

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :19.02.2019

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.3512 of 2019

and

W.M.P.Nos.3813 & 3819 of 2019

Md.Abdul Quadir

.. Petitioner

vs

- 1.The State of Tamil Nadu,
Rep.by its Principal Secretary to Government
Higher Education Department,
Fort St.George
Chennai - 600 009
- 2.The Director of Collegiate Education,
9th Floor, E.V.K.Sampath Maligai
College Road, Nungambakkam,
Chennai - 600 006
- 3.The Regional Joint Director of Collegiate Education,
Chennai Region, Saidapet,
Chennai - 600 015.
- 4.The Quaide Milleth College for Men
Rep.by its Secretary & Correspondent
Tambaram Velachery Main Road,
Medavakkam, Chennai - 600 100.
- 5.The Principal Accountant General
No.361, Anna Salai, Teynampet
Chennai - 600 018

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the charge memo issued by the fourth respondent in Na.Ka.No.Ka.Mi.Ka/O/Na.2014/1304 dated 10/12/2014 and the subsequent proceedings of the fourth respondent not permitting the petitioner to retire from service in Rc.No.A/Est/DP/2015/1337 dated 31/01/2015 and to quash the same and consequently direct the 4th respondent to allow the

petitioner to retire from service from 31/01/2015 and further direct the respondents to permit the petitioner to get the retirement benefits and regular pension including interest for belated pension and related terminal benefits.

For Petitioner : Mr.G.Sankaran

For Respondents : Mr.V.Kathirvelu
Special Government Pleader
for R1 to R3

Mr.N.A.Nissar Ahamed for R4

O R D E R

The charge memo dated 10.12.2014 issued to the writ petitioner as well as the order dated 31.01.2015, not permitting the writ petitioner to retire from service are under challenge in the present writ petition.

2.The learned counsel for the writ petitioner vehemently contended that the writ petitioner is innocent of the allegations, set out in the impugned charge memo. The writ petitioner as a Professor, had served with clean records and further, he completed 34 years of service in the College. The charges framed against him, are not only flimsy, but false in nature.

3.The learned counsel for the writ petitioner states that the Subsistence Allowance/Provisional pension has not been paid to the writ petitioner. The allegations set out in the charge memo are far beyond the truth and the same were framed in order to penalize the writ petitioner one way or other by the Management.

4.The learned counsel for the writ petitioner gone into the facts and circumstances and the explanations submitted by the writ petitioner to the charge memo and attempted to convince this Court by saying that those explanations itself speaks about the innocence of the writ petitioner with relevance to the allegations set out in the impugned charge memo. The petitioner states that he acted with complete care and he had not caused any illegality or irregularity in the matter of award of marks to the Students and therefore, the impugned charges are liable to be quashed.

5.The learned counsel for the writ petitioner further said that the charge memo was issued during the year 2014 and till today, the enquiry proceedings are not concluded and there is an

enormous delay on the part of the Management in concluding the proceedings. Earlier, the writ petitioner approached this Court by way of a writ petition and an order was passed in W.P.No.3764 of 2015 dated 14.07.2016 and this Court passed an order, permitting the petitioner to file an application for payment of the Provisional pension within a period of one week from the date of receipt of a copy of this order and the respondents were directed to dispose of the same within a period of three weeks. The respondents are further directed to complete the enquiry within a period of four months from the date of receipt of a copy of this order and the petitioner shall extend his full cooperation for completing the enquiry.

6.Relying on the said orders of this Court, the learned counsel for the writ petitioner states that the time limit prescribed for conclusion of the enquiry has not been complied with by the Management and therefore, the charge memo itself is liable to be quashed.

7.The learned counsel for the petitioner relying on Section 19(3)(b) of the Tamil Nadu Private College (Regulations) Act, 1976 states that "No such suspension shall remain in force for more than a period of two months from the date of suspension and if such inquiry is not completed within that period, such teacher or other person shall, without prejudice to the inquiry, be deemed to have been restored as teacher or other employee"

8.Relying on the said provision, the learned counsel for the writ petitioner states that the enquiry proceedings are now pending for about four years and therefore, the writ petitioner is entitled for the relief as such sought for in the present writ petition.

9.The learned counsel appearing on behalf of the 4th respondent Management made a submission that the allegations against the writ petitioner are serious in nature, warranting a detailed enquiry. The delay occurred at the instance of the writ petitioner himself. At every stage, he blocked the continuance of the enquiry. The writ petitioner had raised bias plea against the earlier enquiry officer and based on his request, a new enquiry officer is going to be appointed.

10.The provisional pension is being paid to the writ petitioner continuously as per the rules in force. Therefore, the writ petitioner has to cooperate for the early disposal of

the enquiry proceedings and the Management is now willing to conclude the enquiry proceedings within a period of Four Months from the date of receipt of a copy of this order.

11.The learned Special Government Pleader appearing on behalf of the respondents 1 to 3 also opposed the contentions of the learned counsel for the writ petitioner by stating that Management is the competent authority to frame charges against the Professors serving in the College. There is no irregularity in framing the charges. However, it is for the Management to complete the enquiry and in the event of proposing any major penalty, then they have to seek the approval of the competent educational authority. The procedures for conducting of an enquiry is to be followed by the Management, by affording opportunity to the delinquent official. With reference to the provisions of the Act, the learned Special Government Pleader states that the Department will go by the procedures as contemplated in accordance with the relevant Act and Rules.

12.Considering the arguments of the respective learned counsels appearing on behalf of the parties to the lis on hand, this Court is of the considered opinion that the main ground raised by the learned counsel for the writ petitioner that under Section 19(3)(b) of the Tamil Nadu Private Colleges(Regulations) Act, contemplates two months time for the conclusion of the disciplinary proceedings, failing which, the Professor must be restored in service.

13.In the present case on hand, the question of reinstatement would not arise in view of the fact that the writ petitioner attained the age of superannuation. Secondly, such time limits prescribed under the statutes are directory in nature and cannot be construed as mandatory. All such time limits fixed in various such statutes in respect of procedures to be concluded. All such directions are subject to the condition that the parties to the proceedings cooperate for the early disposal of the cases. By taking undue advantage of the time limit fixed under the statute, either of the party cannot prolong and protract the issue and thereafter approach the competent Court of law for the purpose of quashing the entire proceedings only on the ground that the time limit prescribed under the statute has not been complied with. Such a ground can never be entertained by the Constitutional Courts. That is the reason why, the Courts also repeatedly held that the time limit prescribed for conclusion by these kind of proceedings within a time limit is to be taken as directory and can never be construed as mandatory.

14. It is well settled that the question whether an expression used in a Section is mandatory or not has to be decided on various factors and the mere expression of the word "shall" alone is not decisive of the matter. This question came up for consideration before the Privy Council in the celebrated case of Montreal Street Railway Company Vs. Normandin AIR 1917 Privy Council 142. SIR ARTHUR CHANNEL, speaking for the judicial Committee of the Privy Council, clarified the position at page 144 of the report as follows:

"The question whether provisions in a statute are directory or imperative has very frequently arisen in this country, but it has been said that no general rule can be laid down, and that in every case the object of the statutes must be looked at."

The learned Judge relied on Maxwell on "The Interpretation of Statutes" and the portion on which reliance was placed is set out herein below:

"Where the prescription of a statute relate to the performance of a public duty and where the invalidation of acts done in neglect of them would work serious general inconvenience or injustice to persons who have no control over those entrusted with the duty without promoting the essential aims of the legislature, such prescriptions seem to be generally understood as mere instructions for the guidance and government of those on whom the duty is imposed, or, in other words as directory only. The neglect of them may be penal, indeed, but it does not affect the validity of the act done in disregard of them."

The aforesaid principles have been followed by the Constitution Bench of the Supreme Court in the case of State of U.P. Vs. Manbodhan Lal (supra), wherein paragraphs 10 and 11 at pages 917 and 918 of the report are relevant and they are extracted here under:

"The question may be looked at from an other point of view. Does the Constitution provide for the contingency as to what is to happen in the event of non-compliance with the requirements of Article 320 (3) (c)? It does not, either in express terms or by implication, provide that the result of such a non-compliance is to invalidate the proceedings ending with the final order of the Government."

This aspect of the relevant provisions of part XIV of the Constitution, has a direct bearing on the question whether Article 320 is mandatory. The question whether a certain provision in a statute imposing a duty on a public body or authority was mandatory or only directory, arose

before their Lordships of the Judicial Committee of the Privy Council in the case of Montreal Street Railway Company Vs. Normandin, 1917 A.C.170(B).

In that case the question mooted was whether the omission to revise the jury lists as directed by the statute, had the effect of nullifying the verdict given by a jury. Their Lordships held that the irregularities in the due revision of the jury lists, will not ipso facto avoid the verdict of a jury. The Board made the following observations in the course of their judgment.

"...The question whether provisions in a statute are directory or imperative has very frequently arisen in this country, but it has been said that no general rule can be laid down, and that in every case the object of the statute must be looked at. The cases on the subject will be found collected in MAXWELL, on the INTERPRETATION OF STATUTES, 5th Edn., p.596 and following pages. When the provisions of a statute relate to the performance of a public duty and the case is such that to hold null and void acts done in neglect of this duty would work serious general inconvenience, or injustice to persons who have no control over those entrusted with the duty, and at the same time would not promote the main object of the legislature, it has been the practice to hold such provisions to be directory only, the neglect of them, though punishable, not affecting the validity of the acts done."

The principle laid down in this case was adopted by the Federal Court in the case of Biswanath Khemka Vs. King-Emperor, 1945 FCR 99: AIR 1945 FC 76 (C). In that case, the Federal Court had to consider the effect of non-compliance with the provisions of Section 256 of the Government of India Act, 1935, requiring consultation between public authorities before the conferment of magisterial powers or of enhanced magisterial powers etc.,

The Court repelled the contention that the provisions of Section 256, aforesaid, were mandatory. It was further held that non-compliance with that Section would not render the appointment otherwise regularly and validly made, invalid or inoperative. That decision is particularly important as the words of the Section then before their Lordships of the Federal Court, were very emphatic and of a prohibitory character.

An examination of the terms of Article 320 shows that the word "shall" appears in almost every paragraph and every clause or sub-clause of that article. If it were

held that the provisions of Article 320 (3) (c) are mandatory in terms, the other clauses or sub-clauses of that article, will have to be equally held to be mandatory.

If they are so held, any appointments made to the public services of the Union or a State, without observing strictly, the terms of these sub-clauses in clause (3) of Article 320, would adversely affect the person so appointed to a public service, without any fault on his part and without his having any say in the matter.

This result could not have been contemplated by the makers of the Constitution. Hence, the use of the word "shall" in a statute, though generally taken in a mandatory sense, does not necessarily mean that in every case it shall have that effect, that is to say, that unless the words of the statute are punctiliously followed, the proceedings or the outcome of the proceeding, would be invalid.

On the other hand, it is not always correct to say that where the word "may" has been used, the statute is only permissive or directory in the sense that non-compliance with those provisions will not render the proceeding invalid. In that connection, the following quotation from Crawford on Statutory Constitution Article 261 at p.516, is pertinent:

"The question as to whether a statute is mandatory or directory depends upon the intent of the legislature and not upon the language in which the intent is clothed. The meaning and intention of the legislature must govern, and these are to be ascertained, not only from the phraseology of the provision, but also by considering its nature, its design, and the consequences which would follow from construing it the one way or the other..."

The very same passage from the judgment of the Privy Council referred to above has been approvingly quoted by the Supreme Court in extenso. Similar principles have been reiterated in a subsequent Constitution Bench judgment of the Supreme Court in the case of State of U.P. Vs. Babu Ram Upadhy (supra). JUSTICE. K. SUBBA RAO as His Lordship then was, speaking for the majority, quoting the same passage from Mantreal Street Railway Company Vs. Normandi (supra), has come to the same conclusion.

"The relevant rules of interpretation may be briefly stated thus: When a statute used the word "shall", prima facie, it is mandatory, but the Court may ascertain the

real intention of the legislature by carefully attending to the whole scope of the statute. For ascertaining the real intention of the Legislature the Court may consider, *inter alia*, the nature and the design of the statute, and the consequences which would follow from construing it the one way or the other, the impact of other provisions whereby the necessity of complying with the provisions in question is avoided, the circumstance, namely, that the statute provides for a contingency of the non-compliance with the provisions, the fact that the non-compliance with the provisions is or is not trivial consequences that flow therefrom, and, above all, whether the object of the legislation will be defeated or furthered."

The decision of the Supreme Court in State of U.P.Vs.Manbodhan Lal (*supra*) was also reiterated.

The two judges Bench of the Hon'ble Supreme Court of India, in the case of T.V.Usman Vs. Food Inspector, Tellicherry Municipality AIR 1994 SC 1818: (1994) 1 SCC 754, the same principles have been reiterated.

"In Maxwell on Interpretation of Statutes, Eleventh Edn., at page 362 it is stated as under:

Where, indeed, the whole aim and object of the legislature would be plainly defeated if the command to do the thing in a particular manner did not imply a prohibition to do it in any other manner, no doubt can be entertained as to the intention; that is to say, such a requirement would be imperative.

It is further stated on page 364 that:

The general rule is, that an absolute enactment must be obeyed or fulfilled exactly, but it is sufficient if a directory enactment be obeyed or fulfilled substantially.

When a public duty is imposed and the statute requires that it shall be performed in a certain manner, or within a certain time, or under other specified conditions, such prescriptions may well be regarded as intended to be directory only in cases when injustice or inconvenience to others who have no control over those exercising the duty would result if such requirements were essential and imperative.

In Craies Statute Law, Seventh Edn., at page 62 it is stated thus:

When a statute is passed for the purpose of enabling something to be done, and prescribes the formalities which are to

attend its performance, those prescribed formalities which are essential to the validity of the thing when done are called imperative or absolute; but those which are not essential and may be disregarded without invalidating the thing to be done, are called directory.

At page 250 it is further stated thus:

The question whether the provisions in a statute are directory or imperative has frequently arisen in this country, but it has been said that no general rule can be laid down and that in every case the object of the statute must be looked at. ... When the provisions of a statute relate to the performance of a public duty and the case is such that to hold null and void acts done in respect of this duty would work serious general inconvenience or injustice to persons who have no control over those entrusted with the duty, and at the same time would not promote the main object of the legislature, it has been the practice to hold such provisions to be directory only, the neglect of them, though punishable not affecting the validity of acts done.

In *Dattatraya Moreshwar v. State of Bombay*, A.I.R. 1952 S.C. 181, it was held as under:

S.V.K. Sahasramam vs The Deputy Registrar Of Co-Op. ... on 29 August, 2008

Generally speaking the provisions of a statute creating public duties are directory and those conferring private rights are imperative. When the provisions of a statute relate to the performance of a public duty and the case is such that to hold null and void acts done in neglect of this duty would work serious general inconvenience or injustice to persons who have no control over those entrusted with the duty and at the same time would not promote the main object of the legislature, it has been the practice of the Courts to hold such provisions to be directory only, the neglect of them not affecting the validity of the acts done.

In Rule 7(3) no doubt the expression shall is used but it must be borne in mind that the rule deals with stages prior to launching the prosecution and it is also clear that by the date of receipt of the report of the Public Analyst the case is not yet instituted in the court and it is only on the basis of this report of the Public Analyst that the authority concerned has to take a decision whether to institute a prosecution or not. There is no time-limit prescribed within which the prosecution has to be instituted and when there is no such limit prescribed then

there is no valid reason for holding the period of 45 days as mandatory. Of course that does not mean that the Public Analyst can ignore the time-limit prescribed under the rules. He must in all cases try to comply with the time-limit. But if there is some delay, in a given case, there is no reason to hold that the very report is void and on that basis to hold that even prosecution cannot be launched. May be, in a given case, if there is inordinate delay, the court may not attach any value to the report but merely because the time-limit is prescribed, it cannot be said that even a slight delay would render the report void or inadmissible in law. In this context it must be noted that Rule 7(3) is only a procedural provision meant to speed up the process of investigation on the basis of which the prosecution has to be launched. No doubt, sub-section (2) of Section 13 of the Act confers valuable right on the accused under which provision the accused can make an application to the court within a period of 10 days from the receipt of copy of the report of Public Analyst to get the samples of food analysed in the Central Food Laboratory and in case the sample is found by the said Central Food Laboratory unfit for analysis due to decomposition by passage of time or for any other reason attributable to the lapses on the side of prosecution, that valuable right would stand denied. This would constitute prejudice to the accused entitling him to acquittal but mere delay as such will not per se be fatal to the prosecution case even in cases where the sample continues to remain fit for analysis in spite of the delay because the accused is in no way prejudiced on the merits of the case in respect of such delay. Therefore it must be shown that the delay has led to the denial of right conferred under Section 13(2) and that depends on the facts of each case and violation of the time-limit given in sub-rule (3) of Rule 7 by itself cannot be a ground for the prosecution case being thrown out."

15. The Hon'ble Mr. Justice. A.K. Ganguly, then Hon'ble Chief Justice of Madras High Court, speaking for the Bench relied on the judgment of the Hon'ble Supreme Court of India and held that the time limit prescribed for completion of enquiry under Section 81 of the Tamil Nadu Cooperative Societies Act and other similar time limits prescribed under the statutes are to be construed as directory and can never be taken as mandatory. The Hon'ble Division Bench in unequivocal terms held that non compliance of such time limit prescribed under the statute is not a ground to vitiate the entire proceedings. In such an event, the persons, who have involved in grave misconduct or allegations, would try to escape from the clutches of law. That is the object and purpose of such time limits prescribed in the statutes. The very purpose and objects of the time limits prescribed in the statutes is to ensure that the competent

authorities act properly and prudently and conclude the same within the time limit prescribed. On various reasons, if the same is unable to be concluded by the competent authorities and if the Constitutional Courts quash all those proceedings on that technical grounds, then this Court is afraid that many such disciplinary proceedings are to be quashed on this ground and the same will defeat the very purpose of the disciplinary proceedings and furthermore, the delinquent officials, who all are involved in serious allegations of misconduct will escape from the clutches of law and accordingly, this Court is of the considered opinion that the time limit prescribed in Section 19 (3) (b) of the Tamil Nadu Private Colleges (Regulations) Act is to be construed as directory and can never be held as mandatory.

16. The other points raised by the learned counsel for the writ petitioner that the charges are not grave and flimsy in reason, this Court is of an opinion that the charges framed against the writ petitioner in nutshell is provided in the order passed by the authorities, not permitting the writ petitioner to retire from service. The said order impugned is enclosed in Page No.18 of the typed set of papers filed along with the writ petition and the same reads as under:

"You have been charge sheeted vide our charge memo Na.Ka.No.Ka.Mi.K/O.Na/2014/1304 dated 10.12.2014 for serious and grave charges some of which are:-

1. awarding of internal assessment marks arbitrarily to the students during APRIL 2014 University Examinations.
2. Penalized a particular student by not informing him about the practical university examination and thereby worked against the interest of the students.
3. Not discharged the examination duty as per the instructions of the Principal.
4. Instigated the students against the interest of the college.
5. Issued bonafide certificate to students without any authorization.
6. On 06.09.2014 disturbed the parent teachers meet and acted in a highly indisciplined manner before the parents and students.
7. Called the students as rowdies' and about 437 students of this college have complained about you.

8. Not recorded the family details which is mandatory for pensionary service etc.,

You have not submitted your written explanation to the charge memo under reference 1st cited till date. Since you have not replied for such a long time it is considered as deemed to have accepted the charges.

Hence you are not permitted to retire pending enquiry and until final order into serious and grave charges.

17. On a plain reading of the allegations, this Court is of an undoubted opinion that the certain allegations are serious in nature. For example, penalizing a particular student, instigated the students against the interest of the College, issued bonafide certificate to students without any authorization and the statements of allegations elaborately provided in the charge memo also portrays the seriousness of the allegations set out against the Professor. However, all these merits and demerits cannot be gone into by this Court in the present writ petition under Article 226 of the Constitution of India. Complex facts and circumstances are to be adjudicated by the competent Forum by verifying the records and by adducing the evidences, if required. Those complex facts and circumstances can never be adjudicated by the parties in a writ proceedings based on certain Xerox copies of the documents filed in the writ petition. The said exercise require an enquiry to be conducted by the competent authorities by affording opportunity to all the parties concerned. Thus, this Court cannot adjudicate the merits raised by the learned counsel for the writ petitioner for the purpose of establishing the innocence of the writ petitioner. The said pleadings require an enquiry by the competent authority.

18. Teaching is a Noble profession. A Professor, who is working in a college, undoubtedly, must behave properly and conduct classes with full devotion to duty and maintain integrity. The allegations against the Teachers/Professors are certainly be enquired into properly. There cannot be any compromise in respect of such allegations raised against the Professors. Demoralizing the students or awarding irregular marks, depriving them to pursue their higher studies. These all are very dangerous and if such practices are permitted amongst the Professors working in the College, the young minds of this great Nation will end with frustration and the same cannot be allowed to be continued by any civilized society.

19.The senior Professors are duty bound to encourage the students in all respects in the interest of the Nation as well as the society at large. If such allegations are set out against the Professors, more specifically, who all are performing the noble duties, this Court is of an undoubted opinion that enquiry is certainly warranted and only after enquiry, the truthfulness or otherwise are to be culled out. Under these circumstances, the grounds raised in the present writ petition cannot be considered for the purpose of quashing the entire charge memo.

20.A writ petition against the charge memo cannot be entertained in a routine manner. Judicial review against the charge memo are certainly limited. Constitutional Courts cannot intervene during the pendency of the proceedings in a casual manner. The Courts must exercise restraint in entertaining such writ petitions filed for quashing of the charge memo. A charge memo can be quashed, if the same has been issued by an incompetent authority having no jurisdiction or if an allegation of mala fides are raised or if the same is in violation of the statutory rules in force. Even in case of raising an allegation of mala fides, the authority against whom such an allegation is raised, to be impleaded as party respondent in the writ proceedings in his personal capacity. In the absence of any one of these substantial legal grounds, no writ proceedings can be entertained against the charge memo.

21.Intermittent intervention in departmental disciplinary proceedings are not certainly preferable. Only on exceptional circumstances, the High Court can interfere with such proceedings, if there is gross injustice or violation of the statutory rules in force.

22.The Honourable Supreme Court of India in the case of Union of India and others Vs. Upendra Singh, reported in (1994) 3 SCC 357 and the paragraph 6 which is extracted hereunder:

"6.In the case of charges framed in a disciplinary inquiry the tribunal or court can interfere only if on the charges framed (read with imputation or particulars of the charges, if any) no misconduct or other irregularity alleged can be said to have been made out or the charges framed are contrary to any law. At this stage, the tribunal has no jurisdiction to go into the correctness or truth of the charges. The tribunal cannot take over the functions of the disciplinary authority. The truth or otherwise of the charges is a matter for the disciplinary authority to go into. Indeed, even after the conclusion of the disciplinary

proceedings, if the matter comes to court or tribunal, they have no jurisdiction to look into the truth of the charges or into the correctness of the findings recorded by the disciplinary authority or the appellate authority as the case may be. The function of the court/tribunal is one of judicial review, the parameters of which are repeatedly laid down by this Court. It would be sufficient to quote the decision in H.B. Gandhi, Excise and Taxation Officer-cum- Assessing Authority, Kamal v. Gopi Nath & Sons. The Bench comprising M.N. Venkatachaliah, J. (as he then was) and A.M. Ahmadi, J., affirmed the principle thus : (SCC p. 317, para 8)

"Judicial review, it is trite, is not directed against the decision but is confined to the decision-making process. Judicial review cannot extend to the examination of the correctness or reasonableness of a decision as a matter of fact. The purpose of judicial review is to ensure that the individual receives fair treatment and not to ensure that the authority after according fair treatment reaches, on a matter which it is authorized by law to decide, a conclusion which is correct in the eyes of the Court. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. It will be erroneous to think that the Court sits in judgment not only on the correctness of the decision making process but also on the correctness of the decision itself."

23. In the case of Secretary, Ministry of Defence and Others Vs. Prabhash Chandra Mirdha [Civil Appeal No.2333 of 2007, Decided on May 29, 2012], the Apex Court of India held that normally, a Charge sheet is not liable to be quashed as it does not adversely affect the rights of an employee and does not give rise to any cause of action. A writ lies only when some right of a party is infringed. The charge sheet does not infringe the right of a party. It is only when a final order imposing punishment or otherwise, it may have a cause of action. Hence, writ petition challenging charge sheet by itself is not maintainable. However, it can be quashed on the ground that issuing authority being not competent to issue the same.

24. In the case of Union of India vs. Kunishetty Satyanarayana [(2006) 12 SCC 28], it was held that writ jurisdiction is discretionary jurisdiction and hence such discretion under Article 226 should not be ordinarily exercised by quashing a charge sheet. No doubt, in some very rare and exceptional cases, the High Court can quash a charge sheet if it

is found to be wholly without jurisdiction or for some other reason if it is wholly illegal.

25. The learned counsel for the writ petitioner though made an attempt to adjudicate the writ petition on merits, this Court is not inclined to consider the grounds raised on merits in view of the fact that all such complex facts and circumstances cannot be adjudicated and the records, documents and witnesses are to be examined for the purpose of culling out the truth, setting out the allegations set out in the present writ petition. The said exercise are to be done only by the enquiry officer to be appointed by the Management. The delay in concluding the enquiry is certainly at the instance of the writ petitioner also. There may be some delay on the part of the Management. However, the writ petitioner also added for such delay by raising the plea of bias against the earlier enquiry officer and the Management stopped the entire enquiry proceedings and thereafter, an attempt is taken for the purpose of appointing an enquiry officer. Thus, non-adherence of the directions issued by this Court cannot be at the instance of the Management. Though this Court passed an order on 14.07.2016, granting four months time to conclude the enquiry, the writ petitioner also not pursued the directions passed by this Court on 14.07.2016. The writ petitioner conveniently waited for about 2 ½ years and filed the present writ petition on 1st February 2019 in order to quash the very charge memo. Such an action can never be appreciated by this Court. Litigants are attempting to protract and prolong the matter and thereafter, making an effort to quash the entire proceedings. Once the departmental disciplinary proceedings are initiated, it is duty mandatory on the part of the employees also to cooperate for the enquiry and conclude the same by establishing their innocence or otherwise. Contrarily, they are working out the ways and means to quash the proceedings some how or other by filing number of writ petitions or by raising untenable allegations and grounds against the disciplinary authorities as well as enquiry officers. In such an event, the delay cannot be attributed against the disciplinary authority.

26. Under these circumstances, this Court has to come to the conclusion that the writ petitioner should cooperate for the early disposal of the enquiry proceedings and establish his innocence by availing the opportunities to be provided by the competent authorities. In this view of the matter, the following orders are passed:

- (1) The relief as such sought for in the present writ petition stands rejected.
- (2) The 4th respondent / Management is directed to

appoint the enquiry officer within a period of two weeks from the date of receipt of a copy of this order and communicate the same to the writ petitioner immediately.

(3) The enquiry officer, so appointed, shall immediately commence the enquiry proceedings and conclude the same, by affording opportunity to the writ petitioner within a period of four Months from the date of appointment of the enquiry officer.

(4) The writ petitioner is directed to cooperate for early disposal of the enquiry proceedings and the respondents are directed to record the non-cooperation, if any, on the part of the writ petitioner in the enquiry proceedings as well as in the departmental disciplinary proceedings.

(5) The Management / 4th respondent is directed to consider the enquiry report to be filed and the materials available on record and pass final orders in the departmental disciplinary proceedings within a period of four weeks from the date of receipt of the enquiry report from the enquiry officer.

27. With these directions, the writ petition stands disposed of. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

kak

To

1. The Principal Secretary to Government
Higher Education Department,
Fort St. George
Chennai - 600 009

2. The Director of Collegiate Education,
9th Floor, E.V.K. Sampath Maligai
College Road, Nungambakkam,
Chennai - 600 006

3.The Regional Joint Director of Collegiate Education,
Chennai Region, Saidapet,
Chennai - 600 015.

4.The Secretary & Correspondent,
Quaide Milleth College for Men
Tambaram Velachery Main Road,
Medavakkam, Chennai - 600 100.

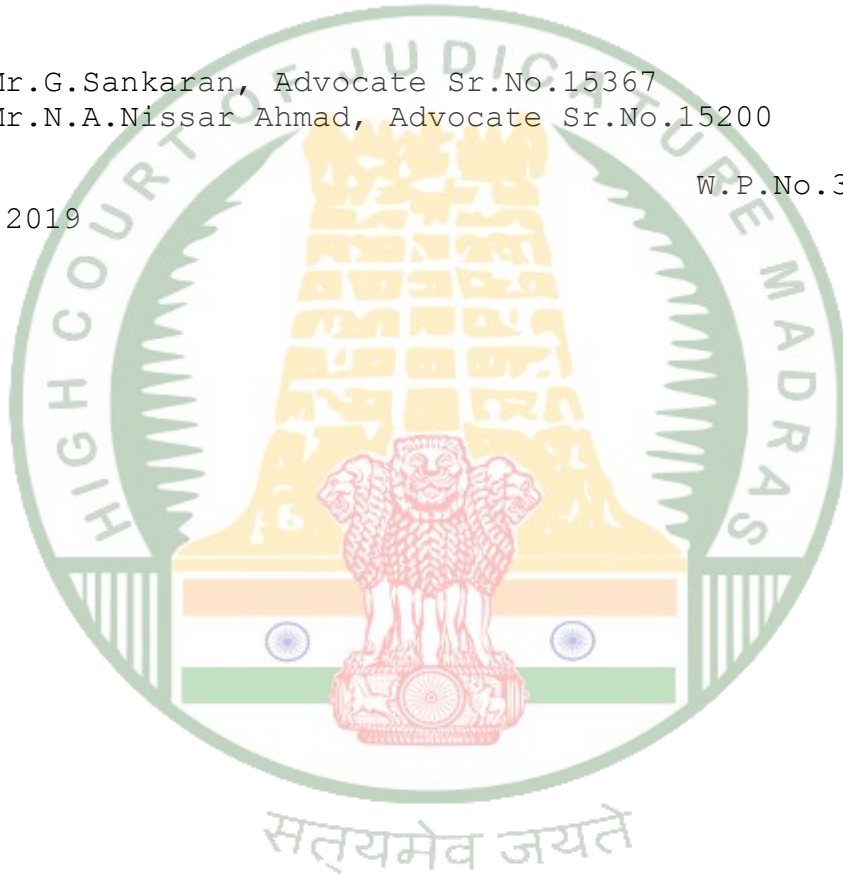
5.The Principal Accountant General
No.361, Anna Salai, Teynampet
Chennai - 600 018

+1 cc to Mr.G.Sankaran, Advocate Sr.No.15367

+1 cc to Mr.N.A.Nissar Ahmad, Advocate Sr.No.15200

W.P.No.3512 of 2019

CSL/18.03.2019



WEB COPY