

IN THE HIGH COURT OF JUDICATURE AT MADRAS
Dated : 13.12.2018

CORAM:
THE HONOURABLE MR. JUSTICE M.M. SUNDRESH
AND
THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

W.A. No. 1456 of 2014

Prof. S.M. Sekkilar

... Appellant

Vs.

1. The Secretary to Government of Tamil Nadu,
Higher Education Department,
Fort. St. George, Chennai - 9.

2. Director of Technical Education,
Chennai - 25.

.... Respondents

Prayer: Appeal filed under Clause 15 of the Letters Patent
against the order dated 03.06.2014 in W.P. No. 12468 of 2007 on
the file of this Court.

WP.12468/2007.

This Writ Petition came to be numbered under Article 226 of
the constitution of India by way of transfer of original
Application in O.A.No.1471 of 2003 for a direction to the 1st
respondent to grant pay and allowances for the period of second
and third years also for his Ph.D., completed under QIP, as the
said period has been treated as 'on duty' as Special Case and as
the pay and allowances for the first year has been granted in
G.O.Ms.No. 374, Higher Education Department, dated 23.07.1998.

For Appellant : Mr. R. Subramanian

For Respondents : Mr. V. Kathirvelu
Spl. Government Pleader for R1 & R2

J U D G M E N T
(Delivered by M.M.Sundresh,J.)

The appellant is a professor working with the respondents.
The appellant along with one Kandasamy was selected under the
Scheme to undergo the Ph.D course. Accordingly, the appellant
joined the PSG College of Technology. Thereafter, a decision was
made to recall the appellant. On the request of the appellant,
the said decision was modified permitting the appellant to
continue the Ph.D course for a period of 3 years with a rider
that only one year he would be reimbursed for expenses and rest

he has to meet the expenses on his own. The other person was allowed to continue since he was having sufficient period as mandated under the Scheme to work with the Department for 9 years, which is three times of the period provided for the completion of Ph.D course. Unfortunately, the appellant was having only five years.

2. The appellant having accepted the aforesaid order continued the Ph.D course and completed. Thereafter, he came back to the parent Department viz., the respondents. Seeking reimbursement of the expenses incurred for the two periods, the appellant filed an application in A.No. 1471 of 2003. It was transferred before this Court. The learned Single Judge was pleased to dismiss the writ petition, and hence the present writ appeal.

3. The learned counsel appearing for the appellant submitted that the condition imposed is impossible of performance. Therefore, Section 36 of the Indian Contract Act would apply. Knowing fully well that the appellant did not have the service of 9 years, he was sent. Therefore, the order of the learned Single Judge would require interference.

4. We do not find any merit in this appeal. The decision to send the appellant to undergo the course was changed at the earliest point of time. The relieving certificate was issued on 30.08.1996 and the appellant was recalled on 02.10.1996. Therefore, within a period of less than 40 days he was recalled. It is on the request made by the appellant he was allowed to continue subject to the condition that he has to pay the expenses for two years. The order passed in G.O.Ms. No.374 dated 23.7.98 has not been put under challenge. Rather, the appellant accepted the said G.O.Ms. No. 374 and completed the course. Admittedly, he did not have three times of the period spent with the PSG College by way of remaining service. Therefore, knowing fully well, the appellant accepted the condition imposed and that is the reason why he did not challenge it.

5. In such view of the matter, we do not find any merit in this appeal. There is no impossibility of performance in complying with the Contract. We do not find any contract here. The entire Scheme has to be looked into from the point of view of the students. It is for the respondents to impose the relevant condition keeping the interest of the students. Therefore, the interest of the appellant takes the back seat. There is nothing wrong in the appellant to continue the Ph.D course which at the relevant point of time was actually starting. This was the decision made by the appellant. When once he admits the terms and completed the course, it is not

open to him to contend to the contrary.

6.In such view of the matter, we do not find any application under Section 36 of the Indian Contract Act and the appeal stands dismissed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

ssm

To:

1.The Secretary to Government of Tamil Nadu,
Higher Education Department,
Fort. St. George, Chennai - 9.

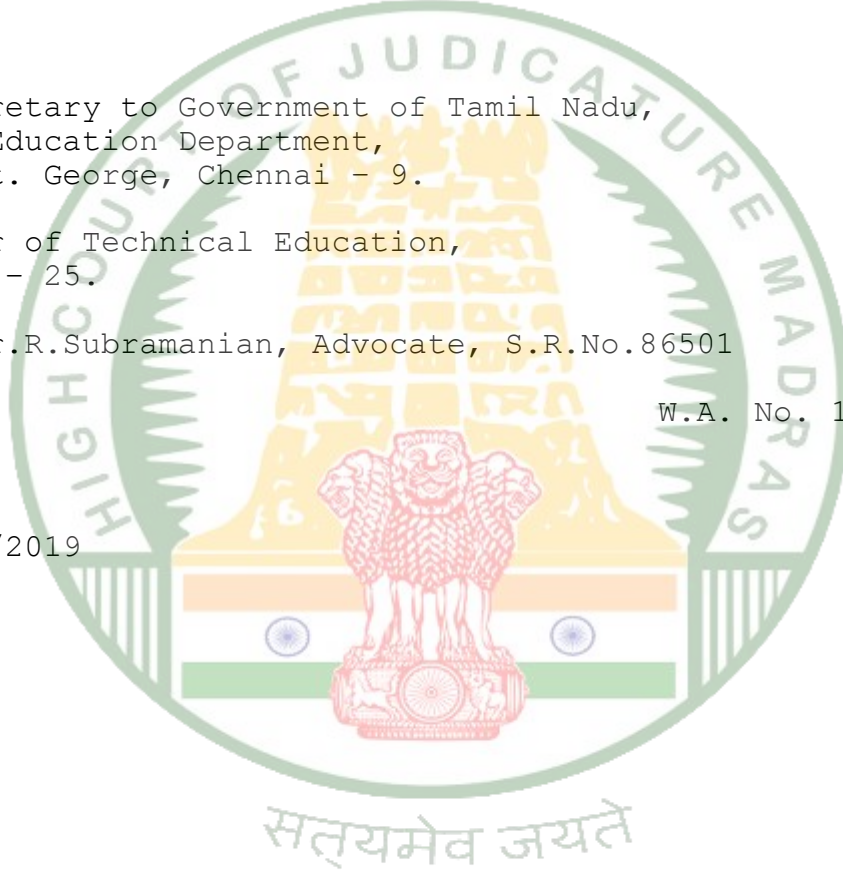
2.Director of Technical Education,
Chennai - 25.

+1cc to Mr.R.Subramanian, Advocate, S.R.No.86501

W.A. No. 1456 of 2014

VSNIIC(O)

rrs 22/01/2019



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