

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.09.2020

CORAM:

THE HON'BLE MR.JUSTICE M.GOVINDARAJ

W.P.Nos.24136 of 2007 and 23498 of 2015
&
M.P.Nos.1,2,3,4 and 5 of 2015 and M.P.No.1 of 2011

K.P.Karupannan ... Petitioner in both cases

Vs.

1.Commissioner of Technical Education
Chennai-25

2.Chairman,
Governing Council,
Nachimuth Polytechnic College,
Udumalai Road, Pollachi-642 003

3.Principal Incharge
Nachimuthu Polytechnic College,
Udumalai Road, Pollachi-642 003.
Coimbatore District

... Respondents 1 to 3 in both

cases

4. C.Ramasamy ... 4th respondent in W.P.No.24136 of 2007

Prayer in W.P.No.24136 of 2007: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari calling for the records from the 3rd respondent relating to the charge memo dated 20.06.2007 bearing ref No.A4/248/2007 and quash the same as illegal, arbitrary, malafide, vindictive and without jurisdiction.

Prayer in W.P.No.23498 of 2015: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Mandamus directing the respondents 1 to 3 to continue the petitioner as Head of the Department (Textiles) in the 3rd respondent Polytechnic till 31.05.2016 in terms of G.O.Ms.No.326 dated 10.02.1977 and grant all service and other incidental benefits.

For Petitioner : Mr.N.G.R.Prasad, Senior Counsel
for
M/s. Row and Reddy

For Respondents: Mr.E.Manoharan, Spl.Govt.Pleader for
R1

Mr.D.Balaraman for R2 and R3

C O M M O N O R D E R

In W.P.No.24136 of 2017, petitioner challenges the charge memo issued by the 3rd respondent principal of the institution dated 20.06.2007 and in W.P.No.23498 of 2015, the petitioner sought to continue his service as head of the department of the 3rd respondent polytechnic college till 31.05.2016 in terms of G.O.Ms.326, Education Department dated 10.02.1977.

2. Short facts leading to the case is that the petitioner possess educational qualification of M.Tech Textile technology and has 20 years of teaching experience. On 26.02.1999, he was appointed as Head of the department(Textiles) in the 3rd respondent Polytechnic college. On 20.06.2007, a charge memo was issued against him for having indulged in acts of falsifying the records of the institution by applying and availing leave stating false reasons, with full knowledge that reasons were false and for having indulged in criminal cases u/s. 419,420,170,171,120(b),109,506(i) and 143 I.P.C.

3. The petitioner has filed the writ petition challenging the charge memo dated 20.06.2007 in W.P.No.24136 of 2007 and obtained an order of interim stay. While the matter is pending, the petitioner attained the age of superannuation as on 31.07.2015. Therefore, the 3rd respondent has called for the petitioner's particulars for the purpose of processing his pension. On 23.04.2015, the petitioner submitted a representation to the 2nd respondent for continuing his services till the end of academic year i.e., May 2016 and requested the 1st respondent to sanction reemployment from 01.08.2015 to 31.05.2016. He further requested to forward the representation to the 1st respondent Commissioner for Technical Education, Guindy, Chennai-25. However, he submitted an advance copy to the 1st respondent on 01.06.2015, it was followed by a reminder to 1st respondent on 20.07.2015 and he also met him on 28.07.2015. He approached this Court on 31.07.2015 and obtained an order of interim injunction on 31.07.2015 restraining the respondents 1 to 3 from relieving the petitioner from service on 31.07.2015.

4. Both these writ petitions are taken together by consent of counsel for both sides. According to the learned counsel for petitioner, G.O.Ms.No.326 Education Department dated 10.02.1977

any teacher who is retiring in the middle of the academic year is entitled to re-employment till the end of the academic year i.e to say upto 31st May of that year. The Government has considered the hardship caused to the students that retirement of a teacher will disturb their education and the teacher who is taking the subject shall be permitted to continue in service. Therefore, the petitioner who attained the age of superannuation on 31.07.2015 is entitled to continue in service till the end of the academic year i.e to say 31.05.2016. He has also made a representation to such effect as such he continued in employment till 31.05.2016 and his service till 31st May shall be considered and appropriate payment of salary and terminal benefits should be made to the petitioner.

5. Controverting the statements made by the learned counsel for the petitioner, the learned Special Government pleader for the 1st respondent would contend that the benefits given under G.O.Ms.No.326, Education Department dated 10.02.1977 is not automatic. The Government vide letter No.5801/1-1/2006-1 dated 08.06.2006 of Higher Education Department issued instructions referring earlier Government Order and the order of this Hon'ble Court that the teaching staff are permitted to continue in service on re-employment till the end of the academic year, subject to the condition that no charge should be pending against them in the Government or in the Court of law.

6. The institution forwarded the request of the petitioner to the 1st respondent for consideration. After considering the request, the 1st respondent vide letter No.25716/C3/2015 dated 31.07.2015 rejected the request of the petitioner in view of the pendency of the criminal case against the petitioner and the 3rd respondent has not recommended the continuance of petitioner in service on re-employment. Since the petitioner is permitted to continue in service only pursuant to the interim order passed by this Court on 31.07.2015 and it is not a formal order of re-employment as contended by the petitioner, the petitioner is not entitled to any relief. सत्यमेव जयते

7. The 3rd respondent would contend that the petitioner had attained the age of superannuation on 31.07.2015. It is relevant to state that a final report (charge sheet) u/s. 173 of Cr.P.C was filed by Kerala Police on 07.01.2006 was forwarded to the 3rd respondent for offences u/s. 419,420,170,171,120(B), 109,506(i) and 143 I.P.C. on 16.06.2015. The above fact that the petitioner was an accused in Crime No.335 of 2004 on the file of Chittur Police Station and the case was pending before the Judicial I Class Magistrate, Chittur in C.C.No.45 of 2006 was communicated to the 1st respondent. The hearing of the criminal case was posted on 14.07.2015. On the very same day, they have requested the decision of the 1st respondent in respect of the

proposal sent by them with regard to his re-employment. On 15.07.2015, the 1st respondent has addressed a letter vide No.25716/C3/2015 dated 15.07.2015 to submit the status of the criminal case and the action taken by the management. On 27.07.2015, the 3rd respondent citing the Government Letter No.5801/1-1/2006-1, Higher Education Department dated 08.06.2006 and circular issued by the Director of Technical Examination in ENDT.No.11207/A1/2006 dated 13.06.2006 that for the purpose of continuing staff for re-employment there shall be no charge pending against them in Government or in Court of Law and in view of the fact that a criminal case is pending before criminal court opined that it is unsafe to recommend the petitioner for re-employment. It appears that it was sent to the 1st respondent by fax also.

8. While the matter stood thus, on 31.07.2015, the writ petitioner submitted his letter to the 3rd respondent to issue retirement order on the same day itself. The 1st respondent in Letter No. 25716/C3-2015 dated 31.07.2015 have conveyed their decision that it is not feasible to issue orders of re-employment in favour of the petitioner. The petitioner had retired from service on the forenoon on attaining age of superannuation. However, on the same evening at around 5.30 p.m. the petitioner had submitted a letter to the 3rd respondent that the High Court in W.P.No.23498 of 2015 had granted interim injunction and that he will receive the relieving after the disposal of the writ petition. In view of the letter submitted by the petitioner the 3rd respondent had submitted a letter to the 1st respondent to clarify as to further action to be taken by the management. It was followed by a reminder dated 24.08.2015.

9. In view of this interim order, the petitioner is continuing inspite of rejection of his request by the 1st respondent. There is no order of re-employment, and hence this continuance does not have any legal sanctity. Therefore, the petitioner is not entitled to benefit after his request for re-employment has been rejected.

10. I have heard the submissions of both the parties.

11. From the materials placed before the Court and the arguments supported by counsel for both sides, the issue to be decided is as to whether the petitioner is entitled to re-employment in view of G.O.Ms.No.326, Education Department dated 10.02.1977 and Government Letter 5801/1-1/2006-1 dated 08.06.2006 or not? Secondly, as to whether the petitioner is entitled to continue inspite of rejection of his request and the effect of interim order passed by this Court. As contended by the learned Special Government pleader, Government Order G.O.Ms.No.326 Education Department dated 10.02.1977, reads as

under:

"2. The Government accept the above proposal of the Director of Technical Education and direct that with effect from the date of issue of these orders, the teaching staff of the Technical Education Department who attain the age of superannuation in the course of an academic year shall be sanctioned re-employment from the day next to the last day of the month in which they attain the age of superannuation to 31st May of the year."

12. In G.O.Ms.1430, Education Department dated 04.10.1989, further orders were issued delegating the power to sanction re-employment to the Director of Technical Education, the 1st respondent, wherein it is ordered subject to certain conditions.

" ii. Any amount of over payment pertaining to the pre-retirement period will be recovered by adjustment of the pay and allowance admissible to them during the period of re-employment.

iii. Their work and conduct should continue to be satisfactory

iv. Their service shall be liable for termination at one months notice on either side, within the specified term. Provided that it shall not be necessary for the authority which sanctioned the re-employment to give the notice of one month referred to above, to the re-employed officer if the services are terminated on the ground of moral turpitude."

13. As per condition no.(iii) the work and conduct of the teacher should be continued to be satisfactory and the services can be terminated at one month notice on either side and it provides for dispense with the notice to the re-employment officer if services are terminated on the grounds of moral turpitude. The Government in its letter No. 5801/1-1/2006-1 dated 08.06.2006 had issued orders to continue the services of teachers pursuant to the stay granted by this Court dated 27.12.2002 subject to the condition that no charge should be pending against them in Government or in the Court of law. Therefore, it is clear that Government for the benefit of coaching the students continuously and not to disturb their studies at the fag end when they are about to face the examination ordered re-employment of the teachers vide G.O.Ms.No.326 Education Department dated 10.02.1977. It was further clarified in G.O.Ms.1430, Education Department dated 04.10.1989 that it was subject to good work and conduct and it

is terminable without notice in the event of moral turpitude. On such terms the power was delegated to the Director of Technical Education.

14. It is further clarified that Government in its letter dated 08.06.2006 stated supra, pursuant to order of this Court that the re-employment will be granted subject to the condition that no charge should be pending against the teacher in Government or in the Court of law.

15. In the instant case, the petitioner has submitted his representation for continuance of service by re-employment till 31.05.2016 to the 2nd respondent on 23.04.2015 and it was forwarded by the 3rd respondent for the opinion of the 1st respondent.

16. It is important to note that a final report charge sheet u/s. 173 Cr.P.C was filed against the petitioner before the I class Judicial Magistrate Court, Chittur, Palakkad u/s. 170, 171, 411, 420, 420(b), 506(i), 109 r/w 34 I.P.C. Once a criminal case is pending, in which the petitioner is arrayed as accused number 4 the re-employment cannot be automatic. The correspondence between the petitioner, the management and the 1st respondent/Government shows that issue of re-employment was considered in detail. The 1st respondent ultimately had decided that the request cannot be accepted as there is no feasibility to accept the request and it was rejected. In that view of the matter, it is clear that re-employment of a teacher is not automatic and in respect of the petitioner it was not granted in favour of him. The petitioner in his affidavit filed in support of W.P.No.23498 of 2015 had submitted that as per G.O.Ms.No.326, Education Department dated 10.02.1977 he is entitled for re-employment till May 2016 and just because a formal written communication has not been sent by the 1st respondent, he cannot be denied of re-employment. He had also given an impression that the 3rd respondent asked him to submit his willingness to continue till the end of academic year and forwarded the papers to the 1st respondent for issuing necessary proceedings in that regard. Further, he would state that the petitioner met the 1st respondent in person on 28.07.2015 and he promised to issue necessary communication to 2nd and 3rd respondents. Therefore, considering the impression given by the petitioner and to avoid the damage at that situation, this Court had granted an order of interim injunction not to relieve the petitioner. But the fact remains that on 31.07.2015, the petitioner himself submitted a letter to retire him from service by 02.00 p.m. Later in the evening he requested the management not to relieve him till the disposal of injunction granted by the High Court. A conjoint reading all these orders would show that a criminal case was pending against the petitioner before the Judicial I Class

Magistrate Court, the 3rd respondent has not favourably recommended re-employment of the petitioner in view of the criminal case. The 1st respondent had rejected the request for re-employment on 31.07.2015 and the petitioner continued in employment in virtue of the interim order granted by this Court.

17. In this background it has to be seen whether re-employment of the petitioner is legal or not. As seen re-employment is not automatic but it shall be sanctioned by the 1st respondent that no charges are pending before the Government or in Court of Law. On 31.07.2015, the petitioner himself requested that he may be retired from service and relieving order may be issued to him. It is well settled that retirement of the teachers in Government colleges as well as Government aided colleges will take effect from the forenoon of that day. As per the letter submitted by the petitioner, he should have been relieved with effect from 02.00 p.m on 31.07.2015. Therefore, it should be construed that the petitioner was retired from service and the retirement was taken effect from the forenoon on 31.07.2015. He submitted a letter later in the evening that by virtue of the interim order granted by this Court, he should be continued in service. In that view of the matter, the interim order passed by this Court was much after the petitioner retiring from service. Further, as we observed that re-employment is not automatic and interim injunction was granted subject to the decision to be taken by the 1st respondent. On 31.07.2015, itself a decision was taken not to grant re-employment to the petitioner. In that view of the matter, the interim order of this Court will not have any effect on continuation of the petitioner without any order for re-employment. In such a view, the petitioner does not have any legal right to hold the post. When the order of rejection dated 31.07.2015 has been communicated to the petitioner, he must be aware of his status that he is not legally entitled to hold the post and no substantive right will accrue for his continuation in the said post stricto sensu. He has not chosen to challenge the order of rejection but continued with the strength of the interim order granted by this Court. Since no formal order of re-employment was given and as discussed above he did not possess legal sanction to hold the post, he will not be entitled to any benefits arising out of unrecognised services. The judgment of High Court of Patna in Rita Mishra and other vs. Director, Primary Education, Bihar and others, 1987 SCC Online Pat 159, whereunder it is held:

“ 45. In this somewhat exhaustive Judgement it is indeed apt if not necessary to collate the basic conclusion arrived at. In the light of the aforesaid discussion it is subsequently held :-

(1) Where the letter of appointment is a forged

one and the appointee is either a party or a privy thereto, then no substantive right to salary can accrue therefrom.

(2) Where the letter of appointment is forged, but the appointee is neither a party nor a privy to the same, even then, no substantive right to statutory salary can arise from a document which is non est or a nullity. It is neither necessary nor desirable to pronounce on the aspect, whether a civil suit for compensation under Section 70, Contract Act for services rendered not gratuitously or any other analogous law would be successfully maintainable.

(3) Where the letter of appointment has been obtained by the appointee fraudulently or for dubious considerations, no substantive right to salary *stricto sensu* would arise.

(4) Where the letter of appointment is flagrantly violative of the prescribed statutory procedure for selection and appointment to the post, the same would be illegal and there being no valid appointment in the eye of law, no substantive right to salary would arise.

(5) On the procedural aspect, where the basic and material facts are categorically controverted and traversed, the exercise of writ jurisdiction would be inapt and this would be doubly so in the case of a writ of mandamus, which cannot possibly issue on such a slippery base.

(6) Where the petitioners had not come to the portals of a Writ Court with clean hands, they must be relegated to their ordinary remedies.

(7) That Art.23 of the Constitution is not attracted in a situation of statutory service; where the letter of appointment is forged, fraudulent or illegal.

(8) That the doctrine of equal pay for equal work is not at all attracted to the case.

(9) That Art.21 of the Constitution or the right of livelihood thereunder has not the remotest analogy to the particular context.

(10) That the *de facto* doctrine of working on a post is distinct and separate and cannot possibly be invoked to sustain any claim for salary *stricto sensu*, where the very appointment thereto is in serious doubt."

Therefore, the petitioner who is not legally entitled to hold the post in view of G.O., Ms.No.326 Education Department, dated 10.02.1977. Therefore, is not entitled to any benefits pursuant to his continuance on strength of interim order granted

by this Court. Hence, writ petition W.P.No.23498 of 2018 merits no consideration and accordingly dismissed.

In so far as W.P.No.24136 of 2007 is concerned, in view of the reinstatement made by the 3rd respondent, nothing survives for adjudication and accordingly it is closed. No costs. Connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

To

1.The Commissioner of Technical Education
Chennai-25

2.The Chairman,
Governing Council,
Nachimuth Polytechnic College,
Udumalai Road, Pollachi-642 003

3.The Principal Incharge
Nachimuthu Polytechnic College,
Udumalai Road, Pollachi-642 003.
Coimbatore District

+2cc to M/s. Row and Reddy, Advocate SR.No.28888, 28889

W.P.Nos.24136 of 2007 and 23498 of 2015
&

M.P.Nos.1,2,3,4 and 5 of 2015 and M.P.No.1 of 2011

RSV (CO)
GMY (19/10/2020)

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