



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.03.2018

CORAM :

WEB COPY

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P. (MD) .No.1315 of 2018

and

W.M.P. (MD) .Nos.1380 & 1381 of 2018

A.Sivanantham

...Petitioner

Vs.

1.The Director,
Director of Collegiate Education,
Chennai.

2.The Joint Director,
Collegiate Education,
Madurai Region,
Palam Station Road,
Madurai-2.

3.The Secretary cum Correspondent,
V.H.N.S.N. College,
Virudhunagar District,
pin-626 001.

4.The Principal,
V.H.N.S.N. College,
Virudhunagar District,
pin-626 001.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the entire records relating to the impugned revised proceedings of the second respondent in Na.Ka.No.1941/1/2015 dated 02.11.2016 and consequent proceedings of the third respondent in Na.Ka.No.74 of 2011-ஏ,எஸ் dated 22.07.2016 and quash the same and further direct the respondents herein to reinstate the petitioner in the post of Junior Assistant with all attendant benefits from 23.07.2016 to till date.

For Petitioner : Mrs.A.Rajini

For Respondents : Mr.J.Gunaseelan Muthiah for R1 & R2
Additional Government Pleader
: Mr.Nallathambi for R3 & R4

**ORDER**

By consent of both parties, the main Writ Petition itself is taken up for final disposal.

2. Mr. J. Gunaseelan Muthiah, learned Additional Government Pleader, takes notice for the respondents 1 and 2 and Mr. Nallathambi, learned counsel, takes notice for the respondents 3 and 4.

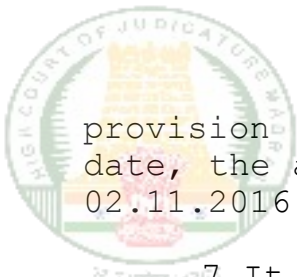
3. The petitioner joined in the fourth respondent/College as a Sweeper on 30.06.1995. He was subsequently promoted as Library Assistant on 23.07.1998. Then, he became a Lab Assistant on 12.01.2001. He was promoted as Junior Assistant on 07.04.2010. Disciplinary action was initiated against the petitioner. The Management originally wanted to remove the petitioner from service. The College is a private aided institution. It is covered by the Provisions of the Tamil Nadu Private Colleges Regulation Act, 1976.

4. Section 19 of the said Act reads as follows:-

"no teacher or other person employed in any private college shall be dismissed, removed or reduced in rank not shall his appointment be otherwise terminated except with the prior approval of the competent authority."

5. In this case, the competent authority declined to grant such an approval. Therefore, instead of proposing to remove the petitioner from service, the Management proposed to impose the punishment of reversion from the post of Junior Assistant to the post of Sweeper.

6. The competent authority by proceedings dated 19.07.2016, granted permission for reverting the petitioner from the post of Junior Assistant to the post of Sweeper. The petitioner submitted a review petition dated 06.09.2016. The second respondent took cognizance of the said application and modified the earlier proceedings dated 19.07.2016. By the modified proceedings permission was granted for reverting him from the post of Junior Assistant to the post of Lab Assistant instead of granting permission for reverting the petitioner from the post of Junior Assistant to the post of Sweeper. Contending that the second respondent does not have the jurisdiction to review his own orders, the Management filed an appeal before the first respondent. The said appeal has been apparently filed under Section 20 of the Tamil Nadu Private Colleges Regulation Act, 1976. It is obvious that an appeal can be filed under Section 20 of the said Act only by an employee. The correct provision of law would be Section 37 of the said Act which enables any person aggrieved by any order or decision or direction of the competent authority under any provision of the Act to prefer an appeal against such order, decision or direction. But it is settled a principle of law. that non-quoting of the correct



provision will not really vitiate. The fact remains that as on date, the appeal filed by the Management questioning the order dated 02.11.2016 is pending before the first respondent.

7. It is fairly admitted by the learned counsel for the college management that they have not obtained any interim order before the appellate authority. Therefore, as on date of filing of this petition, the order dated 02.11.2016 passed by the second respondent was holding the field. The said order is assailed in this Writ Petition by the petitioner on more grounds than one.

8. This Court was not informed that the College Management has already preferred a statutory appeal questioning the order that is now impugned in the Writ Petition.

9. The learned counsel appearing for the petitioner would submit that the petitioner did not receive any notice in the appeal filed by the College/management and that the petitioner is unaware of lodging of such an appeal.

10. This Court is of the view that no power of review has been conferred on the second respondent to modify or review his own earlier order. Therefore, when once, the second respondent had passed an order dated 22.07.2016, for granting an approval, the question of modifying or reviewing the same will not arise.

11. Therefore, on the very face of it, this Court is of the view that the order dated 02.11.2016 is patently lacking in jurisdiction. Therefore, the order dated 02.11.2016 will have to go. At the same time, the relief sought for in the Writ Petition will have to be modified. It is not in dispute that following the passing of the order dated 22.07.2016, the petitioner had been reverted to the post of Sweeper and that he is working only as a Sweeper. This Court went through the pay slip for the month of December 2017. Thus on the date, when the Writ Petition was filed, the petitioner had already been reverted and he was working in the reverted post for several months. Therefore, the interim order granted in the Writ Petition stands vacated.

12. The learned counsel appearing for the petitioner would submit that the petitioner has filed an appeal questioning the order dated 22.07.2016. But, there is no proof for lodging such an appeal. The petitioner is given two weeks from the date of receipt of a copy of this order to lodge a formal appeal questioning the impugned order dated 22.07.2016 passed by the second respondent for granting an approval for reverting the petitioner from the post of Junior Assistant to the post of Sweeper. If such an appeal is filed within a period of two weeks from the date of receipt of a copy of this order, the first respondent shall entertain the same without reference to any limitation. Once the enquiry notice is sent to the College Management, they shall appear for enquiry before the first respondent and the appeal proceedings shall be concluded on or



before 30.04.2018. This Court has not pronounced anything on the merits of the matter.

13.The rights of the parties are left open. It is open to the first respondent to go into the entire factual matrix and also see if reverting from the post of Junior Assistant to the post of Sweeper is grossly disproportionate to the gravity of the charges levelled against him.

14.The learned counsel for the petitioner shall mark copies of the appeal memorandum together with the related materials to the college management while lodging the appeal.

15.With these directions, the Writ Petition stands dismissed. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar

To

1.The Director,
Director of Collegiate Education,
Chennai.

2.The Joint Director,
Collegiate Education,
Madurai Region,
Palam Station Road,
Madurai-2.

+1CC to Mr.A.Rajini, Advocate, SR.No. 53190

+1CC to Mr.D.Nallathmbi, Advocate, SR.No. 52697

+1CC to the Special Government Pleader SR.No.53308

W.P. (MD) .No.1315 of 2018
02.03.2018

tsg

AM/SKN RSK/SAR 4/09.03.2018/4P/6C