



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.07.2017

CORAM:

THE HONOURABLE MR.JUSTICE **K.K.SASIDHARAN**
AND
THE HONOURABLE MR.JUSTICE **G.R.SWAMINATHAN**

W.A. [MD].Nos.1124 & 1185 of 2013, & 590 of 2014

W.A. [MD].Nos.1124 & 1185 of 2013:-

G.Ravi Ubald Prakash

: Appellant/Petitioner
in both Writ Appeals

Vs.

1.The Commissioner,
Directorate of Technical Education,
Guindy, Chennai-600 025.

2.The Secretary-Correspondent,
Kamaraj Polytechnic College,
Pazhavilai-629 501.

3.The Principal-in-Charge,
Kamaraj Polytechnic College,
Pazhavilai-629 501,
Kanyakumari District.

: Respondents/Respondents
in both Writ Appeals

COMMON PRAYER: Writ Appeals are filed under Clause 15 of Letters Patent, praying to set aside the order dated 31.01.2013 in W.P.(MD)No.1052 of 2012 & W.P.(MD)No.11834 of 2011.

Prayer in WP(MD). 1052/ 2012 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue of Writ of Certiorari to call for the records pertaining to the impugned order of charge memo in No.N.M.S.K.P-0500-A1-2011 Dt.01.11.2011 on the file of the respondent No.3 and quash the same as illegal

Prayer in WP(MD). 11834/ 2011 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records pertaining to the impugned order in No.N.M.S.k.P.0500-A1-2011 dated 12.09.2011 on the file of the Respondent No.3 and quash the same as illegal.



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For Petitioner : Ms.Porkodikarnan for Mr.M.Ravi
For R-1 : Mr.T.S.Mohamed Mohaideen
Additional Government Pleader
For R-3 : Mr.B.Saravanan
For R-2 : No Appearance

W.A. [MD].No.590 of 2014:-

G.Ravi Ubald Prakash :Appellant/Petitioner
Vs.

1.The State of Tamil Nadu,
Represented by Principal Secretary/Commissioner,
Department of Technical Education,
Secretariat,
Chennai.

2.The Additional Director(Polytechnic)
Office of the Director of Technical Education,
Chennai-600 025.

3.The Correspondent,
N.M.S.Kamaraj Polytechnic,
Pazhavelai-629 501.
Kanyakumari District.

:Respondents

PRAYER: Writ Appeal is filed under Clause 15 of Letters Patent, praying to set aside the order dated 31.01.2010, passed in W.P.No.13260 of 2010.

Prayer in WP(MD). 13260/ 2010 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a WRIT OF MANDAMUS, directing the 1st and 2nd Respondents to promote the Petitioner as instructor from 12-12-1985 and upgraded Associate lecturer from 20-03-1990 and upgraded Junior Lecturer from 20-03-2000 and upgraded Head of the Department (Mechanical) from 20-03-2008 onwards at the 3rd Respondent Polytechnic College.

For Petitioner : Ms.Porkodikarnan for Mr.M.Ravi
For R1 & R2 : Mr.T.S.Mohamed Mohaideen
Additional Government Pleader
For R3 : Mr.B.Saravanan



COMMON JUDGMENT

[Judgment of the Court was delivered by **G.R.SWAMINATHAN, J.**]

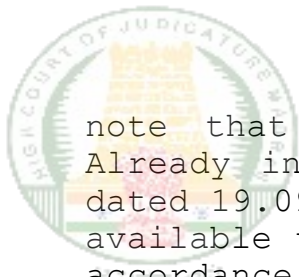
W.A(MD)Nos.1124 & 1185 of 2013 are directed against the order dated 31.01.2013 dismissing W.P.(MD)No.1052 of 2012 and W.P.(MD)No.11834 of 2011, W.A.(MD)No.590 of 2014 is directed against the order dismissing W.P.(MD)No.13260 of 2010.

2. The appellant herein was appointed as Work Shop Instructor in Kamaraj Polytechnic College, Pazhavilai, Kanyakumari, which is an aided institution on 20.03.1985. The Principal-in-charge of the college, the third respondent herein, issued the charge memo, dated 01.11.2011 on the appellant herein. The appellant herein questioned the issuance of the charge memo on him on the ground that the third respondent was not the competent authority to issue the same. According to the appellant herein, the third respondent was acting as a principal-in-charge from 01.10.2010, without the approval of the Governing Council of the college.

3. The learned Single Judge held that the Principal was competent to initiate disciplinary action by framing charges against the appellant. The learned Single Judge held that the Writ Petitioner did not challenge the appointment of the third respondent as a principal. Therefore, the allegation of the petitioner with regard to the competency of the third respondent could not be gone into. Unless the very appointment of the third respondent as principal was questioned, it would not be possible to give any finding with regard to the legality of his functioning as a principal. Even though the Writ Petitioner pleaded *mala fide* on the part of the third respondent, the same was not established.

4. In that view of the matter, both the contentions raised by the Writ Petitioner, namely jurisdiction as well as *mala fide*, were rejected. For the very same reason, the learned Single Judge did not also interfere with the order of suspension as such. However, relief was granted with regard to revocation of the order of suspension as such. We find that the order passed by the learned Single Judge with regard to the sustaining issuance of charge memo as well as the suspension order are correct. We decline to interfere with the same.

5. The Appellant herein sought a direction to direct the first and second respondent to promote him as instructor from 12.12.1985 and upgrade him to the post of Associate Lecturer, Junior Lecturer and Head of the Department respectively, with effect from 20.03.1990, 20.03.2000 and 20.03.2008 onwards and other consequential reliefs. This aspect of the matter was dealt with extensively in paragraphs 39 to 53 in the common order dated 31.01.2013 passed by the learned Single Judge. It is relevant to



note that this issue is not being raised for the first time. Already in W.P.No.9111 of 1997, this Court has directed by order dated 19.09.2004 to consider all the claims of the petitioner in the available vacancies for being promoted to the post of instructor in accordance with the special rules.

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6. The management filed W.A.No.1039 of 2006 against the said order in W.P.No.9111 of 1997 and the same was dismissed by the Division Bench by an order dated 01.08.2007. Thereafter, the management forwarded a proposal on 08.10.2007 for filling up the posts. It was indicated that there were only three vacancies. In the order of seniority, the appellant herein was the fourth candidate. In other words, if the said proposal had been accepted, the appellant herein could not have got promotion. However, G.O.No.95 Higher Education, dated 26.03.2008 came to be issued, directing the promotion of the petitioner as well as the four others as instructors.

7. Pursuant to the said G.O., The Commissioner, Directorate of Technical Education issued a letter dated 02.12.2008 granting promotion to the other four persons as instructors but leaving out the Writ Petitioner herein. Unfortunately, the appellant herein failed to question the said order dated 02.12.2008. Instead, he filed a Writ seeking a direction in the year 2010, seeking promotion to the post of instructor, with effect from 12.12.1985 and to upgrade him to the post of Associate Lecturer and for consequential reliefs.

8. The learned Single Judge rightly held that the Writ Petitioner would get benefit only out of the order dated 19.09.2004 rendered in W.P.No.9111 of 1997 and G.O.Ms.No.95 of 2008 dated 26.03.2008. It is not open to the appellant to aspire for anything more than what was granted in W.P.No.9111 of 1997.

9. The learned Single Judge rightly observed that accepting the case of the petitioner by granting him the benefit of promotion with retrospective effect from 1985 would amount to over reactions the decision in W.P.No.9111 of 1997 and also held that the Writ Petitioner can only seek parity with the other four persons by taking the benefit of promotion to the post of instructor with effect from 26.03.2008.

10. We see no reason to differ with the order passed by the learned Single Judge. Therefore, all these three Writ Appeals are dismissed as bereft of any merit. No Costs.

Sd/-

Assistant Registrar(Record)

/True Copy/



To

1. The Commissioner,
Directorate of Technical Education,
Guindy, Chennai-600 025.

2. The Secretary-Correspondent,
Kamaraj Polytechnic College,
Pazhavilai-629 501.

3. The Principal-in-Charge,
Kamaraj Polytechnic College,
Pazhavilai-629 501,
Kanyakumari District.

4. The State of Tamil Nadu,
Represented by Principal Secretary/Commissioner,
Department of Technical Education,
Secretariat,
Chennai.

5. The Additional Director (Polytechnic)
Office of the Director of Technical Education,
Chennai-600 025.

+1cc to THE SPECIAL GOVERNMENT PLEADER in SR. No.68700,68701

+2cc to Mr.M.RAVI Advocate in SR. No.68063,68064

+2cc to Mr.B.SARAVANAN Advocate in SR. No.68024,68025

TA/MRM/PSD

JS/MR.KKR/SAR.1/23.08.2017/5P-11C

**W.A. [MD] .Nos.1124 & 1185 of 2013
&**

**W.A. [MD] .No.590 of 2014
26.07.2017**