



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.09.2021

(Reserved on 27.07.2021)

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

Review Application(MD)No.23 of 2021

and

WMP(MD)No.6108 of 2021

G.Srinivasan

... Petitioner/Petitioner

vs .

- 1)The State of Tamilnadu,
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 : Review Application filed under Clause 15 of the Letters Patent to review the order dated 09.02.2021 in W.P(MD)No.1170 of 2012.

Prayer in WP(MD). 1170/ 2012:

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order of dismissal passed by the 4th respondent Principal dated 04.01.2012, quash the same and further direct the 3rd & 4th respondents herein

<https://hcservices.ecourts.gov.in/hcservices/>



to reinstate the petitioner forthwith into service as Assistant with all attendant benefits including arrears of salary, allowances and continuity of service.

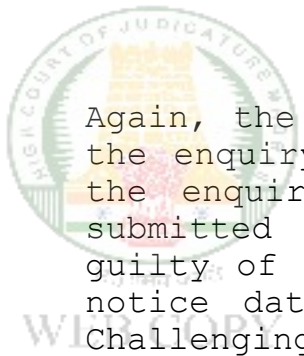
For Petitioner : Mr.Isaac Mohanlal, Senior Counsel
For R1 & R2 : Mr.P.Thilak Kumar, Government Advocate
For R4 : Mr.Raguvaran Gopalan for
Mr.K.Prabhakar

ORDER

This review application has been filed to review the order dated 09.02.2021 in W.P(MD)No.1170 of 2012.

2.The petitioner filed the above writ petition questioning the order dismissing him from service passed by the 4th respondent dated 04.01.2012 and to direct the 3rd and 4th respondents to reinstate him into service with all service and monetary benefits. In the writ petition, the petitioner contended that he 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. The petitioner has sent a representation on 16.11.2010 requesting to provide certain documents and to grant 30 days time to submit explanation which was refused by the 4th respondent 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 petitioner has further contended that challenging the order of suspension, he filed 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 above writ petition which was refused. 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 *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. 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 ie., W.P.(MD).No.2580 of 2011 and W.P.(MD).No.6116 of 2011. However, this Court had 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 order dated 04.01.2012, dismissed the petitioner from service, against which, the petitioner filed the above writ petition.

4.This Court after considering the submissions made by the learned counsel for the petitioner as well as the respondents, by order dated 09.02.2021, has passed the following order in the writ petition:-

'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

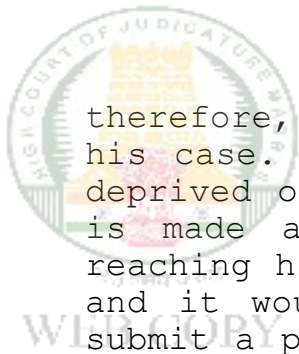


limitation as he has approached this Court within the limitation period and he has been litigating only before this Court for these long years, and dispose of the appeal on merits and in accordance with law, within a period of three months from the date of receipt of appeal. It is open to the petitioner 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.''

5. Seeking to review the abovesaid order, the petitioner has filed the present review application.

6. The learned Senior Counsel appearing for the petitioner 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 order of dismissal passed by the 4th respondent / Principal of the College is wholly without jurisdiction and liable to be set aside. He would further state that the 3rd respondent college is a private professional college and the grant in aid is squarely applicable to the college. It is accepted principle of statutory construction that rules made under a statute are a legitimate aid to construction of the statute as contemporanea expositio. For the said legal position, the learned Senior Counsel relied on the judgment in P.Kasilingam vs. P.S.G.College of Technology reported in 1995 Supp (2) SCC 348. He would also state that the bye-laws though non statutory, still binding in order to avoid arbitrariness and to ensure fairness in action.

7. The learned Senior Counsel would further state that the entire enquiry proceedings is wholly void. It is the duty of the enquiry officer to adduce all the material documents as well as evidences to arrive at the conclusion that all the charges are proved even though the delinquent is not present in the enquiry. In this case, the charge memo was bereft of the statement of allegations, the copies of the documents and list of witnesses in favour of the management. He would further submit that the petitioner has not been issued with documents relied on by the



therefore, the petitioner could not give effective reply and defend his case. In a quasi judicial matter, if the delinquent is being deprived of knowledge of the material against him, though the same is made available to the punishing authority in the matter of reaching his conclusion, rules of natural justice would be affected and it would clearly be a denial of a reasonable opportunity to submit a plausible and effective rebuttal to the charges. In this regard, the learned Senior Counsel relied on the following judgments:-

a) State of U.P and others vs. Saroj Kumar Sunha (2010) 3 MLJ 742 (SC)

b) State of Uttaranchal and others vs. Kharak Singh (2008) 8 SCC 236.

c) Mohd, Quaramuddin vs. State of A.P. (1994) 5 SCC 118.

d) K.Vijayalakshmi vs. Union of India and others (1998) 4 SCC 37.

8. Lastly, the learned Senior Counsel would contend that it is well settled that alternative remedy is not an absolute bar to the invocation of the writ jurisdiction. The rule of exclusion of writ jurisdiction by availability of alternative remedy is a rule of discretion and not one of compulsion and the Court must consider the pros and cons of the case and then may interfere if it comes to the conclusion that the petitioner seeks enforcement of any of the fundamental rights; where there is failure of principles of natural justice or where the orders or proceedings are wholly without jurisdiction or the vires of the Act is challenged. In this regard, the learned Senior Counsel relied on the following judgments:-

a) (2005) 6 SCC 499, State of H.P and others vs. Gujarat Ambuja Cement Ltd, and another.

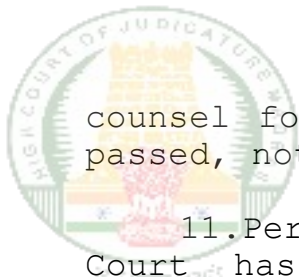
b) Harbanslal Sahnia and another vs. Indian Oil Corporation Ltd., and another reported in (2003) 2 SCC 107.

c) Union of India and others vs. Tania Construction Private Limited reported in (2011) 5 SCC 697.

In support of his contentions, the learned Senior Counsel would also rely on various decisions and would pray for allowing the review application.

9. The 4th respondent has filed a detailed counter affidavit and written submissions.

10. Heard the learned Senior Counsel for the petitioner, learned Senior Counsel for the respondents 1 and 2 and the learned
<https://hccservices.mca.gov.in/hccservices/>



counsel for the 4th respondent. In view of the order going to be passed, notice to the respondents 3 and 5 is not necessary.

11. Perusal of the order sought to be reviewed shows that this Court has specifically found that in W.P(MD)No.6116 of 2011 questioning the second show cause notice, the petitioner did not raise the ground of non supply of documents and hence this Court has specifically directed the petitioner to approach the appellate authority, if any adverse order is passed. Despite the said directions, the petitioner has filed the present writ petition and this Court has once again directed the petitioner to approach the appellate authority mentioned in the impugned order. Perusal of the grounds raised in the review application also shows that the points canvassed in the writ petition are again re-agitated under the garb of review. Therefore, in my considered opinion, there is no error apparent on the face of the record to review the order passed in the writ petition.

12. The power of this Court in matters of review is very limited. Such power can be exercised only when there is error apparent on the face of the record or in the event an order is not reviewed, it would amount to miscarriage of justice. For the said proposition, we may usefully refer to the Judgment of a Division Bench of this Court, in **Union of India, rep by the Senior Divisional Commercial Manager, Chennai, Vs. The Registrar, Central Administrative Tribunal, Madras Bench**, reported in **CDJ 2014 MHC 241**, wherein the Division Bench has made a complete survey of several Judgments of the Supreme Court, on this question, and has ultimately, in Paragraph No.10, held as follows:-

"10. In yet another Judgment reported in **2013 (8) SCC 320, [Kamlesh Verma Vs. Mayawati and others]**, the Hon'ble Apex Court, after examining various Judgments passed earlier has held as follows"

"12. This Court has repeatedly held in various Judgments that the jurisdiction and scope of review is not that of an appeal and it can be entertained only there is an error apparent on the face of record. A mere repetition through different counsel, of old and overruled arguments, a second trip over ineffectually covered grounds or minor mistakes of inconsequential import are obviously insufficient....."

In the above Judgment, the Hon'ble Apex Court has laid down the principles as under:

"19. Review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order XL VII Rule 1 of CPC. In review jurisdiction, mere



disagreement with the view of the Judgment cannot be the ground for invoking the same. As long as the point is already dealt with and answered, the parties are not entitled to challenge the impugned Judgment in the guise that an alternative view is possible under the review jurisdiction.

Summary of the principles:

20. Thus, in view of the above, the following grounds of review are maintainable, as stipulated by the statute:

20.1 When the review will be maintainable:-

(i) Discovery of new and important matter or evidence which, after the exercise of due diligence, was not within knowledge of the petitioner or could not be produced by him;

(ii) Mistake or error apparent on the face of record;

(iii) Any other sufficient reason.

The words 'any other sufficient reason' has been interpreted in **Chhajju Ram Vs. Neki, AIR 1922 PC 112** and approved by this Court in **Moran Mar Basselios Catholicos Vs. Most Rev. Mar Poullose Athanasius & others [1955] 1 SCR 520**, to mean, "a reason sufficient on grounds at least analogous to those specified in the rule". The same principles have been reiterated in **Union of India Vs. Sandur Manganese & Iron Ores Ltd., ors., JT (2013) 8 SC 275**.

20.2. When the review will not be maintainable:-

(i) A repetition of old and overruled argument is not enough to reopen concluded adjudications.

(ii) Minor mistakes of inconsequential import.

(iii) Review proceedings cannot be equated with the original hearing of the case.

(iv) Review is not maintainable, unless the material error, manifest on the face of the order, undermine its soundness or results in miscarriage of justice.

(v) A review is by no means an appeal in disguise whereby an erroneous decision is re-heard and corrected but lies only for patent error.

(vi) The mere possibility of two views on the subject cannot be a ground for review.

(vii) The error apparent on the face of the record should not be an error which has to be fished out and searched.



(viii)The appreciation of evidence on record is fully within the domain of the appellate Court, it cannot be permitted to be advanced in the review petition.

(ix)Review is not maintainable when the same relief sought at the time of arguing the main matter had been negatived."

13.In view of the law laid down by the Division Bench of this Court in the Judgment, referred to above, it may be mentioned that the review is not an appeal in disguise and therefore, this Court cannot consider any of the new materials, which were not placed before the Court, argued and not considered. Applying the said legal principles to the facts of the present case, if the grounds of review are analysed, this Court finds no error apparent on the face of the order sought to be reviewed. Thus, the present Review Application is liable to be dismissed. Accordingly, the Review Application is dismissed. If the petitioner is still aggrieved, it is always open to him to work out his remedy in accordance with law, if he so desires. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

To

- 1)The Secretary,
Department of Higher Education,
Fort St.George,
State of Tamilnadu,
Chennai-600 009.
- 2)The Principal Secretary/
Commissioner of Technical Education,
Directorate of Technical Education (Polytechnic)
Guindy, Chennai-600 025.

Pre_Delivery order made in
Review Application(MD)No.23 of 2021
DATED : 01.09.2021

_RS (21.09.2021) 8P 3C