



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 23.10.2019
CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MRS.JUSTICE R.THARANI

Writ Appeal (MD).No.934 of 2017

and

C.M.P. (MD).No.6301 of 2017

in

WP (MD) No.237 of 2011

1. The Correspondent cum Secretary,
Management of Palani Andavar Polytechnic for
Women,
Palani.
 2. The Principal,
Palani Andavar Polytechnic for Women,
Palani.
 3. The Chairman,
Management Committee of Palani Andavar
Polytechnic for Women,
Palani.
- ... Appellants/Respondents 1 to 3

Vs.

1. S.Kalaiarasi
 2. The Commissioner,
Directorate of Technical Education,
Chennai.
- ... 1st Respondent/Writ Petitioner
... 2nd Respondent/4th Respondent

Prayer: Writ Appeal is filed under Clause 15 of Letters Patent Act, against the order passed in W.P.(MD).No.8237 of 2011, dated 22.04.2015.

Prayer in WP(MD). 8237/ 2011 :

Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ or any other order or direction in the nature of Writ of Certiorarified Mandamus calling for the records relating to the impugned order passed by the 4th respondent herein vide letter No. Mu.Mu.No.37797/C1/2009 dated 05/03/2010 read with the order passed by the 2nd respondent dated 05/04/2010 in Na.Ka. No.64/A4/2009 and quash the same and consequently direct the respondents to provide all service benefits



except the monetary benefits for the period of absence from 02/07/1987 to 04/05/88 and pass any other order or orders as this Hon ble Court.[prayer amended as per order dt 5.4.2013 in mp(md) 2/2013]

For Appellants : Mr.R.Devaraj
For R1 : Mrs.S.Vijayashanthi
For R2 : Mrs.S.Srimathy
Special Government Pleader

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J U D G M E N T

(Judgment of the Court was delivered by **T.S.SIVAGNANAM, J.**)

This appeal filed by the Correspondent / Management of Palani Andavar Polytechnic for Women, Palani, is directed against the order in W.P.(MD).No.8237 of 2011, dated 22.04.2015.

2. The writ petition filed by the first respondent was allowed. The first respondent initially filed the writ petition challenging the order passed by the second appellant, dated 05.04.2010 and for a consequential direction to provide all service benefits except monetary benefits for the period of absence from 02.07.1987 to 04.05.1988, subsequently, the prayer sought for in the writ petition was amended by challenging the order passed by the Commissioner, Directorate of Technical Education, Chennai, dated 05.03.2010.

3. The case has had a checkered history since 1993. But however, the controversy involved lies in a very narrow campus. The writ petitioner joined in the appellant Institution as an Instructor in English in the year 1981 and upgraded as Associate Lecturer in the year 1986. For a charge of unauthorised absence for a period about one year from 02.07.1987 to 04.05.1988, charge memo dated 26.12.1989 was issued. Consequently, the writ petitioner was removed from service on 29.04.1992. The said order of removal was challenged by filing a writ petition before the Single Bench of this Court in W.P.(MD).No.20237 of 1993. The writ petition was disposed of giving observations and directions. At this juncture, it is relevant to take note of the observations and directions and in Paragraph No.6 of the order, dated 30.03.2001, it is stated as follows:

"On going through the materials placed before this Court, it is seen that the petitioner had applied for maternity leave initially, when she reported for duty after her leave period she was informed that her name had already been removed from the rolls of the Management/Institution. It is also seen that the petitioner was not given an opportunity to defend her case. Under the facts and circumstances of the case, the impugned order deserves to be quashed and it is accordingly quashed. The respondents are directed to reinstate the petitioner in the post of Lecturer within a period of three months from the date of



receipt of a copy of this order. However, it is made clear that though the petitioner is not entitled to the monetary benefits during the period of absence from duty, her services shall be counted for the purpose of calculating her retirement benefits such as pension, gratuity etc.

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4. The appellant Management did not implement the decision, but chose to file an appeal in W.A.No.1387 of 2001 before the Principal Bench. Initially, interim order was granted for a limited period and subsequently, it was not extended and therefore, left with no other option, the Management reinstated the writ petitioner on 23.01.2004. The writ appeal was dismissed by judgment dated 19.08.2008. After which, the writ petitioner submitted a representation on 16.09.2008, requesting that she may be given all service benefits, except the monetary benefits during the period of absence, which was already denied by the writ Court. The writ petitioner was reinstated and her salary was also fixed. Subsequently, an order was passed by the second appellant on 05.04.2010, which was challenged by the writ petitioner stating that she is entitled for all service benefits, except monetary benefits for the period of absence. The relief sought for by the writ petitioner was opposed by the Management by contending that the period of absence will be considerable only for the purpose of computing the terminal benefits and not for other purposes. The writ petition was allowed by order dated 22.04.2015. Against which, the present writ appeal has been filed.

5. Even prior to the filing of the writ appeal, the second respondent herein viz., the Commissioner, Directorate of Technical Education, Chennai, has passed an order on 03.09.2016, making the Management liable for payment of the arrears of salary computed at the appropriate rate together with other benefits. This has been questioned by the Management by filing W.P.No.14006 of 2017 and an order of interim stay has been granted and the matter is pending before the Principal Bench. The Management has misconstrued that the claim made by the writ petitioner is for back wages.

6. On a careful reading of the order passed in W.P.(MD). No.20237 of 1993, dated 30.03.2001, it is clear that the appellant / Management was directed to reinstate the writ petitioner in the post of Lecturer and ordered that except the denial of monetary benefits for the period of absence, her services should be counted for the purpose of calculating her retirement benefits. The Management tries to take advantage and incorporate this order stating that they will not give the writ petitioner appropriate salary, consequent upon reinstatement. This stand of the Management is wholly unsustainable. Once the order of removal has been set aside and direction has been issued to reinstate the employee, it goes without saying that all consequential service benefits should automatically flow to her. For the anterior to the period of absence i.e., from 02.07.1987 to 04.05.1988 and subsequent to the date of joining i.e., 04.05.1988,



the writ petitioner is entitled to all benefits. This is the natural consequence that should flow out of the order of reinstatement. This has been made to incorporate by the Management to sue their advantage. It is a misnomer to state that the writ petitioner claiming back wages, but the writ petitioner has claimed her entitlement consequent upon her reinstatement. Be that as it may, we find that there is no error in the order passed by the Single Bench extending the benefits flowing from the reinstatement of the writ petitioner. The appellant / Management cannot take advantage of the belated reinstatement, because it is they who had filed the writ appeal and initially obtained an interim order. Thus, for all the above reasons, we find no ground to interfere with the order passed by the Single Bench. Accordingly, the writ appeal is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

7. It is made clear that upon reinstatement, on compliance of the direction issued in the writ petition, the writ petitioner cannot be treated as a fresh appointee and she should be continued in service and for all purpose, her date of first appointment will be as Instructor in English in the year 1981. It is submitted by the learned counsel for the appellant that the Management in fact has made such a proposal.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

To

The Commissioner,
Directorate of Technical Education,
Chennai.

+1 CC to Mr.R.DEVARAJ, Advocate (SR-94391[F] dated 24/10/2019)
+1 CC to M/s.S.VIJAYASHANTHI, Advocate (SR-94706[F] dated
25/10/2019)

Writ Appeal (MD).No.934 of 2017
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MK (07.11.2019) 4P 4C