

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.09.2017

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.31671 of 2015

and

W.M.P.No.1 of 2015

Dr.R.Karthikeyan

... Petitioner

Vs.

Anjalai Ammal Mahalingam Engineering College,
Rep. by its Administrator/Managing Trustee,
Kovilvenni,
Thiruvarur District - 614 403.

... Respondent

Prayer: Writ Petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the concerned records at the respondent, quash the order of the Respondent dated 25.09.2015 and consequently direct the respondent to reinstate the Petitioner in service in the post of Principal with back wages, continuity of service and all other attendant benefits.

For Petitioner : Mr.Balan Haridas

For Respondent : Mr.T.R.Rajagopalan, Senior Counsel
for C.V.Vijayakumar

O R D E R

Heard Mr.Balan Haridas, learned counsel appearing for the petitioner and Mr.T.R.Rajagopalan, learned senior counsel appearing for the respondent.

2.The relief sought for in this writ petition is to quash the order of the respondent dated 25.09.2015, terminating the writ petitioner from service and for a consequential direction to reinstate in service.

3.The writ petitioner was holding the post of Principal with back wages in the respondent Engineering College and on account of certain allegation he was terminated from service through order dated 25.09.2015.

4.The learned counsel appearing for the writ petitioner made a submission that the writ petitioner was terminated from service on account of certain allegations and without conducting any enquiry. The order impugned in this writ petition states that Thiru.R.Karthikeyan, Principal is relieved from the post of Principal from the afternoon of 30.09.2015 and he has directed to hand over charge to Thiru.Palanivel, Vice Principal, who is placed in full additional charge until further orders. Thiru.Palanivel is also directed to assume charge on the afternoon of 30.09.2015 and send a compliance report. In lieu of one month notice the Principal also will be paid one month salary. The Principal is staying in the staff quarters freely and as he is staying alone he is granted one week time to vacate the quarters and hand over possession with the Administrative Officer.

5.On a perusal of the order impugned, it is clear that the order is punitive in nature and the order of termination was issued on account of certain allegations against the writ petitioner. Admittedly, neither a charge memo was issued nor any domestic enquiry was conducted. It is the case of straight termination issued against the writ petitioner, without adhering to the principles of natural justice, which is a basic principle to be followed in all cases of termination.

6.The learned senior counsel appearing on behalf of the respondent made a submission that the writ petition is not maintainable on account of the fact that the respondent is not a state within the meaning of the Article 12 of the Constitution of India. In support thereof, the learned senior counsel urged this Court for the condition of appointment itself, it is made clear that one month notice to be given on both sides either at the time of termination of service or at the time of resignation from service. Therefore, there is no infirmity in the order of termination and the order impugned in this writ petition was issued by invoking Clause 7 of the condition stipulated in the order of appointment dated 12.04.2012. Such being the factum of the case, there is no irregularity in issuing any such order, thus, the writ petition is to be rejected.

7.This apart, the learned senior counsel appearing on behalf of the respondent is of the opinion that the writ petitioner ought to have been exhausted the remedy available to him by approaching the higher authorities of the Technical Education Department and therefore, the writ petition cannot be entertained even before exhausting the remedies available to him by way of an appeal.

8.This Court is of the opinion that it is a case where a gross injustice is being committed against the writ petitioner by issuing an order of termination, even without providing the basic principles of opportunity and a straight termination order was issued. Thus, this Court is inclined to follow the principles laid down by the Hon'ble Supreme Court of India in the case of Janet Jeyapaul -Vs- SRM University and others reported in 2015 16 SCC 530.

9.The interpretation of the Judgment of the Hon'ble Supreme Court of India otherwise will not arise on the facts and circumstances of the case and in view of the fact that it is not a case of termination simplicitor and it is a case of punitive termination. In all cases of a punitive termination it is mandatory that the competent authorities should follow the principles of natural justice at the minimum. Non adherence of the principles will vitiate the entire proceedings. When it is brought to the notice of the Constitutional Court that a gross of injustice to the citizens and it is the duty of the Court to interfere even if there is a slight doubt with regard to the maintainability of the writ petition. Thus, this Court is not inclined to consider the plea, of the learned senior counsel in respect of the maintainability of the writ petition. Rather this Court feels that it is a fit case where a writ is to be issued.

10.The order of termination is also elaborating the circumstances and the instance under which a writ petitioner was terminated from service. On a perusal of the same it is certainly punitive in nature wherein an enquiry ought to have been conducted by the competent authorities. In normal circumstances a charge memo is to be issued and an explanation to be received and a domestic enquiry officer to be appointed, who in turn should conduct the enquiry by following the principles of natural justice and by providing opportunity to the delinquent officials and thereafter on receipt of the enquiry report, it is for the disciplinary authority to take a decision and issue final order on the disciplinary proceedings. The above said procedures were not followed in the case on hand. Such being the factum of the case, the order impugned is certainly infirm and liable to be scrapped.

11.However, this Court is not inclined to appreciate the merits and demerits of the allegations set out in the order impugned and it is left open to the parties to reopen the case in the manner known to law and to conduct the process of enquiry by following the principles of natural justice. The other grounds raised in this writ petition in relation to the merits of the allegations need not be considered at this point of time.

12.In this view of the matter, the order impugned in this writ petition passed by the respondent in proceedings dated 25.09.2015 is quashed and the writ petition stands allowed. However, the respondent is at liberty to reopen the case and proceed with the disciplinary proceedings in accordance with law by providing all reasonable opportunities to the writ petitioner and thereafter pass final orders.

13.Accordingly, the writ petition stands allowed. However, there is no orders as to costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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+1cc to Mr.C.V.Vijayakumar, Advocate Sr. 68694

W.P.No.31671 of 2015
and
W.M.P.No.1 of 2015

AR(V)
VR(26/10/2017)

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