



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON:	16.03.2021
DELIVERED ON:	19.03.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P. (MD)No.8717 of 2020

and W.M.P. (MD) Nos.8029 & 8030 of 2020

(Through Video Conference)

R.V.Rajavel

... Petitioner

Vs

1) The State of Tamil Nadu,
Rep., by its Secretary to Government,
Higher Education Department,
Secretariat, Chennai.

2) The Director,
Directorate of Technical Education,
53, Sardhar Patel Road,
Guindy, Chennai 600 025

3) The Secretary,
Virudhunagar S.Vellaichamy
Nadar Polytechnic College,
Virudhunagar 626 001

4) The Chairman,
Virudhunagar S.Vellaichamy
Nadar Polytechnic College,
Virudhunagar 626 001

5) Mr.V.P.P.K.C. Narayanamoorthi,
The Secretary,
Virudhunagar S.Vellaichamy
Nadar Polytechnic College,
Virudhunagar 626 001

6) The Principal,
Virudhunagar S.Vellaichamy
Nadar Polytechnic College,
Virudhunagar 626 001

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order passed by the 3rd respondent in his proceedings குறிப்பாணை எண்.எம்.50-201-V3/O-10826-3173 dated 14.11.2018 and quash the same as illegal and consequentially to direct the respondents to reinstate the petitioner as lecturer in the fourth respondent College along with monetary and service benefits including the salary for the period between 14.11.2018 and



as on date of reinstatement within the period that may be stipulated by this Court.

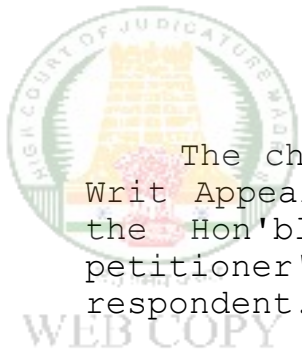
For Petitioner : Mr.M.Ajmal Khan,
Senior Counsel for
M/s.Ajmal Associates
For RR 1 & 2 : Mr.A.Muthukaruppan,
Additional Government Pleader
For RR 3 to 5 : Mr.Veerakathiravan,
Senior Counsel for
M/s. Veera Associates
For R-6 : Mr.G.Mariappan

O R D E R

The brief facts of the case are as follows:-

(1.1.) The petitioner herein was appointed as a Lecturer in the Mechanical Engineering Department of the 3rd respondent College on 06.07.2015. In connection with the approval of his appointment, a writ petition in W.P.(MD).No.3831 of 2018 was filed and by an order, dated 23.03.2018, the writ petition was allowed in the following manner:-

"6.In the said case, the post in question was lecturer in polytechnic and the candidates concerned should have degree in Public Administration. The Hon'ble High Court held that they are not inter-changeable but reversing the said decision, the Supreme Court held that since an expert namely UGC declared that subjects in Political Science and Public Administration are inter changeable and inter-related, the candidate possessing Masters degree in Public Administration is eligible for the post of Lecturer in Political Science and vice versa. Of-course, in this case, Anna University has given a contra opinion and based on the same, the first respondent has taken a decision. But this Court is of the view that the opinion given by AICTE is to be accepted. Therefore, the order impugned in this writ petition stands quashed. The first respondent is directed to accord approval to the appointment of the writ petitioner as Lecturer in Mechanical Engineering in the second respondent College with effect from 06.07.2015 and release grant-in-aid towards the salary and all other benefits within a period of four weeks from the date of receipt of a copy of this order. The writ petition stands allowed. No costs. Consequently, connected miscellaneous petitions are closed."



The challenge to the above order of the learned single Judge in Writ Appeal W.A.(MD).No.884 of 2019 and the further appeal, before the Hon'ble Supreme Court were dismissed. Consequently, the petitioner's appointment was approved on 23.03.2020 by the 2nd respondent.

(1.2.) In the meanwhile, there was a change in the Management of the third respondent on 31.08.2018. The new Management /6th respondent, had issued a show cause notice on 08.11.2018, alleging that the petitioner had unauthorisedly taken photographs of some documents pertaining to the College and uploaded the same in a social media. The show cause notice was followed by the impugned order dated 14.11.2018, whereby, the petitioner's services were terminated.

2.The learned Senior Counsel for the petitioner would submit that the appointment of the petitioner is deemed to be approved with effect from the date of his initial appointment, i.e., from 06.07.2015. Insofar as the present order of punishment is concerned, it is his submission that the same cannot be sustained on two major grounds. Firstly, the order is in violation of Section 19 of the Tamil Nadu Private Colleges Regulation Act and secondly, the order of termination was in violation of principles of natural justice, since the prior approval of the competent Authority was not obtained.

3. Per contra, the learned Senior Counsel for the respondents 3 to 6 would submit that the petitioner's appointment was approved only on 23.03.2020 and therefore, on the date when the petitioner was terminated, the post was not approved and hence the Regulation under Section 19 of the Tamil Nadu Private Colleges Regulation Act will not apply. Insofar as the violation of principles of natural justice is concerned, the learned counsel would submit that pursuant to the show cause notice dated 18.11.2018, the petitioner herein had not submitted his reply. He would also submit that earlier, on a similar set of charges, the petitioner was issued with a show cause notice on 08.09.2018, for which, he had given his reply, on 19.09.2018, which was considered in the present impugned proceedings and hence, there is no violation of the principles of natural justice.

4. The learned Additional Government Pleader submitted that pursuant to the orders of this Court passed in W.P.(MD) No.3831 of 2018 as well as in Cont.P.(MD) No.749 of 2019, the second respondent herein had approved the appointment of the petitioner on 23.03.2020.

5. I have given careful consideration to the submissions made by the respective learned counsels.



6. It is not in dispute that the petitioner was initially appointed in the third respondent College on 06.07.2015 and his appointment was approved by the second respondent on 23.03.2020. The main objection of the College Management seems to be that, such an approval would be effective from the date of the grant of the approval and not from the date of the initial appointment of the petitioner.

7. The petitioner herein possessed the required qualification and experience at the time of his appointment to the post of Lecturer in the third respondent College and such an appointment was also made in accordance with the Rules. It is a settled proposition of law that, when the appointment of a qualified Lecturer is approved at a later date, the approval shall be given effect from the date of the original initial appointment of the Lecturer. Such a legal position has been laid down in various decisions of the Hon'ble Supreme Court as well as the High Courts and the decision of a Constitutional Bench of the Hon'ble Supreme Court in the case of **Direct Recruit Class II Engineering Officer's Association vs. State of Maharashtra and others** reported in (1990) 2 SCC 715, has held that, when an appointment is made in accordance with the Rules, seniority is to be counted from the date of such appointment and not from the date of confirmation. The aforesaid proposition has been reiterated in various other decisions of the Hon'ble Supreme Court as well as including the case of **Pramod K.Pankaj vs. State of Bihar and others** reported in (2004) 3 SCC 723.

8. The order of approval of the petitioner's appointment does not stipulate as to from what date the approval has been granted. In the absence of the same and in the light of the aforesaid pronouncements of the Hon'ble Apex Court, it has to be necessarily held that the petitioner's appointment has been approved by the second respondent with effect from 06.07.2015, which is the date of his initial appointment. As such, the submission of the learned Senior Counsel for the respondents 3 to 6 is unfounded.

9. Insofar as the ground of violation of Principles of Natural Justice is concerned, the impugned order of termination, dated 14.11.2018 does not indicate that the petitioner was called for an enquiry nor was his objections considered. The respondents claim to have issued a show cause notice dated 08.11.2018, to which, the petitioner had not rendered his objections. A perusal of the show cause notice indicates that the petitioner was called upon to render his objections by 09.11.2018, which is the next date after the date of the show cause notice. The very purpose of issuance of show cause notice is to give an opportunity to the delinquent to raise his objections and further cause of action could be decided on the basis of such objections. However, the respondents / College Management seem to have hastily and hurriedly proceeded with the action contemplated and without extending sufficient time, had



terminated the petitioner from his services. Accordingly, it can be said that such indiscriminate procedure of extending 24 hours for filing of objections, is not granting of due opportunity but rather would amount to denial of such opportunity. Furthermore, the reference to the objections given by the petitioner to an earlier show cause notice for a different cause of action, may not be relevant for the purpose of considering the present alleged delinquency. For all these reasons, the impugned order of termination, dated can be said to be in violation of the Principles of Natural Justice.

10. Accordingly, the impugned order passed by the 3rd respondent in his proceedings குறிப்பாணை எண்.எப்.50-201-V3/O-10826-3173 dated 14.11.2018 is quashed and the petitioner's appointment as a Lecturer in the Mechanical Engineering Department of the third respondent College is declared to have been approved from 06.07.2015, which is the date of his initial appointment. Consequently, the respondents 3 to 6 are directed to reinstate the petitioner as Lecturer in their College and disburse all the monetary and service benefits. However, the petitioner shall not be entitled for the arrears of salaries on the principle of 'no work, no pay'.

11. The Writ petition stands allowed accordingly. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar ()

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate / litigant concerned.

To:

- 1) The Secretary to Government,
Higher Education Department,
Secretariat, Chennai.
- 2) The Director,
Directorate of Technical Education,
53, Sardhar Patel Road,
Guindy, Chennai 600 025



+1 CC to M/s.VEERA ASSOCIATS, Advocate (SR-11675[F] dated 17/03/2021)

+1 CC to M/s.SPL GP (SR-12565[F] dated 19/03/2021)

+1 CC to M/s.AJMAL ASSOCIATES, Advocate (SR-12674[F] dated 22/03/2021)

+1 CC to M/s.VEERA ASSOCIATES, Advocate (SR-12687[F] dated 22/03/2021)

W.P. (MD)No.8717 of 2020
19.03.2021

NA (CO)
KB (17.04.2021) 6P 7C