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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON:	08.02.2021
DELIVERED ON:	11.02.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P. (MD)Nos.17419 & 17420 of 2018
and W.M.P. (MD) Nos.15320 to 15324 of 2018
(Through Video Conference)

A.Pasupathy

... Petitioner in both W.P.'s

Vs

1) The Director of Collegiate Education,
O/o the Director Collegiate Education,
DPI Campus, College Road,
Chennai 600 034

2) Urumu Dhanalakshmi College,
Rep. By its Secretary Kalki Ramakrishnan,
Having Office at:
Urumu Dhanalakshmi College,
Tiruchirapalli.

3) The Secretary,
College Committee,
Urumu Dhanalakshmi College,
Trichy District.

4) Dr.S.Aruna Devi

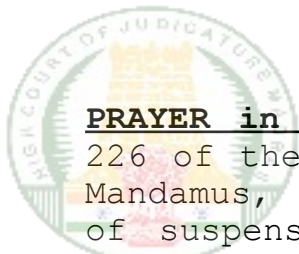
... RR 1 to 4 in both W.P's

5) Dr.S.Ananthalakshmi

6) Mr.S.Martin

... RR 5 & 6 in W.P.(MD)
No.17419 of 2018

PRAYER in W.P. (MD) No.17419 of 2018: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned charge memo in Ref: UDU/Sec/A:10/dt 12.04.2018 dated 12.04.2018 and consequential order in Ref: Udu/Sec/A:15/dt 05.05.18 dated 05.05.2018 on the file of the 3rd respondent and quash the same as illegal and consequently forbear the respondent no.6 from proceeding with enquiry.



PRAYER in W.P.(MD) No.17420 of 2018: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order of suspension in pro.No.Udc/ Sec/ AO5/27.01.2018/ Dr.A.Pasupathy/ Teaching staff-suspension/1-2018 dated 27.01.2018 on the file of the respondent no.3 and quash the same as illegal and consequently direct the respondent no.1 to 3 to reinstate the petitioner in the post of Associate Professor / Head of Department.

In both the cases:

For Petitioner	:	Mr.M.Mahaboob Fazil
For R-1	:	Mr.P.Mahendran, Additional Government Pleader
For R-2 (both W.P) & R-6 in W.P.(MD) No.17419/2018	:	Mr.Isaac Mohanlal, Senior Counsel
For R-3	:	No Appearance
For R-4	:	Mr.M.Subash Babu
For R-5 in W.P.(MD) No.17419 of 2018	:	Mr.G.S.Ashok Adhithyan

C O M M O N O R D E R

Since the issue involved in both the writ petitions are one and the same, they are disposed of by this common order.

2. The petitioner herein is an Associate Professor in the Department of Chemistry in the Respondent College. In connection with a criminal case registered against the petitioner in Crime No.2 of 2018, for offences under Sections 294(b), 354 & 506(i) of the Indian Penal Code, the petitioner was detained in judicial custody from 24.01.2018. Consequent to his arrest and detention, he was suspended from his services by the 3rd respondent herein, through an order dated 27.01.2018. Further, a charge memo dated 12.04.2018 was issued to the petitioner on sexual harassment charges and on 05.05.2018, the petitioner's explanations came to be rejected and an Enquiry Officer was appointed. Challenging the aforesaid suspension order dated 27.01.2018 and the charge memo as well as the appointment of Enquiry Officer, the above writ petitions have been filed.

3. Insofar as the suspension order is concerned, the predominant ground raised by the learned counsel for the petitioner



is that the 3rd respondent cannot keep a Teacher in continuous suspension over a period of two months, without an order of the Competent Authority, in view of Section 19(3)(b) of the Tamil Nadu Private Colleges Regulations Act (hereinafter referred to as the 'Act').

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4. Under Section 19(3)(b) of the Act, the suspension of a Teacher shall remain in force only for a period of two months and if the enquiry is not completed within the said period of two months, the suspended Teacher is deemed to have been restored back into service. The proviso to the aforesaid provision states that in case the suspension is sought to be extended, the same could be done only for further period of two months, for which purpose, an order of the competent Authority should be obtained.

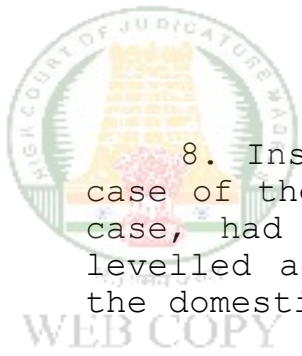
5. Section 19(3) of the Act reads thus:

"19. Dismissal, removal or reduction in rank or suspension of teachers or other persons employed in private colleges-(3)(a) No teacher or other person employed in any private college shall be placed under suspension, except when inquiry into the gross misconduct, within the meaning of their Code of Conduct prescribed under sub-section (1) of Section 18, of such teacher or other person is contemplated.

(b) No such suspension shall remain in force for more than a period of two months from the date of suspension and if such inquiry is not completed within that period, such teacher or other person shall, without prejudice to the inquiry, be deemed to have been restored as teacher or other employee provided that the competent authority may, for reasons to be recorded in writing, extend the said period of two months for a further period not exceeding two months, if, in the opinion of such competent authority, the inquiry could not be completed within the said period of two months for reasons, directly attributable to such teacher or other persons."

6. Admittedly, the competent Authority has not passed any order extending the period of suspension over and above two months. In view of Section 19(3)(b) of the Act, the petitioner herein is deemed to have been restored back as a Teacher in the 3rd respondent College.

7. It is relevant to point out that the aforesaid provision does not employ the word "reinstated" as a teacher but is referred to have been "restored". As such, it cannot be said that the petitioner should be reinstated back into the service. This proposition also gains relevance in cases where serious charges are laid, which may lead to imposing of major penalty.



8. Insofar as the impugned charge memo is concerned, it is the case of the petitioner that his alleged involvement in the criminal case, had ended in an acquittal and since the charges have been levelled against him only on the basis of the criminal complaint, the domestic proceedings itself requires to be set aside.

9. Per contra, Mr. Isaac Mohanlal, learned senior counsel appearing for the second respondent submitted that after the charges were levelled against the petitioner, the enquiry was posted on 37 hearings, out of which, the petitioner was absent for 21 hearings. Hence, he would submit that the petitioner intends to protract the domestic proceedings and that, there is no bar for the enquiry to proceed, even though the criminal case had ended in acquittal.

10. It is a settled proposition that a criminal trial requires a proof beyond reasonable doubt and the disciplinary proceedings, not being a criminal trial, where the standard of proof required is that of preponderance of probability, can be simultaneously conducted and an acquittal in the criminal case may not necessarily render the domestic proceedings redundant. Such a ratio has been laid by the Hon'ble Supreme Court in **Union of India vs Sardar Bahadur** reported in **1972 (4) SCC 618**.

11. At this juncture, the learned counsel for the petitioner submitted that owing to the petitioner's acquittal in the criminal case, they are willing to co-operate in the domestic enquiry. The learned counsel further assured that the petitioner will fully co-operate in the domestic enquiry. In view of these statements made by the learned counsel for the petitioner, no prejudice could be caused to the Respondent College also.

12. In the light of the above findings and the submissions made by the learned respective counsels, no interference is required to the suspension order dated 27.01.2018 since the petitioner is deemed to have been restored back as a Teacher in the Respondent College, in view of Section 19(3)(b) of the Act. Consequently, the petitioner would be entitled for his full salary. However, till the suspension order is revoked, he shall not claim reinstatement.

13. By recording the submissions of the learned counsel, that the petitioner would co-operate in the domestic enquiry, the impugned charge memo dated 12.04.2018 as well as the consequential order dated 05.05.2018, does not require interference and consequently, the Respondent College are directed to complete the domestic enquiry against the petitioner, as expeditiously as possible, in any event, within a period of one month, from the date of receipt of the order. If required, the domestic enquiry could be held on a day-to-day basis also and the petitioner herein, shall extend his full co-operation for the conduct of the enquiry.



14. Both the writ petitions thus, stand ordered accordingly. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (Records)

// True Copy //

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Sub Assistant Registrar(CS)

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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:

The Director of Collegiate Education,
O/o the Director Collegiate Education,
DPI Campus, College Road,
Chennai 600 034.

+1 CC to M/s.M.SUBASH BABU, Advocate (SR-4788[F] dated 12/02/2021)

+1 CC to M/s.G.S.ASOK ADITHYAN, Advocate (SR-4789[F] dated 12/02/2021)

+1 CC to M/s.ISAAC CHAMBERS, Advocate (SR-4796[F] dated 12/02/2021)

+1 CC to M/s.T.LAJAPATHI ROY, Advocate (SR-4753[F] dated 12/02/2021)

+1 CC to M/s.GP (SR-5132[F] dated 15/02/2021)

Common Order made in
W.P. (MD)Nos.17419 & 17420 of 2018

Dated:
11.02.2021

(SE) CO
AP(19/02/2021) 5P 7C