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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.12.2021

CORAM

THE HON'BLE MR. JUSTICE D.KRISHNAKUMAR

W.P.No. 15336 of 2008
and M.P.No. 1 of 2008

S.Sathya

..Petitioner

Vs

1. Union of India rep. By
Secretary to Government for Education,
Chief Secretariat, Puducherry.

2. Pondicherry Institute of Post Matric
Technical Education (PIPMATE)
rep. By its Member Secretary,
Lawspet, Puducherry.

3. The Chairman,
Pondicherry Institute of Post Matric
Technical Education (PIPMATE)
rep. By its Member Secretary,
Lawspet, Puducherry.

4. The Principal,
Women's Polytechnic College,
Lawspet, Puducherry.

..Respondents

Prayer: writ petition is filed under Article 226 of Constitution of India for Writ of Certiorari to call for the records of the 3rd respondent with No.B/1/2 PIPMATE/2008/A1/439 dated 30.05.2008 and to quash the same.

For Petitioner : Mr.Ajayakumar
For Respondents : Ms.G.Djearany, GA - R1
Mr.T.P. Manoharan, SC - R2 to R4

O R D E R

The writ petitioner had joined service of the 2nd respondent as Lecturer on 14.12.2001. The petitioner was placed on probation for a period of two years and subsequently her probation was declared by the respondents by order dated 15.05.2006. The respondents have prepared a tentative seniority



list on 21.03.20017 in which, the petitioner was placed at seniority no. 26 in the faculty of computer technology and subsequently a final seniority list also published by the respondents on 15.07.2007 in which the petitioner was placed at Sl.No. 23. As per the guidelines of the respondent-institute, the petitioner has submitted her explanation seeking permission to grant leave to pursue higher studies, the petitioner has submitted her application to the respondent on various dates on 05.03.2007, 06.04.2007, 27.04.2007 and 02.05.2007. In the meantime, the petitioner has got admission in the International Institute of Information Technology and received communication for admission in the aforesaid college for higher studies. Since the respondent has not communicated any reply to the petitioner's study leave, the petitioner had joined in the said college. Normally, the 2nd respondent-institution will take long time to process the application and issue orders. The petitioner took one month leave and joined in the aforesaid college, the respondent-institute informed that the petitioner is not entitled to take leave and directed to submit a separate application to convert the said leave into EOL. The petitioner after applying the said EOL, have been perused the course. That being so, the respondent has passed the impugned order dated 30.05.2008, informing that the petitioner's services shall stand terminated with effect from the date of expiry of a period of one month from the date on which the said notice is served or tendered to the petitioner. Challenging the same, the present writ petition is filed.

2. Heard both sides and perused the documents available on record.

3. According to the learned counsel for the petitioner, the impugned order issued by the respondent is contrary and illegal. The learned counsel for the petitioner further submitted that the petitioner was placed on probation for two years and she was declared as probationer by the order of the respondents dated 15.05.2006, therefore the petitioner's appointment was regularised by the 2nd respondent-Institute. The learned counsel further submitted that the leave application was pending with the respondent-institute and she joined in the institute for higher studies. Therefore, without providing any opportunity to the petitioner, the respondent has passed impugned order of termination from service.

4. The learned counsel for the petitioner relied upon Chapter XVII of Central Civil Service Rules. The learned counsel has also relied upon the decision of the Hon'ble Full Bench of the Hon'ble Supreme Court reported in 1977 3 SCC 399 in the case of S.B. Patwardhan & another Vs. State of Maharashtra and others and K.V.Ramakrishna and others Vs. State of Gujarat and



others. By relying upon the aforesaid decision, the learned counsel for the petitioner has submitted that since the petitioner has completed probation, she deemed to be treated as permanent employee, therefore, the termination order passed by the respondent is liable to be quashed.

“39. If officiating Deputy Engineers belong to Class II cadre as much as direct recruits do and if the quota system cannot operate upon their respective confirmation in that cadre, is there any valid basis for applying different standards to the members of the two group for determining their seniority? Though drawn from two different sources, the direct recruits and promotees constitute in the instant case a single integrated cadre. They discharge identical functions, bear similar responsibilities and acquire an equal amount of experience in their respective assignments. And yet clause (iii) of rule 8 provides that probationers recruited during any year shall in a bunch be 'treated as senior to promotees confirmed in that year. The plain arithmetic of this formula is that a direct recruit appointed on probation say in 1966, is to be regarded as senior to a promotee who was appointed as an officiating Deputy Engineer, say in 1956, but was confirmed in 1966 after continuous officiation till then. This formula gives to the direct recruit even the benefit of his one year's period of training and another year's period of probation for the purposes of seniority and denies to promotees the benefit of their long and valuable experience. If there was some intelligible ground for this differentiation bearing nexus with efficiency in public services, it might perhaps have been possible to sustain such a classification. It is interesting that time and again the State Governments themselves found it difficult to justify the hostile treatment accorded to the promotees. In various affidavits filed on their behalf, entirely contradictory contentions were taken, sometimes in favour of the promotees and sometimes in favour of direct recruits. Instead of adopting an intelligible differentia, rule 8 (iii) leaves seniority to be determined on the sole touchstone of confirmation which seems to us indefensible. Confirmation is one of the inglorious uncertainties of government service depending neither on efficiency, of the incumbent nor on the availability of substantive vacancies. A glaring instance widely known in a part of our country is of a distinguished member of the judiciary who was confirmed as a District Judge years after he was confirmed as a Judge of the High Court. It is on



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the record of these writ petitions that officiating Deputy Engineers were not confirmed even though substantive vacancies were available in which they could have been confirmed. It shows that confirmation does not have to conform to any set rules and whether an employee should be confirmed or not depends on the sweet will and pleasure of the government.

5. The learned counsel for the respondent-Institute objected that the writ petitioner has made application to the respondent for granting leave for pursuing higher studies. The said applications were returned by the respondent-Institute and directed the petitioner to submit the same through proper channel. Subsequently, the petitioner has made application and no decision was taken by the respondent-institute. The learned counsel has further submitted that the subsequent application was also returned on the ground that only 6 days of Earned Leave was available on her credit and the same was communicated to the petitioner on 27.07.2007, thereafter the petitioner has not approached the respondents, hence the termination order came to be passed by the 2nd respondent.

6. The learned counsel for respondent submitted that though the writ petitioner has completed probation and the same was declared by the respondent, the petitioner has no legal right as she was working only on temporary lecturer subject to the terms and conditions of her appointment.

7. The learned counsel for the respondents has relied upon the decision of this Court made in W.P.No. 15568 of 2010 dated 19.01.2010. The relevant portion is extracted hereunder;

7. Thus having held that the temporary service rules would be applicable to the 1st Respondent, the next question to be considered is as to whether the said rules could be made applicable to the Petitioner and whether the impugned order is legally sustainable. The Learned Counsel of the Petitioner placed reliance on the order dated 17.5.2006, by which the petitioner's probation was declared and in the said order it has been stated that the Petitioner and the other Lecturers who had been placed on probation for a period of 2 years have satisfactorily completed the period of probation in their respective post and in Column No.4 of the tabulated statement it has been stated that the date of "regular" appointment of the Petitioner is 28.12.2001. Further the Learned Counsel submits that the proceedings dated 21.3.2007 tentative seniority list was prepared in which the Petitioners name is in serial No.2 in the Computer Technology



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Department and therefore a combined reading of all these proceedings would go to show that the Petitioner is not a temporary employee. This factual aspect has been denied by the Respondents in their counter affidavit and a specific averment has been made stating that unless the DPC recommends the name of the candidate, the question of confirmation does not arise and that the temporary Lecturers appointed upto the year 1998 have been issued orders of confirmation and that the Petitioner having been appointed only on 28.12.2001, her case has not been considered by the DPC and she continued only as a temporarily Lecturer and her appointment was in accordance with condition 2(c) of the offer of appointment dated 14.12.2001 which clearly states that the appointment may be terminated at any time by giving one month notice on either side without assigning any reasons thereof and the appointing authority is also entitled to terminate the services before the expiry of the one month notice period by making payment of a sum equivalent to the pay and allowance for the period of notice. In the absence of any record submitted by the Petitioner disputing the averment made in the counter affidavit, it has to be taken to be true and if that be the case the Petitioner is only a temporary employee as her candidature did not come up for consideration before the DPC. It is noteworthy to mention at this juncture the law as declared by the Hon'ble Supreme Court in the case of State of UP vs. Rajendra Kumar Singh [(1997) 10 SCC 682], wherein the Hon'ble Supreme Court held that unless a positive decision by the Appointing Authority for confirming the temporary employee, such employee cannot claiming to be permanent merely because of completion of the period of probation. Having held that the Petitioner is a temporary employee, her service are liable for termination in accordance with the condition the offer appointment dated 14.12.2001, and having perused the impugned order, it is clear that the order is an order of termination simplicitor and it is also in consonance with the prescribed statutory format. Therefore no error could be attributed to the order impugned namely that the Respondent were justified in invoking the power under Rule 5 (1) of the temporary service rules.

8. The next submission which has to be considered at this point is whether the impugned order casts a stigma on the Petitioner, since it is stated by the Petitioner that her services came to be terminated on



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account of her request for grant of study leave. To consider this submission it is necessary to look into certain factual details. It is the case of Petitioner that she applied for under going M.Tech course at Pondicherry University and that her application was forwarded by the 2nd Respondent by letter dated 15.5.2007, it is thereafter she made a request for grant of EOL for the period of her study which came to be rejected. It has been stated by the Respondent that the Petitioner did not apply through the Respondents but had directly sent her original application to the Pondicherry University and Anna University and only a copy was given to the Respondents and even while forwarding the same to the Pondicherry University the Petitioner was informed through the 2nd Respondent that the forwarding of the application does not entitle the Petitioner to claim grant of study leave in case of her selection and she should apply for permission for sponsorship / NOC separately. Therefore the Respondents have kept the Petitioner informed that the grant of permission to pursue higher studies has to be separately obtained. Hence in my view that merely because the Petitioner has given a copy of the application to the Respondents which came to be forwarded to the Pondicherry University would not by itself be considered as grant of permission to pursue the course in the event of she securing admission. The petitioner having been appointed to the services of the Respondents has accepted her offer appointment and abide by the service rules and regulations of the 1st Respondent in force from time to time. While appreciating the Petitioner's zeal to acquire higher qualification, the procedure adopted by the Petitioner appears to be not in consonance with the rules and regulations of the 1st Respondent society. Though the Petitioner has pointed out certain instances where the Respondents have permitted certain other candidates to pursue the course without prior permission, cannot be a ground to justify the approach of the Petitioner. If candidates were permitted to pursue higher studies without permission at earlier point of time, the same cannot be cited as a precedent since it is the contention of the Respondents that prior permission is required. Therefore even assuming there were certain earlier instances it has to be held to be not in consonance with the rules and such departure from the rules cannot be cited as a precedent. However in paragraph 7 (A) of the counter affidavit the Respondents have stated about the permissions granted to the Lecturers in the computer technology department



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and therefore the factual aspects pleaded by the Petitioner alleging discrimination appears to be incorrect. On the aspects as to whether a stigma has been caused to the Petitioner on account of the impugned order, it would be relevant to note the law as declared by the Hon'ble Supreme Court, referred to by the Learned Counsel for the Petitioner. In the case of state of UP vs. Bhoop Singh, [AIR 1979 SC 684], the Hon'ble Supreme Court was dealing with a discharge order passed against a temporary Sub Inspector of Police, wherein the Hon'ble Supreme Court while considering as to whether the order of termination was by way of punishment or termination simplicitor, held as follows.

"6. Assuming, however, that the impugned order was made in the background of the allegations against the respondent concerning his behaviour with Smt. Phoolmati, we see no reason in law why a departmental enquiry should be necessary before the respondent's services could be terminated. It appears from the material before us that it was merely a preliminary enquiry which was made by the Superintendent of Police into the allegations made against the Respondent's conduct concerning the woman. No departmental enquiry by way of disciplinary proceedings was instituted, no charge was framed, and the formal procedure characterizing a disciplinary proceeding was never adopted.

" 7 There was nothing to prevent the Deputy Inspector General from deciding that instead of instituting disciplinary proceedings against the government servant he should consider whether the government servant was suitable for retention in service.....

....That it was not intended to take punitive action against the Respondent for his misbehaviour with Smt. Phoolmati is evident from the circumstance that thereafter the respondent was allowed an increment to his salary and was regarded as in service for all purposes. The High Court, it seems to us, did not have regard to all the facts and circumstances of the case, and appears to have assumed that the respondent's services were terminated as a measure of punishment...."



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8. Further the Hon'ble Supreme Court in the case of Commodore Commanding, Southern Naval Area vs. V.N.Rajan, [AIR 1981 SC 965] held that where the decision to terminate the services of the servant had been taken at the highest level on the ground of unsuitability of the servant in relation to the post held by him and it was not by way of any punishment and no stigma was attached to him by reason of the termination of his services, termination could not be said to be vitiated for non observance of Art 311 (2).

In the decision of State of UP vs. Rajendra Kumar Singh, referred supra the Hon'ble Supreme Court further held

...It appears that the records of service of the respondent are not good and if on consideration of such adverse records, a decision to terminate the temporary service of the respondent was taken and the order was passed without attaching any stigma, we do not think that such order would be held as illegal and a punishment in disguise....

In such view of the matter, it cannot be stated that there is any stigma attached to the Petitioner under the impugned order as the order is an order of termination simplicitor.

9. For the above reasons, I find that there are no good grounds to interfere with the impugned order and therefore the writ petition fails and is accordingly dismissed. No costs. "

8. The learned counsel for the petitioner has relied upon the Central Civil Service Rules, in which the instructions issued for conversion of temporary posts into permanent posts. Since the petitioner's service has not been confirmed by the respondent, the said Rules cannot be considered. Further more, the petitioner was absenting herself and not attending duty for about 11 months prior to the impugned order and she continued the same. It is also strongly contended by the learned counsel for the respondents that the leave application submitted by the petitioner is violative of the procedures. The petitioner has sent letters on her own to the respondent and continued to be absent for 11 months and joined M.Tech Course in IIIT, Hyderabad.

9. Considering the fact that the petitioner's appointment as temporary lecturer to teach computer technology was as per Rule 2(c) of CCS (Temporary Service) Rules 1965, and taking note of the fact that the petitioner has not followed due procedure for applying leave, this Court finds no grounds to interfere with



the termination order passed by the 3rd respondent. Further more, merely having the benefit of interim order in her favour, the same cannot be construed as the right of the petitioner.

10. Considering the facts and circumstances of the case and by relying upon the decision of this Court made in W.P.No. 15568 of 2010 dated 19.01.2010, this Court with no hesitation has come to the conclusion that the grounds raised by the petitioner are liable to be rejected as devoid of merits.

11. Accordingly, the writ petition stands dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CCC)

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Sub Assistant Registrar

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To

1.The Secretary to Government for Education,
Chief Secretariat,
Puducherry.

2.Pondicherry Institute of Post Matric
Technical Education (PIPMATE)
rep. By its Member Secretary,
Lawspet, Puducherry.

3.The Chairman,
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4.The Principal,
Women's Polytechnic College,
Lawspet, Puducherry.

+1cc to Mr.T.M.Naveen, Advocate, S.R.No.64643
+1cc to Mr.V.Ajayakumar, Advocate, S.R.No.66484

W.P.Nos. 15336 of 2008
and M.P.No. 1 of 2008

MT(CO)
CB(02/02/2022)