

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE:14.08.2019

CORAM

THE HON'BLE MR. JUSTICE V.PARTHIBAN

W.P.No.19079 of 2018 and
W.M.P.No.22457 of 2018

N.Senguttuvan

...Petitioner

Vs.

1.The Secretary
Kandasamy Kandar College,
Velur, Namakkal District.

2.The Joint Director,
Directorate of College Education,
Dharmapuri Region,
Dharmapuri.

...Respondents

Prayer: Petition filed under Article 226 of Constitution of India, for issuance of Writ of Mandamus directing the respondents to disburse salary to the petitioner for the period from August 2014, who is working as the Assistant Professor in the Department of Physics of the 1st respondent college with reference to the representation of the petitioner dated 8.12.2015 and 29.6.2016.

For Petitioner : Mr.R.Subramanian
For Mr.S.Govindraman

For 1st Respondent : Mr.G.Anbumani

For 2nd Respondent : Mr.V.Kathirvelu
Special Government Pleader

ORDER

The petitioner was working as Assistant Professor in the department of Physics in Kandasamy Kandar College, Velur, Namakkal District, the 1st respondent herein. He joined the 1st respondent College during the year 1999 as Management Staff. During 2002-2004, the petitioner studied M.Phil (Physics) in Manonmaniam Sundaranar University, Tiruvelveli. Thereafter, he was appointed as Assistant Professor in the Department of Physics by the Joint Director of Collegiate Education, Dharmapuri Region, the 2nd respondent herein with effect from

27.10.2006.

2. When the petitioner was working as Assistant Professor, he was implicated in a criminal case registered by the Velur Police Station, Velur against him and other two persons in Crime No.426/2005. After conclusion of the trial, the learned Judicial Magistrate, Paramathy Velur, Namakkal District passed an order convicting the petitioner and two others in C.C.No.14/2006 dated 17.07.2014. Against the conviction, the petitioner moved the appellate Court in Crl.A.No.52 of 2014 before the learned Principal District and Sessions Judge, Namakkal.

3. In the meantime, the 1st respondent issued a memo dated 30.09.2014 referring the order passed by the Judicial Magistrate in C.C.No.14/2006 and response to the same, the petitioner submitted his reply. Thereafter, the 1st respondent issued a show cause notice. The Management Committee subsequently conducted an enquiry on 26.11.2014 and the petitioner appeared before the Committee and offered his explanation. The 1st respondent thereafter passed resolution No.50/2014 dated 28.11.2014 proposing to remove the petitioner from service on the basis of the enquiry. The proposal to remove the petitioner from service was forwarded to the Educational authority for their approval.

4. At the time the petitioner approached this Court in W.P.No.31742 of 2014 and this Court, while entertaining the writ petition, had granted an interim stay of the proceedings of the 1st respondent. In view of the interim order granted by this Court, the petitioner continued to work as Assistant Professor in the department of Physics. However, the 1st respondent discontinued payment of salary to the petitioner since August 2014. Therefore, the petitioner submitted a representation for payment of salary to the 1st respondent on 08.12.2015.

5. In the meanwhile, the Criminal Appeal No.52 of 2014 filed against the order of conviction by the Judicial Magistrate came to be allowed and the petitioner was acquitted on the criminal charges in the Appeal. In the said circumstances, a request was made to the 1st respondent for payment of salary.

6. In view of the subsequent development viz., that the petitioner was acquitted of the charges in the criminal appeal, the 1st respondent passed another resolution on 04.07.2016 to drop further disciplinary action and recommended for payment of salary for the period when the petitioner was continued as Assistant Professor in the department of Physics. However, till date the Educational authority, the 2nd respondent has not responded to the resolution and the fact remains that the petitioner has not been paid salary since 2014 till date, notwithstanding the fact that the petitioner has been continued

to be employed as Assistant Professor in the department of Physics.

7.Mr.G.Anbumani, learned counsel appearing for the 1st respondent would not dispute the above facts. He would in fact admit that the 1st respondent has passed a resolution on 04.07.2016 to drop the disciplinary proceedings initiated against the petitioner and in fact, sought approval of payment of salary during the period of employment of the petitioner since August 2014 and till date.

8.On behalf of the 2nd respondent, Mr.V.Kathirvelu, learned Special Government Pleader has entered appearance and counter affidavit has been filed. According to the counter affidavit filed on behalf of the 2nd respondent, it is for the College Secretary to send a proposal to the 2nd respondent with regard to the payment of salary to the petitioner. Thereafter, the 2nd respondent will take necessary steps for payment of salary as per law. The averment, as found in paragraph 15, is extracted hereunder:

"15.I submit that the College Secretary should send a proposal to the 2nd respondent with regarding payment of salary to the petitioner. Thereafter the 2nd respondent will take necessary steps for payment of salary as per law."

9.The learned Special Government Advocate reiterated the averments as contained in the counter affidavit filed on behalf of the 2nd respondent.

10.Considered the submissions made on behalf of the petitioner as well as the 1st respondent and 2nd respondent. The facts as narrated above are not disputed by the respondents. The original conviction passed by the trial Court admittedly has been overturned by the appellate Court and the petitioner was acquitted of the criminal charges. Thereafter, the 1st respondent thought fit to pass a resolution on 04.07.2016 dropping further disciplinary action and also recommended for payment of salary, since the petitioner was not paid salary since 2014. However, it appears that the Educational authority viz., the 2nd respondent has not taken any action on the resolution till date and therefore, the petitioner is before this court for issuance of writ of mandamus.

11.When the petitioner admittedly has been working since 2014, under no circumstances, the salary which is due and admissible can be denied to the petitioner. When the College has extracted the work from the petitioner all these years, and the petitioner having discharged his duties in an aided post, it is imperative on the part of the 2nd respondent to grant approval

for disbursement of the salary and allowances to the petitioner. In fact, this position has been admitted by the 2nd respondent in paragraph 15, which is extracted supra. According to the 2nd respondent, if the proposal sent by the Secretary of the College, the 2nd respondent shall take necessary steps for payment of salary as per law.

12.The learned counsel for the petitioner would submit that as per law, the petitioner is entitled to be paid salary for discharging of his duties since August 2014 and particularly when the College the 1st respondent itself has taken a decision to drop further proceedings against the petitioner on the basis of the fact that the petitioner's original conviction was set aside by the appellate Court in Crl.A.No.52/2014. In which case, this Court does not think that there is any legal impediment, in terms of the Tamil Nadu Recognised Private Colleges (Regulation) Act, for payment of due salary and allowances as admissible to the petitioner for all these years.

13.In the said circumstances, this Court is of the considered view that the petitioner has made out a clear case for grant of relief. Therefore, the Writ Petition shall stand allowed and the writ of mandamus is issued directing the 2nd respondent to grant approval for payment of salary and allowances admissible to the petitioner since August 2014 and till date. The 2nd respondent is directed to pass appropriate orders in this regard within a period of four weeks from the date of receipt of a copy of this order. It is also made clear that in case, no proposal has not been sent by the 1st respondent in this regard the 1st respondent is directed to forward necessary proposal, so that the 2nd respondent shall take necessary steps for payment of salary, as per their own averments as found in paragraph 15 of the counter affidavit, as extracted above. No costs. Consequently, connected miscellaneous petition is closed.

Sgl

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Sd/-

Assistant Registrar

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Sub Assistant Registrar

To

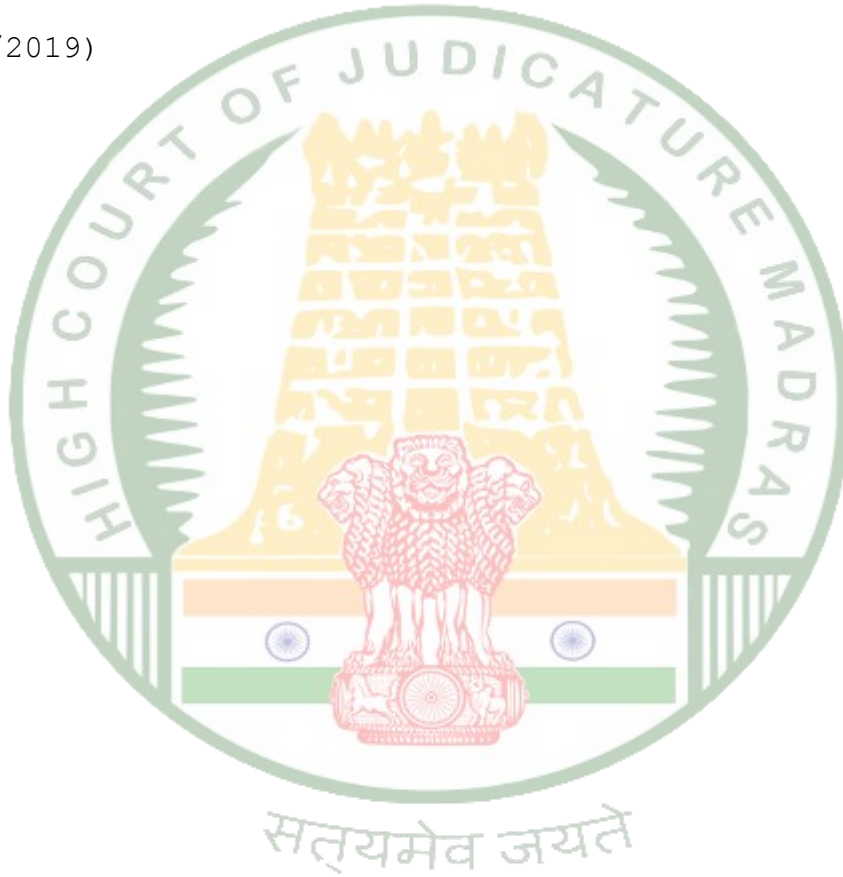
1.The Secretary
Kandasamy Kandar College,
Velur, Namakkal District.

2.The Joint Director,
Directorate of College Education,
Dharmapuri Region,
Dharmapuri.

+1cc to Mr.Arun Anbumani, Advocate, SR.No.69751
+1cc to the Govt.Pleader, Vide Sr.No.69744

W.P.No.19079 of 2018

Kak(17/09/2019)



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