

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 21.12.2018

CORAM

THE HON'BLE DR. JUSTICE S.VIMALA

Writ Petition No.15662 of 2018  
& WMP Nos.18598 & 18599 of 2018

M.Thenmozhi

.. Petitioner

- Vs -

1. The Principal Secretary, Government of Tamil Nadu,  
Higher Education Department, Secretariat,  
Chennai - 9
2. The Director of College Education, Chennai - 6
3. The Principal, Government Arts College for Women  
(Autonomous), Pudukottai .. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorarified mandamus to call for the records issued by the first respondent in G.O.(2D) No.4, dated 09.02.2018, to quash the same and consequently to direct the respondents to reinstate the petitioner with all other benefits.

For Petitioner : Mr.D.Selvam for  
Mr. K.Sathishkumar

For Respondents : Mrs. P.Kavitha, Govt. Advocate

O R D E R

The petitioner was working in the third respondent College, as Assistant Professor. The petitioner was given award by the Government of Tamil Nadu for completion of 25 years of unblemished service.

2. The petitioner's husband, who served as Assistant Director, Geology and Mining Department, was not allowed to retire from service due to pendency of criminal case registered against him as well as the petitioner in Crime No.3/2013AC/TR for the offence under Section 13(1) (e) r/w 13 (2) of the P.C.Act.

3. The criminal case came to be registered for the reason that the petitioner and her husband acquired disproportionate assets from their known sources of income to the tune of Rs.41,94,674/-. Subsequent to the filing of FIR, charge sheet

came to be filed wherein the petitioner was shown as accused No.2.

4. The second respondent issued a charge memo dated 15.09.2017 consisting of four charges against the petitioner. The first respondent issued a Government Order (2D) No.4 dated 09.02.2018 suspending the petitioner from service. Thereafter, the Joint Director of Collegiate Education, Trichy, was appointed as Enquiry Officer. As against the suspension order, the petitioner made a detailed representation. Since the same did not evoke any response, the petitioner filed this writ petition.

5. Heard both sides.

6. The learned counsel appearing for the petitioner submitted that the petitioner sought for permission from the respondents to purchase the property worth Rs.7,92,900/- in favour of her daughter and the permission was duly granted by the communication dated 09.09.2010. Hence, the charges framed against the petitioner has no valid grounds. Hence, the petitioner prayed for quashing of the impugned order.

7. It is to be pointed out that, as per the reported decision in the case of Ajay Kumar Choudhary vs Union Of India, Thr. its Secretary & another, in CIVIL APPEAL No. 1912 OF 2015 (Arising out of SLP No. 31761 of 2013), prolonged suspension is illegal. In the said decision, in paragraph 8, it has been observed as follows:-

"8. Suspension, specially preceding the formulation of charges, is essentially transitory or temporary in nature, and must perforce be of short duration. If it is for an indeterminate period or if its renewal is not based on sound reasoning contemporaneously available on the record, this would render it punitive in nature. Departmental / disciplinary proceedings invariably commence with delay, are plagued with procrastination prior and post the drawing up of the Memorandum of Charges, and eventually culminate after even longer delay."

8. The said decision squarely applies to the facts of the case and the proposition laid down therein has been subsequently followed in various other decisions of the Supreme Court as well as this Court.

9. In as much as the petitioner has obtained permission of the respondents to purchase the property and having regard to the fact that permission was granted only after ascertaining the source of purchase money, the charge that the petitioner is in possession of property which is disproportionate to her income

appears to be groundless.

10. The petitioner would have an opportunity to show how the assets are not disproportionate to her income, only during enquiry.

11. Under the said circumstances, the respondents are directed to revoke the order of suspension passed against the petitioner, (if need be) by imposing appropriate terms and conditions and by posting her in any non-sensitive post. Such an order shall be passed by the respondents forthwith, not later than two weeks from the date of receipt of a copy of this order.

12. With the above directions, this writ petition is disposed of. No costs. Consequently, the connected WMPs are closed.

Sd/-  
Assistant Registrar

//True copy//

Sub Assistant Registrar

srk

To

1. The Principal Secretary, Government of Tamil Nadu,  
Higher Education Department, Secretariat,  
Chennai - 9
2. The Director of College Education, Chennai - 6
3. The Principal, Government Arts College for Women  
(Autonomous), Pudukottai

+lcc to Mr.K.Sathishkumar, Advocate SR.No.136

सत्यमेव जयते

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GMY (29/01/2019)

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