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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.08.2021

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THE HONOURABLE DR.JUSTICE ANITA SUMANTH

W.P. NO.32122 OF 2004

AND

WMP. NO.38895 OF 2004

D.Upendiran

...Petitioner

Vs.

1. The Director of Collegiate Education,
College Road,
Chennai - 600 006.

2. The Bharathiar University,
represented by its Registrar,
Coimbatore.

3. Bishop and Chairman,
Bishop Thorp College,
Dharapuram 638 657,
Erode District.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue Writ of Certiorarified Mandamus to call for the impugned order of the 3rd respondent dated 11.06.2004 and to quash the same and direct the 3rd respondent to continue to employ the petitioner as Lecturer untill the procedure under Section 25 of the Tamil Nadu Private College (Regulation) Act is followed to close B.A. Co-operation Course.



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For Petitioner : Mr.P.Premkumar
Mr.K.Vaidyanathan

For Respondents : Mr.C.Selvaraj
Government Advocate for R1
Ms.N.Kavitha for R2
Ms.H.Mary Soumi Rexi for R3

O R D E R

The petitioner was employed in the third respondent private college viz., Bishop Thorp College, Dharapuram as a lecturer in the Co-operation Department on 19.01.1987. He completed his probation on 19.01.1989 and has been in employment thereafter with R3 till 11.06.2004.

2. The college is self-financing and is governed by the provisions of the Tamil Nadu Private Colleges (Regulation Act), 1976 (in short 'Act') and the applicable Rules being the Tamil Nadu Private Colleges (Regulation Rules), 1976 (in short 'Rules'). The terms of employment were governed by agreement dated 19.01.1987 between the petitioner and R3.

3. As a preliminary challenge to maintainability, learned counsel for the third respondent would submit that the agreement is not in line with the stipulations contained in the statutory forms to be executed at the time of appointment of the lecturers. She would draw support from the aforesaid in advancing the legal submission that this writ petition is itself not maintainable since it concerns the interpretation of a private contract between the petitioner and R3 and is hence not amenable to Article 226 of the Constitution of India.

4. For the aforesaid purpose, she relies on a decision of a learned Single Judge of this Court in the case of J.Varghese Riju Vs. Directorate of Collegiate Education and four others in W.P. No.12391 of 2012 dated 17.09.2012. In that case, the writ petition was held to be non-maintainable, as what was questioned was the termination of service of the petitioner from Loyola College. The Court held that the terms of employment were contractual. Moreover, the learned Judge noted that the



college was self-financing and the parties governed by a contract of personal service and hence, the same cannot be enforced in writ proceedings.

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5. The aforesaid case is distinguishable for the reason that there was no appearance therein for the official respondents and the legal issue of whether the provisions of Section 25 of the Act and Rules would encompass self-financing colleges as well, was neither raised nor argued.

6. It is the contention of the petitioner herein that, being a private college, the provisions of Section 25 would apply and consequently the procedure set out under Rule 16 as per which, notice should be given in Form No.8 for closure of a private college to the competent authority before 1st September of the year preceding the year in which the closure is proposed.

7. Rule 16 (2), Sub Rules (a) & (b) mandate that when a college is proposed to be closed, it must be ensured that the students who have already been admitted to such course are not deprived of the benefit of continuance in a particular course or class and steps must be taken to resolve the same and secondly, the names and details of the service of the Junior-most teachers as well as others who have been rendered surplus on account of the closure must be furnished to the competent authorities for consideration of re-deployment to colleges where there is a requirement.

8. In the present case, what is argued is that the procedure set out under Rule 16(2)(b) has not been followed and as such, the petitioner was not afforded opportunity of being considered for re-deployment till his subsequent employment, albeit at a far more junior level than his employment in R3. Had he been considered for re-deployment, there would have been continuity of employment and also advancement in career as well as increased pay scales.

9. Learned counsel for the petitioner would rely on a decision of this Court in the case of Jawahar College Staff Association Vs. University of Madras represented by its Registrar (1994 (1) MLJ 376).



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'4. A reading of the above two provisions made is clear that whether a private college is an aided or an unaided college; whether it came into existence either before or after the date when the Act came into force makes no difference as long as it is a college which is maintained by an educational agency and approved by or affiliated to a university and permitted or deemed to be permitted under the Act it has to be held that it is a Private College falling within the scope of the Act. It is not disputed before us that the college in question is managed and maintained by an educational agency known as Jawahar Education Society consisting of body of persons. It is this society which is permitted to open the college. It is approved by, and affiliated to, the University of Madras. Thus, the private college in question satisfied all the conditions specified in the definition of the expressions 'private college' and "educational agency" under Secs.2(8) and 2 (4) respectively of the Act. The act is passed regulating the private colleges in the State of Tamil Nadu providing permission for establishment and management of private colleges; constitution of college committee; appointment of Special Officer in certain cases, terms and conditions of service of teachers and other persons employed in private colleges; control of private colleges; accounts, audit, inspections and returns; general provisions regarding appeal and revision; penalties and procedure and other miscellaneous matters. The executive power of the State Government to that extent gets circumscribed and it has to exercise its power only in conformity with the provisions of the Act and the Rules framed thereunder. Sec.3 of the Act provides that no person shall, without the permission of the Government and except in accordance with the terms and conditions specified in such permission, establish, on or after the date of commencement



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of the Act any private college, provided that it shall also be necessary to obtain affiliation of such college to a university. Sec.4 provides for the form of application and statement to be sent for the purpose of granting permission. Sec.5 deals with the grant of permission. Sec.6 covers the private colleges which were in existence on the date when the Act came into force and says that permission to such colleges is deemed to have been granted. Therefore the contention of the learned counsel that the permission granted to the college under G.O.Ms. No.873, Education, dated 24.6.1986 does not refer to the provisions of the Act and as such the permission cannot at all be held to have been granted as per the provisions of the Act, is not tenable. Whether the order of the State Government granting permission to start a new private college refers to the particular provision (s) of the Act or not, when such a power can only be exercised by the State Government under Secs. 3 and 5 of the Act, the competency of the State Government to pass such an order is traceable to Secs.3 & 5 only, irrespective of the fact whether the said Secs. 3 and 5 are mentioned in the order granting permission or not. Therefore, we are of the view that the college in question is a private college governed by the Act. It may be relevant to notice that the College itself has proceeded on the basis that it is governed by the Act. It has constituted the college committee as per Sec.11 of the Act, which provides for the constitution of college committee. In addition even in the appointment order issued by the college it is specifically stated that the same is in conformity with and is subject to the provisions of the Rules framed under the Act, known as the Tamil Nadu Private Colleges (Regulation) Rules, 1976, hereinafter referred to as the Rules. Therefore, we have no doubt in our mind that



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the Act in question governs all the private colleges permitted or deemed to be permitted under the Act whether aided or not, which have been established and maintained by an educational agency and approved by or affiliated to the University and which do not fall within the meaning of Sub-clauses (1) and (b) of clause (8) of Sec.2 of the Act. It is not even the case of the college that it falls under Sub-clauses (a) and (b) of the Clause (8) of Sec.2 of the Act. Therefore, we hold that the Jawahar Science College is a private college within the meaning and the definition, of that expression as contained in clause (8) of Sec.2 of the Act and as such it is governed by the provisions of the Act. Point No.1 is answered accordingly.'

10. Per contra, learned counsel for R3 would submit that the provisions of the Act and Rules do not apply to self-financing colleges at all. According to her, the approvals that are to be obtained under the Act are merely by way of intimation/information to the competent authority and no sanction or approval is contemplated or required. Thus Section 25 of the Act is not applicable to R3 college, as a result that the question of not adhering to the procedure under Rule 16(2) (b) does not arise.

11. A perusal of the Act would indicate that it extends to all private colleges within the State of Tamil Nadu. The term 'private college' is defined in terms of Section 2(8) of the Act to mean a college maintained by an educational agency and approved by, or affiliated to, a university with two specified statutory exclusions. Those exceptions or exclusions are (a) established or administered or maintained by the Central Government or the Government or any local authority or any university; or (b) giving, providing or imparting religious instruction alone, but not any other instructions. The petitioner is admittedly governed by an Educational Agency and is affiliated to the Bharathiyar College. The statutory pre-conditions are thus wholly satisfied.



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12. Barring the aforesaid two exceptions, all private colleges within the State of Tamil Nadu, whether aided or self-financing, would come within the coverage of the Act, except if specifically excluded for any other purpose.

13. That apart, a series of decisions in the case of R3 college itself, is relevant. Litigation was initiated in W.P. No.25404 of 2009 by one S.Chenniappan, who was a colleague of the petitioner herein, challenging order dated 29.10.2008 passed by the Directorate of Collegiate Education ordering the closure of Department in question with effect from 2008-09. While disposing the writ petition, the learned Judge specifically permitted R3 to file a representation seeking closure of the college, being of the view that the stipulations of Rule 16(2) (b) had not been adhered to. As against the aforesaid order R3 filed Writ Appeal in W.A. No.1360 of 2010 which came to be dismissed on 25.08.2010, confirming the position that the provisions of Rule 25 read with 16(2)(b) are applicable to private self-financing colleges as well.

14. That apart, S.Chenniappan had also moved W.P. No.13701 of 2011 challenging a subsequent order passed by R3 directing the closure of the College from academic year 2011-12 onwards. Mr.Justice.N.Kirubakaran in his order dated 22.11.2011 allowing the Writ Petition, has infact, considered the very same submission of the college in that matter to the effect that Rule 16(2)(b) would be applicable only to an aided college and has rejected it (paragraph 12). The aforesaid order was also carried in appeal and a Division Bench of this Court in W.A. No.898 of 2013 had, in the course of hearing of the Writ Appeal directed the College to consider re-deployment of that petitioner. The writ petition ultimately came to be closed with the Court directing that petitioner to avail the alternate employment that had been offered to him by the appellant college (R3 in this Writ Petition) in Bishop Heber College, Trichy. The aforesaid decisions thus make the legal position amply clear to the effect that Section 25 as well as the procedure under Rule 16 would be applicable to private, self-financing colleges as well. The submissions of R3 on this score are rejected.



15. The only question that remains is the applicability of the above legal position to the petitioner's case and the resultant consequences. The petitioner had admittedly sought and obtained, though somewhat demoted, and at a junior level, alternate employment since 2007. However, had the provisions of Section 25 and Rule 16(2)(b) been applied as provided for, he would not have suffered discontinuity in his employment between 2004 and 2007 and could have enjoyed all consequential benefits.

16. In my view, he is entitled to salary for the intervening period, that is from the date of his termination till the date of re-employment being 11.06.2004 to 06.03.2007. Let the amount be quantified and paid over to the petitioner within a period of eight (8) weeks from today.

17. This will ensure that there is no discrimination in the treatment meted out to identically placed faculty, as compared with S.Chenniappan. Though learned counsel for R3 would state that he has not been employed for the aforesaid period, it was incumbent upon the authorities to have followed and applied Rule 16, and make an attempt to re-deploy the petitioner. There is thus a loss of opportunity to which a cost must be attributed. Furthermore, it is admitted that it is only in 2011 that the Directorate of Collegiate Education had discontinued with the course in question, with effect from Academic Year 2011-12. Thus what had transpired in the intervening period as between R3, the Directorate of Collegiate Education and the Bharathiyar University cannot, in my view, prejudice the petitioner/faculty in any way.

18. This Writ Petition is allowed in the aforesaid terms. Connected Miscellaneous Petition is also closed. No costs.

Sd/-
Assistant Registrar(CS-VI)

// True Copy //

Sub Assistant Registrar

rkp



1. The Director of Collegiate Education,
College Road, Chennai - 600 006.

2. The Registrar,
Bharathiyar University,
Coimbatore.

+1cc to Mr.P.Premkumar, Advocate, S.R.No.42180

+1cc to the Government Pleader, S.R.No.42336

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and
WMP. No.38895 of 2004

GPL(CO)
RLP(23/09/2021)