

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.08.2017

CORAM

THE HONOURABLE MR. JUSTICE V.PARTHIBAN

W.P.No.38141 of 2016

and

W.M.P.Nos.34523 and 32687 of 2016

Dr.P.Thambidurai

.. Petitioner

Vs.

1. Union of India rep. by the  
Chief Secretary to Government,  
Government of Puducherry,  
Chief Secretariat, Puducherry.
2. Perunthalaivar Kamarajar Institute  
rep. by Secretary (Education) cum  
Chairman,  
Perunthalaivar Kamarajar Institute  
Engineering and Technology,  
Karaikal, Union Territory of Puducherry.

3. R.Buvanesvari

... Respondents

Petition filed under Article 226 of The Constitution of India praying for the issuance of a writ of certiorarified mandamus to call for the records relating to the orders of the first respodnent dated 08.06.2016 bearing reference No.008554/CS (Hr.&Tech.Edn)/E3/2016 and quash the same as being illegal, arbitrary, violative of principles of natural justice, unjust and beyond jurisdiction and consequently direct the respondents 1 and 2 to continue the petitioner as Principal of the second respondent, pay salary and other benefits meant for the posts.

For Petitioner .. Mr.R.Krishnamoorthy,Sr. Counsel  
for M/s.S.Saravana Kumar

For Respondents.. Mr.A.Gandhiraj,  
Govt. Pleader (Pondy) for R1 & R2  
Mr.M.Gnanasekar for R3

## ORDER

The petitioner has approached this Court seeking the following relief:

to issue a writ of certiorari and mandamus to call for the records relating to the orders of the first respondent dated 08.06.2016 bearing reference No.008554/CS(Hr.&Tech.Edn)/E3/2016 and quash the same as being illegal, arbitrary, violative of principles of natural justice, unjust and beyond jurisdiction and consequently direct the respondents 1 and 2 to continue the petitioner as Principal of the second respondent, pay salary and other benefits meant for the posts.

2.The case of the petitioner is that he is a Doctorate in Computer Science and Engineering from Alagappa University, Karaikudi. On 28.08.1989, he joined Bharathiyar University, Coimbatore as Reader in Computer Science. He was thereafter promoted as Professor on 28.08.1995. In 1999, the petitioner came to be appointed as a Professor and Head of the Department of Computer Science and Engineering in Pondicherry Engineering College, which is a Government of Pondicherry institution. On 19.11.2007, the petitioner was directed to officiate as Principal-in-charge of the second respondent institution. On 17.09.2009, he was transferred back to the Pondicherry Engineering College and thereafter, once again on 24.03.2010, the petitioner was posted back as Principal-in-charge of the second respondent institution which institution is affiliated to Pondicherry University.

3.While the petitioner was working as Principal-in-charge of the second respondent institution, the third respondent who was the Assistant Professor in the same institution had been making allegations against the petitioner, which allegations were ultimately found to be baseless and unfounded. In order to harass the petitioner, the third respondent had even approached the Central Administrative Tribunal, Madras Bench in O.A.No.511 of 2010, seeking a direction to the authorities concerned to transfer the petitioner from the second respondent institution. The learned Tribunal, vide its order dated 16.03.2011, directed the matter to be placed before the Honourable Minister for Higher Education, Pondicherry for consideration of the entire matter and a decision to be taken thereon whether the petitioner should be continued in the post of Principal-in-charge or otherwise.

4.The third respondent, not satisfied with the outcome in the Original Application, had also filed a police complaint and

the matter was taken up by way of criminal revision before this Court and ultimately, an order was issued by this Court, referring the issue to the Superintendent of Police for independent investigation and as per the direction, the Superintendent of Police filed an independent report on 14.10.2014 stating that the complaint filed by the third respondent was false.

5. In the meanwhile, in pursuance of the directions passed by the learned Tribunal, the Honourable Minister, by proceedings dated 26.05.2012, took a decision that the specific charge of harassing of woman lecturer is not proved and the petitioner may continue to work as Principal-in-charge of the second respondent institution.

6. While matter stood thus, a Notification was issued on 23.12.2015 for recruitment to the post of Principal in the second respondent institution, overlooking the claim of the petitioner, whose services were earlier recommended by the Governing Body for regularization. In the said circumstances, the petitioner is said to have approached this Court in W.P.Nos.19301 and 19302 of 2016, challenging the Notification. The said writ petitions came to be dismissed, against which, writ appeals were filed in W.A.Nos.734 and 735 of 2016 before this Court and the same are pending final decision, as on date.

7. Having failed in all her attempts to remove the petitioner from the second respondent institution as Principal-in-charge, the third respondent filed a review application in 2015 seeking to review the order passed as early as 16.03.2011 with the condonation delay application seeking to condone the delay of 1635 days. This review application was deliberately filed in the face of the fact that the order passed in the O.A.No.511 of 2010 had already been complied with and the same had worked itself out when the Honourable Minister had passed an order on 26.05.2012 directing the petitioner to continue as Principal-in-charge of the second respondent institution. The learned Tribunal, by its order dated 19.01.2016 dismissed the M.A.No.926 of 2015 filed in unnumbered review application seeking condonation of delay. But unfortunately while dismissing the said application, the Tribunal directed the first respondent to consider and pass orders on the representation said to have been made by the third respondent on 05.10.2015.

8. In pursuance of the direction issued by the learned Tribunal in M.A.No.926 of 2015 in unnumbered review application, the first respondent passed an order on 08.06.2016 and the

operative portion of the order is extracted below:

".....4.AND WHEREAS, having carefully considered all the pleas raised by Tmt.R.Buvanesvari in her representation dated 05.10.2015 and in person on 27.05.2016, vis-a-vis the inquiry reports of various Authorities as mentioned at pre-para hereinabove, I am of the opinion that the matter could be resolved by repatriating Dr.P.Thambidurai, out of PKIET, Karaikal, to his parent institution, the Pondicherry Engineering College, Puducherry. Orders to be issued accordingly."

The said order passed by the first respondent is impugned in this writ petition.

9.Mr.R.Krishnamoorthy, learned senior counsel appearing for the petitioner would submit that while passing the order, the first respondent has not given any opportunity to the petitioner and the impugned order was passed behind the back of the petitioner and therefore, the same is unsustainable in law. Moreover, the learned senior counsel would submit that the third respondent had failed in all her attempts to remove the petitioner from his post as Principal-in-charge of the second respondent institution and the first respondent ought to have taken into consideration that the earlier order passed by the Honourable Minister stating that the allegations made against the petitioner are found to be false and unfounded in the face of such clear finding by the superintendent of police, which finding was relied on by the Honourable Chief Minister/Minister, the first respondent ought not to have taken a decision to repatriate the petitioner to his parent institution in order to appease the third respondent herein.

10.The learned senior counsel appearing for the petitioner would submit that in any event, such a decision taken by the first respondent in the facts and circumstances of the case amounted to cast a stigma on the character of the petitioner and therefore, the action taken by the first respondent is per se arbitrary, malicious and malafide, particularly, when no opportunity has been afforded to the petitioner to explain his position. In all these circumstances, the learned senior counsel would pray for allowing the writ petition.

11.Upon notice, Mr.A.Gandhiraj, learned Government Pleader entered appearance on behalf of respondents 1 and 2 and Mr.M.Gnanasekar, learned counsel entered appearance for the third respondent. The learned counsels reiterated the

submissions on the basis of the pleadings and documents filed in support of their positions. On behalf of the third respondent, it is submitted that the petitioner had approached this Court, challenging the Notification calling for appointment to the post of Principal and the writ petitions came to be dismissed and the writ appeals filed against that are pending final consideration and therefore, his continuation would not be in public interest. Moreover, it is contended on behalf of the third respondent that the petitioner had already approached the Central Administrative Tribunal, Madras bench by filing M.A. Nos.537, 538 and 719 of 2016 in M.A.No.926 of 2015 in unnumbered review application in O.A.No.511 of 2010 seeking to recall the order passed in M.A.No.926 of 2015 dated 19.01.2016, in which, the Tribunal while dismissing M.A.No.926 of 2015 directed the first respondent to pass orders on the representation made by the third respondent dated 05.10.2015. However, the said application filed by the petitioner came to be eventually dismissed by order dated 04.10.2016 saying that the order passed in the said M.A. had worked itself out in view of the first respondent's order dated 08.06.2016, which order is impugned in the present writ petition. Therefore, it is submitted that having failed in his attempt to secure an order before the Tribunal, the petitioner preferred this writ petition.

12.Learned Government Pleader appearing for respondents 1 and 2 would submit that in pursuance of the direction issued by the Tribunal, the first respondent had taken a conscious decision on 08.06.2016 and therefore, the same cannot be subject matter of challenge before this Court. Since the order passed was continuous to the direction issued by the Tribunal, no opportunity is required to be given to the petitioner and as such, the decision taken by the first respondent was in order.

13.Upon consideration of the rival submissions of the learned counsels and upon perusing the pleadings and the materials placed on record, this Court is of the view that there is considerable force in the contention put forth by the learned senior counsel for the petitioner that the impugned order passed by the first respondent dated 08.06.2016 detrimental to the interest of the petitioner without giving him an opportunity is per se arbitrary, unjust and cannot be countenanced in law. Moreover, even factually, it has to be seen that the repeated attempts made by the third respondent in making allegations against the petitioner have been found to be baseless and unfounded and also the fact that once the Honourable Chief Minister/Minister Incharge had taken a conscious decision, as conveyed therein in his order dated 26.05.2012 that the petitioner should continue to be the Principal-in-charge of the second respondent institution, it is not open to the first

respondent to disturb such an order passed by the Honourable Chief Minister. Moreover, it appears from the decision taken by the first respondent that there was no proper application of mind since the entire decision has been arrived at on the basis of exigency without appreciating the earlier circumstances when the third respondent made attempt to malign the petitioner with unfounded and baseless allegations. Having failed in all her attempts, the third respondent had practically succeeded in removing the petitioner as Principal-in-charge of the second respondent institution by obtaining an innocuous direction from the Tribunal on 19.01.2016, that too, on the basis of extempore submission made on behalf of the learned counsel for the applicant, who is the third respondent herein. The Tribunal could have avoided in issuing a direction particularly in view of the fact that M.A.No.926 of 2015 filed for seeking condonation of delay over 1600 days in filing the review application was found to be without merit and the same ultimately came to be dismissed. Such being the case, the Tribunal could have refrained from giving any further direction. In any event, such a direction cannot be made use of by the third respondent for achieving her own ends. Unfortunately, the first respondent, without due care and appreciation of the totality of circumstances, has acted in furtherance of the interest of the third respondent while ordering repatriation of the petitioner to his parent institution.

14. In the upshot, the impugned order passed by the first respondent dated 08.06.2016 is liable to be struck down and therefore, the same is set aside. It is also submitted that while admitting the writ petition, the writ petitioner has obtained an interim order of stay of the impugned order and is continuing as such as Principal-in-charge of the second respondent institution. In the said circumstances, the petitioner shall be allowed to continue as Principal-in-charge of the second respondent institution.

15. With these directions, the writ petition stands disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

s/d-

Assistant Registrar (CS-III)

True Copy

Sub-Assistant Registrar

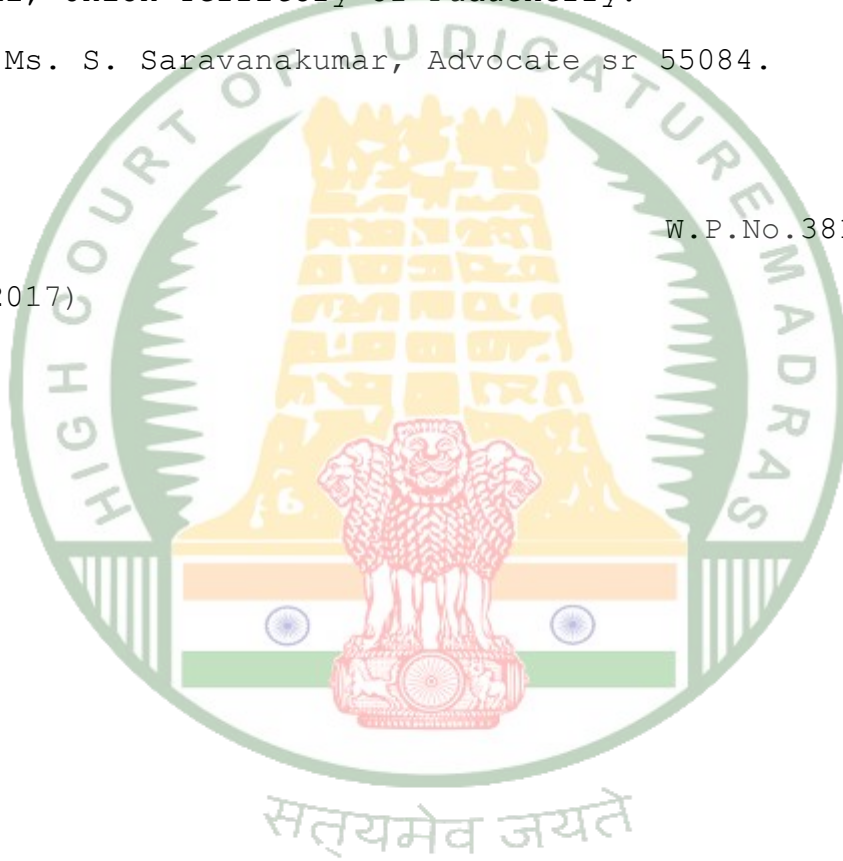
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To

1. The Chief Secretary to Government,  
Government of Puducherry,  
Chief Secretariat, Puducherry.
  2. The Secretary (Education) cum  
Chairman,  
Perunthalaivar Kamarajar Institute  
Engineering and Technology,  
Karaikal, Union Territory of Puducherry.
- +2 Ccs to Ms. S. Saravanakumar, Advocate sr 55084.

W.P.No.38141 of 2016

SP(24/08/2017)



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