

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.01.2019

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THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.31331 & 31332 of 2016
and

WMP NOS.27193 to 27196/16 & 718/2019

E.Simson Jesudass ..Petitioner in W.P.No.31331 of 2016

A.Merlin Thanka Daniel ..Petitioner in W.P.No.31332 of 2016

-vs-

1. The Joint Director of Collegiate Education
Chennai Region
Saidapet
Chennai 600 015

2. The Correspondent Secretary
No.497, YMCA College of Physical Education
Nandanam
Chennai 600 035

3. National Council of YMCAs of India
Rep by the National General Secretary
Bharat Yuvak Bhawan
Jai Singh Road
New Delhi 110 001

..Respondents in both the WPs

Petitions under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus, calling for the records relating to the impugned orders in Letter Nos.201/PHY/AP/2016-PT & 202/PHY/AP/2016-PT dated 26.8.2016 passed by the second respondent, to quash the same and for a consequential direction to the respondents to reinstate the petitioners as Assistant Professors in the second respondent College with continuity of service, monetary benefits and all other service benefits.

For Petitioners :: Mr.N.G.R.Prasad for
M/s Row & Reddy

For Respondents :: Mr.V.Kadhirvelu
Special Government Pleader
for R1
Mr.J.Thilagaraj for R2 & 3

ORDER

These writ petitions are directed against the impugned orders dated 26.8.2016 in Letter Nos.201/PHY/AP/2016-PT & 202/PHY/AP/2016-PT passed by the Correspondent and Secretary of YMCA College of Physical Education, Chennai, the second respondent herein relieving the petitioners from the post of Assistant Professor with immediate effect, citing a reason that although the petitioners were appointed as Assistant Professors in the YMCA College of Physical Education with effect from 24.10.2013 and their probationary period was two years from the date of joining and as per the appointment orders, the due date for declaration of probation fell on 24.10.2015, their probation was extended for a further period of one year and even during the extended period of probation, as their teaching performance was not satisfactory, they were relieved from service.

2. Mr.N.G.R.Prasad, learned counsel for the petitioners, assailing the reasoning given in the impugned orders, submitted that when the petitioners, after clearing the State Level Eligibility Test for Lectureship in March, 1997 and October 2012 respectively, on seeing the advertisement issued by the second respondent for the post of Lecturer, applied for the same. Thereafter, they were called for interview and after assessing their performance, the petitioners were appointed as Lecturers on temporary basis in the second respondent college under self finance pattern by orders dated 6.10.2003 and 27.6.2002 respectively in the Physical Education Department. Subsequently, the petitioners also acquired the Doctorate in Philosophy in their discipline. In the meanwhile, the second respondent issued an advertisement calling for applications for the post of Assistant Professor in Physical Education. After applying for the said post, based on the interview conducted by the selection committee on 22.10.2013, the petitioners were appointed as Assistant Professors in the sanctioned posts permitted by the first respondent by order dated 24.10.2013. Arguing further, Mr.Prasad stated that the petitioners' appointment in the post of Assistant Professor was approved by the first respondent-Joint Director of Collegiate Education on 4.3.2014 finding them as qualified Assistant Professors. Satisfying with the performance rendered by the petitioners in the post of Assistant Professor, the first respondent granted permission for regularisation of their service and also the yearly increment

along with the doctorate increment of 15%. He has also referred to the increment certificate dated 9.11.2015 issued by the second respondent in their favour. Therefore, they made a representation to the second respondent for regularising their service through proper channel and that was also recommended and forwarded by the Principal of the college. On the basis of the recommendation made by the Principal, when the first respondent also gave permission for regularisation of their service, on completion of the probationary period of two years, if no order is passed on the request of the petitioners for regularisation, it goes without saying that the services of the petitioners are deemed to have been regularised. Therefore, the impugned orders passed against the petitioners relieving them from service of the second respondent college citing a mere reason that during the period of probation, their services were not upto the mark and satisfaction of the second respondent, are wholly untenable and unacceptable.

3. Continuing his arguments, Mr. Prasad submitted that when the first respondent has permitted the regularisation of the services of the petitioners on the basis of the recommendation made by the Principal, the second respondent cannot justify that the petitioners are still working as probationers. Secondly, it is also pleaded that when the second respondent has issued charge memos calling upon the petitioners to submit their explanation to the charges, in response to the charge memos, the petitioners also submitted a detailed explanation denying all the charges which are flimsy in nature and thereafter, the second respondent also appointed an enquiry officer, who also, on completion of the enquiry, submitted his report, but, sadly, the disciplinary authority has not come forward to furnish a copy of the report calling for any explanation on the report said to have been submitted by the enquiry officer. Therefore, the stand taken by the second respondent in the impugned orders that they have been relieved from the services of the YMCA college, as they were only probationers, is wholly a falsehood. The reason being that if the petitioners are only probationers, the question of issuing charge memos calling for an explanation from them and then appointing an enquiry officer and obtaining a report from the enquiry officer, does not arise. Hence, looking at the impugned orders, which are cryptic in nature, the same are liable to be set aside. In support of his submissions, he has also relied upon the judgment of the Apex Court in the case of Dipti Prakash Banerjee v. Satyendra Nath Bose National Centre for Basic Sciences, Calcutta and others, (1999) 3 SCC 60, wherein it is held that the order of termination would stand vitiated on the ground that no regular enquiry was conducted. In the present cases, after issuing the charge memos calling for explanation from the petitioners, the second respondent appointed an enquiry officer and he also, on completion of the

enquiry, submitted his report. After the enquiry was over, without even furnishing a copy of the enquiry report and without giving an opportunity to the petitioners to submit their written representation to the enquiry report, the impugned relieving orders have been passed without following the principles of natural justice. On this basis, it is pleaded that the impugned orders are liable to be interfered with.

4. Detailed counter affidavits have been filed by the second respondent. The learned counsel appearing for the second and third respondents submitted that on completion of the probationary period of two years, taking note of the fact that the petitioners have not discharged their duties to the satisfaction of the superior officer, their period of probation was also further extended for one more year and during the extended period of probation, as the petitioners fell short of the satisfactory services, the impugned orders have been passed.

5. But the learned counsel for the second and third respondents is unable to show before this Court when the orders of extension of probation were served upon the petitioners. Secondly, when the recommendation was already made by the Principal of the second respondent college satisfying with their performance and the first respondent-Joint Director of Collegiate Education, accepting the recommendation made by the Principal, has also granted permission for regularisation of their services, the stand taken by the second respondent that the period of probation was extended by one year on the ground that the petitioners were unable to render satisfactory service, after the recommendation made by the Principal, is wholly misconceived. The reason being only on the recommendation made by the Principal that the petitioners have performed satisfactorily their duties, the Joint Director of Collegiate Education, the first respondent, accepting the said recommendation, has granted permission for regularisation of their service. Therefore, it goes without saying that there was no such order passed by the second respondent extending the period of probation of the petitioners. Thirdly, as highlighted above, after receiving the explanation from the petitioners to the charge memos, the second respondent, finding that the explanation was not satisfactory, appointed an enquiry officer, who also, on completion of the enquiry, submitted a detailed report. Since the enquiry was held, they have not completed the enquiry and the copy of the enquiry officer's report was also not given to the petitioners, as per the ratio laid down by the Apex Court in the case of Managing Director, ECIL v. B.Karunakar, (1993) 4 SCC 727. Hence, this Court is of the considered opinion that the impugned orders passed by the second respondent have to go. Accordingly, the impugned orders are set aside and the second respondent is directed to reinstate the

petitioners in service with backwages and all other service benefits, within a period of four weeks from the date of receipt of a copy of this order. With this direction, the writ petitions are allowed. Consequently, W.M.P.Nos.27193 to 27196 of 2016 & 718 of 2019 are closed. No costs.

ss

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Joint Director of Collegiate Education
Chennai Region
Saidapet
Chennai 600 015
2. The Correspondent Secretary,
No.497, YMCA College of
Physical Education,
Nandanam,
Chennai - 35.

+6CCs to Mr.J.Thilagaraj, Advocate, S.R.No.7410 & 7411/19
+2CCs to M/s.Row & Reddy, Advocate, S.R.No.7969 & 7970/19
+2CCs to the Government Pleader, S.R.No.8157 & 8158/19

W.P.Nos.31331 & 31332 of 2016

NA (CO)
kak (27/02/2019)

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