

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.06.2018

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.Nos.11855, 771, 772 of 2016, 41055 of 2015, 11869 of 2016

M.Jumma Khan	..	Petitioner in W.P.No.11855 of 2016
B.S.Mohamed Rizwan	..	Petitioner in W.P.No.771 of 2016
M.Mohamed Abdhahir	..	Petitioner in W.P.No.772 of 2016
K.Mohamed Ibrahim	..	Petitioner in W.P.No.41055 of 2015
I.Rahamatulla Khan	...	Petitioner in W.P.No.11869 of 2016

-vs-

1. The All India Council for
Technical Education
rep.by its Member Secretary
7th Floor, Chanderlok Building
Janpath, New Delhi 110 001
 2. The University Grants Commission
rep.by its Secretary
Bahadur Shah Zafar Marg
New Delhi 110 002
 3. Anna University
rep.by its Registrar
Guindy, Chennai 600 025
 4. State of Tamil Nadu
rep.by its Commissioner of Technical Education
Sardar Patel Road, Guindy
Chennai 600 025
 5. Mohamed Sathak A.J.College of Engineering
run by Mohamed Sathak Trust
rep.by its Principal
No.34, Rajiv Gandhi Salai (OMR)
Inside SIPCOT IT Park, Siruseri
Egattur, Chennai 603 103
 6. Mohamed Sathak Trust
rep.by its Chairman
& Director-Headquarters
No.6/1, Pycrofts Garden Road
I Floor, Chennai 600 006
- .. Respondents in all the writ petitions

W.P.Nos.11855, 771, 772 of 2016 & 41055 of 2015 are filed under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus, to call for the records culminating in the passing of the letter dated 29.01.2016/10.12.2015/11.12.2015 by the sixth respondent, quash the same and to consequently direct the respondents to reinstate the petitioners with backwages, continuity of service, monetary, service and all other attendant benefits, within a time frame to be fixed by this Hon'ble Court.

W.P.No.11869 of 2016 is filed under Article 226 of the Constitution of India, praying for the issue of a Writ of Mandamus, directing the respondents 5 and 6 to pay the petitioner terminal benefits viz., Gratuity, PF, Encashment of Leave Salary, Commutation etc., along with applicable interest from 11.12.2015 till the date of payment of the said amounts in full, within a time frame to be fixed by this Hon'ble Court.

For Petitioners :: Mr.S.Haja Mohideen Gisthi

For Respondents :: Mrs.AL.Ganthimathi for R1
Mr.P.R.Gopinathan
Standing Counsel for R2
Mr.M.Vijayakumar
Standing Counsel for R3
Mr.K.Rajendra Prasad
Additional Government Pleader
for R4
Mr.M.Ravi for R5 & 6

ORDER

Mr.M.Jumma Khan, the petitioner in W.P.No.11855 of 2016, Mr.B.S.Mohamed Rizwan, the petitioner in W.P.No.771 of 2016, Mr.M.Mohamed Abdhahir, the petitioner in W.P.No.772 of 2016 and Mr.K.Mohamed Ibrahim, the petitioner in W.P.No.41055 of 2015 have prayed for issuance of a writ of certiorarified mandamus, calling for the records relating to the impugned letter dated 29.01.2016/10.12.2015 issued by the sixth respondent relieving them from service with immediate effect, to quash the same with a consequential direction to the respondents to reinstate them in service with all consequential service and monetary benefits. Similarly, Mr.I.Rahamatulla Khan, the petitioner in W.P.No. 11869 of 2016 has sought for issuance of a mandamus directing the respondents 5 and 6 to pay him the terminal benefits viz., Gratuity, PF, Encashment of Leave Salary, Commutation etc., along with applicable interest from 11.12.2015 till the date of payment of the said amounts in full, as he was also relieved from service on his own request. As the issue raised is common in all the writ petitions, for convenience, the facts pleaded by

the petitioner in W.P.No.11855 of 2016 are alone referred to in this order.

2. Mr.M.Jumma Khan, having joined as Associate Lecturer in the Department of Mechanical Engineering, Mohamed Sathak A.J. College of Engineering on 8.7.89 and also functioned as Head of the Department of Mechanical Engineering for a long time, was relieved from service by one line order dated 29.1.2016 passed by the sixth respondent without assigning any reason, which reads as follows:-

"Dear Sir,

Sub: Relieving from services.

You are relieved with immediate effect from the services of our organization.

Sd/-

Associate Director

Headquarters

Mohamed Sathak Trust"

3. Mr.S.Haja Mohideen Gisthi, learned counsel appearing for all the petitioners submitted that the fifth respondent engineering college was established on 5.7.2001 by Mohamed Sathak Trust, the sixth respondent herein and the said institution was also approved by the All India Council for Technical Education, the University Grants Commission and the Commissioner of Technical Education, the respondents 1, 2 & 4 herein and it is also affiliated to Anna University, the third respondent herein. In view of the above status enjoyed by the fifth respondent, Mr.M.Jumma Khan joined the Mohamed Sathak Engineering College at Kilakkarai as Associate Lecturer in the Department of Mechanical Engineering on 8.7.89. As he got a job opportunity abroad on 30.9.91, he left the institution and again re-joined the institution on 15.9.98 after his return from abroad. During his service with the fifth respondent, the petitioner worked under five Principals with great enthusiasm and involvement for the betterment of the institution and also the welfare of the students. Acknowledging his tireless and sincere devotion to the teaching duty, he was elevated as Head of the Department of Mechanical Engineering during the academic year 2004-05 and again he brought many laurels to the department, when it was accredited with NBA by the AICTE, New Delhi in the year 2006-07. Moreover, the petitioner obtained grants as the Principal Co-ordinator from AICTE to establish IIPC in the institution and also brought excellent results to the department from very low level to the notable rank among the institutions in that zone under Anna University and produced university ranks in the post graduate courses. On account of the

personal reasons of the petitioner, as his family also shifted to Chennai in the year 2007, he requested the then Chairman late Dr.Hamid Abdul Qadir of Mohamed Sathak Trust to transfer him to the Chennai institution, to which he readily agreed and accordingly, the petitioner was transferred to Chennai on 1.4.2008. Since the administration declined to relieve him from service, the petitioner had no other alternative, but to give up the position of Head of the Department and continued as faculty upto 9.7.2009. Realising the compulsive situation, the petitioner joined another institution at Chennai on his request. Thereafter, he joined as Assistant Professor in the fifth respondent college on 10.7.2010 and assumed charge as Head of the Department of Mechanical Engineering. During his service for six years, he was made to work under six Principals in the institution. Due to his health reasons, in the year 2012-13, the petitioner requested the Director Mr.Faizal to relieve him from the responsibility of Head of the Department, but continued as a faculty. After sometime, due to the illness and inability of the Director, the top management system was completely revamped with new faces not having enough experience to handle academicians and they also indulged in politics and created an unhealthy working environment, with the result the Principal was sent out. Again the team of faculty members who were committed for the betterment of the institution was targeted. When the petitioner has produced 100% results in the PG courses and above 60% in all the UG courses, he was made to face troubles and tribulations by the newly appointed Head of the Department. However, in the review interview held on October 2015, the petitioner was informed through the Dean (Research) that his performance was excellent.

4. While so, on 28.1.2016, one Mr.Saleem came to the petitioner and told him to shift his seat from the staff room, as the new Principal wanted to make it as the room of the Head of the Department. The petitioner declined to part with that room, since it is too large a room to be the Head of the Department's room which required only 10 sq.mts., area as per the norms and moreover as the petitioner has been using the room for the past six years and the same was also reported to the Dean (Research) Dr.Hasan Sheik, who was very well aware of the norms and procedure, with a request to arrange a room, if the Head of the Department needs privacy. However, for the simple reason that the petitioner declined to leave the room, the matter was discussed with the Associate Director Mr.Sajeed in the Principal's cabin on 29.1.2016 and finally they took a decision to shift the petitioner to a place convenient to him. The petitioner, on knowing the same, informed that he could sit with the senior person Mr.Venkatasubramanian, which was also declined by the Principal for some lame reasons. Only then, he was informed not to come to the college from 30.1.2016. Hence,

the petitioner was unable to attend to his duties and applied leave through SMS on 30.1.2016. On 3.2.2016, the petitioner was informed that he was relieved from his job with immediate effect without assigning any valid reasons whatsoever in the impugned order. The learned counsel further submitted that the one line termination order passed against the petitioner shows that the respondents did not have a reason. Secondly, a perusal of the impugned order shows that he was not given any opportunity to explain why he should not be terminated. This apart, the golden principle that no one shall be condemned without being heard, has been flagrantly violated and a faculty member working in the Mechanical Engineering department has been victimised without following the rule of law and the principles of natural justice. This is a clear abuse of the process of law, illegal, arbitrary and violative of Articles 14, 16 and 21 of the Constitution of India. Adding further, the learned counsel for the petitioner submitted that the fifth respondent has not issued any prior notice or conducted any enquiry before asking him to resign or being relieved from service in the impugned order dated 29.1.2016. Besides, the respondents 1 to 4 have not even passed any order for the act of the fifth respondent in arbitrarily relieving him before initiating any departmental proceedings and subjecting him to face the departmental proceedings. Moreover, there is no adverse remark against the petitioner from any quarter.

5. Continuing his arguments, the learned counsel submitted that although the fifth respondent is a minority educational institution not receiving grant in aid, as per the latest judgment of the Apex Court in Janet Jeyapaul v. SRM University and others, (2015) 16 SCC 530, while deciding the question as to whether a writ petition lies under Article 226 of the Constitution of India against any person, juristic body, organisation, authority etc., it has been held that the test is to examine in the first instance the object and purpose for which such body/authority/organisation is formed so also the activity which it undertakes to fulfil the said object/purpose. As the fifth respondent college is engaged in the activity of engaging students at large, it is amenable to the writ jurisdiction of this Court under Article 226 of the Constitution of India. When the petitioner is able to prove that the twin test laid down by the Apex Court in Janet Jeyapaul's case that the fifth respondent is engaged in imparting education to the students at large and it is discharging a public function being satisfied in the present case, the writ petitions filed by the petitioners against the fifth and sixth respondents are certainly maintainable under Article 226 of the Constitution of India. Hence the writ petitions deserve to be allowed by setting aside the impugned order.

6. Detailed counter affidavits have been filed by the fifth and sixth respondents. Mr.M.Ravi, learned counsel for the respondents 5 & 6, opposing the maintainability of the writ petitions, taking a preliminary objection, contended that the writ petitions against the fifth and sixth respondents, being a minority educational institution, are wholly not maintainable, since the fifth respondent, which is a self financing college, runs the institution only from the fees collected from the students and from the contribution of the management. Adding further, Mr.M.Ravi submitted that the fifth respondent college, being run by a private trust, is a minority institution recognised by the Central Government and its status as a minority institution also continues even now. As the Mohamed Sathak A.J.College of Engineering run by Mohamed Sathak Trust is an unaided private minority educational institution, the same is not amenable to the writ jurisdiction of this Court under Article 226 of the Constitution of India, inasmuch as the dispute raised in the present writ petitions relates to the service matter of the writ petitioners, which is based on contract between the petitioners and the respondents 5 & 6 private trust, hence, the remedy under Article 226 cannot be invoked and the filing of the writ petitions is only an abuse of the process of law, and as such, the prayer in the writ petitions is not maintainable. Even the respondents 1 to 5 are unnecessarily impleaded as parties and they are no way connected to the dispute raised by the petitioners against the respondents 5 & 6. Adding further the learned counsel for the respondents 5 & 6 pleaded that the relationship between the petitioners and the respondent Trust is governed by the terms available in the contract of employment signed by both the parties and if the contract is allegedly violated, they have to work out their remedy by approaching the appropriate forum and not before this Court. Referring to various orders passed by this Court as well as the Apex Court, he further contended that in similar circumstances when a teacher working in an unaided educational institution challenged an order of termination simpliciter issued by the Dean and Director and Principal of Padma Seshadri Bala Bhavan Senior Secondary School, K.K.Nagar, Chennai, this Court, in the reported decision in K.Muniswari v. The Regional Director, Central Board of Secondary Education, Chennai and 2 others, 2013 SCC Online Mad 1784, has held that the writ petition under Article 226 of the Constitution of India cannot be entertained against an unaided private school, particularly when the writ petition sought to quash the termination order passed by the school and for a direction to reinstate the terminated teacher. Again a learned Judge of the Madhya Pradesh High Court in the decision in Smt.Reena Louis v. The State of Madhya Pradesh and others, 2014 SCC Online MP 4393, following a Division Bench judgment in Sunil Kumar Saxena v. Holy Cross Ashram Higher Secondary School, 2009 (4) MPLJ 641,

has held that the writ petition against an unaided minority educational institution is not maintainable, as the respondent Nos.3 and 4 therein are not amenable to writ jurisdiction under Article 226 of the Constitution of India. Even the Apex Court also in yet another order in Committee of Management, La Martiniere College Lucknow, through its Principal and another v. Vatsal Gupta and others, 2016 SCC Online SC 743, has held that when a writ petition is not maintainable against an unaided minority private institution, the entertaining of the writ petition against that institution and passing of subsequent directions by the High Court was clearly an error. On this score, he further pleaded that the decision of the Apex Court in Janet Jeyapaul's case cannot be made applicable to the present case for various distinguishing aspects.

7. Again meeting some of the averments raised in the writ petition by the petitioner, the learned counsel for the respondents 5 and 6 submitted that the petitioner, in order to suppress his habitual tendency to shift from one institution to the other, has made a bunch of lies and baseless allegations against the fifth and sixth respondents. One such lie being, when the petitioner admits that he joined the respondent institution on 8.7.89 and left the institution on 30.9.91 and thereafter he again rejoined the institution on 15.9.98 after his return from abroad, he has conveniently suppressed the fact that he had once again left the institution in the year 2010 and returned after 40 days. Only on his persistent request, the management warned him and took him back. However, his next tenure was also shortlived, as he was with the institution only till October, 2012. Even in October 2012 also, during the middle of the academic year, with scant respect to the interest of the students, he once again went abroad keeping only his selfish interest in mind. Again in the month of June 2013, pleading condonation of his selfish and insensitive conduct, giving assurance that he would render sincere and continuous service, requested the fifth and sixth respondents to permit him to rejoin the institution. As he was unable to keep up his assurance, he was deputed to his original post and the same was also duly accepted by him without any protest. But he has projected a case before this Court as if he only relinquished the post of Head of the Department, which is not correct. Again clarifying one another false averment made by the petitioner, the learned counsel submitted that in PG courses, only two students were there, for which the petitioner has stated that he secured 100% results. Even in UG courses, it is too low for a senior Professor to give only 60% results. Even the results of the last semester December, 2015 handled by him for the subject Aero Thermal Dynamics was only 27.27%, which shows that the petitioner has lied that he secured best results. Going back to the preliminary objection as to the maintainability of the writ

petitions, referring to the latest judgment of the Apex Court in Committee of Management, La Martiniere College Lucknow, through its Principal and another v. Vatsal Gupta and others, 2016 SCC Online SC 743, he concluded that once the Apex Court has held that an unaided minority private institution is not amenable to writ jurisdiction and the writ petition filed under Article 226 of the Constitution of India should not be entertained, he prayed that the writ petitions filed by the petitioners are liable to be dismissed.

8. Heard the learned counsel for the parties.

9. I also find merit in the submissions made by the learned counsel for the respondents 5 and 6. When the fifth respondent engineering college, being a minority educational institution recognised by the Central Government and its minority status continues even now, is run by the sixth respondent, which is a private Trust, the respondents 5 and 6 are not amenable to the writ jurisdiction. Under similar circumstances, when a teacher working in Padma Seshadri Bala Bhavan Senior Secondary School, K.K.Nagar, Chennai was terminated from service, questioning the termination order issued by the Dean and Director and Principal of the school, a writ petition under Article 226 of the Constitution of India seeking issuance of a writ of certiorarified mandamus to call for the records of the order of termination simpliciter was filed. But this Court, in the decision in K.Muniswari v. The Regional Director, Central Board of Secondary Education, Chennai and others, 2013 SCC Online Mad 1784, taking note of the factor that the said teacher was handling yoga subject and was in service for more than ten years and the said subject was also abolished from the academic year 2013-14, declined to entertain the writ petition under Article 226 of the Constitution of India holding that the third respondent therein was an unaided private school, more particularly, when the writ petition sought to quash the termination order passed by the school and for a direction to reinstate the terminated teacher. The relevant paragraphs of the said order read as follows:-

"5. I am of the view that the writ petition under Article 226 of the Constitution cannot be entertained against the third respondent unaided private school, particularly, when the writ petition is to quash the termination order passed by the school and for a direction to reinstate the terminated teacher.

6. In the result, the writ petition fails and the same is dismissed. However, the dismissal of the writ petition will not

preclude the petitioner from seeking the relief under the bye-laws before the concerned authorities. No costs. Consequently, connected miscellaneous petitions are closed."

10. Again a learned Judge of the Madhya Pradesh High Court in the decision in Smt.Reena Louis v. The State of Madhya Pradesh and others, 2014 SCC Online MP 4393, has held as follows:-

"In view of the pronouncement of law in Sunil Kumar Saxena (supra) and taking into consideration the facts of present case that the respondent No.4 is unaided minority educational institution and that the services of the petitioner has been terminated which is personal in nature rather than involving any public element, the respondent Nos.3 and 4 are not amenable to writ jurisdiction under Article 226/227 of the Constitution of India. Consequently, while upholding the preliminary objection, petition is dismissed in limine. The dismissal of this petition will not come in way of the petitioner availing the remedy in Civil Court. With these observations petition fails and is dismissed. No costs."

11. Moreover, the Apex Court in a recent decision in Committee of Management, La Martiniere College Lucknow, through its Principal and another v. Vatsal Gupta and others, 2016 SCC Online SC 743, while setting aside the judgment and order passed by the High Court, has clearly held as follows:-

"1. Leave granted.

2. We have heard learned counsel for the parties.

3. Appellant No.1 is an unaided minority private institution. We see no reason how a writ petition against that institution could be entertained. The High Court was clearly in error in entertaining the writ petition and passing subsequent directions.

4. Under the circumstances, the appeal is allowed and the impugned judgment and order passed by the High Court is set aside."

12. In the light of the above, if this Court examines the case of the petitioners, it is seen that the fifth respondent, namely, Mohamed Sathak A.J.College of Engineering, a private minority institution, is run by Mohamed Sathak Trust, the sixth respondent herein. Secondly, the fifth respondent engineering college is purely an unaided minority educational institution, which is not amenable to the writ jurisdiction under Article 226 of the Constitution of India. This Court, in a reported decision in K.Muniswari v. The Regional Director, Central Board of Secondary Education, Chennai and others, 2013 SCC Online Mad 1784, while dealing with a similar issue, has held that the writ petition under Article 226 of the Constitution cannot be entertained against an unaided private school for a direction to reinstate the terminated teacher. Even the Apex Court also, in yet another reported judgment in Committee of Management, La Martiniere College Lucknow, through its Principal and another v. Vatsal Gupta and others, 2016 SCC Online SC 743, has held that the writ petition is not maintainable against an unaided minority private institution. Coming to the decision of the Apex Court in Janet Jeyapaul v. SRM University and others, (2015) 16 SCC 530 laying down the twin test for entertaining the writ petition, firstly that the educational institution is engaged in imparting education to the students at large and secondly it is discharging a public function, this twin test can be applied only in the case of non-minority educational institution like SRM University, whereas the same cannot be put against the unaided minority educational institution. Moreover, this judgment did not deal with an unaided minority educational institution.

13. For all the aforesaid reasons, in the light of the ratio laid down by the Apex Court in Committee of Management, La Martiniere College Lucknow, through its Principal and another v. Vatsal Gupta and others, 2016 SCC Online SC 743 ruling that no writ petition is maintainable against an unaided minority private institution, since the fifth respondent is a private unaided minority educational institution, no writ petition under Article 226 can be entertained, as it is not amenable to the writ jurisdiction. Besides, when the petitioners have been relieved from service as per the terms of contract, which are purely personal in nature, the writ petitioners cannot enforce a contract of personal service against a non-statutory body on the premise that the fifth respondent college adopts certain statutory provisions. If the rights are purely of a private character, no mandamus can be issued. Hence, the writ petitions filed by the petitioners are not maintainable against the fifth and sixth respondents. Accordingly, the writ petitions are dismissed. However, the petitioners are at liberty to work out their remedy in the manner known to law by approaching the

appropriate authority. Consequently, interim order stands vacated and the W.M.P.Nos.10226, 21200, 577, 578, 21198, 21199, 21197, 10238 of 2016 & 1 of 2015 are also dismissed. No costs.

Sd/-

Assistant Registrar (CS-iv)

//True Copy//

Sub Assistant Registrar

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To

1. The Member Secretary
All India Council for
Technical Education
7th Floor, Chanderlok Building
Janpath, New Delhi 110 001
2. The Secretary
University Grants Commission
Bahadur Shah Zafar Marg
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3. The Registrar
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4. The Commissioner of Technical Education
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+5cc to Mr.HAJA MOHIDEEN GISTHI Advocate, S.R.No. 39841 & 39382

+1cc to Mr.M.RAVI Advocate, S.R.No.39626

+3cc to Mr.M.VIJAYAKUMAR, Advocate, S.R.No.40496 TO 40498

+1cc to Mr.B.RABU MANOHAR, Advocate, S.R.No.40340

+2cc to Mr.A. SHAIK PAREETH, Advocate, S.R.No.39383

W.P.Nos.11855 of 2016 etc.

RSK(CO)
TR(27/06/2018)