



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.09.2021

CORAM

THE HONOURABLE MR.JUSTICE **S.S.SUNDAR**

W.P.(MD) No.1462 of 2014

and

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

WEB COPY

G.Devi

... Petitioner

vs.

1.The Regional Director (I/C),
Anna University Chennai,
Regional Office,
Tirunelveli.

2.Dr.S.Adishkumar

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, to call for the records relating to the impugned order of the first respondent in Proc.No/E1/AUTR/Estt/2013, dated 26-10-2013 and quash the same.

For Petitioner	: Mr.H.Arumugam
For R-1	: Mr.M.Rajarajan
For R-2	: No appearance

O R D E R

This Writ Petition is filed for issuance of a Writ of Certiorari, to quash the impugned order passed by the first respondent, dated 26.10.2013.

2.Heard Mr.H.Arumugam, learned Counsel for the petitioner and Mr.M.Rajarajan, learned Counsel for the first respondent.

3.By the impugned order, dated 26.10.2013, the Regional Director in- charge of Anna University, Tirunelveli region relieved the petitioner from the post of Head of the Department of Civil Engineering, Anna University Regional Centre, Tirunelveli. In the very same order, the second respondent was appointed as Head-in-Charge of Civil Engineering Department, Anna University Regional Centre, Tirunelveli with effect from forenoon of 26.10.2013.

4.In the affidavit filed in support of this Writ Petition, it is stated that the petitioner was appointed as Head of the Department originally for the Remote Sensing (RS) and Geo Informatics (GI) department during 2011-12 and further stated that the department of Remote Sensing (RS) and Geo Informatics (GI) was merged with Civil Engineering Department and that the petitioner was appointed as Head of the Department of Civil Engineering Department on 09.07.2012.

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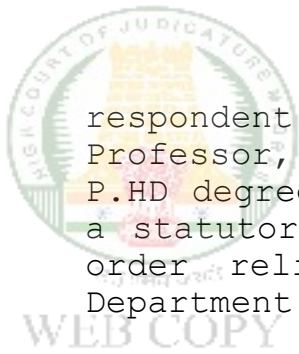


5. Apart from referring to the academic excellence of the petitioner, the petitioner challenges the impugned order mainly on the ground that the petitioner, who is the senior most Assistant Professor appointed as Head of the Department of Civil Engineering Department, cannot be relieved by the first respondent, who has no authority or power to remove or appoint the Head of the Department. Referring to the Ordinance under Statute 5 of the First Statute in Schedule-II to the Anna University Act, 1978, the learned Counsel for the petitioner submitted that every Head of the Department of study shall be appointed by the Vice Chancellor and that the term of office of the Head of the Department is three years. Stating that the person appointed is also eligible for reappointment, it is submitted that the impugned order passed by the first respondent is invalid.

6. In the affidavit filed in support of this Writ Petition, the petitioner also alleged *mala fides*. It is stated that the first respondent committed some irregularities in the purchase of computers without the required specification and that the petitioner raised the issue regarding purchase of two systems without having required specifications and without following the purchase procedure. It is only because the issue was raised by petitioner, the petitioner has stated that the first respondent has made an allegation to relieve her from the post of Head of the Department. Stating that the appointment of the petitioner as Head of the Department is valid till 08.07.2015 and the petitioner is holding a permanent post of Head of the Department, the impugned order passed by the first respondent, as if the first respondent has power to remove anyone for administrative reasons, is questioned.

7. Mr. M. Rajarajan, the learned Counsel appearing for the first respondent referring to the counter affidavit submitted that the appointment of the petitioner is only for a period of three years and that the three years period for the petitioner was over before the impugned order, as the petitioner was originally appointed during 2009-10.

8. In the entire counter affidavit and the additional counter affidavit filed on behalf of the first respondent, it is seen that the specific issue raised by the learned Counsel for the petitioner regarding the competency of first respondent to pass the impugned order is not met. Referring to the Statute, which enables the Appointing Authority to replace the Head of the Department during the tenure of office, the learned Counsel appearing for the first respondent submitted that the petitioner, who served more than three years from the inception of the campus, has no vested right to challenge the replacement. In the counter affidavit, a specific stand was also taken to the effect that a person with P.HD degree in respect of academic study was considered as statutorily deserved for the post of Head of the Department and that therefore, the second



respondent was promoted as Head of the Department from Assistant Professor, as the petitioner was not having the qualification of P.HD degree. Stating that the appointment of second respondent was a statutory requirement, it is further contended that the impugned order relieving the petitioner from the post of Head of the Department is lawful.

9.This Court considered the rival submissions of the learned Counsels on either side.

10.The learned Counsel appearing for the first respondent does not dispute the provisions of ordinance, that are applicable. It is admitted that every Head of the Department of the study shall be appointed by the Vice Chancellor. When Vice Chancellor is the Appointing Authority and the term of office of Head of the Department is three years, no power is available to anyone to replace the petitioner from the post of Head of the Department for administrative reasons. In the impugned order, no reason is stated for replacing the petitioner. Though the petitioner was earlier appointed as Head of the Department of Civil Engineering Department during 2009-10, in view of the specific provisions that the petitioner's appointment in 2012-13 is independent and perfectly valid and it should be deemed that her appointment as Head of the Department of Civil Engineering Department was for a period of three years with effect from the date of appointment. Hence, the termination or replacement of the petitioner by the first respondent cannot be justified. The impugned order, therefore, is without jurisdiction or authority.

11.Merely because, the second respondent was appointed in the place of petitioner, the petitioner's right cannot be sealed. In other words, the petitioner cannot be deprived of his right to office merely because, a right is created in favour of the second respondent, when the impugned order is an order without authority. Based on illegal appointment, no right can be recognised in favour of second respondent.

12.This Court find that no counter affidavit is filed by the first respondent. Strangely, the Registrar of Anna University has filed a counter affidavit on behalf of the first respondent. Though the Registrar, who is the Administrative Head of the University, can file counter affidavit, the counter affidavit should be in his capacity. The way in which the counter affidavit is filed by the Registrar shows that the first respondent has acted at the instance of his superiors. The Registrar has not explained why the first respondent was allowed to exercise power, which is not vested with him as per the Statute. Normally, when a complaint is received by any employee of the University aggrieved by the orders passed by the University alleging *mala fides* or lack of power, it is the duty of Registrar to initiate disciplinary action against the individual, against the Statute. In this case, the Registrar, who



is not even made a party before this Court, has filed a counter affidavit on behalf of first respondent. This Court is of the view that there must be some truth in the affidavit filed by the petitioner alleging *mala fides*.

13. Having regard to the reasons stated above, this Court is of the view that the Writ Petition deserves to be allowed. Accordingly, the Writ Petition is allowed and the impugned order passed by the first respondent, dated 26.10.2013, is quashed.

14. The learned Counsel appearing for the petitioner submitted that the impugned order, dated 26.10.2013, was stayed by this Court at the time of admission and that the order of stay is in force till date. The learned Counsel for the petitioner further stated that despite an order of stay granted by this Court, the petitioner was not permitted to report duty or to perform function as Head of the Department of Civil Engineering Department in the University. It is also brought to the notice of this Court that the petitioner has filed a Contempt Petition alleging wilful disobedience and this Court dismissed the Contempt Petition on the ground that the petitioner had been relieved even before the order of stay was granted. Hence, this Court is not inclined to pass any order placing reliance on the order of stay granted by this Court in the Writ Petition. However, the petitioner is entitled to be reinstated as Head of the Department and it is open to the Competent Authority of the respondent University to pass appropriate orders with regard to the consequence of the petitioner's reinstatement. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS III)

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/ /2021

Sub Assistant Registrar(CS)

tmg/cmr

TO

1. The Regional Director (I/C),
Anna University Chennai,
Regional Office,
Tirunelveli.

+1 CC to M/s.H.ARUMUGAM, Advocate (SR-30533[F] dated 28/09/2021)
+1 CC to M/s.M.RAJARAJAN, Advocate (SR-30381[F] dated 27/09/2021)

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NSN (CO) /RS (12.10.2021) 4P 4C

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