HON'BLE SRI JUSTICE RAJA ELANGO

WRIT PETITION NO.25023 OF 2005

ORDER:

1. This Writ petition is filed seeking to declare the office order dated 7.11.2005 bearing reference No.912/2004-05 issued by the 3rd respondent as arbitrary and illegal; to declare the action of the respondents in not paying the petitioner's salary from 4th January, 2004 till date of filing of the petition as illegal; to declare the action of the respondents in not paying the subsistence allowance for two months i.e., November 2003 and December, 2003 as arbitrary and illegal; and to declare the action of the respondents in not conducting any enquiry against all the concerned for the lapses pointed out in the audit report dated 16.4.2004 and the report of the Commissioner of Collegiate Education dated 7.5.2005 as illegal and arbitrary; and to issue a consequential direction to the respondents to pay the subsistence allowance to the petitioner for November, 2003 and December, 2003 and pay the full salary from 4th January till filing of this writ petition and continue to pay the monthly salary due to the petitioner on the respective dates every month, to conduct impartial enquiry against all the concerned, and also to take appropriate action against all the concerned who are responsible for the objections raised in the audit reports dated 16.4.2004 of the college auditor and audit report dated 7.5.2005 of the Director of College Education.

2. Brief facts of the case are as follows:

(i) The petitioner joined in the third respondent-institution, which is an aided college, as Typist in 1975 and by the date of filing this writ petition in the year 2005, she already put up 30 years of service and aged about 50 years. During the year 1999, as the concerned L.D.C. retired, the petitioner was asked to look into the maintenance of Special Fee Account and while dealing with the said seat, she used to file all the vouchers, receipts and bills. The entire expenditure out of this Special Fee Account is supported by vouchers and receipts approved and signed by the Principal as well as the Correspondent. While so, the impugned office order, dated 7.11.2005 was issued by the 3rd respondent as under:

> "Mrs. T. Sathi Devi (petitioner herein) was informed to pay the balance of Rs.3,68,687/- at 50% of her salary i.e., Rs.6,242/- (50% of her salary) commencing recovery out of her supplementary pay bill for the duty period from 14th July, 2004 to 30th September, 2004, which will be payable to her after release of grant-in-aid by the Director of Collegiate Education. The balance amount, as on the date of her retirement, will be recovered from her terminal benefits in lump sum."

Basing on the audit report dated 7.5.2005, the 3rd respondent concluded that the above referred amount has to be recovered from the petitioner.

(ii) It is stated that in November, 2003, the Management called for the explanation of the petitioner for an amount of Rs.50,000/- which was excessively drawn by the petitioner. Then, the petitioner deposited Rs.50,000/- in the college account. The management promised that no action will be taken against her. On 4.11.2003 the 3rd respondent issued a memo placing the petitioner under suspension for the lapse of Rs.50,000/-. Subsequently enquiry notice was issued. On 5th May, 2004, charge sheet was given levelling 11 charges against the petitioner. Only 11th charge relates to Rs.50,000/- and the rest of the charges relate to Special Fee

Account, which is amounted to Rs.25,87,583/-. The petitioner submitted detailed explanation. Respondents Nos.3 and 4 did not furnish the enquiry report. No enquiry was conducted after issuance of charge sheet. On 20.5.2004, the petitioner received a memo to show cause as to why a sum of Rs.25,87,583/- should not be recovered. The petitioner submitted explanation. While submitting the representation, she deposited Rs.4 lakhs as security and she promised to pay another sum of Rs.3 lakhs within 15 days. Respondents 3 and 4 promised to hold full fledged enquiry and to find out as to who are really responsible and after finding the persons, who are responsible, they will return the amount to the petitioner. They collected Rs.10 lakhs from the petitioner. They also obtained title deeds of the petitioner relating to her house. The respondents reinstated the petitioner into service. During the period of her suspension, the respondents did not pay the subsistence allowance. The respondents did not pay the salary of the petitioner even after reinstatement. In spite of several representations, there was no response. The petitioner made a representation to the 2nd respondent on 10.8.2005 and 13.9.2005. The 2nd respondent called for explanation from the third respondent. Then, the 3rd respondent sent the office order impugned herein. The office order refers to a Special Audit report dated 7.5.2005, on the basis of which, the entire amount alleged to have been pointed out was sought to be recovered from the petitioner. Challenging the same, the petitioner filed this writ petition.

3. Respondents Nos.1 and 2 filed counter stating that the 3rd respondent in his letter dated 17.11.2003 informed that the petitioner has been dealing with the special fee accounts operated by the Principal and she has involved in tampering cheques and withdrawal of excess amount of

Rs.50,000/- from the special account maintained in the college and that in the enquiry conducted by the Principal on 1.11.2003, the petitioner accepted her irregularities for Rs.50,000/- and hence, she was placed under suspension w.e.f. 4.11.2003. When the 3rd respondent requested for extension of suspension period, it was informed that extension of suspension beyond 4 months is not feasible. The 3rd respondent vide letter dated 7.5.2004 furnished a copy of enquiry report to the 2nd respondent wherein the enquiry officer concluded that the petitioner is responsible for misappropriation of Rs.25,87,583/- relating to special fee; R. Narasimha, Record Assistant, I/C of stationery section is responsible for Rs.1,94,417/-; principal D. Priyadharshini Kapadia being drawing officer failed to check up all the purchases and payments and that the B. Mruthyunjay, Superintendent failed to supervise the office work properly. Subsequently, the petitioner and another viz., R. Narasimha were reinstated into service. While so, the 2nd respondent ordered for special audit of the special fee funds of the college. In the audit report, it was held that the petitioner tampered the cheques, withdrew huge amounts of the special fee accounts and that the erred individuals remitted some amounts. Balance of Rs.3,96,438/- has to be recovered from the responsible. The 2nd respondent vide his proceedings dated 6.8.2005 instructed to take necessary action against the persons responsible, and to recover the amounts misappropriated. In that context, the 3rd respondent issued the impugned order. The petitioner is under the control of the 3rd respondent and that these respondents are nothing to do with the orders of the 3rd respondent.

4. Respondents Nos. 3 and 4 filed a counter stating that there is no violation of the principles of natural justice in seeking to recover the

amount of Rs.25,87,583/- from the petitioner and that the petitioner paid a sum of Rs.10,00,000/- and deposited the title deeds of her house property towards recovery of the balance amount. The petitioner is responsible for misappropriation of funds from the special fee account. The petitioner herself admitted her guilt and therefore, the question of enquiry does not arise. It is submitted that as advised by the 2nd respondent, respondents Nos.3 and 4 decided to recover the balance amount of Rs.3,96,438.10 ps. Regarding payment of subsistence allowance is concerned, the respondents sent proposals to the 2nd respondent to release grant-in-aid.

5. The learned Counsel for the petitioner submitted that the office order dated 7.11.2005 was not preceded with any enquiry and that the special audit report was not communicated to the petitioner. He further submitted that the enquiry officer was appointed in respect of Rs.50,000/- and notice dated 7.2.2004 was only in respect of the said amount and that the charge memo dated 5.5.2004 alleging irregularities in respect of huge amounts against the petitioner is illegal and arbitrary and that the petitioner was not paid her salaries and the conduct of the respondents in not paying the petitioner's subsistence allowance for a period of two months and the salaries is illegal and arbitrary.

6. Learned Government Pleader for Higher Education reiterated the contentions raised in the counter-affidavit.

7. From the material available on record and the office order under challenge, it is clear that no proper enquiry was conducted before issuing the office order in question. Further, the facts as to the payment of Rs.10 lakhs and the deposit of title deeds were not disputed by the respondents.

The action of the respondents-authorities concerned in receiving the property documents of the petitioner is contrary to the legality. This writ petition is filed in the year, 2005. By the date of filing this writ petition, the petitioner was aged about 50 years. Considering the facts and circumstances of the case and in view of the lapse of time, this Court is of the view that no purpose will remain in remanding the matter now for fresh adjudication by conducting proper enquiry.

8. In the circumstances, the petitioner is directed to pay the remaining amount of Rs.3,68,687/- as claimed by the respondents authorities concerned within a period of six months from the date of receipt of a copy of this order. On such payment, the respondents concerned are directed to return the title deeds deposited by the petitioner. Further, the petitioner is entitled to all the retirement benefits in view of the fact that no enquiry was conducted in a proper manner.

9. With the above direction, the Writ Petition is disposed of. No costs. Consequently, miscellaneous petitions pending, if any, shall stand closed.

Justice Raja Elango

Dated: 15.9.2017

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