



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **01.12.2021**

CORAM :

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P(MD).No.12918 of 2014

and

M.P(MD).Nos.1, 2, 3 and 4 of 2014

P.Rajasekaran

... Petitioner

Vs.

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

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

3.The Joint Director of Collegiate Education,
30, Vaidyanatha Iyer Street,
Shenoy Nagar, Madurai-625 020.

4.The Secretary & Correspondent,
N.M.S.S.Vellaichamy Nadar College,
Nagamalai, Madurai-625 019.

... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned proceedings issued by the second respondent the Director of Collegiate Education in Na.Ka.No.53311/G2/2011 dated 08.02.2013 and quash the same and further direct respondents to reinstate the petitioner in service as Lecturer in Selection Grade in Computer Science with continuity of service including all monetary benefits.

For Petitioner : Mr.P.Muthuvel

For R1 to R3 : Mr.D.Sasikumar
Additional Government Pleader

For R4 : No Appearance



O R D E R

The petitioner states that he is a Selection Grade Lecturer in the fourth respondent College, which is a private aided college. The college issued a charge memo, dated 09.12.2003 and an additional charge memo cum suspension order, dated 14.07.2004. The charge memo contained 26 charges alleging that the petitioner concluded with one Dr. S. Yeshudhasan, Principal of the College and misappropriated a sum of Rs.10,100/- towards purchasing computer parts.

2.The petitioner challenged the Charge Memo dated 09.12.2003 and an additional charge memo cum suspension order dated 14.07.2004 in W.P.(MD).No.667 of 2004 and obtained an interim order. Based on the interim order, the petitioner continued his service in the fourth respondent college. The petitioner filed another W.P. (MD). No.882 of 2004 challenging another charge memo dated 17.08.2004. Both the writ petitions were dismissed vide order dated 04.02.2005.

3.The petitioner was directed to appear before the enquiry on 20.08.2005. The petitioner sent a telegram requesting to defer the disciplinary proceedings to be held on 17.08.2004, since a new college committee election is under process but the election new committee is challenged in W.A.(MD).No.47 to 49 of 2005. The request of the petitioner was declined and the college committee conducted enquiry on 20.08.2005. But the petitioner challenged the committee as null and void and did not appear. Again the college directed the petitioner to appear before the enquiry officer on 30.08.2005 vide letter 28.05.2005. Again, the petitioner did not appear and the College Committee concluded the enquiry and submitted its report on 03.09.2005.

4.The college issued show cause notice, dated 09.09.2005, directing the petitioner to submit explanation for the imposition of major punishment. The petitioner vide letter dated, 16.09.2005, questioned the very validity of the college committee. Thereafter the college passed a resolution dated 22.09.2005 and based on the resolution the college dismissed the petitioner from service on 27.09.2005. The Secretary intimated that a detailed order would be issued shortly. However, the petitioner did not receive the order but received a telegram on 30.09.2005, intimating that the college submitted its resolution and the school had submitted papers before the competent authorities for getting prior approval for dismissal.

5. The college submitted the order of punishment seeking approval from Joint Director of Collegiate Education, but the same was not approved. Aggrieved over the college preferred an appeal before the Director and that was also rejected. Then the college preferred an appeal before the Secretary, Department of Higher



Education. The Government vide G.O.(3D) No.5 (Higher Education (E2) Department) dated 14.10.2009 has confirmed the punishment order.

6. After passing of the G.O. (3D) No. 5, the college issued an order of punishment dated 16.11.2009 and the petitioner has challenged the said order before the Director of Collegiate Education on 15.12.2009 and the same was dismissed on 25.10.2011. Aggrieved over the petitioner preferred an appeal before the government and the government has passed an dated 08.02.2013, wherein it has rejected the petitioner appeal filed against order of dismissal from service. Aggrieved over the petitioner has preferred the present writ petition to quash the impugned order dated 08.02.2013 and sought a consequential prayer to reinstate.

7. Heard the learned Counsel Mr. P. Muthuvel for the petitioner and learned Counsel Mr. D. Sasikumar Additional Government Pleader Respondent 1 to 3.

8. It is pertinent to stated that the petitioner has not challenged the said G.O.(3D)No.5. After passing this G.O. the petitioner has preferred an appeal before the Director, praying to quash the order passed by the College, dated 16.11.2009 and praying to reinstate the petitioner with all service and monetary benefits. The Director has passed the impugned order, challenging the same the present Writ Petition is filed.

9. The petitioner claims that the Director of College Education has passed the order without assigning any reasons, hence, the order is a non-speaking order and ought to be set aside. The learned Government Pleader appearing for the respondents pointed out that the College has filed an appeal before the Joint Director which was dismissed, then an appeal was preferred before the Director and the same was dismissed by the Director. Then Government has confirmed the dismissal order of the petitioner. In such circumstances the appeal filed before the Director is not maintainable. Moreover, the petitioner has not challenged G.O.(3D)No.5, which was passed in the year 2009 and the petition is hit by the principles of latches.

10. The Government has passed G.O.No.171, dated 24.11.2020, wherein, a Tribunal has been constituted for the litigations between the College and the employees. Therefore, the respondent prayed the matter may be dismissed and the petitioner may be directed to file a petition before the Tribunal. But the petitioner has submitted since the Writ Petition was filed in the year 2014, at this point of time, if the petitioner is directed to submit a petition before the Tribunal, the petitioner would be seriously prejudiced and the petitioner is without salary and prayed for to remit back the appeal before the Appellate Authority for reconsideration. Moreover, the petitioner submitted that he has submitted 300 pages documents to



the Director, without considering all those things the Director has passed an order and it is a non-speaking order.

11.To meet the ends of justice, this Court is of the view the petitioner may be directed to file a petition before the Tribunal since, the Tribunal has been constituted exclusively to deal with such cases. The petitioner claims that he had submitted the petitioner has submitted 300 pages documents, evidence before the Director, then the Tribunal is the right place to agitate. The petitioner would be benefited by cross examining witnesses, if necessary, since, the Tribunal is a "fact finding" authority, the petitioner would get an opportunity to put forth all the 300 pages evidence before the Tribunal.

12.Therefore, this Court is giving liberty to the petitioner to file a petition before the Tribunal and once the petition is filed, the Tribunal may complete the enquiry within a period of six months and shall not dismiss the petition on the basis of limitation. The petitioner states that he was not granted subsistence allowance from 14.07.2004 to 07.09.2004 and from 05.02.2005 to entire period of suspension and this issue shall also be agitated before the Tribunal by filing an interlocutory application.

13.With the above direction, the Writ Petition is disposed of. No costs. Consequently, the connected Miscellaneous Petition are also closed.

Sd/-

Assistant Registrar (AE)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

sn/lr

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,
The State of Tamil Nadu
Department of Higher Education
Fort St. George,
Chennai-600 009.



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

3.The Joint Director of Collegiate Education,
30, Vaidyanatha Iyer Street,
Shenoy Nagar, Madurai-625 020.

+1 CC to M/s.ISAAC CHAMBERS, Advocate(SR-37007[F] dated
02/12/2021)

+1 CC to M/s.SPL GP (SR-37052[F] dated 02/12/2021)

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MGJ(10.12.2021) 5P 6C