

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT****DATED: 06.02.2018****CORAM:****THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM****W.P. (MD) No.21 of 2017**

I.Ismail

... Petitioner

-Vs-

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

2. K.Shameem Rani ... Respondents  
(R2 impleaded vide Court order dated 06.03.2017 in W.M.P. (MD) No.1657 of 2017)

**Prayer:** Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus, directing the respondent herein 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, within a time frame stipulated by this Court.

For Petitioner : Mr.N.R.Chandran  
Senior Counsel  
for Mr.V.Murugan

For 1<sup>st</sup> Respondent : Mr.K.K.Senthil  
For 2<sup>nd</sup> Respondent : Mr.V.Janakiramulu

**ORDER**

The relief sought for in the writ petition is for a direction to the respondents 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, within a time frame stipulated by this Court.

2.Mr.N.R.Chandran, learned Senior Counsel appearing on behalf of the writ petitioner made a submission that it is the fit case, where this Court should consider for grant of pension in favour of the writ petitioner, the writ petitioner was unnecessarily

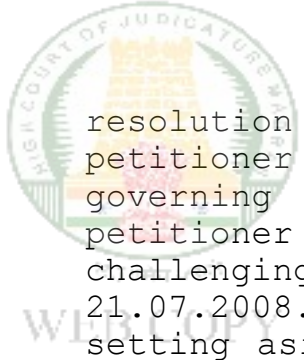


harassed right from the date of complaint given by the second respondent.

3.The factual matrix required to be considered in the writ petition are that the writ petitioner, on account of the allegations under the provisions of Sexual Harassment Act, was placed under suspension by the Chairperson, Tamil Nadu Wakf Borad on 24.07.2013. Challenging the order of suspension, the writ petitioner filed a writ petition in W.P.(MD)No.20955 of 2003 and this Court allowed the said writ petition on 21.08.2003. Again, a resolution was passed by the Wakf Board suspending the writ petitioner from service on 27.08.2003. Consequently, disciplinary proceedings were initiated and a charge memo was issued by the Governing body on 30.08.2003. Not satisfied with the explanation / objections provided by the writ petitioner, an enquiry officer was appointed, who, in turn, conducted a domestic enquiry and submitted his final report on 05.12.2003. Accepting the enquiry report, the second show cause notice was issued to the writ petitioner on 12.12.2003 and the writ petitioner preferred a writ petition in W.P.(MD)No.37797 of 2003, challenging the show cause notice and the writ petition was allowed by this Court on 24.06.2005. This Court in W.P.(MD)No.10569 of 2005 by an order dated 17.05.2006 directed the management to constitute a new governing body within a period of four weeks and pursuant to that the writ petitioner had received a copy of the enquiry report and a further direction was issued to the petitioner to provide explanation / objections in the enquiry report. After considering the enquiry report and the explanation, the governing body passed a resolution on 02.12.2005 imposing the punishment of dismissal and against which, the writ petitioner preferred a writ petition in W.P.(MD)No.11618 of 2005 and on 12.07.2006, the writ petitioner had withdrawn the said writ petition. Thereafter, on 26.05.2006 a new governing body was constituted. The new governing body rejected the earlier resolution dated 02.12.2005 imposing the punishment of dismissal and ordered for reinstatement of the writ petitioner as Principal by way of another resolution on 29.05.2006. After the revised resolution dated 29.05.2006, the writ petitioner had submitted the V.R.S.letter on 21.04.2008.

4.The learned Senior Counsel appearing on behalf of the writ petitioner states that the V.R.S.letter was accepted by the management on 25.04.2008 itself. However, it is brought to the notice of this Court that the said V.R.S.letter originally submitted on 21.04.2008 was again withdrawn by the writ petitioner on 03.07.2008. However, on 21.07.2008 withdrawal of the letter was rejected by the competent authorities and in view of the fact that new Principal was already appointed.

5.W.P.(MD)No.7658 of 2007 filed by an erstwhile student of the college was dismissed as withdrawn and the victim / second respondent filed W.P.(MD)No.9491 of 2007, challenging the resolution of reinstatement passed by the governing body on 29.05.2006 and the said writ petition was allowed on 30.09.2009. Accordingly, the



resolution passed by the governing body reinstating the writ petitioner was set aside. Once again, a meeting was convened by the governing body on 07.12.2008. Under these circumstances, the petitioner filed a writ petition in W.P.(MD)No.6735 of 2008 challenging the rejection of withdrawal of V.R.S.letter on 21.07.2008. In view of the upholding of the order of dismissal and setting aside the resolution dated 29.05.2006 reinstating the writ petitioner, W.P.(MD)No.6735 of 2008 filed by the writ petitioner was dismissed on 30.09.2009.

6.Thus, it is made clear that the writ petitioner was originally dismissed from service on 02.12.2005 and the new governing body reinstated him through the resolution dated 29.05.2006 and the same was challenged by the second respondent and the said resolution dated 29.05.2006 was also set aside and ultimately the order of dismissal dated 02.12.2005 was upheld. During the interregnum period, the writ petitioner had submitted an application for V.R.S. on 21.04.2008 and subsequently, the same was accepted on 25.04.2008 and a letter was submitted for withdrawing the V.R.S.letter by the writ petitioner on 03.07.2008 and the same was also rejected by the competent authorities. The writ petition filed against the rejection was also dismissed. Thus, the facts regarding the submission of V.R.S.application and withdrawal and filing of a writ petition may not have any implications in respect of the order of dismissal originally passed on 02.12.2005. The V.R.S.application was submitted during the interregnum period, the same was accepted and subsequently, withdrawn by the writ petitioner and the writ petition was filed and the same was dismissed. Thus, the facts are very clear that all the defects took place after the initial resolution dated 02.12.2005 was resolved and ultimately by way of interim order on 30.09.2009, the original order of dismissal on 02.12.2009 was upheld.

7.Against the interim order, the writ petitioner has preferred Special Leave Petition before the Hon'ble Supreme Court of India. The Special Leave Petition was dismissed on 25.01.2010 by the Apex Court. However, liberty was granted to the writ petitioner to challenge the original resolution dated 02.12.2005 imposing the penalty of dismissal. Accordingly, the writ petitioner preferred a writ petition in W.P.(MD)No.1132 of 2010 challenging the original resolution dated 02.12.2005. The writ petition was allowed by this Court on 21.04.2010 setting aside the resolution of imposing the penalty of dismissal from service. Challenging the order passed in the writ petition, the management / second respondent filed a writ appeal in W.A.(MD)No.295 of 2010 and the writ appeal filed by the second respondent was allowed by the Hon'ble Division Bench on 09.02.2011. The Hon'ble Division Bench upheld the original resolution dated 02.12.2005 imposing the penalty of dismissal from service. The writ petitioner aggrieved from and out of the order passed by the Division Bench preferred a Special Leave Petition and the Hon'ble Supreme Court of India, dismissed the Civil Appeal in Civil Appeal Nos.9149 and 9150 of 2015 on 30.10.2015. Ultimately,



after the dismissal of the civil appeals by the Honourable Supreme Court of India, the petitioner preferred a review application No.84 of 2012 before this Court and the same was also dismissed. At the outset, the original order of dismissal dated 02.12.2005 has been upheld by the Apex Court of India.

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8. Under these circumstances, the present writ petition has been filed, seeking pension and pensionary benefits in accordance with the rules, by the writ petitioner.

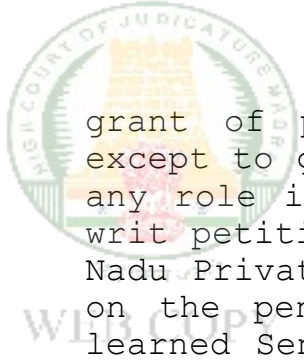
9. learned counsel appearing on behalf of the first respondent states that no doubt the punishment of dismissal was imposed on 02.12.2005 and the newly constituted Governing Body reviewed the earlier resolution and ordered for reinstatement. However, the same was set aside by the Court and while passing the common order, this Court found that the first respondent has committed grave error and imposed fine on the first respondent in respect of the conduct of changing the resolutions. He further states that the VRS application submitted by the writ petitioner may not have any implications in respect of the punishment of dismissal imposed. More specifically, the Courts have rejected the writ petition filed by the writ petitioner in respect of allowing the petitioner to go on VRS and further the Apex Court upheld the order of dismissal imposed on 02.12.2005. This being the factum, the first respondent cannot submit any proposal to the Accountant General or to the department of Higher Education for pension. Pension proposals are to be submitted by the first respondent/management only in accordance with the Tamilnadu Pension Rules 1978. Thus the writ petitioner is not eligible for pensionary benefits, in view the punishment of dismissal from service.

10. The arguments as advanced by the learned Senior Counsel and the learned counsel for the first respondent, this Court is of an opinion that the only question arises is whether the writ petitioner is eligible for terminal and pensionary benefits under the Rules of the Tamil Nadu Pensionary Benefits Act.

11. The learned Senior Counsel made a submission that Section 17 of Tamil Nadu Private Colleges Regulations Act 1976 speaks about the conditions of service etc., of teachers and other persons employed in private colleges and the provision reads as under:-

**"The Government may make rules in consultation with the University regulating the number and conditions of service (including promotion, pay, allowances, leave, pension, provident fund, insurance and age of retirement and rights as respects disciplinary matters but excluding qualifications) of the teachers and other persons employed in any private college."**

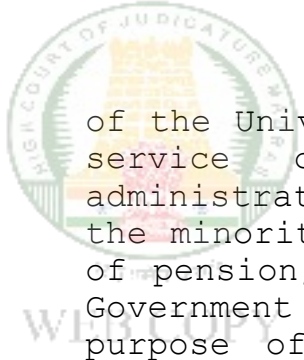
<https://hcservices.ecourts.gov.in/hcservices/> 12. The Senior Counsel is of an opinion that there is no specific prohibition under the provisions of the Tamil Nadu Private Colleges Regulations Act. In the absence of any prohibition for



grant of pension, the authorities cannot have any other option except to grant pension. This apart the pension rules may not have any role in respect of the facts and circumstances of the present writ petition. When there is no specific provisions under the Tamil Nadu Private Colleges Regulations Act, then the prohibition imposed on the pension rules cannot have any implications at all. The learned Senior Counsel is of an opinion that in the absence of any bar under the Constitution, the benefit of pension cannot be denied. In support of this, the learned Senior Counsel contended that pension is the property right. Pension is a valuable right of an employee, who have served more than ten years as a permanent employee. When an employee has completed the required service for grant of pension, then the same cannot be denied on the ground that he was imposed with the punishment of dismissal from service. This apart the learned Senior Counsel contended that pension is not a bounty and it is the deferred portion of the wages in respect of the service rendered by an employee. The proposition was well propounded by the Constitution Bench of the Hon'ble Supreme Court of India in the case of D.S.Nakara as early as in 1984. Thus the pension being a property right, the person, who is otherwise eligible, cannot be deprived of the right at all.

13. Now this Court has to go into the provisions of Section 17 of the Tamil Nadu Private Colleges Regulations Act. Section 17 states that the Government may make rules, in consultation with the University, regulating the number and conditions of service (including promotion, pay, allowances, leave, pension, provident fund, insurance and age of retirement and rights as respects disciplinary matters but excluding qualifications) of the teachers and other persons employed in any private college.

14. This Court is of an opinion that the power of making the rules are vested with the Government under the provisions of the Tamil Nadu Private Colleges Regulations Act. The Government is granting approval of appointment to the college teachers. In other words, the teachers even appointed by the minority/ non-minority institutions ought to have been approved by the Government and the Government has got powers to grant or not to grant approval. The Government has to scrutinise the proposals for approving in relation to the minimum educational qualifications prescribed by the University Grants Commission and thereafter, grant approval in accordance with the provisions of the Act. Further, the Government in respect of the college teachers adopted the Government rules in respect of payment of pension. The approved college teachers are treated akin to the Government pensioners and the other condition as applicable are provided. However, in respect of minority institutions their constitutional rights are protected in respect of administering the institutions. Thus the minority institutions are empowered to appoint and promote the college teachers of their choice. However, in respect of other rules and regulations including the prescription of minimum educational qualifications, the minority institutions are also bound to follow the regulations



of the University Grants Commission. Thus it is clear that certain service conditions in relation to the Constitution and administration of the institutions are vested with the management of the minority institutions. However, in respect of pay scale, grant of pension, are governed by the Tamil Nadu Government Rules. The Government has adopted the Tamil Nadu Pension Rules, 1978 for the purpose of granting pension and pensionary benefits to all the teachers including aided minority and Government colleges. All the Government college teachers working in Government colleges / Government aided colleges and aided minority colleges are entitled to receive pension and pensionary benefits only in accordance with the provisions of the Tamil Nadu Pension Rules 1978 and if any college teacher is appointed after 01.04.2003 then the said teacher would be entitled only for pension under the new pension scheme namely contributory pension scheme. When the Government has adopted the Tamil Nadu Pension Rules in respect of the college teachers working in aided / minority / Government colleges, then the same should be made applicable to the case of the writ petitioner also and the proposals ought to be submitted only under the provisions of Tamil Nadu Pension Rules. For a moment, if the arguments of the learned Senior Counsel is accepted that there is no provision under the Private College Regulation Act for grant of pension then the question arises under which provision the petitioner is eligible to receive the pension. The learned Senior Counsel is unable to explain in respect of any other provisions as applicable. Therefore, this Court has to come to a conclusion that the adoption of pension rules by the Government in respect of the college teachers is to be followed as they are also state pensioners.

15. In respect of pensionary benefits and the monthly pension, the rules to be followed are that the management/appointing authority has to submit a proposal to the department and the department, in turn, has to send the same to the Accountant General of Tamil Nadu and the Accountant General on verification of the service particulars and the last pay drawn of the individual, issue the pension sanction order. This being the procedures followed in this State in respect of all the college teachers including the college teachers working in the Government/Aided Minority Colleges, this Court is of an opinion that the ground raised by the learned Senior Counsel that there is no provision under the Private Colleges Regulations Act does not find force in the eye of law and the same deserves rejection.

16. When it is made clear that Tamil Nadu Pension Rules alone to be followed in respect of the college teachers retired from aided college/aided minority colleges and Government colleges and the college teachers are the State pensioners, this Court has to look into at the provisions of Tamil Nadu Pension Rules. The relevant rule is Rule 21, which enumerates forfeiture services on dismissal or removal and the same is as under:-



**"Dismissal or removal of a Government servant from a service or post entails forfeiture of his past service."**

17. Thus the pension rules are very clear that an employee, who is dismissed from service is not entitled for pensionary benefits and pension under the Tamil Nadu Pension Rules. When there is an express provision under the Tamil Nadu Pension Rules and when the punishment of dismissal from service was upheld by the Courts more specifically by the Hon'ble Supreme Court of India, this Court has no reason to consider the case of the writ petitioner for grant of pensionary benefits or pension as such prayed for in this Writ Petition.

18. The learned Senior Counsel urged this Court that if at all the writ petitioner is not eligible to get the regular pensionary benefits and pension, at least a compassionate allowance can be considered.

19. Rule 40 in respect of compassionate allowance has to be considered in accordance with the terms and conditions stipulated in the Rules. Thus this Court cannot directly issue any direction in respect of grant of compassionate allowance. However, it is left open to the petitioner to submit a proper application to the competent authority for considering grant of compassionate allowance under Rule 40.

20. At the out set, this Court is of an opinion that the writ petitioner has filed number of writ petitions at various stages challenging each and every proceedings. Ultimately, the Courts including the Hon'ble Supreme Court of India upheld the resolution passed by the governing body dismissing the service of the writ petitioner on 02.12.2005. Thus, for all purposes, the writ petitioner has to be treated as a dismissed employee and accordingly, he is not eligible for pensionary benefits and pension under the Tamil Nadu Pension Rules. Rule 21 of the pension rules also is unambiguous that dismissed employee is not entitled for any pensionary benefits and pension. This being the factum of the case, no further consideration is required in respect of the claim made by the writ petitioner and the relief as such sought for in this writ petition cannot be granted.

21. Accordingly, this writ petition stands dismissed. However, no order as to costs.

Sd/-

Assistant Registrar(CO)

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Sub Assistant Registrar



+1cc to Mr.V.Murugan, Advocate in SR.NO.46689  
+1cc to Mr.K.K.Senthil, Advocate in SR.NO.46774  
+1cc to M/S.V.Janakiramulu, Advocate in SR.NO.46735

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**W.P(MD) No.21 of 2017**

**06.02.2018**