submitted by him to Shree Chandrababhu Jain College dated 28.06.2017, wherein he has stated that he had joined duty on 28.06.2017 FN. The petitioner has also produced the Service Certificate dated 27.06.2017 issued by Pattammal Alagesan College of Arts and Science, Athur, Chengalpet wherein the Management has stated that the petitioner was working in the Institution from 01.06.2017 to 27.06.2017. The

petitioner has also produced a letter dated 30.06.2017 written by the Secretary of Shree Chandrababhu Jain College to the respondent informing the respondent that the petitioner was appointed as Principal of Shree Chandrababhu Jain College on 28.06.2017 along with all the necessary details. By letter dated 04.08.2017, the respondent had informed the petitioner that the petitioner's request for continuation as Member of Syndicate, Senate and Academic Council is pending for decision. When the petitioner had established that he was relieved from the post of Principal, Pattammal Alagesan College of Arts and Science, Athur, Chengalpet on 27.06.2017 and had joined Shree Chandrababhu Jain College, Minjur on 28.06.2017 FN, it clearly establishes that there is no break in service. The Secretary of Shree Chandrababhu Jain College had also, by letter dated 30.06.2017 (i.e.) within two days from the date of appointment, informed the respondent with regard to the appointment of the petitioner as the Principal of their College. सत्यमेव जयते

7.4. When the fact remains that the petitioner was relieved from the erstwhile college on 27.06.2017 and joined Shree Chandrababhu Jain College as its Principal on 28.06.2017, I do not find any reason to discredit the letter dated 30.06.2017 written by the Secretary of Shree Chandrababhu Jain College, Minjur. When the Management had informed

the respondent University within seven days from the date of appointment of the petitioner as its Principal, as per proviso to Section 18 of the Madras University Act, the petitioner is entitled to get approval as the Principal, Shree Chandrababhu Jain College, Minjur as well as to continue as Ex-Officio Member in the Academic Council under Section 23(a) - Ex-Officio Members (7) of the Madras University Act, 1923 as well as the elected Member in the Syndicate and Senate countenancing his position as the Principal of Shree Chandrababhu Jain College, Minjur.

8. In these circumstances, I direct the respondent to accord qualification approval to the petitioner as the Principal, Shree Chandrababhu Jain College, Minjur as well as to continue the petitioner as an Ex-Officio Member in Academic Council under Section 23(a) - Ex-Officio Members (7) of the Madras University Act, 1923 as well as an elected Member in the Syndicate and Senate countenancing his position as the Principal of Shree Chandrababhu Jain College, Minjur. Accordingly, the Writ Petition is allowed. No costs. Consequently, the connected miscellaneous petition is closed.

Index : No
Internet : Yes
va

13.09.2017

Note: Issue order copy today itself.

To

The Registrar, University of Madras,
“Centenary Buildings”, Chepauk,
Chennai - 600 005.

M.DURAI SWAMY, J.

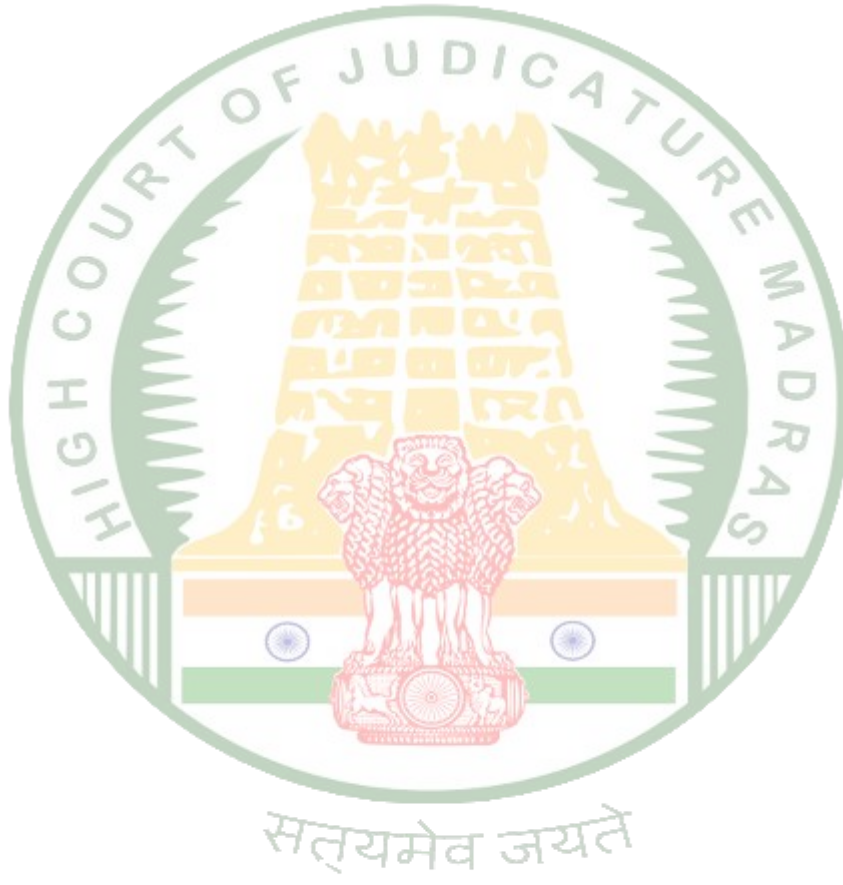
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