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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 23.07.2018

DELIVERED ON : 24.08.2018

CORAM

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN
AND
THE HON'BLE MRS. JUSTICE T.KRISHNAVALLI

W.A (MD) No.789 of 2018

Dr.I.Ismail

.. Appellant/Petitioner

Vs

1. M.S.S.Wakf Board College,
Through its Secretary,
K.K.Nagar, Madurai - 625 020.

2. Dr.K.Shameem Rani

.. Respondents/Respondents

Prayer : Appeal filed under Clause 15 of the Letters Patent against the order of the learned Single Judge dated 06.02.2018 passed in W.P.(MD) No.21 of 2017.

Prayer in WP(MD). 21/ 2017 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a writ of Mandamus directing the respondent hereinto release my retirement benefits and compensation inclusive and not restricted to pension and welfare fund as available to the post of Principal and as per the Rules and Regulations, within a time frame stipulated by this Court.

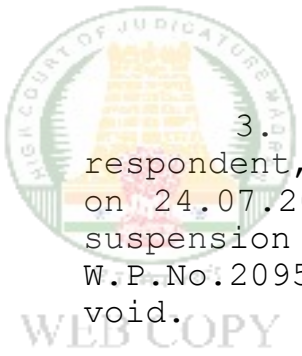
For Appellant	: M/s.P.Yasmin Begum
For Respondents	: M/s.M.Seeni Ragmath
	for 1 st respondent
	No appearance
	: for 2 nd respondent

JUDGMENT

[Judgment of the Court was delivered by M.V.MURALIDARAN,J.]

Aggrieved by the order dated 06.02.2018 passed in W.P.(MD) No.21 of 2017 by the learned Single Judge, the unsuccessful petitioner, has filed this appeal.

2. The facts in a nutshell are as under: The appellant, who was initially appointed in the year 1978 as Assistant Professor in the first respondent College and thereafter the Appellant was promoted as Professor in the year 1988 and was subsequently promoted as Principal in the year 1999.



3. It is stated that based on the complaint of the second respondent, the first suspension order was issued to the appellant on 24.07.2003. On a challenge made by the appellant to the said suspension order, this Court by order dated 21.08.2003 made in W.P.No.20955 of 2003, set aside the suspension order as illegal and void.

4. It is averred that, based on the resolution passed by the Tamil Nadu Wakf Board on the complaint of the second respondent, a second suspension order was issued on 27.08.2003, which was followed by a charge memo dated 30.08.2003. A retired District Judge was appointed as Enquiry Officer, who submitted his report on 05.12.2003. Thereafter, a show cause notice was issued on 12.12.2003 calling upon the appellant to show cause as to why he should not be removed from service. The said show cause notice, on challenge made by the appellant, was set aside by order dated 24.06.2005 made in W.P.No.37797 of 2003.

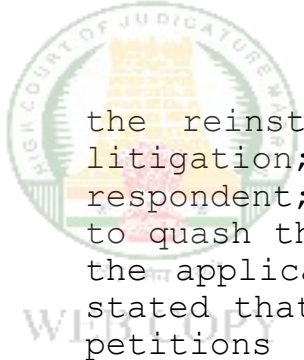
5. It is further stated that pursuant to the same, on 01.07.2005, the first respondent called for explanation to the enquiry report from the appellant, to which the appellant submitted his explanation on 11.09.2005. Thereafter, by proceedings dated 02.12.2005, the Governing Body resolved to remove the appellant from service.

6. It is averred that as the tenure of the Governing Body came to an end on 04.07.2005, this Court by order dated 17.03.2006 made in W.P. (MD) No.10569 of 2005, directed the Government to constitute new governing body within four weeks. Accordingly, the new governing body was constituted on 26.05.2006, which on 29.05.2006 resolved to reinstate the appellant in service. Based on such resolution, the appellant resumed his service as Principal in the first respondent college with effect from 30.6.2006. In view of the reinstatement ordered, the appellant withdrew the writ petition, being W.P.(MD)No.11618 of 2005, filed by him challenging the removal from service.

7. It is stated that after lapse of almost 16 months, the second respondent had filed W.P.(MD) No.9491 of 2007 challenging the reinstatement of the appellant. Pending the said writ petition, the appellant, on 21.04.2008, made an application for voluntary retirement and on 25.04.2008, the Governing Body resolved to accept the voluntary retirement of the appellant. However, by letter dated 03.07.2008, i.e., within three months of notice period, the appellant withdrew his application for voluntary retirement.

8. It is stated that, however, on 21.07.2008, the appellant was informed that his application for voluntary retirement has been accepted and he has been relieved with effect from that date.

9. When things stood thus, three writ petitions were filed as follows: (i) W.P.(MD)No.7658 of 2008 by one Asraf Ali challenging



the reinstatement of the appellant by way of a public interest litigation; (ii) W.P.(MD)No.9491 of 2007 filed by the second respondent; and (iii) W.P.(MD)No.6735 of 2008 filed by the appellant to quash the decision dated 21.07.2008, rejecting the withdrawal of the application of the appellant for voluntary retirement. It is stated that, by order dated 30.09.2009, the first of the above writ petitions was dismissed; the second was allowed and order of reinstatement was quashed; and the third writ petition was dismissed observing that the order of voluntary retirement had come into effect.

10. It is stated that the challenge made to the above said order dated 30.09.2009 before the Hon'ble Supreme Court was dismissed without going into merits, of course by granting liberty to the renew the challenge regarding order of removal of service dated 02.12.2005.

11. It is stated that consequent to the order of the Hon'ble Supreme Court, the appellant filed W.P.(MD)No.1132 of 2010 challenging his removal from service and the said writ petition was allowed by order dated 21.04.2010.

12. When things stood thus, it is stated that the age of superannuation of the appellant was on 31.08.2010 and only thereafter, the appeal filed by the second respondent, being W.A. (MD) No.295 of 2010, challenging the order dated 21.04.2010, had been allowed by upholding the order of removal from service dated 02.12.2005. The further appeal filed by the appellant was dismissed on the ground of delay and on merits.

13. At this stage, the appellant filed W.P.(MD)No.21 of 2017 seeking a direction on the first respondent to release the retirement benefits and compensation inclusive and not restricted to pension and welfare fund as available to the post of Principal and as per the Rules and Regulations.

14. The learned Single Judge, by order dated 06.02.2018, which is under challenge in this appeal, dismissed W.P.(MD)No.21 of 2017, holding that inasmuch as the order of dismissal from service of the appellant has been upheld, the appellant is not eligible for pensionary benefits and pension under the Tamil Nadu Pension Rules.

15. Calling into question the said order, the appellant has filed this appeal.

16. The learned counsel appearing on behalf of the appellant submitted that the Chairperson of the Tamil Nadu Wakf Board is not the competent authority to initiate disciplinary action against the appellant and as per Section 14(1) of the Tamil Nadu Private Colleges Regulation Act, 1976, it is the College Committee which is competent to take disciplinary action and, therefore, the very initiation of disciplinary proceedings is invalid. In this regard,



she added that the Director of Collegiate Education, Chennai, who is the competent authority, had not granted his approval for removal of the appellant from service as contemplated under Section 19(1) of the Tamil Nadu Private Colleges Regulation Act, 1976.

17. It is further contended that as per the order dated 17.03.2006 made in W.P.(MD)No.10569 of 2005, the period of members of the erstwhile Governing Body came to an end on 04.07.2005 itself and, therefore, the resolution dated 02.12.2005 passed by such Governing Body, which does not exist in the eye of law, that too in gross violation of the principles of natural justice is liable to be set aside.

18. It is also contended that as per the decision of the Hon'ble Supreme Court in *Visaka v. State of Rajasthan*, reported in (1997) 6 SCC 241, the complaints relating to sexual harassment can be gone into only by the Special Committee and, therefore, the entire enquiry conducted by the learned retired District Judge in this case on hand is void.

19. She further submitted that pursuant to the reinstatement of the appellant from 29.05.2006, he was duly discharging his duties and while in service, he opted for voluntary retirement on 21.04.2008 and on 21.07.2008, the appellant was informed that he was relieved from service with acceptance of the competent authority, viz., the Joint Director of Collegiate Education, Madurai and Director of Collegiate Education, Chennai, with effect from 21.07.2008 and inasmuch his reinstatement was approved by the competent authorities, it is contended that the appellant is eligible for all his consequential terminal benefits from 21.07.2008.

20. It is further contended that the second respondent, who is another employee, has no locus standi to challenge the order passed on 21.04.2010 in W.P.(MD)No.1132 of 2010, which was filed by the appellant, wherein the order of removal was set aside, inasmuch as in service jurisprudence, the dispute relating to removal/reinstatement of service are between the employer and employee.

21. It is also contended that as per Rule 56(3) of the Fundamental Rules, the appellant, having completed 30 years of service, is entitled to pensionary benefits. That apart, she added that in the case on hand, the appellant's application for voluntary retirement has been accepted as on 21.07.2008 and no order withholding the retirement was passed and, therefore, there can be no denial of pensionary benefits.

22. Per contra, the learned counsel appearing on behalf of the first respondent reiterated the reasons that weighed with the learned single Judge in passing the order under challenge in this appeal and prayed for dismissal of this appeal.



23. In the case on hand, the issue to be dealt with is relating to payment of retirement benefits and compensation to the appellant.

24. At the outset, it is apposite to refer to Rule 56(3)(f) of the Tamil Nadu Government Fundamental Rules, which reads as under:

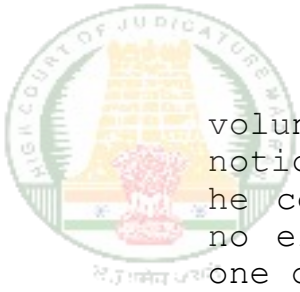
"Fundamental Rule 56(3)(f); The appointing authority shall issue orders before the date of expiry of notice either accepting 'the voluntary retirement or not. Otherwise, the government servant, shall be deemed to have been retired voluntarily from service at the end of the period of notice."

25. Admittedly, on 21.04.2008, the appellant made an application for voluntary retirement and on 21.07.2008, the appellant was informed that his application for voluntary retirement has been accepted and he has been relieved with effect from that date. Even though, there was pending litigation, as on that date there was no order inhibiting the appellant from being relieved from service based on his application for voluntary retirement.

26. That apart, a Division Bench of this Court in P.Muthusamy v. Tamil Nadu Cements Corporation Ltd. and another, 2006 (4) MLJ 504, held that continuance of disciplinary proceedings after superannuation of employee is illegal and without jurisdiction and hence the employee is entitled to all terminal benefits.

27. At this juncture, it is apt to refer to a decision of the Hon'ble Supreme Court in Tek Chand v. Dile Ram, (2001) 3 SCC 290, wherein after referring to an earlier decision of the Hon'ble Supreme Court in State of Haryana v. S.K. Singhal, (1999) 4 SCC 293, it was held as under:

"... there are three categories of rules relating to seeking of voluntary retirement after notice. In the first category, voluntary retirement automatically comes into force on expiry of notice period. In the second category also, retirement comes into force unless an order is passed during notice period withholding permission to retire and in the third category, voluntary retirement does not come into force unless permission to this effect is granted by the competent authority. In such a case, refusal of permission can be communicated even after the expiry of the, notice period. It all depends upon the relevant rules. In the case decided, the relevant Rule required acceptance of notice by appointing authority and the proviso to the rule further laid down that retirement shall come into force automatically if the appointing authority did not refuse permission during communicated to the respondent during the notice period and the Court held that



voluntary, retirement came into force on expiry of the notice period and subsequent order conveyed to him that he could not be deemed to have voluntarily retired had no effect. The present case is almost identical to the one decided by this Court in the aforesaid decision."

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28. In the case on hand, it is beyond any cavil that, on 21.7.2008, the appellant was informed that his application for voluntary retirement has been accepted and he has been relieved with effect from that date. In fact, such relieving was with the acceptance of the competent authority, viz., the Joint Director of Collegiate Education, Madurai and Director of Collegiate Education, Chennai.

29. Admittedly, the appellant was not under suspension when he attained the age of superannuation and no departmental proceedings were pending or under contemplation. Therefore, the appointing authority has no jurisdiction to take disciplinary proceedings against a government servant who had effectively retired, as has been held by the Hon'ble Supreme Court in *Dinesh Chandra Sangma v. State of Assam*, (1977) 4 SCC 441.

30. The next point to be considered in the case on hand is the tenure of the Governing Body, which passed the order of removal from service qua the appellant.

31. In the order dated 17.03.2006 made in W.P.(MD) No.10569 of 2005, on which heavy reliance has been placed by the learned counsel appearing for the appellant, it had been categorically observed that: "When the term of the Governing Body came to an end on 4.7.2005, Tamil Nadu Wakf Board ought to have taken steps to get nomination from the Government". The said recording only fortifies the plea of the appellant that there was no valid Governing Body as on 2.12.2005 to resolve the removal from service of the appellant. A perusal of the orders passed by the Hon'ble Supreme Court on appeals in this case, shows no specific reference to this vital factor, probably the same had not been brought to the notice of the Hon'ble Supreme Court by either side.

32. The next issue to be considered is regarding prior approval of competent authority before passing any order of removal.

33. To consider this issue, it is appropriate to refer to Section 19(1) of the Tamil Nadu Private Colleges Regulations Act, which reads as under:

"Section 19. Dismissal, removal or reduction in rank or suspension of teachers of other persons employed in private colleges.-

(1) Subject to any rule that may be made in this behalf, no teacher or other person employed in any private college shall be dismissed, removed or reduced in rank



or shall his appointment be otherwise terminated except with the prior approval of the competent authority".

34. Section 19 of the Act applies to all teachers and other persons employed in any private college. Section 19 of the said Act stipulates that no such teachers or employees shall be dismissed, removed or reduced in rank or their services shall otherwise be terminated except with prior approval of the competent authority. On a perusal of Section 19, it is clear that except with the prior approval of the competent authority, there shall not be any removal, dismissal, or reduction in rank of any teacher or other persons employed in a private college or termination of their appointment. In other words, the prior approval of the competent authority is a sine qua non for the orders contemplated under Section 19 of the Act to take legal effect.

35. The said view of this Court is fortified by a decision of the Hon'ble Supreme Court in All Saints High School v. Govt. of A.P., (1980) 2 SCC 478, wherein it was held that the order of termination simpliciter would also require to be submitted for the prior approval of the competent authority. There is absolutely no reason not to rely upon the said judgment to hold that even a simple order of termination will fall within the scope of Section 19 of the Act.

36. That apart, the information obtained by the appellant under the provisions of the Right to Information Act on 28.05.2018 shows that the Director of Collegiate Education, Chennai has not given permission to the first respondent to terminate the appellant from the post of Principal. The said information furnished is also not rebutted by the respondents.

37. It is seen from the records that the order of reinstatement of the appellant was challenged by the second respondent by filing W.P.(MD)No.9491 of 2007. Furthermore, consequent to the order of the Hon'ble Supreme Court, the appellant filed W.P.(MD)No.1132 of 2010 challenging his removal from service and the said writ petition was allowed by order dated 21.04.2010. Even at this stage, when the appellant attained the age of superannuation on 31.08.2010, the appeal filed by the second respondent, being W.A.(MD) No.295 of 2010, challenging the order dated 21.04.2010, had been allowed by upholding the order of removal from service dated 02.12.2005.

38. Assuming arguendo, a disciplinary authority imposes a punishment, it does not lie in the mouth of a third party, who could be a junior or a senior employee, to come forward and suggest that a graver punishment ought to have been imposed on the erring employee. If the imposition of punishments is made justiciable at the hands of third parties, it will lead to discordant results. All employees who are likely to stand to benefit or gain if a heavier punishment is imposed upon any particular employee, would queue up and sue the



organization for its failure to impose a much harsher or graver punishment against a particular employee. In such an event, the organization would be flooded with the prospects of multiple litigation and it would be forced to defend its action on every such occasion when a punishment is imposed. In our considered opinion, in the matter of imposition of a punishment against an erring employee, the same is not justiciable at the hands of a third party thereto.

39. In the case on hand, the fact that the appellant had put in 30 years of service is not disputed. It is no longer res integra that pension is not a bounty. It is in fact a deferred salary and is like a property. Pension is co-related and has nexus with the salary payable to the employee on the date of retirement. Denial of the same would put the employee to irreparable loss and hardship, more particulars in the light of the reasoning given herein above.

40. For the foregoing reasons, we are unable to subscribe to the view taken by the learned Single Judge in dismissing the writ petition.

41. In the result:

(a) the writ appeal is allowed and the order in W.P. (MD) No. 21 of 2017 dated 06.02.2018 is set aside;

(b) the 1st respondent or the Chief Executive Officer of the Wakf Board is directed to pay the terminal benefits and pensionary benefits to the appellant from 21.07.2008;

(c) the said exercise shall be done within a period of four weeks from the date of receipt of a copy of this order. No costs.

Sd/-

Assistant Registrar (Writs)

/True Copy/

Sub Assistant Registrar (CS-IV)

To

The Secretary,
M.S.S. Wakf Board College,
K.K. Nagar, Madurai - 625 020.

COPY TO:

The Chief Executive Officer,
Tamil Nadu Wakf Board, Chennai - 20.

+2cc to M/S.P. Yasmin Begum, Advocate SR.No. 80056

order made in
W.A (MD) No. 789 of 2018
24.08.2018