

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.03.2021

CORAM :

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.5739 of 2021

N.Raja

... Petitioner

Vs.

1. The Director of Collegiate Education,
EVK Sampath Maligai,
College Road, Chennai 600 006.
2. The Registrar,
Periyar University,
Salem 636 011.
3. The Principal,
Government Arts College (Autonomous),
Salem 636 007.
4. The Controller of Examination,
Government Arts College (Autonomous),
Salem 636 007. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Mandamus, directing the Respondents to reinstate the Petitioner into service in the post of Computer Programmer/Operator cum Typist within a limited time frame.

For Petitioner : Mr.R.Siva

For Respondents 1, 3 & 4 : Mr.S.Karthikaibalan,
Government Advocate

For 2nd Respondent : Mr.Godson Swaminathan

O R D E R

Petitioner has come up with this Writ Petition seeking a direction to the Respondents to reinstate him into service in the post of Computer Programmer/Operator cum Typist.

2. According to the Petitioner, in the year 2008, vacancy for the post of Computer Operator cum Typist in the 3rd Respondent College was notified in various Tamil and English Dailies. The Petitioner applied for the same and got appointed as Computer Programmer/Operator cum Typist on 07.05.2008, on daily wage basis. Since his appointment in the year 2008, his services were extended by the Respondents, periodically. It is further stated by the Petitioner that, he preferred a complaint dated 01.11.2015 to the higher Authorities against the then Controller of Examinations about the misuse of his power and breaking of Rules in the College. Thereafter, the Petitioner was not permitted to work in the said post for more than a month from 02.11.2015 to 16.12.2015. Though the Petitioner tendered an unconditional letter of apology and was allowed to rejoin, his services were terminated by the 3rd Respondent without assigning any reasons and he was restrained from functioning from 18.01.2019, by an oral order. Seeking reinstatement into service, the Petitioner submitted a representation dated 14.09.2019 to the Respondents. Due to COVID-19, he was unable to approach the Respondent College and hence, he made a further representation dated 18.01.2021 to the Respondents. As there is no response to the same, the Petitioner is before this Court by way of the present Writ Petition.

3. Heard the learned counsel on either side and perused the material documents available on record.

4. At this juncture, it is worth referring to an Apex Court decision in the case of A. Sundarambal vs. Government Of Goa, Daman And Diu, reported in (1988) 4 SCC 42, wherein, the view of the High Court was upheld that, the appellant, Teacher therein was not a "workman", though the Educational Institution was an industry, in view of the definition of "workman" and "Industry" under the provisions of the Industrial Disputes Act, 1947. For better appreciation, relevant portion of the said decision is extracted hereunder:

"10. The court held that the employee Mukerjee involved in that case was not a workman under Section 2(s) of the Act because he was not mainly employed to do any skilled or unskilled manual or clerical work for hire or reward, which were the only two classes of employees who qualified for being treated as "workman" under the definition of the expression "workman" in the Act, as it stood then. As a result of

the above decision, in order to give protection regarding security of employment and other benefits to sales representatives, Parliament passed a separate law entitled the Sales Promotion Employees (Conditions of Service) Act, 1976. It is no doubt true that after the events leading to the above decision took place Section 2(s) of the Act was amended by including persons doing technical work as well as supervisory work. The question for consideration is whether even after the inclusion of the above two classes of employees in the definition of the expression "workman" in the Act a teacher in a school can be called a workman. We are of the view that the teachers employed by educational institutions whether the said institutions are imparting primary, secondary, graduate or post-graduate education cannot be called as "workmen" within the meaning of Section 2(s) of the Act. Imparting of education which is the main function of teachers cannot be considered as skilled or unskilled manual work or supervisory work or technical work or clerical work. Imparting of education is in the nature of a mission or a noble vocation. A teacher educates children, he moulds their character, builds up their personality and makes them fit to become responsible citizens. Children grow under the care of teachers. The clerical work, if any they may do, is only incidental to their principal work of teaching. We agree with the reasons given by the High Court for taking the view that teachers cannot be treated as "workmen" as defined under the Act. It is not possible to accept the suggestion that having regard to the object of the Act, all employees in an industry except those falling under the four exceptions (i) to (iv) in Section 2(s) of the Act should be treated as workmen. The acceptance of this argument will render the words 'to do any skilled or unskilled manual, supervisory, technical or clerical work' meaningless. A liberal construction as suggested would have been possible only in the absence of these words. The decision

in May and Baker (India) Ltd. v. Workmen [AIR 1967 SC 678 : (1961) 2 Lab LJ 94, 97 : (1961-62) 20 FJR 147] precludes us from taking such a view. We, therefore, hold that the High Court was right in holding that the appellant was not a "workman" though the school was an industry in view of the definition of "workman" as it now stands."

5. In the case on hand, the Petitioner is a workman in terms of Section 2(s) of the Industrial Disputes Act, 1947. Even according to the Petitioner, he was orally terminated from service on 18.01.2019. Though the Petitioner claims to have sent a representation dated 14.09.2019 to the Respondents through Registered Post Acknowledgement Due (RPAD), requesting them to reinstate him in service, and that, the same has been received by the Respondents on 16.09.2017, there is no postal receipt to prove that, he has sent such representation, except the recent representation dated 18.01.2021 made to the Respondents.

6. Since the Petitioner is a workman, he is entitled to raise an Industrial Dispute within three years from the date of disengagement of his service. Hence, it is open to the Petitioner to approach the Labour Officer, initially, with regard to non-employment/termination from service and try for an amicable settlement, as this Court is not the appropriate forum to decide this issue. In case of failure within 45 days from the date of conciliation, it is open to the Petitioner to approach the appropriate Labour forum by filing necessary Claim Petition for adjudication of the Industrial Dispute to decide about the so-called non-employment/termination.

7. It is needless to mention that, the period during which this Writ Petition is pending, can be excluded for computing the limitation. If the petitioner is still out of time, he can raise a dispute through the Union, as there is no time limit prescribed for raising a dispute under Section 2(k) of the Industrial Disputes Act, 1947. The Apex Court has held that, in case, workers have a case on merits, monetary benefits for the delay can be deprived. It does not mean that, a dispute can be raised after a long delay after the time limit for preserving the records by the employer has expired and those documents are destroyed/not available. If the Petitioner has sufficient and genuine documents, he can produce the same, as, it is his responsibility to shift the burden on the employer.

The Writ Petition stands dismissed with the above observation. No costs.

Sd/-
Assistant Registrar (CS-IV)

//True copy//

Sub Assistant Registrar

(aeb)

To:

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EVK Sampath Maligai, College Road, Chennai 600 006.
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Salem 636 007.
4. The Controller of Examination, Government Arts College
(Autonomous), Salem 636 007.

+1cc to Mr.R.Siva, Advocate SR.No.15744

+1cc to M/s.Isaac Chambers, Advocate SR.No.15916

+1cc to Government Pleader SR.No.15176

W.P.No.5739 of 2021

LN (CO)
GMY (08/07/2021)

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