



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 17.12.2019

DELIVERED ON : 09.02.2021

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P(MD)No.1170 of 2012

and

M.P. (MD) .No.1 of 2012

G.Srinivasan

... Petitioner

Vs.

1.The State of Tamil Nadu,
rep. by its Secretary,
Department of Higher Education,
Fort St. George, Chennai - 600 009.

2.The Principal Secretary /
Commissioner of Technical Education,
Directorate of Technical Education
(Polytechnic), Guindy,
Chennai - 600 025.

3.The Governing Council,
Sankar Polytechnic College,
Sankar Nagar - 627 357,
Tirunelveli District,
represented by its Chairman.

4.The Principal,
Sankar Polytechnic College,
Sankar Nagar - 627 357,
Tirunelveli District.

5.B.N.Venkatraman,
the Manager (Accounts & Administration),
Sankar Polytechnic College,
Sankar Nagar - 627 357,
Tirunelveli District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order of dismissal passed by the 4th respondent / Principal dated



04.01.2012 and quash the same and to direct the 3rd and 4th respondents to reinstate the petitioner forthwith into service as Assistant with all attendant benefits, including arrears of salary, allowances and continuity of service.

For petitioner : Mr.S.Xavier Rajini

For respondents 1 to 3 : Mr.S.Dhayalan,
Government Advocate

For respondents 4 & 5 : Mr.K.Prabhakar

ORDER

This writ petition has been filed by the petitioner challenging the order dismissing him from service passed by the fourth respondent dated 04.01.2012 and to direct the 3rd and 4th respondents to reinstate him into service with all service and monetary benefits.

2. The learned counsel appearing for the petitioner submitted that the petitioner was appointed as Junior Assistant in the 4th respondent Polytechnic College on 01.09.1993 and he was promoted as Assistant on 25.02.2000. While so, the 5th respondent took charge as Manager on 10.05.2010 and he commanded to do several things which were not appropriate under law. As the petitioner did not cooperate with the 5th respondent to do so, on 22.09.2010 the 5th respondent made the 4th respondent / Principal to suspend the petitioner from service on the vague allegations of disobeying their instructions and behaving in a disorderly manner. The 4th respondent without the approval of the Governing Council issued the suspension order. On 12.11.2010, the 4th respondent issued a charge memo levelling six charges, which read as follows:

"1) On 10th August, 2010, you were instructed to prepare cheques amounting to Rs.35 for transferring the excess amount lying in our Grant account to a fixed deposit. Despite frequent reminders, from our Manager (A & A), you have not prepared the cheques and finally the cheques were prepared only on 02.08.2010, a delay of more than 20 days resulting in revenue loss to the polytechnic.

2) On 12th August 2010, you were instructed to prepare draft replies to the audit queries forwarded by the DOTE relating to the year 2005-06. You have bluntly refused to prepare the replies. In fact, the audit queries forwarded by the DOTE for many years have been pending with you and despite frequent reminders from DOTE as well as from Management, you have not prepared the replies. On the contrary, when you were advised to prepare the replies, you have



shouted at the Principal and Manager (A & A) and walked out from the room without giving any proper commitment or answer for preparing the audit replies.

3) On 18th September 2010, during a meeting when all Office staff were called for the purpose of issuing an office order for the preparation of audit replies, you have behaved in a disorderly manner questioning the authority of your superiors and refusing to accept the office order issued to you.

4) The amount collected in cash towards application forms commencing from 17th May 2010 were not remitted to bank by you on the immediate succeeding working day. On the other hand, huge amounts have been retained by you and remitted to bank after a delay of six days. The application form fees collected from 17.05.2010 onwards upto 14.06.2010 have been finally remitted into the bank only by 19.07.2010.

5) Despite our repeated instructions to you and to all staff not to collect the students' fees in cash, but to advise them to remit the same into the bank under the prescribed chalan, you have collected the fees amounting to Rs.29,600/- from seven students and not remitted the same to bank on the immediate succeeding days.

6. The Office working hours are from 9 a.m. to 5 p.m. while you came to the office by 9 a.m., it is a regular practice of you to leave for canteen immediately and return to your seat only by 10 a.m. despite repeated instructions to you not to leave your seat without prior permission from your superior officers. Similarly, you have been leaving your seat by 4 p.m. to go to the canteen and return only by 5 p.m. at the close of office hours without obtaining any official permission."

The petitioner has sent a representation on 16.11.2010 requesting to provide certain documents and to grant 30 days time to submit the explanation. The 4th respondent sent a reply dated 25.11.2010 refusing to give the documents and directing the petitioner to submit his explanation within seven days. Thereafter, on 02.12.2010 the petitioner has submitted his explanation. On 07.12.2010, the 4th respondent issued a letter stating that there were some typographical error in the charge memo at charge Nos.1 and 3. The petitioner has submitted his explanation on 18.12.2010.

3.The learned counsel appearing for the petitioner further submitted that challenging the order of suspension, the petitioner has filed a writ petition in W.P.(MD).No.2580 of 2011. While so,



the 4th respondent sent a letter dated 01.04.2011 informing about appointment of an Enquiry Officer and directing him to attend enquiry on 11.04.2011. On 04.04.2011, the petitioner sent a letter requesting the 4th respondent to defer the enquiry in view of pendency of the writ petition. The 4th respondent refused to accept the said request. The Enquiry Officer sent a letter dated 15.04.2011 to the petitioner to attend enquiry on 21.04.2011. The petitioner has sent a letter to the Enquiry Officer requesting to defer the enquiry. The Enquiry Officer, by his letter dated 22.04.2011, refused to defer the enquiry and directed the petitioner to attend the enquiry on 29.04.2011 or otherwise the enquiry would be conducted in *ex parte*. Again, the petitioner sent a letter to the Enquiry Officer to defer the enquiry on 28.04.2011. However, the Enquiry Officer conducted the enquiry in the absence of the petitioner on 29.04.2011 and submitted a report on 15.05.2011 holding that the petitioner is guilty of all the charges. The 4th respondent issued a show cause notice dated 08.06.2011 enclosing a copy of the enquiry report.

4. He would further submit that challenging the said show cause notice, the petitioner has filed another writ petition in W.P.(MD).No.6116 of 2011. This Court, by order dated 13.10.2011, dismissed both the writ petitions i.e., W.P.(MD).No.2580 of 2011 and W.P.(MD).No.6116 of 2011. However, this Court granted time to the petitioner to submit his explanation to the second show cause notice. Accordingly, the petitioner submitted his explanation on 02.11.2011. Thereafter, the 4th respondent, by the impugned order dated 04.01.2012, dismissed the petitioner from service. Challenging the said order, the petitioner is before this Court.

5. The learned counsel appearing for the petitioner further submitted that the Polytechnic College is governed by the Grant-in-Aid Code of the Madras Technical Education Department. Article 14 of the Code mandates that "No employee of the institution shall be punished or dismissed except in accordance with the instruction given in Appendix 3 which deals with the procedure for taking disciplinary action on the members of the staff. As per paragraph No.2 of Appendix 3, the power of dismissal vests only with the Chairman of the Governing Council. Though it is stated by the 4th respondent that in this regard, a clarificatory circular dated 07.09.2007 has been issued by the Director of Technical Education, the circular cannot supersede the Code. Therefore, the impugned order passed by the 4th respondent / Principal of the College is wholly without jurisdiction and hence, it is liable to be set aside.

6. He would further submit that the petitioner has not been issued with documents relied on by the College either with the charge memo or with the enquiry report and therefore, the



petitioner could not give effective reply and defend his case. Thus, the impugned order is liable to be set aside on the ground of violation of principles of natural justice also. He would further submit that it is well settled that an alternative remedy is not an absolute bar to the invocation of the writ jurisdiction. As there is violation of the principles of natural justice and the impugned order has been passed wholly without jurisdiction, this writ petition is maintainable and this Court may interfere with the impugned order and direct the respondents to reinstate the petitioner into service with all service and monetary benefits. Thus, he prayed to allow this writ petition.

7. The learned Government Advocate appearing for the official respondents submitted that the College is an aided Private College and hence, the provisions contained in the Tamil Nadu Grant-in-Aid Code is applicable. As per the provisions contained in the Code, the disciplinary authority for non teaching staff of the aided private Polytechnic college shall be the Governing Council and the appellate authority is the College management and as such, the official respondents have no role in the matters of the disciplinary cases against non teaching staff of aided private polytechnic college. Thus, he prayed to dismiss this writ petition in respect of the official respondents.

8. The learned counsel appearing for the respondents 4 and 5 submitted that the College is governed by the Code. The detailed procedure in Appendix 3 of the Code does not anywhere state that the copies of the documents and list of witnesses are to be provided along with the charge memo to the delinquent employee. Even assuming that the 4th respondent ought to have supplied the same, the petitioner by his misconduct has waived the right to state that the non production of document has caused him prejudice. Further, the petitioner has not raised any grievance about non supply of documents in his explanation. Though the petitioner has challenged the second show cause notice on the ground that the entire domestic enquiry is illegal, this Court has dismissed the said writ petition on the ground of maintainability and the availability of alternative remedy and this Court had only directed the petitioner to submit his explanation. As against that order, the petitioner has not filed an appeal and therefore, it has become final. Thus, the petitioner has accepted the domestic enquiry upto the stage of the second show cause notice and the legality of the same cannot be questioned in the instant writ petition, after it having been agitated unsuccessfully in the earlier round.

9. He would further submit that though the clause 2 Appendix 3 of the Code says that the penalty of dismissal from service can be passed by the Governing Council, Article 15(i) of



the Code says that the teaching staff shall appeal against all minor and major penalties including dismissal to the Director; and the non teaching staff for all minor/major penalties to the Governing Council. That means, the disciplinary authority and the appellate authority for non teaching staff are one and the same ie., the Governing Council. This conflict in the provision leads to an absurd position. Therefore, the second respondent, by circular dated 07.09.2007, has clarified that for non teaching staff, the Principal shall act as the authority initiating disciplinary proceedings and person imposing punishment, and the Governing Council shall act as the appellate authority and that for teaching staff, the Governing Council shall act as the disciplinary authority and the Director of Technical Education, shall act as the appellate authority. Though it is stated by the petitioner that the circular cannot supersede the Code, it cannot be accepted, in view of Article 76 of the Code, which clearly and categorically says that "notwithstanding anything in these rules, it shall be binding on the Management to give effect to and implement faithfully every order passed by the Government or the Director and made applicable to the institution. It shall be open to the sanctioning authority to withhold the grant in respect of an institution proved to have wilfully violated any such order." In short, Article 76 makes it clear that it is the duty of the institution to follow all the orders of the Government and Director, irrespective of the Code. Therefore, as per the circular dated 07.09.2007, the 4th respondent has initiated the disciplinary proceedings and imposed punishment after following the procedures. As the impugned order passed by the 4th respondent is in consonance with the Code and circular dated 07.09.2007, the same need not be interfered with. Thus, he prayed to dismiss this writ petition.

10. Heard the learned counsel appearing for both sides and perused the materials available on record.

11. In this case, totally six charges were framed against the petitioner alleging misconduct, disobedience and temporary misappropriation of funds. The order of dismissal from service passed in ex parte. The petitioner has filed this writ petition without availing effective alternative remedy of appeal. The main ground on which the petitioner sought to set aside the impugned order is that there is a violation of principles of natural justice by non supplying the documents relied by the management. It is seen that the petitioner had filed W.P.(MD).No.6116 of 2011 questioning the second show cause notice. In the affidavit filed in support of the said writ petition, the petitioner did not raise the ground of non supply of documents. In that writ petition, by order dated 13.10.2011, this Court has specifically directed the petitioner to approach the appellate authority, if any adverse



order is passed. Even then, the petitioner has filed this writ petition. Hence, this Court is not inclined to entertain this Writ Petition. However, this Court is of the view that it would be appropriate to direct the petitioner to approach the appellate authority mentioned in the impugned order and to raise the grounds raised in this writ petition.

12. In the result, this Writ Petition is disposed of with a direction to the petitioner to approach the appellate authority mentioned in the impugned order within a period of three weeks from the date of receipt of a copy of this order and if the petitioner files an appeal within the above stipulated time, the appellate authority shall entertain the appeal without going into the question of limitation as he has approached this Court within the limitation period and he has been litigating only before this Court for these long years, and dispose of the appeal on merits and in accordance with law, within a period of three months from the date of receipt of appeal. It is open to the petitioner to raise all the grounds before the appellate authority. It is made clear that the appellate authority, while deciding the appeal on merits, shall not be influenced by any observation made by this Court in this order and the appeal shall be decided on its own merit. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

Bala

To

1.The Secretary,
Department of Higher Education,
Fort St. George,
Chennai - 600 009.

2.The Principal Secretary /
Commissioner of Technical Education,
Directorate of Technical Education (Polytechnic),
Guindy, Chennai - 600 025.



3.The Chairman, Governing Council,
Sankar Polytechnic College,
Sankar Nagar - 627 357,
Tirunelveli District,

+1 CC to M/s.K.PRABHAKAR, Advocate (SR-4103[F] dated 09/02/2021)

+1 CC to M/s.ISSAC CHAMBERS, Advocate (SR-4196[F] dated
10/02/2021)

order made in
W.P (MD) No.1170 of 2012
09.02.2021

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