



WEB COPY

and M.P.(MD).No.1 of 2008

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.10.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.S. SUNDAR

W.P.(MD).Nos.11355 & 11393 of 2008

and M.P.(MD).No.1 of 2008

K.Chandramouli

.. Petitioner in both petitions

Vs.

1.The Joint Director of
Collegiate Education,
Nandi Kovil Street,
Tiruchirappalli - 2.

2.National College,
Rep. by its Secretary,
Dindigul Road,
Tiruchirappalli - 1.

3.Mr.K.Ragunathan,
Secretary,
National College,
Dindigul Road,
Tiruchirappalli - 1.

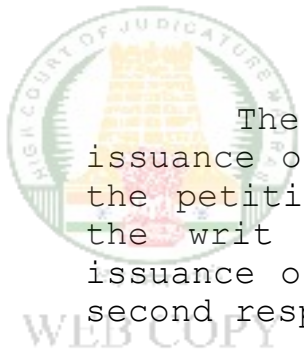
.. Respondents in both petitions

Prayer in W.P.(MD).No.11355 of 2008: Writ Petition filed under Article 226 of the Constitution of India, for the issuance of Writ of Mandamus, directing the respondents to permit the petitioner to join duty.

Prayer in W.P.(MD).No.11393 of 2008: Writ Petition filed under Article 226 of the Constitution of India, for the issuance of Writ of Certiorari, calling for the records of the 2nd respondent in Rc.No.85/2008.2009, dated 19.05.2008 and quash the same.

For Petitioner : Mr.M.Saravanan

For Respondents : Mr.M.Jeyakumar for R1
Additional Government Pleader
M/s.J.Maria Roscline for R2 and R3
(In both petitions)



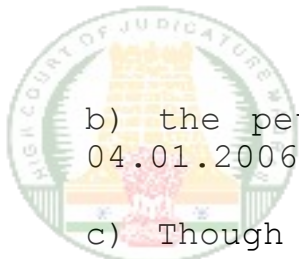
The writ petition in W.P.(MD).No.11355 of 2008 is filed for issuance of writ of Mandamus, directing the respondents to permit the petitioner to join duty in the second respondent college and the writ petition in W.P.(MD).No.11393 of 2008 is filed for issuance of Writ of Certiorari to quash the charge memo issued by second respondent, dated 19.05.2008.

2.The brief facts that are necessary for the disposal of these writ petitions are as follows:

The petitioner was appointed as Office Assistant in the second respondent College. It is stated that the petitioner was unable to attend the College from 19.01.2005 to 04.01.2006. It is further stated that he applied to the second respondent for Medical leave, but the second respondent refused to sanction the leave. Thereafter, he was referred to the Medical Board and the Medical Board certified the petitioner's illness. It is stated by the petitioner that the third respondent had some personal vengeance against the petitioner and hence despite the proposal sent by the second respondent to regularize the leave period, the petitioner was treated badly. It is further stated that the third respondent directed the petitioner suddenly to do duty as a Watchman and compel him to serve in that post. The petitioner further stated that he was affected by severe back pain and piles and therefore, he could not attend the College from 01.08.2007. It is further stated that since the petitioner's illness continued, he had to apply for leave periodically. The petitioner specifically stated that the third respondent thereafter did not permit him to join duty. It is also the case of the petitioner that while refusing to permit the petitioner to join duty, the third respondent issued a charge memo as if he was un-authorisedly absent from 20.09.2007. The said charge memo was issued on 19.05.2008. Stating that the Secretary is not the competent authority to issue charge memo and that the charge memo had not been issued by the College Committee, the petitioner filed Writ petition in W.P.(MD).No.11393 of 2008 to quash the charge memo dated 19.05.2008 and Writ petition in W.P.(MD).No.11355 of 2008 for issuing a writ of Mandamus to direct the respondent to permit the petitioner to join duty.

3.Though the respondents 2 and 3 have not filed a counter affidavit for a long time, it is stated that a counter prepared in 2010 was served on the petitioner only recently. In the counter affidavit, the respondents 2 and 3 have given the following factual details.

a) The petitioner is a regular absentee and frequently used to absent for work for long periods without intimating the respondents 2 and 3.



b) the petitioner absented himself from duty from 19.01.2005 to 04.01.2006 without intimation.

c) Though the respondents permit the petitioner to join duty on humanitarian consideration, and sent a proposal for regularizing the unauthorized absence of the petitioner for the first spell, the petitioner applied for medical leave from 01.08.2007 to 27.08.2007 and thereafter from 28.08.2007 without any permission.

d) Considering the petitioner's attitude, a charge memo, dated 20.09.2007 was issued to the petitioner. After the charge memo, the petitioner reported duty on 25.09.2007.

e) Even thereafter, the petitioner committed same irregularities and therefore the second respondent issued the charge memo, dated 05.01.2008 to the petitioner. This time, the petitioner instead of reporting duty or reply to the memo has sent two messages to the second respondent on 02.02.2008 and on 04.02.2008, stating that the petitioner was suffering from heart attack and that he was admitted in ICCU Ward in Government Hospital, Cuddalore and on the second occasion, he stated that due to heart problems, he was admitted in the MM - II Ward, in Government Hospital, Trichy.

g) It is only thereafter, the impugned show cause notice was issued to the petitioner on 19.05.2008. The second writ petition is filed challenging the charge memo, dated 19.05.2008.

4. The learned counsel appearing for the petitioner in these writ petitions submitted that the charge memo was issued by the Secretary of the College. It is stated that as per the provisions of Tamil Nadu Private College Regulations Act, the College Committee alone is competent to issue charge memo. To the legal submissions of the learned counsel appearing for the petitioner, the learned counsel appearing for the respondents 2 and 3 has stated that the Secretary is authorised to issue charge memo. However, it is contended that the Secretary of the College had obtained ratification from the College Committee. As per Section 14 of the Tamil Nadu Private Colleges Regulation Act, 1976, the College Committee is expected to perform the functions as contemplated under Section 14. It is only the College Committee which has the responsibilities and duties under Section 14(1)(c) of the Act, the College Committee alone can take disciplinary proceedings against the teachers and other persons in a private College. Though Rule 9 of Tamil Nadu Private Colleges Regulation Rules, 1976, authorise the Educational Agency to nominate the Secretary to the Committee and the Secretary is expected to function for and on behalf of the Committee and Educational Agency, Rule 9(4) specifically mandates that the Secretary shall act only according to the resolution passed at the meeting of the



committee. Though the third respondent has specifically denied the submission of petitioner and the third respondent has taken a stand that the third respondent is competent to issue charge memo, there is no factual details as to how the third respondent is competent to issue the charge memo without any authorisation from the committee. The learned counsel appearing for the third respondent has produced records to show that the charge memo issued by the third respondent was later ratified by the Committee. Unless the College Committee authorizes the Secretary, the charge memo cannot be issued by Secretary.

5. Having regard to the specific statutory provisions, this Court is of the view that the Secretary of the College Committee cannot act independently and that the charge memo should be authorised by the committee. There is no indication that the matter was placed before the College Committee, while issuing charge memo to the petitioner. In such circumstances, the charge memo cannot be sustained. Therefore, the charge memo issued by the second respondent in Rc.No.85/2008, dated 19.05.2008, impugned in the writ petition in W.P.(MD).No.11393 of 2008 is quashed. However, liberty is given to the second respondent to take appropriate action against the petitioner in the manner known to law after issuing fresh charge memo. Though the charge against the petitioner is that he is in the habit of taking leave without permission on several occasions, the inconvenience caused to the Management by the conduct of the petitioner cannot be ignored. Therefore, the second respondent is permitted to initiate proceedings afresh by issuing charge memo after placing the matter before the College Committee.

6. In the first writ petition filed by the petitioner in W.P.(MD).No.11355 of 2008, the petitioner sought for a direction against the respondents 2 and 3 to permit the petitioner to join duty. From the over all conduct of petitioner, this Court is of the view that the petitioner has no inclination to attend work. For a period of one year 19.01.2005, the petitioner was absent without any intimation to the authorities. However, on humanitarian consideration, the respondents have permitted the petitioner to join duty and in fact was helpful to the petitioner by sending a proposal for regularization of the period of one year, during which the petitioner absented unauthorizedly. Even, thereafter, the petitioner stated medical grounds to abstained from work regularly for a long time. Pursuant to representation to the respondent to permit him to join duty, the petitioner admittedly received a communication from the Management to join duty. However, the petitioner refused to joint duty by sending two messages. The contents of the message given by the petitioner to the respondent is not in dispute. This shows that the petitioner either absented himself wilfully or due to medical



reasons for a long time and thereby, caused inconvenience to the management. Hence, the management which is competent to take disciplinary action cannot be prevented from exercising their right to protect the interest of the Institution and Administration. It is in the said circumstances, this Court is unable to accept the case of petitioner that he reported duty. Since the petitioner is facing disciplinary proceeding, it is open to the College Committee to keep him under suspension subject to outcome of the proceedings initiated by respondents 2 and 3. The respondents may consider the petitioner's grievance and pass appropriate orders within a period of two weeks from the date of receipt of a copy of this order if he gives a representation within one week from the date of this order.

7.The respondents 2 and 3 shall complete the disciplinary proceedings within a period of eight weeks from the date of receipt of a copy of this order and the petitioner should give full co-operation for completion of disciplinary proceedings as permitted by this Court in this proceedings.

8.As a result, W.P.(MD).No.11355 of 2008 is dismissed. W.P.(MD).No.11393 of 2008 is allowed with liberty to issue fresh charge memo authorised by College Committee and proceed further in accordance with law. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (P&A)

// True Copy //

Sub Assistant Registrar(CS)

TM

+1 CC to M/s.R.SUBRAMANIAN, Advocate (SR-91753[F] dated 14/10/2019)

+1 CC to M/s.GP (SR-91861[F] dated 15/10/2019)

+1 CC to M/s.J.MARIA ROSELINE, Advocate (SR-91788[F] dated 14/10/2019)

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11393 of 2008
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