



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.08.2019

CORAM:

WEB COPY

**THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU
AND
THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

**W.A(MD)No.811 of 2019
and
C.M.P. (MD)No.7084 of 2019
Against WMP(MD).No.5668 of 2009
in
WP(MD) No.2390 of 2019**

Dr.G.Thamaraiselvi

:Appellant/1st respondent/writ petitioner

.vs.

- 1.The Registrar,
National Institute of Technology,
Trichy. :1st respondent/petitioner/3rd respondent
- 2.Union of India,
Rep. by its Secretary to Government
(Department of Higher Education),
Ministry of Human Resources Development,
Shastri Bhavan, New Delhi.
- 3.The Director,
National Institute of Technology,
Trichy. : Respondents 2 & 3 /Respondents 2 & 3 /
Respondents 1 and 2

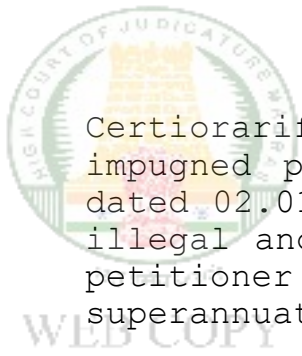
PRAYER: Writ Appeal filed under Clause 15 of the Letters Patent praying this Court to set aside the order passed by this Court in W.M.P.(MD)No.5668 of 2019 in W.P.(MD)No.2390 of 2019, dated 18.07.2019.

Prayer in WMP(MD). 5668/ 2019 :

Petition filed Under Article 226 of the Constitution of India, praying to vacate the Interim Order dated 01.02.2019 granted in WMP (MD) No. 1853 of 2019 in WP(MD) NO. 2390 of 2019.

Prayer in WP(MD). 2390 of 2019 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of



Certiorarified Mandamus, calling for the records relating to the impugned proceedings No:NITT/ Estt. / Unit -III / 2018-19 / 91, dated 02.01.2019 issued by the 3rd respondent and quash the same as illegal and consequentially direct the 3rd respondent to permit the petitioner to continue in service till petitioner attain age of superannuation i.e. 65 years.

For Appellants	:Mr.VR.Shanmuganathan
For R-1 & R-3	:Ms.J.Maria Roseline for Mr.Sri Balaji
For R-2	:Mr.S.Sivakumar

JUDGMENT

[Judgment of the Court was delivered by **K.RAVICHANDRABAABU, J.**]

This writ appeal is directed against the order made in W.M.P. (MD)No.5668 of 2019 in W.P.(MD)No.2390 of 2019, dated 18.07.2019.

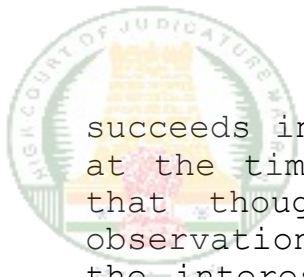
2.The Writ Court allowed the said Miscellaneous Petition filed for vacating the stay already granted in W.M.P.(MD)No.1853 of 2019 in W.P.(MD)No.2390 of 2019. In other words, the stay originally granted by the Writ Court is vacated through the order impugned in this appeal.

3.The learned counsel for the appellant submitted that the interim order of stay was granted on 01.02.2019 and the same was in force for more than six months and therefore, the Writ Court, instead of deciding the main writ petition itself, is not justified in vacating the stay after a period of nearly six months. He further submitted that even on merits, the appellant can convince this Court that she is entitled to the protection by way of stay of the impugned order in the writ petition.

4.On the other hand, the learned counsel for the respondents submitted that the vacate stay petition was filed immediately and that the same was taken up and decided only on 18.07.2019 and therefore, the respondents cannot be found fault with. She also submitted that the respondents also can convince this Court by placing the Rule position and satisfy that the claim made by the writ petitioner/appellant cannot be entertained.

5.The core issue before the Writ court is whether the retirement age of the writ petitioner, who was holding the post of Librarian, is 62 years as contended by the respondents or 65 years as claimed by the writ petitioner.

6.Admittedly, the said issue has not been considered yet by the Writ Court and the stay granted originally was vacated only by observing that the petitioner is entitled to all the monetary benefits, back wages including the arrears of salary, if she



succeeds in the writ petition, as the said issue has to be examined at the time of hearing the main writ petition. Therefore, we find that though the stay originally granted is vacated, the very observation made by the Writ Court, as stated supra, has protected the interest of the petitioner in the event of her success in the writ petition later. Therefore, we are of the view that instead of expressing any view on the merits of the claim made by the respective parties in respect of the issue involved in the writ petition, it is better the main writ petition itself is taken up for final disposal and decided on merits and in accordance with law.

7. Accordingly, without expressing any view on the merits of the claim made by the respective parties, this writ appeal is disposed of with a request to the Writ Court to take up the main writ petition itself and dispose of the same on merits and in accordance with law, after hearing both parties, preferably within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

/TRUE COPY/

Sub Assistant Registrar

To

The Secretary to Government,
Union of India,
(Department of Higher Education),
Ministry of Human Resources Development,
Shastri Bhavan, New Delhi.

+1 CC to M/s.J.MARIA ROSELINE, Advocate (SR-80435[F] dated 07/08/2019)

+1 CC to M/s.S.SIVAKUMAR, Advocate (SR-80690[F] dated 08/08/2019)

+1 CC to M/s.VR.SHANMUGANATHAN, Advocate (SR-80928[F] dated 09/08/2019)

W.A(MD)No.811 of 2019

07.08.2019

rj2

JM/03.09.2019/3P/5C