



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.01.2019

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P. (MD) No.12671 of 2011
and
M.P. (MD) No.1 and 2 of 2011

Dr.S.Ponnusamy

... Petitioner

/Vs./

1. The Director,
O/o.Director of Collegiate Education,
College Road, Nungambakkam,
Chennai - 6.
2. The Joint Director of Collegiate Education,
Perumalpuram,
Tirunelveli District.
3. Sri Paramakalyani College Committee,
Represented by its Secretary,
Dr.G.Devarajan, Alwarkurichi,
Tirunelveli District.
4. The Principal Secretary to the Government,
Department of Higher Education,
St.George Fort,
Chennai.

... Respondents

[4th respondent is suo-motu impleaded vide order dated 25.01.2019.]

Prayer: Writ Petition - filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the records pertaining to the paragraph Nos.7 and 8 of the impugned communication in Ref No.165/spkc/11-12 dated 28.10.2011 on the file of the respondent no.3 and quash the same as illegal.

For Petitioner : Mr.T.Lajapathi Roy

For R-1 & R-2 : Mr.D.Muruganandam
Additional Government Pleader

For R-3 : Mr.Krishna Srinivasan
for M/s.S.Ramasubramanian Associates

**ORDER**

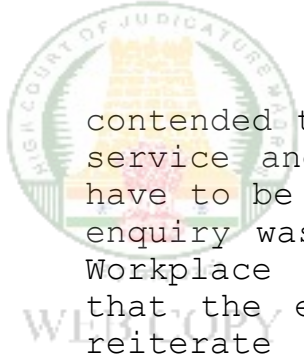
The writ petitioner joined the third respondent college as Lecturer in the year 1986. The College Management received a letter dated 19.07.2011 from a parent alleging commission of acts of sexual harassment by the writ petitioner. On the very next day, i.e., 20.07.2011, the second year girl students studying in M.Sc.Chemistry in the said College also lodged a similar complaint against the writ petitioner. As many as 15 girl students had signed in the said complaint. That led to registration of an FIR against the writ petitioner and he was also arrested.

2. The College Management issued a charge memo on 30.08.2011. The petitioner offered his explanation. Not satisfied with the same, enquiry was ordered. A lawyer was appointed as the enquiry officer. The writ petitioner participated in the said enquiry. Witnesses were examined on either side. Documents were also marked on either side. The enquiry officer submitted his report dated 16.10.2011 holding that the charges framed against the writ petitioner stood proved.

3. The College Management, by a Communication dated 19.10.2011 called upon the writ petitioner to offer his further explanation with regard to the findings in the said enquiry report. It was made clear in the said show cause notice that the College Management, in the event of accepting the enquiry report, would impose the punishment of reduction in rank. The petitioner submitted his further explanation dated 24.10.2011. The College Management was not satisfied with the said further explanation. It decided to accept the findings set out in the enquiry report. It also proposed to impose the punishment of reduction in rank. Since the college is one governed by the Provisions of the TamilNadu Private Colleges [Regulation] Act, it had to obtain approval from the competent authority. Pending such approval, the College Management decided to revoke the petitioner's suspension and permit him to join duty. To this effect, a communication dated 28.10.2011 was issued to the writ petitioner. The College Management also submitted the proposal dated 29.10.2011 seeking prior approval of the competent authority for imposing the said punishment of reduction in rank on the writ petitioner.

4. The writ petitioner questioned the said communication dated 28.10.2011. This Court, by order dated 09.11.2011 granted an interim order of status quo. The said interim order of status quo was not vacated till 31.05.2014, when the writ petitioner reached the age of superannuation. The Secretary of the College vide proceedings dated 17.07.2015 permitted the writ petitioner to retire from service and the writ petitioner was also relieved from duties on the same afternoon.

5. Today, when this writ petition was taken up for final hearing, the learned counsel appearing for the writ petitioner



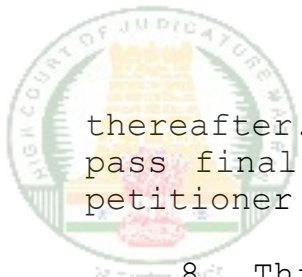
contended that since the writ petitioner was allowed to retire from service and was not retained in service, this writ petition will have to be allowed on that short ground. He also contended that the enquiry was not conducted as per the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013 and that the enquiry by a lawyer was not competent. He would also reiterate the other contentions set out in the notes on the submissions.

6. Per contra, Mr. Krishna Srinivasan, the learned counsel appearing for the third respondent pointed out that the impugned communication as such does not infringe the rights of the writ petitioner. What the Management had sought was prior approval from the competent authority. This Court cannot foreclose the decision from being taken by the competent authority. He also rebutted the other contentions raised by the learned counsel appearing for the writ petitioner. According to him, the third respondent being a Private College was obliged to issue an order of retirement and relieve him from service. By doing so, the Management has not given up its right to pursue the disciplinary action initiated against the writ petitioner, when he was in service.

7. I am in agreement with the first contention raised by the learned counsel appearing for the third respondent. What is under challenge in this writ petition is only a communication, whereby the Management had indicated its intention to award a particular punishment. As per the relevant provisions of the statute, without the prior approval of the competent authority, this punishment cannot be given effect to. The competent authority has not admittedly taken any decision. Therefore, I am of the view that the writ petitioner's rights have not suffered any infringement at this stage. The matter is presently pending only at the stage of proposal and nothing more. Therefore, leaving open all the contentions available to either side, I dispose of this writ petition with the following directions:

(i) the second respondent will take a decision on the proposal dated 29.10.2011 submitted by the College Management pertaining to the writ petitioner within a period of eight weeks from the date of receipt of a copy of this order. Since certain substantial legal contentions are being canvassed on either side, before taking a decision on this proposal, the authority will hear the writ petitioner as well as the representative of the College. They are at liberty to file their written arguments.

(ii) Since the writ petitioner had already reached the age of superannuation, it is the Government, which will have to take a decision with regard to the disbursement of the final retirement benefits to the writ petitioner. After a decision is taken by the second respondent, based on the decision of the second respondent, the Management will submit the pension proposal pertaining to the writ petitioner to the Government within a period of three weeks



thereafter. The Government shall involve the Accountant General and pass final orders and disburse the retirement benefits to the writ petitioner within a period of eight weeks thereafter.

8. This writ petition is disposed of accordingly. No costs. Consequently, connected Miscellaneous Petitions are closed.

sd/
Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar

To

1. The Director,
O/o. Directorate of Collegiate Education,
College Road, Nungambakkam,
Chennai - 6.
2. The Joint Director of Collegiate Education,
Perumalpuram,
Tirunelveli District.
3. The Principal Secretary to the Government,
Department of Higher Education,
St. George Fort,
Chennai.

+1cc to Mr.S.Ramasubramanian, Advocate in SR.No. 42982

sm

ES/14.03.2018/4P/5C

Order made in
W.P. (MD) No.12671 of 2011
25.01.2019