

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:12.06.2017

CORAM:

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

W.P.No.28007/2015 & MP.No.1/2015

D.Subramaniyan

..Petitioner

Vs

- 1.P.T.Lee Chengalvaraya Naicker Trust,  
Represented by its Secretary,  
Vepery, Chennai 600 007.
  2. The Principal,  
P.T.Lee C.N. Polytechnic College,  
Vepery, Chennai 600 007.
  3. The Commissioner of Technical Education,  
Guindy,  
Chennai 600 025
- ..Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorarified Mandamus or any other appropriate Writ, order or Direction in the nature of a writ, to call for the records connected with the two impugned bearing order No.673/A3/2015 dated 23.06.2015 on the file of the 2<sup>nd</sup> respondent and to quash the same, and direct the 2<sup>nd</sup> respondent to consequently forward necessary pension and re-employment papers to the authorities concerned, the 3<sup>rd</sup> herein.

For Petitioner: Mr.D.Subramanian  
Party-in-Person

For Respondents: Mr.M.R.Jothimanian for R1& R2  
Mr.K.V.Dhanapalan,  
Spl.Government Pleader for R3

ORDER

By consent, the writ petition is taken up for final disposal.

2 The petitioner made a challenge to the impugned order of suspension dated 23.06.2015 passed by the 2<sup>nd</sup> respondent with a further prayer to direct the 2<sup>nd</sup> respondent to forward

necessary pension and re-employment proposal to the authorities concerned, viz., 3rd respondent and to pass such further or other orders.

3 The writ petitioner in the affidavit filed in support of this writ petition, would aver among other things that he is working as a Selection Grade Lecturer in Mathematics in the service of the 2<sup>nd</sup> respondent Polytechnic college and he was appointed initially on 17.01.1985 as an Instructor and put in 30 years of hard, sincere and unblemished service with satisfaction of all concerned. The petitioner would further aver that he has taken all possible steps to preserve the glory of the Public Trust which is running the educational institution and though, he was due to retire from service on 31.10.2015, he was placed under suspension by the 2<sup>nd</sup> respondent vide proceedings No.673/A3/2015 dated 23.06.2015 which reads as follows :

"As per the directions of the Trust Board with reference to the Trust Board Res.No.396, dated 20.06.2015, the Principal i/c. Is informed to issue orders to place Thiru D.Subramanian, Lecturer(Sel. Gr) under Suspension with immediate grounds on administrative grounds.

Hence, Thiru D.Subramanian, Lecturer (Sel.Gr) is under suspension with immediate effect."

4 It is the claim of the petitioner that the said order of suspension came to be issued by the 2<sup>nd</sup> respondent without any rhyme or reason and with an oblique motive, as the petitioner was complaining about the misdeeds on the part of the first respondent Trust. The petitioner would further state that order of suspension was issued by the 2<sup>nd</sup> respondent in a hurried manner without following any procedure and subsequently, he was issued with a charge memo dated 17.08.2015 containing 19 false and imaginary charges and the contents of the charge memo are also vague in nature.

5 The petitioner submitted his explanation to the charge memo and however, the Disciplinary proceedings has been kept pending with a view to harass him. The petitioner/ Party in person would further submit that but for the order of suspension, he would have got his re-employment till the end of the academic session dated 31.05.2016 and would further state that the impugned order of suspension came to be issued by the Principal, in-charge of 2<sup>nd</sup> respondent institution and they have no power to do so, for the reason that Grant-in-Aid Code and the guidelines issued by the Director of Department of Technical Education in their Circular No.44555/C3/85 dated 25.01.2006 have to be forwarded and admittedly, it has not been done so.

6 This Court while entertaining the writ petition, found that a prima facie case has been made out for grant of interim orders and accordingly, granted interim stay of the order of suspension vide impugned order dated 07.09.2015 and which was extended until further orders vide order dated 26.11.2015 and in pursuant to the same, the petitioner was permitted to join duty on 11.09.2015.

7 The petitioner / party-in-person has drawn the attention of this Court to the typed set of documents filed along with the contempt petition and would submit that the Chairman , Governing Council of the 2<sup>nd</sup> respondent college vide letter No.673/A3/2015 dated 23.06.2015 has permitted the petitioner to retire from service on 31.10.2015 and also indicated that the disciplinary proceedings shall be continued against the petitioner under Rule 9 of the Tamilnadu Pension Rules, 1978 in accordance with the procedure laid down under the said rules. It is also the submission of the petitioner/party-in-person that the Governing Council lacks power to invoke Rule 9 of Tamil Nadu Pension Rules, 1978 and even for the sake of argument that the petitioner is visited with the charge memo dated 07.08.2015 and the same would disclose that by his acts of delinquency, he has caused financial loss to the institution, the said rule cannot be invoked for the said ground and prays for interference.

8 Mr.M.R.Jothimanian, learned counsel appearing for the respondents 1 and 2 has drawn the attention of this Court to the Counter affidavit filed on behalf of the respondents both in the writ petition as well as contempt petition and would submit that the petitioner, being a Lecturer of the College, has failed to discharge his duties properly and efficiently and he is repeatedly indulging in making false untenable and scrupulous allegations against the members of the Governing Body and gone to the extent of publishing a book containing the derogatory remarks and the concerned persons are also reserving their rights to initiate appropriate civil and criminal proceedings against the petitioner for making such kind of allegations, knowing very well that the allegations lack truth. The learned counsel for respondents 1 and 2 would further submit that his prayer is unsustainable in the light of the conduct and duty cast upon the petitioner and would further submit in response to the charge memo, the petitioner has submitted his explanation and domestic enquiry has also been completed and final orders are to be passed soon and in the light of the proceedings of the Chairman of the Governing Council dated 21.12.2015, appropriate orders will be passed and prays for dismissal of the writ petition as well as contempt petition.

9 Mr.K.V.Dhanapalan, learned Special Government Pleader appearing for 3<sup>rd</sup> respondent would submit that in the facts and circumstances, Rule 9 of the Tamil Nadu Pension Rules cannot be invoked and even assuming that if such a rule is invoked, it is permissible in the absence of any specific averments leveled in the charge memo as to the cause of loss on account of misdeeds and misconduct and such an invocation is impermissible.

10 This Court paid its best attention and anxious consideration to the submissions made by the petitioner / party-in-person and also the learned counsel appearing for the respondents.

11 The petitioner / party-in-person has invited the attention of this Court to the Letter of the Chairman, Governing Council [Justice A.K.Rajan, Judge [Retd], High Court of Madras] dated 26.12.2015 addressed to the Department of Technical Education, wherein, the Chairman has observed Article 9 of the Grant-in-Aid Code of the Technical Education Department and stated that the order of suspension passed against the petitioner by the Principal have not been issued by the Governing Council / competent authority and the Governing Council has not issued any direction for such suspension and therefore, no consequence would flow from that order of suspension.

12 The Chairman of the Governing Council also further stated the Trust Board has no power to suspend the employees of the college and therefore, order of suspension is non est in law and also took a stand that even if the order of suspension is valid, in as much the order of suspension issued by the Principal can result in only imposing of minor penal and not major penalty and also further invited the attention of the said official to the fact that the Governing Council also passed a Resolution dated 21.12.2015 and allowed the petitioner to retire from service with effect from the date of superannuation. The Chairman further observed that the Director of Technical Education may take note of G.O.Ms.No.111 dated 25.05.2010 with regard to the re-employment in the academic year and pass appropriate order in accordance with law.

13 In the light of the said stand taken by the Chairman of the Governing Council, which is in consonance with the legal position, this Court is of the view that the order of suspension is liable to be quashed.

14 The Petitioner / Party-in-person, also made a submission that though the Governing Council vide letter dated 21.12.2015 has permitted him to retire from service with effect from the date of superannuation, i.e., 31.11.2015, has indicated that the Disciplinary Proceedings shall be continued under Rule 9 of the Tamil Nadu Pension Rules 1978 and in the light of the stand taken by the learned Special Government Pleader appearing for the 3<sup>rd</sup> respondent such proceedings cannot be allowed to be proceeded with and even otherwise the contents stated in the charge memo did not disclose that on account of alleged misdeed and misconduct, he has caused loss to the institution and prays for appropriate orders.

15 In response to the said submission, Mr.R.Jothimanian, the learned counsel for respondents 1 and 2 would submit that admittedly the said proceedings have not been put to challenge and what is to be challenged is the order of suspension and if the petitioner is aggrieved by the same, he is always at liberty to work out his remedy by filing a separate writ petition.

16 In the light of the stand taken by the Chairman of the Governing Council in his letter dated 20.06.2015 addressed to the 3<sup>rd</sup> respondent and also in the light of the settled legal position, this Court of the considered view, that the impugned order of suspension is liable to be set aside. In so far as the continuance of the Disciplinary proceedings under Rule 9 of the Tamilnadu Pension Rules, 1978 Governing Council may take note of the stand of the learned Government pleader appearing for the 3<sup>rd</sup> respondent coupled with observations made by this Court in this writ petition and shall take appropriate steps and pass final orders, quashing the disciplinary proceedings initiated against the petitioner as expeditiously as possible.

19 In the result, the writ petition is partly allowed and the order of suspension is quashed. In sofar as the initiation of Disciplinary proceedings against the petitioner, the Governing Council shall consider the stand of the Learned Special Government Pleader appearing for the 3<sup>rd</sup> respondent taken in this Writ petition and also the observation made by this Court in this regard and pass appropriate orders within a period of four weeks from the date of receipt of copy of this order and communicate the decision taken, to the petitioner. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Asst.Registrar (CS VII)

/true copy/

Sub Asst. Registrar

To

1.P.T.Lee Chengalvaraya Naicker Trust,  
Represented by its Secretary,  
Vepery, Chennai 600 007.

2. The Principal,  
P.T.Lee C.N. Polytechnic College,  
Vepery, Chennai 600 007.

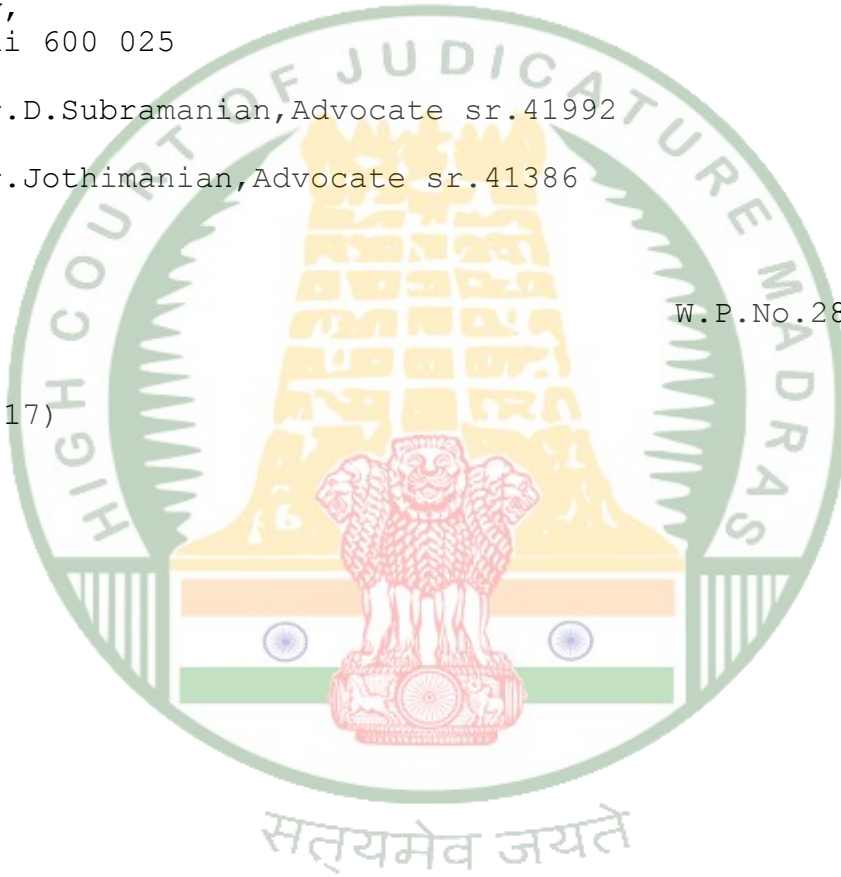
3. The Commissioner of Technical Education,  
Guindy,  
Chennai 600 025

+3cc to Mr.D.Subramanian,Advocate sr.41992

+1cc to Mr.Jothimanian,Advocate sr.41386

W.P.No.28007 of 2015

ev(co)  
ss(21/6/2017)



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