



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.11.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.SUNDAR

W.P (MD) No.15234 of 2018

and W.M.P (MD) Nos.13767, 13768 & 16220 of 2018

G.Kannan

... Petitioner

Vs.

1.The Principal Secretary cum
Commissioner of Technical Education,
Directorate of Technical Education,
Chennai - 600 025.

2.The Principal,
Tamil Nadu Polytechnic College,
Madurai - 625 011.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order in Letter No.1003/Nil/2017, dated 09.07.2018 issued by the second respondent, quash the same, further forbearing the respondents from demanding the alleged arrears of rent amount of Rs.1,49,736/- illegally enhanced with retrospective effect from 01.09.2007 to 12.09.2009 by waiving the same.

For Petitioner : Mr.S.Ramu

For Respondents : Mr.K.Mu.Muthu,
Additional Government Pleader.

ORDER

Mr.S.Ramu, learned counsel on record for writ petitioner and Mr.K.Mu.Muthu, learned Additional Government Pleader on behalf of both respondents are before this Court.

2.With consent of learned counsel on both sides, main writ petition is taken up, heard out and is being disposed of.

3.Notwithstanding very many averments made in the affidavit and counter-affidavit, notwithstanding very many documents that have been pressed into service by filing the same in the typedset of papers by writ petitioner as well as respondents, from the hearing today, it emerges clearly that entire matter turns on a very narrow



compass.

4.A small room originally admeasuring 150 square feet or thereabouts within the premises of 'Tamil Nadu Polytechnic College, Madurai' (hereinafter referred to as 'said institution' for brevity, clarity and convenience) is the nucleus of this Writ Petition and for the sake of convenience and clarity, the same shall hereinafter be referred to as 'demised area'. Genesis of the issue in instant Writ Petition dates back to more than two and half decades or in other words a quarter century when writ petitioner gave a requisition letter dated 12.12.1995 addressed to second respondent requesting second respondent to provide a small space within said institution for running a photocopying centre. The term used in the requisition letter is 'xerox centre', but this Court chooses to refer to the same as a 'photocopying centre' for reasons which are more than obvious. Suffice to say that 'xerox' is name of a company / brand whereas 'photocopier' is the product.

5.In response to the aforementioned requisition, second respondent issued an order dated 15.09.1997 bearing Reference No.5714/C2/1996 permitting writ petitioner to run a photocopying centre in demised area by paying Rs.300/- per month.

6.Before proceeding further with this matter, this Rs.300/- has been referred to as rent, but in the considered view of this Court, arrangement between writ petitioner and respondents cannot be one of lease, but can only be one of licence. The reason is ingress and egress to said institution is controlled by second respondent. Demised area is situate within said institution. Therefore question of transferring possession of demised area by second respondent to writ petitioner does not arise. It is therefore a simple case of licence. It is therefore a simple case of permitting writ petitioner to vend / carry on the business of running a photocopying centre from a specified area ie., demised area. Absent, transfer of possession there can be no lease. Therefore, this Court has no difficulty in coming to the conclusion that arrangement between writ petitioner and second respondent is one of licence qua demised area.

7.With the aforesaid clarifying preface, this Court now turns to the controversy. The controversy is regarding enhancement of licence fee which as mentioned supra has been described as rent. In the light of clarifying preface qua the term rent, it has to necessarily be construed as licence fee. Licence fee was enhanced and that led to writ petitioner filing a Writ Petition in this Court being W.P(MD)No.11801 of 2014. There is no disputation or disagreement before this Court that said Writ Petition was withdrawn by writ petitioner on 12.04.2018. Though learned counsel for writ petitioner submitted that the said Writ Petition was withdrawn owing to an assurance given by the then Principal of said institution, but there is no shred of paper to support this submission. Be that as it may, Court is to say that earlier Writ Petition was withdrawn.



8. When things stood as above, an 'order dated 07.09.2018 bearing Letter No.1003/Nil/2017 made by the second respondent' (hereinafter referred to as 'impugned order' for brevity) came to be passed.

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9. Impugned order traces the genesis and history of the licence arrangement between writ petitioner and second respondent. Thereafter, impugned order calls upon writ petitioner to pay arrears of Rs.1,49,736/-. Impugned order goes on to say that several extensions have been given and the impugned order ends by saying that extension can be considered only in the event of payment of arrears. Assailing this impugned order, instant Writ Petition has been filed.

10. Arrangement between writ petitioner and second respondent is purely contractual. The terms of monthly payment ie., licence fee is also a term of the contract. This Court cannot rewrite a contract. Even with regard to original permission granted on 15.09.1997, it has been made clear that monthly charges are tentatively fixed at Rs.300/- and that it is subject to the amount that is fixed by Government ultimately. Issues regarding what should be the quantum of enhancement of licence fee, cannot be gone into in a Writ Petition in a case of this nature.

11. What is of utmost significance is, both parties ie., writ petitioner and State Counsel, who has the benefit of instructions from second respondent, who is personally present in Court, submit that demised area is shut for the last three months. This is an undisputed factual position.

12. This Court has no hesitation in holding that this Court cannot interfere in the matter as no case has been made out for interference qua impugned order as it is merely an innocuous demand for arrears of licence fee which says that request for extension can be considered only on payment of the same.

13. As Writ Petition is being disposed of on this short point, it is not necessary to allude to or dilate further on facts which are not imperative for appreciating this order. Instant Writ Petition is dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(AD-II)

// True Copy //

Sub Assistant Registrar(CS)

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<https://hcservices.ecourts.gov.in/hcservices/>



To

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Commissioner of Technical Education,
Directorate of Technical Education,
Chennai - 600 025.

2.The Principal,
Tamil Nadu Polytechnic College,
Madurai - 625 011.

+1CC TO MR.S.RAMU, Advocate Sr. No. 100519

W.P (MD) No.15234 of 2018
20.11.2019

KM(CO)
TR(10.12.2019) 4P 4C