



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.02.2017

WEB COPY

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH
AND
THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.A. [MD].Nos.206 and 222 of 2013

and

M.P. (MD)No.1 of 2013

W.A. [MD].No.206 of 2013:

The Secretary
Tirunelveli Dakshinamara Nadar Sangam College,
T.Kallikulam, Radhapuram Taluk,
Tirunelveli District. : Appellant

Vs.

1.Sundararaj
2.The Director of Collegiate Education,
College Road, Chennai-6.
3.The Joint Director of Collegiate Education,
Tirunelveli Region, Murugankurichi,
Tirunelveli-2. : Respondents

PRAYER: Writ Appeal is filed under Clause 15 of the Letters Patent against the order of a learned Single Judge of this Court dated 21.01.2013, made in W.P. (MD).No.6419 of 2006.

Prayer in WP(MD).6419/2006 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court a WRIT OF CERTIORARI Call for the records of the 1st respondent made in No. 30125/F4/2005 dated 7.4.2006 dismissing the appeal filed by the petitioner challenging the order of termination passed by 3rd respondent by his proceedings No. 2/97 dated 7.06.2005 pursuant to the approval granted by 2nd proceedings Na.ka.NO. 6973/A4/2000 dated 4.04.2006 of the 1st respondent.

For Appellant : Mr.S.Meenakshi Sundaram,
Senior Counsel,
For Mr.R.Manimaran
For Respondent No.1 : Mr.N.Dilip Kumar
For Respondents 2&3 : Mr.N.S.Karthikeyan,
Additional Government Pleader



W.A. [MD].No.222 of 2013:

Sundararaj

: Appellant

Vs.

WEB COPY

- 1.The Director of Collegiate Education,
College Road, Chennai-6.
- 2.The Joint Director of Collegiate Education,
Tirunelveli Region, Murugankurichi,
Tirunelveli-2.
- 3.The Secretary
Tirunelveli Dakshinamara Nadar Sangam College,
T.Kallikulam, Radhapuram Taluk,
Tirunelveli District.

: Respondents

PRAYER: Writ Appeal is filed under Clause 15 of the Letters Patent against the order of a learned Single Judge of this Court dated 21.01.2013, made in W.P.(MD).No.6419 of 2006.

For Appellant	: Mr.N.Dilip Kumar
For Respondents 1&2	: Mr.N.S.Karthikeyan, Additional Government Pleader
For Respondent No.3	: Mr.S.Meenakshi Sundaram, Senior Counsel, For Mr.R.Manimaran

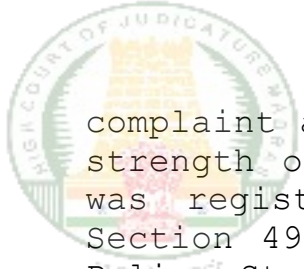
COMMON JUDGMENT

[Judgment of the Court was delivered by R.SUBBIAH, J.]

Both these Writ Appeals have been filed as against the order passed by the learned Single Judge dated 21.01.2013, made in W.P.(MD).No.6419 of 2006.

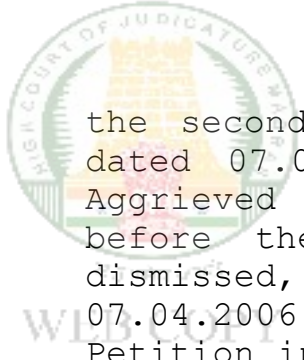
2. The appellant in W.A.(MD)No.222 of 2013 is the writ petitioner. The appellant in W.A.(MD)No.206 of 2013 is the third respondent in the said Writ Petition. Therefore, for the sake of convenience, the parties are referred to, as per their ranking, before the Writ Court.

3. The case of the writ petitioner before the learned Single Judge is that he was appointed as Lab Assistant under the Scheduled Caste quota in the third respondent College on 20.03.1989. While so, one Amali, claiming to be his wife, gave a



complaint as if the writ petitioner demanded dowry from her on the strength of the marriage agreement and based on the same, a case was registered in Crime No.35 of 1994, for an offence under Section 498(A) of the Indian Penal Code on the file of All Women Police Station, Tirunelveli, on 14.11.1994. The said case was taken on file by the learned Judicial Magistrate, Valliyoor, in C.C.No.134 of 1995. After trial, the writ petitioner was convicted on 26.12.1996. Thereafter, the said Amali gave a complaint on 08.01.1997, to the third respondent stating that the criminal case lodged by her against the writ petitioner ended in conviction. Therefore, the third respondent placed the writ petitioner under suspension on 08.01.1997 and issued a charge memo on 21.10.1997. The writ petitioner submitted his explanation to the third respondent on 05.12.1997. The third respondent himself conducted an enquiry and submitted a report on 27.03.1998. On the very same day, the third respondent, relying on the enquiry report, issued a second show cause notice, calling upon the writ petitioner to show cause as to why he should not be terminated from service. The writ petitioner sent a reply on 22.04.1998, to the said show cause notice.

4. While the matter stood thus, as against the conviction made in C.C.No.134 of 1995, the writ petitioner preferred an appeal in C.A.No.10 of 1997 before the learned Third Additional Sessions Judge, Tirunelveli. The said appeal was allowed on 21.06.1998 and the conviction and sentence imposed by the Trial Court was set aside. Hence, the said Amali preferred a revision in Crl.R.C.No.524 of 1998 before this Court. The said revision case was allowed by this Court by remitting the matter to the lower Appellate Court for fresh disposal. After remand, the appeal in C.A.No.10 of 1997 was dismissed on 21.07.2000. As against the dismissal of the appeal, the writ petitioner preferred a revision in Crl.R.C.No.752 of 2000 before this Court. This Court, in the said revision, passed an order sentencing him to undergo imprisonment till the rising of the Court and to pay a fine of Rs.1,00,000/- and further, directed that out of the said fine amount of Rs.1,00,000/-, the *defacto* complainant is entitled to receive a sum of Rs.90,000/- as compensation. Accordingly, the writ petitioner had undergone the sentence and deposited the fine amount of Rs.1,00,000/- before the learned Judicial Magistrate, Valliyoor, on 31.07.2002. On the very same day, Amali had withdrawn Rs.90,000/- as compensation. The writ petitioner also preferred a Special Leave Petition before the Hon'ble Supreme Court in No.3953 of 2002 and the same was dismissed by the Hon'ble Supreme Court, by judgment dated 23.09.2002, with an observation that the validity of the marriage in a criminal prosecution under Section 498(A) IPC may not be binding on the parties in other proceedings. After the dismissal of the Special Leave Petition, the third respondent, once again, issued a show cause notice on 17.11.2003, to the writ petitioner. The writ petitioner also sent his explanation on 15.12.2003. After obtaining the approval from



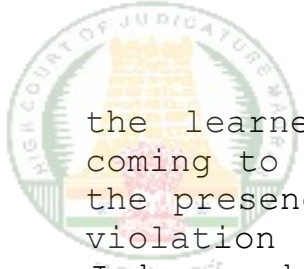
the second respondent, the third respondent, by his proceedings dated 07.06.2005, terminated the writ petitioner from service. Aggrieved over the same, the writ petitioner preferred an appeal before the first respondent on 23.06.2005 and the same was dismissed, confirming the order of dismissal, by order dated 07.04.2006. Therefore, the writ petitioner has filed the Writ Petition in W.P.(MD)No.6419 of 2006.

5. The first and second respondents, by filing counter-affidavit, contested the Writ Petition and denied the averments made in the affidavit filed in support of the Writ Petition.

6. The learned Single Judge, after hearing the submission made on either side, has allowed the Writ Petition by setting aside the orders impugned therein and consequently, directed the third respondent to reinstate him in service, but, at the same time, by applying the principle 'No Work, No Pay', the learned Single Judge has not ordered for backwages for the period the writ petitioner did not work.

7. Aggrieved over the order of reinstatement of the writ petitioner in service, the third respondent filed W.A.(MD)No.206 of 2013. Similarly, since the learned Single Judge has not ordered backwages. the writ petitioner has filed W.A.(MD)No.222 of 2013.

8. Today, when the matter was taken up for consideration, the learned counsel for the writ petitioner submitted that the writ petitioner was issued with a charge memo levelling two charges, the one is for violating Rule 6 of the Code of Conduct with regard to the failure of the writ petitioner to inform the Management about the criminal case registered against him immediately after its registration and the second one relates to one for violation of Rule 10 of the Code of Conduct for having caused harassment of dowry demand to the informant Amali. The entire proceedings, viz., issuance of charge memo, passing order of suspension, conducting enquiry, submission of enquiry report, formation of opinion upon the enquiry report, issuance of show cause notices and passing of final order terminating the writ petitioner from service, have all been done by the Secretary on behalf of the College Committee. Absolutely, there is no tangible evidence available to show that the enquiry proceedings was conducted in the presence of the entire College Committee. In fact, the learned Single Judge has also come to the conclusion that the third respondent, viz., the Secretary of the College, himself had acted as an Enquiry Officer and also acted as a Judge. Thus, the action of the third respondent in acting against the writ petitioner in the disciplinary proceedings in different capacity is in total violation of the established principle that "No man can be a judge in his own cause". Thus, the learned Single Judge has rightly allowed the Writ Petition and ordered for reinstatement of the writ petitioner in service. In this regard,



the learned counsel for the writ petitioner submitted that by coming to such a conclusion that the enquiry was not conducted in the presence of entire College Committee and the same is in total violation of principles of natural justice, the learned Single Judge ought to have ordered for backwages also. However, without doing so, the learned Single Judge directed the third respondent to reinstate him in service alone. Therefore, the writ petitioner sought for backwages by filing the Writ Appeal.

9. To substantiate the contention that "No man can be a Judge in his own cause", the learned counsel has also relied upon a judgment reported in **2009(11) SCC 84 [A.U.Kureshi v. High Court of Gujarat]**.

10. Countering the said submission made by the learned counsel for the writ petitioner, the learned Senior Counsel for the third respondent submitted that the entire disciplinary proceedings has been initiated by the College Management, in pursuance of the powers conferred on it under Sections 18 and 19 of the Tamil Nadu Private Colleges (Regulation) Act and Rule 9(3) of Tamil Nadu Private Colleges (Regulation) Rules, 1996, and the Secretary had only implemented the outcome of the resolution of the College Committee and he is not a Judge sitting in his own cause. But the learned Single Judge has come to the conclusion as if the Secretary conducted enquiry and arrived at such conclusion. In fact, it is admitted by the writ petitioner himself that the College Committee consisting of various persons conducted enquiry proceedings and the same is evident from his explanation dated 15.12.2003. In fact, the writ petitioner earlier filed W.P.No.4693 of 2005 challenging the legality of the disciplinary proceedings and the said Writ Petition was dismissed by this Court and no appeal was filed. However, the writ petitioner, by suppressing the same, has filed the present Writ Petition raising a ground that no one can be a Judge in his own cause. Thus, all the proceedings, which culminated into awarding of punishment, cannot be re-agitated in the present Writ Petition.

11. Adding further, the learned Senior Counsel for the third respondent submitted the College Committee alone has conducted the entire enquiry proceedings and not by the Secretary, as contended by the writ petitioner. Further, the learned Senior Counsel submitted that admittedly, the writ petitioner was imposed with punishment since he had violated Rule 6 of the Code of Conduct by not intimating the College about the initiation and pendency and conviction of the criminal offence. The charge memo issued to the writ petitioner also proved that he had demanded a sum of Rs.10,000/- as dowry. Thus, the order of the Writ Court is liable



12. Keeping in mind the submissions made on either side, we have carefully gone through the entire materials available on record.

13. Though we find some force in the submission made by the learned Senior Counsel for the third respondent that the enquiry was conducted by the College Committee and not by the Secretary, in our considered view, the learned Single Judge, by taking note of the fact that the writ petitioner was already punished by the Criminal Court with a fine of Rs.1,00,000/- and out of the said fine amount, the *defacto* complainant had also withdrawn a sum of Rs.90,000/- as compensation, allowed the Writ Petition, directing the third respondent to reinstate the writ petitioner in service, however, without backwages, by applying the principle 'No Work, No Pay' for the period the writ petitioner did not work, which, absolutely, needs no interference at the hands of this Court. Furthermore, the writ petitioner and the *defacto* complainant got divorce. At this juncture, there is no need to remit the matter back to the third respondent for fresh consideration. Thus, on equity, the learned Single Judge has allowed the Writ Petition. Therefore, we do not find any compelling circumstance warranting to make our interference in the well considered order.

14. In fine, W.A.(MD)No.206 of 2013 filed by the third respondent is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

15. Insofar as W.A.(MD)No.222 of 2013 filed by the writ petitioner is concerned, the said appeal was filed aggrieved over the non-awarding of backwages.

16. In our considered view, the learned Single Judge, by applying the principle "No Work, No Pay", has rightly dealt with the issue on hand and allowed the Writ Petition and thereby, directed the third respondent to reinstate the writ petitioner in service, without backwages, considering the fact that he did not work during the period, in which, he was not in service. Thus, viewed from any angle, we find that there is no necessity to interfere with the said finding. Accordingly, W.A.(MD)No.222 of 2013 is also dismissed. No costs.

Sd/-

Assistant Registrar(CS-III)

/True Copy/

Sub Assistant Registrar



To

1.The Director of Collegiate Education,
College Road, Chennai-6.

2.The Joint Director of Collegiate Education,
Tirunelveli Region, Murugankurichi,
Tirunelveli-2.

+1cc to Mr.R.Manimaran, Advocate Sr.No.11434

+1cc to Mr.N.Dilip Kumar, Advocate Sr.No.12084

SML

VB/JC/SAR3/07.04.2017/7P/5C

**COMMON JUDGMENT MADE IN
W.A. [MD] .Nos.206 and 222 of 2013
Dated: 28.02.2017**