



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 02.12.2016
Pronounced on : 06.01.2017

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CORAM :

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

W.P. (MD) . No.8728 of 2013
and
M.P (MD) No.1 of 2013

R.Viswanathan,
S/o, R.Renganathan,
46/60, Sivan south car street,
Palayamkottai, Tirunelveli.

---Petitioner

-Vs-

- 1.The Joint Director,
Directorate of Collegiate Education,
Tirunelveli Region,
Tirunelveli - 627 007.
- 2.The Secretary,
Sri Kumaragurubara swamigal Arts College,
Arulnanthi nagar, Padmanabamangalam Post,
Srivaikundam, Tuticorin District - 628 619.
- 3.R.Subbarayalu,
The Secretary,
Sri Kumaragurubara swamigal Arts College,
Arulnanthi nagar, Padmanabamangalam Post,
Srivaikundam, Tuticorin District - 628 619.
- 4.The Principal,
Sri Kumaragurubara swamigal Arts College,
Arulnanthi nagar, padmanabamangalam Post,
Srivaikundam, Tuticorin District.
- 5.Mr.S.Sankaranarayanan,
The Principal,
Sri Kumaragurubara swamigal Arts College,
Arulnanthi nagar, padmanabamangalam Post,
Srivaikundam, Tuticorin District.

- 6.The Enquiry Officer,
Plot No.70, K.K.Nagar,
Madurai - 625 020.



7.The Director of Collegiate Education,
College Road,
Chennai.

(R7 is Suo motu impleaded vide Court order
dated 06.01.2017 in WP(MD)No.8728/13)

---Respondents

PRAYER : Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records relating to proceedings of the 2nd and 3rd respondents vide proceedings Rc.No.11G/Violation of Code of Conduct as set out in TNPCR Rules 1976/KGS/2013-2014 dated 15.05.2013 and quash the same and consequentially direct the 2nd, 3rd and 6th respondents to reopen the enquiry.

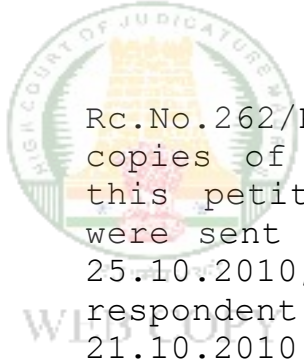
For Petitioner : Mr.Niranjan.S.Kumar

For Respondents :Mr.K.Guru A.G.P for R1 & R7
:Mr.G.R.Swaminathan for R2
:Mr.M.Suresh Kumar for R4 & R5
:No Representation for R6
:Mr.Xavier Rajini-R3

O R D E R

This Writ Petition has been filed by the petitioner challenging the enquiry report submitted by the 6th respondent and the consequential proceedings initiated by the 2nd and 3rd respondents vide proceedings Rc.No.11G/Violation of Code of Conduct as set out in TNPCR Rules 1976/KGS/2013-2014 dated 15.05.2013; and for a consequential direction to reopen the enquiry.

2.The learned Counsel appearing for the petitioner submits that the petitioner was selected and temporarily appointed as Lecturer in Physics Department in the respondent College on 03.12.1990. After satisfactory completion of the probation period, his appointment was regularized on 02.12.1992. Thereafter, the petitioner was upgraded to Senior Lecturer on 07.01.1998, and Selection Grade Lecturer on 28.02.2001 and thereafter, as Associate Professor from 01.01.2006. Further the learned Counsel for the petitioner submits that the petitioner has put an unblemished record of service nearly 20 long years in the respondent College. In the entire 20 long years of service, not even a single memo was issued against the petitioner regarding any kind of misconduct in the college. Subsequently, for a simple reason of non-sharing of food during the meeting and using cell phone in the informal meeting of Physics department, an office note was served on the petitioner, without seeking any explanation vide letter dated 20.09.2010. On 05.10.2010, a suitable explanation was given for the office note, by the petitioner to the respondents. Thereafter, an office memo vide



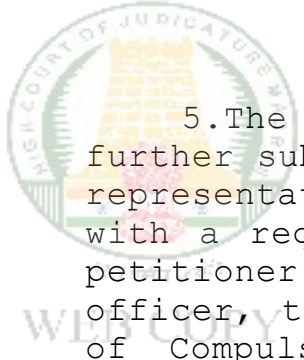
Rc.No.262/KGS/2010-11, dated 07.10.2010, was served for sending copies of the explanation. For the office memo, on 18.10.2010 this petitioner also given suitable explanation and the copies were sent to the management and the educational authorities. On 25.10.2010, the suspension order vide proceedings of the 3rd respondent in Rc.No.1/Discipline action/KGS/2010-11, dated 21.10.2010 was served on the petitioner during working hour of the college. After serving the suspension order, the respondents 3 and 4 brought the Police personal for removing the petitioner from the College premises. Hence, the petitioner has filed a Writ Petition in W.P(MD).No.13406 of 2010 before this Court, calling for the records relating to proceedings in RC.No.262/KGS/2010-2011 dated 07.10.2010 issued by the 4th respondent and the consequential suspension order in RC.No.1/DISCIPLINARY ACTION/KGS/2010-2011 dated 21.10.2010 issued by the third respondent and quash the same and consequently direct the respondents 3 and 4 to reinstate the petitioner as a Associate Professor in the Department of Physics and got interim order in M.P.(MD)No.1 of 2010 from this Court. Subsequently the petitioner joined duty on 18.11.2010 based on the order of this Court's interim order.

3.The Learned Counsel appearing for the petitioner has further submitted that after a period of time, the petitioner has sent the casual leave application through registered post and Fax on 05.02.2011, but the 4th respondent wantonly marked the causal leave as absent in the attendance register. Further, when the petitioner applied for medical leave with medical certificate issued by the Government Doctor for three days i.e. from 09.02.2011 to 11.02.2011, but the 4th respondent informed the petitioner through his letter dated 09.02.2011 that the Medical Leave would be referred to Medical Board, which is totally against the medical leave procedure and the same has not been in practice at any point of time. In this regard a suitable explanation was given by the petitioner through the letter dated 11.02.2011 to the 4th respondent. Regarding the Medical Leave there was no communication from the 3rd respondent. Thereafter, when the petitioner went to join duty, the respondents did not permit him to join duty and hence, the petitioner has filed another Writ Petition in W.P.(MD).No.2812 of 2011 before this Court, calling for the records relating to proceedings in Na.Ka.No.455/KGS/2010-11 dated 9.2.2011 and Na.Ka.No.459/KGS/2010-11 dated 9.2.11 issued by the 3rd and 4th respondents respectively and quash the same consequently direct the 3rd and 4th respondents to receive the leave application as well as representations as and when furnished by the petitioner, and in M.P.No.1 of 2011 an interim order was granted by this Court permitting the petitioner to join duty. Thereafter, the 3rd respondent sent telegram and the letter to the petitioner to join duty. On that basis, the petitioner has joined duty on 18.03.2011.

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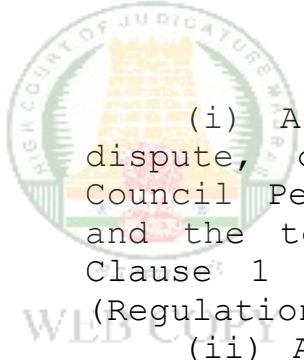
4.The Learned Counsel appearing for the Petitioner would submit that the National Assessment and Accreditation Committee

inspected the respondent College on 13.09.2012. At that time, the petitioner has submitted a memorandum pointing out certain irregularities made by the Management. Having vengeance against the petitioner, the 4th respondent and his own community students entered into the 2nd year B.Sc., class room and started shouting against the petitioner and used filthy words and hence the petitioner has called the Police. Therefore, the 3rd respondent has issued suspension order vide in No.9/Discipline/KGS/Suspension order, dated 22.09.2012 for submitting memorandum to the peer team of NAAC, and for calling Police inside the College premises. Challenging the same, the petitioner has filed another Writ Petition in W.P.(MD).No.13268 of 2012 before this Court calling for the records relating to the proceedings of the Secretary Order No.09/Discipline/KGS/Suspension order issued dated 22.09.2012 and quash the same and consequently direct the fourth respondent to reinstate the petitioner as an associate professor in the department of physics. While pending the above Writ Petition, a charge memo was issued vide Rc.No.11/KGS/2012-13, dated 24.10.2012. The Learned Counsel appearing for the petitioner further submitted that in order to give suitable explanation to the charge memo, the petitioner sought certain documents as much as 66 documents. Without providing the required documents the management appointed an enquiry officer vide Rc.No.11A/KGS/Enquiry/2012-13, dated 19.11.2012. Further without obtaining prior approval from the collegiate education, the management extended the period of suspension vide Rc.No.11B/Suspension/extended/2012-13, dated 20.11.2012, which is against the provision of Section 19(1) of TNPCR Act 1976. Pointing out the same, the petitioner has submitted an objection letter on 24.11.2012. In the meantime, a notice dated 24.11.2012 from the enquiry officer was sent to the petitioner directing him to appear for enquiry. In response to his letter, a reply was sent by the petitioner by way of representation dated 27.11.2012. Following that, the enquiry officer sent a call letter dated 01.12.2012 by fixing the date of enquiry. After receiving it once again the petitioner has sent his objection through letter dated 04.12.2012, by stating that without providing documents to give suitable explanation he is trying to conduct the enquiry, which is against the provision of enquiry. The Enquiry Officer closed the enquiry as Ex-parte. The Learned Counsel appearing for the Petitioner submitted that another Writ Petition in W.P.(MD).No.17120 of 2012 was filed by the petitioner challenging the extension of suspension order and Enquiry officer's report closing the enquiry ex-parte. After filing the Writ Petition in W.P.(MD).No.17120/2012, a Second show cause notice was issued to the petitioner vide 11C/2nd Show cause Notice/KGS/2012-13, dated 31.12.2012 by the 3rd respondent. The Writ Petition in W.P.(MD).No.17120 of 2012 was dismissed granting liberty to the petitioner to make a request to re-open the enquiry, which was closed Ex-parte.



5. The Learned Counsel appearing for the petitioner would further submitted that as per the direction given by this Court, a representation, dated 11.01.2013 was sent to the 3rd respondent with a request to re-open the enquiry. Without considering the petitioner's request, based on the ex-parte report of enquiry officer, the management tentatively decided to impose the penalty of Compulsory Retirement vide Rc.No.11D/Violation of Code of conduct as set out in TNPCR Act rule 1976/KGS/2012-13, dated 20.01.2013. The Learned counsel for the petitioner submitted that the petitioner has challenged the 2nd Show cause notice dated 31.12.2012 and the enclosure No.1 of the enquiry officer's report and findings dated 20.01.2013 in W.P.(MD).No.1636 of 2013. This Court has also granted an interim order of stay on 30.01.2013. By virtue of the interim order, the petitioner once again joined duty on 08.02.2013. Subsequently the Writ Petition in W.P(MD).No.1636 of 2013 was disposed of by this court, rejecting the request of the petitioner claiming certain documents, but directed the enquiry officer to re-open the enquiry and conduct the enquiry a fresh and provide adequate opportunity to the petitioner to examine and cross-examine the witness and thereafter, the enquiry officer was directed to file a fresh report. As against the negative portion, a Writ Appeal in W.A.(MD).No.362 of 2013 was filed by the petitioner. But no interim order was granted by this court. Since there was no interim order, the enquiry officer has directed the petitioner to appear for the enquiry, for which, the petitioner has not appeared but has given a reply stating that the writ appeal is pending. Subsequently, another notice specifying time and date, the enquiry officer has directed the petitioner to appear for enquiry. The petitioner has appeared for enquiry on the specified date and time but there was no one present at that time. Hence, the petitioner has sent a telegram that he waited for a long time, but no one has turned up. Thereafter, the enquiry officer has closed the enquiry ex-parte and has submitted a report. Challenging the same the petitioner has filed another Writ Petition in W.P.(MD).No.8340 of 2013 before this Court. This Court by an order dated 15.05.2013, granted an order of interim stay. Subsequently based on the report, the present impugned order came to be passed. Since the petitioner was not allowed to join duty by virtue of the interim order granted on 15.05.2013, a Contempt came to be filed by the petitioner in Cont.P(MD).No.708 of 2013, which was dismissed by this court on 09.10.2013. Hence, the petitioner prayed this Court to allow the writ petition by granting the prayer sought for in this writ petition.

6. Mr.G.R.Swaminathan, Learned Counsel appearing for the respondent College submitted that the nature and behaviour of the petitioner is unbecoming and has violated moral code of conduct inside the college premises. The attitude of the petitioner, who is supposed to be a Associate Professor in the Department of Physiology, ought to have followed ethics and ought not have violated the Morality. The Learned Counsel pointed out that the three charges which were framed against the petitioner namely



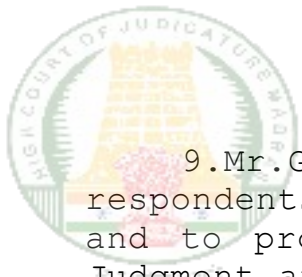
(i) Article 1: That the Petitioner having certain service dispute, obstructed the National Assessment and Accreditation Council Peer Team and unauthorizedly submitted a representation and the tone and tenor used by the petitioner has contravened Clause 1 and 9 of the Code of Conduct as Set out in TNPCR (Regulations) Rules 1976.

(ii) Article 2 : That the petitioner having abruptly stopped the classes which he was taking, and stopped the Principal while he was going rounds and intimidated him using strong words and has threatened him in the college corridor which is in violation of Clause 1 and 9 of the Code of Conduct as Set out in TNPCR (Regulations) Rules 1976.

(iii) Article 3: That the petitioner is habitually disobeying the instructions given by the Head of the Department Dr.P.Arul Alphonse and that the petitioner having accepted the duty of University Examination has failed to appear which is in violation of Clause 1 and 1(a) of the Code of Conduct as Set out in TNPCR (Regulations) Rules 1976.

7.Mr.G.R.Swaminathan, Learned Counsel appearing for the respondents would further submitted that these charges framed against the petitioner are serious in nature and cannot be brushed aside easily. Being a Associate Professor, the petitioner's attitude has become intolerable and his activities became endless. Further, the petitioner has been filing petitions after petitions against the Management before this Court instead of cooperating for the enquiry proceedings. The petitioner instead of attending the enquiry sought nearly 66 documents which are immaterial to the enquiry proceedings. Even after this Court directing the enquiry officer to re-open the enquiry, the petitioner purposely filed a Writ Appeal which is still pending and not appeared in this enquiry. From this kind of attitude, the intention of the petitioner can be easily understood. The petitioner, even after affording sufficient opportunity, has not come forward to attend the enquiry, but found some or other reason to come before this court to file a petition one after another to avoid the proceedings. Hence, instead of terminating the petitioner, the respondent management has consider the petitioner's lengthy service in the college, and directed the petitioner to go on compulsory retirement. But, without satisfying the said order, he has filed this writ petition, without any valuable ground. Therefore, he prayed for dismissal of this writ petition.

8.Heard Mr.Niranjan.S.Kumar, learned Counsel appearing for the petitioner, Mr.K.Guru, Additional Government Pleader appearing for the respondents 1 and 7, Mr.G.R.Swaminathan, learned Counsel appearing for respondents 2, Mr.Xavier Rajini learned Counsel appearing for third respondent, Mr.M.Sureshkumar learned Counsel appearing for respondents 4 and 5. There is no representation on behalf of the 6th respondent and I perused all the relevant records.



9.Mr.G.R.Swaminathan, learned Counsel appearing for the respondents submitted that the college is a Minority Institution and to prove the same he has filed a typed set containing the Judgment and Decree in O.S.No.18 of 1995 on the file of Sub-court, Kumbakonam, which is also confirmed by the Judgment and Decree in A.S.No.62 of 1986 on the file of District Judge, Thanjavur. Also relied on the Order dated 19.09.2002 passed in W.P.No.2021 of 1999 and a communication dated 24.02.2004 issued by Higher Education Department and an Order dated 02.12.2009 in W.P.No.12481 of 2001, to prove that that the Sri Kumara Gurupara Swamigal Arts College, Srivaikundam has been declared as Minority Institution by the Competent Civil Court and hence, there is no necessity for the respondent College to obtain prior approval from the Collegiate Education as per Section 19 of TNPCR (Regulation) Act, 1976.

10.Per contra, the learned Counsel appearing for the petitioner during the course of argument raised a vital legal issue involved in the writ petition, which is not raised in the grounds of the writ petition and sought permission of this court to take it into consideration. The learned Counsel appearing for the petitioner after leave of this court submitted that the 2nd respondent, in the impugned order, has referred as if the respondent college is declared Minority institution, prior approval from collegiate education is not necessary. The learned Counsel appearing for the petitioner relied upon an information furnished under the Right to information Act, wherein, it is stated that no specific order has been passed by the State Government declaring the Kumuraguru Swamigal Arts College, Srivaikuntam as Minority Institution. Hence, the learned Counsel insisted this Court that the impugned order is unsustainable as per Section 19 of TNPCR(Regulation)Act,1976. The provision section 19 of Tamil Nadu Private Colleges (Regulation) Act, 1976 is as follows:

"19.Dismissal, removal of reduction in rank or suspension of teachers or other persons employed in private colleges.-(1) Subject to any rule that may be made in this behalf, no teacher or other person employed in any private college shall be dismissed, removed or reduced in rank nor shall his appointment be otherwise terminated except with the prior approval of the competent authority.

(2) Where the proposal to dismiss, remove or reduce in rank or otherwise terminate the appointment of any teacher or other person employed in any private college is communicated to the competent authority, that authority shall, if it is satisfied that there are adequate and reasonable grounds for such proposal, approve such dismissal, removal, reduction in rank or termination of appointment.



(3)(a) No teacher or other person employed in any private college shall be placed under suspension, except when an inquiry into the gross misconduct, within the meaning of the Code of Conduct prescribed under sub-section (1) of section 18, of such teacher or other person is contemplated.

(b) No such suspension shall remain in force for more than a period of two months from the date of suspension and if such inquiry is not completed within that period such teacher or other person shall, without prejudice to the inquiry be deemed to have been restored as teacher or other employee:

Provided that the competent authority may, for reasons to be recorded in writing, extend the said period of two months, for a further period not exceeding two months, if, in the opinion of such competent authority, the inquiry could not be completed within the said period of two months for reasons directly attributable to such teacher or other persons."

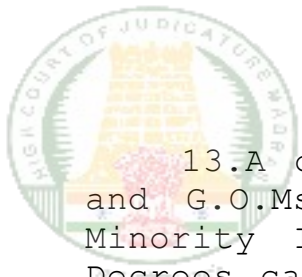
Therefore, when the Court has sent the reply for the RTI Act letter then, this Court come to conclusion that the college is not comes under the Minority Institution.

11.Mr.Niranjana.S.Kumar, learned Counsel appearing for the petitioner relied on a Judgment rendered by the Hon'ble Supreme Court reported in 2002 (8) SCC 481: T.M.A.Pai Foundation case and G.O.Ms.No.270 passed by Higher Education (J1) Department dated 17.06.1998. The relevant portion is extracted as follows:

"2. In the orders passed by the Supreme Court of India in T.M.A. Pai Foundation and others case, second read above, Supreme Court of India, have stayed the decrees/orders which might have been given by any civil court in respect of the minority status to the institutions concerned and directed that the institutions claiming minority status shall approach the Government for a declaration that they are minority institutions, and till such time the Government issue an order declaring that it is a minority institution, they cannot operate as Minority Institutions."

Emphasis Applied

12.Therefore, the learned Counsel appearing for the petitioner contended that as per G.O.Ms.No.270, the respondent college has not obtained any specific order from the Government declaring the institution as Minority Institution and therefore, this shows that as on date the Government has not passed order declaring that the respondent College is a Minority Institution. In the above circumstances, Prior Approval from the Collegiate Education is necessary as per Section 19 of TNPCR (Regulation) Act, 1976 and therefore, the impugned order without prior approval of Collegiate Education is bad in law and liable to be set aside.



13.A careful perusal of the Judgment in T.M.A.Pai Foundation and G.O.Ms.270 it is clearly clarifies the position that the Minority Institution Status given by virtue of a Civil Court Decrees cannot be valid until such Institution obtains a specific order declaring them as Minority Institution from the Government. Therefore, in the present case, admittedly the respondent college has not obtained any specific order or declaration from the Government that the institution is a Minority Institution and hence, as per the judgment referred to above, the respondent college cannot claim to be a Minority Institution. Therefore, prior approval is necessary as per Section 19 of TNPCR (Regulation) Act, 1976.

14.Coming to the next issue relating to the manner of enquiry conducted and to the decision arrived, it is apparent that both the petitioner as well as the respondent college is fighting each other without any merit. The enquiry officer has also acted in favour of the Management by submitting his Ex-parte report, not once, but twice, without affording a fair opportunity to the petitioner to contest the charges framed against him, even after repeated directions from this Court to conduct the enquiry after affording opportunity. Hence, this Court deems it fit to implead the Director of Collegiate Education, Chennai as a party/ 7th respondent and directs him to conduct enquiry and pass orders after affording fair opportunity to both parties. Therefore, in view of all the discussions made, the impugned ex-parte enquiry report dated 26.04.2013 and the consequential order vide Rc.No.11G/Violation of Code of Conduct as set out in TNPCR Rules 1976/KGS/2013-2014 dated 15.05.2013, imposing compulsory retirement are liable to be set aside and the writ petition deserves to be allowed.

15.In the result:

(a)the Writ Petition is allowed by setting aside the impugned enquiry report dated 26.04.2013 passed by the 6th respondent and the consequential order passed by the respondents 2 and 3 vide Rc.No.11G/Violation of Code of Conduct as set out in TNPCR Rules 1976/KGS/2013-2014 dated 15.05.2013,

(b)consequently directing the 2nd respondent to reinstate the petitioner into service granting him continuity in service with all the back wages and monetary benefits, within a period of two weeks from the date of receipt of copy of this order.

(c)Further, the Director of Collegiate Education, Chennai/the 7th respondent is hereby directed to conduct a fresh enquiry on the charges framed against the petitioner by the college after affording opportunity to both parties and dispose of the same within a period of three months.



16. Therefore, the writ petition is allowed with the above observations. No costs. Consequently, connected miscellaneous petition is closed.

Sd/
Assistant Registrar(RTI)

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Sub Assistant Registrar.

To

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+3CC to M/S.Niranjan S.Kumar, Advocate, SR.No. 1272, 1999
+1CC to M/S.G.R.Swaminathan, Advocate, SR.No. 1925

Order made in
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06.01.2017

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AM/SS3/SAR-3/18.01.2017/10P/10C