



W.P.(MD)No.19599 of 2013

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.12.2022

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No.19599 of 2013

Tamilselvan

... Petitioner

Vs.

1. The Director of Collegiate,
Education, College Road,
Chennai – 6.
2. The Regional Joint Director,
Directorate of Collegiate Education,
Trichy Region, Jamal Mohammed College Building,
TVS Toll Gate, Trichy.
3. The Chairman,
Kurunji College of Arts & Science,
Trichy – 2.
4. The Principal,
Kurunji College of Arts & Science,
Trichy – 2.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of *Writ of Certiorarified Mandamus*, calling for the records in



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Na.Ka.No.38497/R-2/2012, dated 25.09.2013 on the file of the 1st Respondent and set aside the same as illegal and consequence thereof directing the Respondent Nos.3 & 4 to reinstate the petitioner for the post of Professor in the department of Tamil with all monitory benefits including attended back wages.

For Petitioner : M/s.B.Sekar, for
P.Ganapathi Subramanian

For R-1 & R-2 : Mr.M.Linga Durai
Government Advocate

For R-3 & R-4 :Mr.P.Arun Jeyatram

ORDER

This Writ Petition has been filed for issuance of ***Writ of Certiorarified Mandamus***, to set aside the order, dated 25.09.2013 in Na.Ka.No. 38497/R-2/2012, on the file of the 1st Respondent and consequence thereof directing the Respondent Nos.3 & 4 to reinstate the petitioner for the post of Professor in the Department of Tamil, with all monetary benefits including backwages and attendant benefits.



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2. Heard M/s.B.Sekar, for P.Ganapathi Subramanian, Learned Counsel appearing for the petitioner, Mr.M.Linga Durai, learned Special Government Pleader appearing for 1st and 2nd respondents and Mr.P.Arun Jeyatram, the Learned Counsel appearing for the 3rd and 4th respondents and perused the material documents available on record.

3. The petitioner has completed B.Lit., and M.A.(Tamil) and was appointed as Lecturer in the 3rd respondent college on 25.07.1994, in Tamil Department and has rendered 16 years of unblemished record of service. Initially, the petitioner was drawing salary of Rs.1,500/-, subsequently, it was increased. At the time of filing the writ petition in the year 2013, he was drawing salary of Rs.6,100/-.

4. According to the writ petitioner, his marriage was not successful and he was having matrimonial dispute with his wife. From 17.06.2005 onwards, the 3rd respondent did not permit the petitioner to sign in the attendance register by citing the matrimonial dispute pending between himself and his wife. However, in the year 2004, the matrimonial dispute was resolved. The petitioner's



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marriage was annulled and the petitioner's wife remarried someone else and settled peacefully.

5. Since the 3rd respondent did not permit the petitioner to sign in the attendance register, he has filed a writ petition in W.P.(MD)No.11747 of 2005, praying for the issuance of writ of Mandamus forbearing the 3rd respondent from illegally suspending or terminating his services. At the time of admission this Court granted interim direction. Since the interim direction was not complied the petitioner preferred contempt petition for not obeying the interim direction of this Court. In the meanwhile, a charge memo, dated 09.06.2005 was issued. Thereafter the 3rd respondent permitted the petitioner to join duty, he had joined duty on 11.09.2007. Thereafter, in the month of September 2009, the 3rd respondent has issued a charge memo to the petitioner and sought reply. The petitioner had submitted his reply on 12.10.2009. Subsequently, the writ petition was dismissed on 27.07.2010, directing the 3rd respondent to proceed in accordance to law.

6. The petitioner further contended that, from May 2005 onwards, till 11.09.2007, the petitioner was deprived employment, he was not allotted any



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work and salary was not paid. Moreover, the 3rd respondent paid reduced salary of Rs.4,575/-per month, from 01.09.2007 to October 2010 and the salary was reduced without any valid grounds. The petitioner submitted a representation to the 3rd respondent, seeking appropriate salary. Since the 3rd respondent has failed to pay the appropriate salary, the petitioner has filed another writ petition in W.P. (MD)No.11561 of 2012, seeking the arrears of salary in accordance to the Regulations of University Grants Commission. Though this Court directed the 3rd respondent to complete the enquiry, within a period of three months, the enquiry was not completed. On the other hand, on 17.08.2012 retrenchment notice was issued whereby it was informed that the 4th respondent is going to reduce the staff strength in Tamil Department, due to paucity of students' strength.

7. The contention of the petitioner is that, there were three lecturers in the Tamil Department and the petitioner is the Senior most who joined the service on 25.07.1994, followed by one Sakthivel, who joined service in the year 1996 and Hemalatha, who joined service in the year 2006. But, the respondents have issued notice only to the petitioner, who is the senior most in the Tamil Department. The 4th respondent did not get prior approval for reduction in the



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staff strength. In the meanwhile, the 3rd respondent failed to issue experience certificate to the petitioner, which ought to be produced before the Teachers Recruitment Board. Again, the petitioner has filed W.P.(M)No.1284 of 2010 before this Court and the same was allowed on 16.08.2011, directing the respondent to issue necessary experience certificate. The 4th respondent failed to obey the orders of the Court. The frequent filing of writ petitions had been one of the reasons to issue retrenchment notice. The petitioner has preferred an appeal before the 1st respondent challenging the communication. Simultaneously filed W.P.(MD)No. 12578 of 2012 for Mandamus, directing the respondent to permit the petitioner to join college till disposal of the appeal. The 1st respondent kept the appeal pending. Hence the petitioner has approached the State Information Commission to ascertain the stage of the appeal. In the meanwhile, the 1st respondent has passed the impugned order, rejecting the appeal, vide order, dated 25.09.2013.

8. The contention of the petitioner is that the 1st respondent has failed to appreciate the fact of termination, which requires prior approval under Section 19 of Tamil Nadu Private Colleges Regulation Act, 1976. Since final order was



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passed without any prior approval the contention of the petitioner is that the same is not sustainable in law. The reason stated that less number of students consequential reduction of staff strength is false since the respondents had not allowed the petitioner to join duty from 2005 onwards. Aggrieved over the same, the instant writ petition is filed.

9. The respondents have filed counter stating that the petitioner has faced some matrimonial dispute and his wife has preferred a criminal complaint against him and he was arrested by the police are not the factors to reduce the salary. The allegation that due to matrimonial dispute the petitioner was not allowed to sign was denied as false. The contention of the respondents is that the petitioner without seeking permission or informing the Principal, had left the college around 12 Noon. The class hours of the day came to end by 02.05 p.m. Since the 3rd respondent did not permit the petitioner to sign in the attendance register, he has filed a writ petition and in the said petition the 3rd respondent has filed counter since the petitioner left the college and he was not adhering to the time schedule a charge memo was issued. The petitioner did not turn to college for his work. The 3rd respondent paid a salary of Rs.4,575/-per month from



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01.09.2007 to October 2010. Since, there was a reduction in students' strength, the college has also taken a decision to reduce the staff strength. Therefore, 30 days prior notice was issued to the petitioner. The college is a self-finance college. Considering the financial status the management directed to reduce the strength of the staff. The petitioner contended that the petitioner attended the college till 14.09.2013 and later on he did not turn up to college. He himself stopped attending his job and considering the notice dated 17.08.2012 the management also not able to provide job to the petitioner. Since the present strength of the college is very minimum and there is no proper work load, it was decided to stick the notice issued to the petitioner. Mr.Sakthivel, is the senior most person along with one Mrs.Hemaltha. There is no vengeance against the petitioner. Hence the College is not in a position to reinstate the petitioner because of the less students' strength. Therefore, the respondents submitted that the petitioner is not entitled to the relief sought for and prayed to dismiss the writ petition.

10. The official respondents have also filed counter stating that there is an alternate remedy available to the petitioner to file an appeal before the



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Tribunal as per G.O.Ms.No.171 Higher Education (D2) Department, dated 24.11.2020. The 1st respondent is not having any records to state that the petitioner is the senior most teacher in the Tamil Department. As per Tamil Nadu Private Colleges (Regulation) Act, 1976, the Secretary of the college is the appointing authority. Due to the reduction of workload, the Secretary of the college has to issue relieving order. In this case, the appointing authority has not issued any final orders. Hence, question of appeal does not arise. Hence, the respondents prayed to pass appropriate order.

11. Today, when the matter is taken up for hearing, both the parties were present before this Court. The petitioner submitted that the original certificates are with the college. But the college submitted that the same was handed over to the petitioner. Since this issue could not be resolved, this Court is of the considered opinion that the petitioner shall apply to the concerned authorities to issue duplicate certificates and the respondents shall bear the expenses for the same.



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12. It is seen from the records that the petitioner had faced some matrimonial dispute and subsequently, which ended in divorce. Because of the matrimonial dispute the petitioner could not attend the work properly. But the petitioner has put in unblemished service for a period from 25.07.1994 to 14.05.2005. Subsequent to this there were several disputes between the petitioner and the college. The learned counsel appearing for the petitioner contended that he has not received any salary for the period from 15.05.2005 to 10.09.2007. However, the said claim was disputed by the respondents, they have stated that they have paid minimum salary during that period. This Court is of the considered opinion that the college is claiming that they have paid salary, but they have not filed any records to that effect. Therefore, this Court comes to the conclusion that the petitioner has not received any salary, during the period from 15.05.2005 to 10.09.2007.

13. It is an admitted fact that the petitioner was receiving Rs.6,100/- as salary earlier to the dispute. It is an admitted fact that the petitioner has received salary Rs.4,575/- from 01.09.2007 to October 2010. Therefore, this Court is of the considered opinion that the petitioner is entitled to the balance



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salary. Subsequently, from 27.10.2010 to 16.09.2012 the respondents have paid Rs.2,200/-. In the meanwhile, the college had issued retrenchment notice dated 17.08.2012 giving one month notice, which period ends up on 16.09.2012. Therefore, this Court is of the considered opinion that the petitioner is entitled to the balance salary from 27.10.2010 to 16.09.2012.

14. However, for the period from 17.09.2012 and thereafter the respondents have not paid any salary. It is also admitted that the petitioner was not working for the period from 17.09.2012 and thereafter, hence, under the principles of '*No work No pay*' the petitioner is not entitled to any salary.

15. The respondents have refused to reinstate the petitioner back into service since the college is not having sufficient students. Therefore, this Court declines the prayer of the petitioner for reinstatement.

16. The petitioner is aged about 46 years as on date of filing the writ petition and today, his aged is about 55 years. Taking all the factors stated above, this Court is passing the following order:



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1. The respondent college is directed to pay full salary for the period from 15.05.2005 to 10.09.2007.
2. For the period from 01.09.2007 to October 2010 the respondents had paid Rs.4,575/- per month, but the petitioner is entitled to Rs.6,100/- per month, hence the respondents are directed to pay balance salary.
3. For the period from 27.10.2010 to 16.09.2012 the respondents have paid Rs.2,200/- per month, but the petitioner is entitled to Rs.6,100/- per month, hence the respondents are directed to pay balance salary.
4. From 17.09.2012 and thereafter under the principles of '*No work No pay*' the petitioner is not entitled to any salary.
5. Apart from the above salary the respondent college shall pay Rs.50,000/- to the petitioner as retrenchment compensation.
6. The petitioner is not entitled to reinstatement into service.
7. As far as the original certificates are concerned the petitioner is directed to apply for original certificates to the appropriate authorities and the expenses incurred by the petitioner shall be paid by the respondents, which is fixed as Rs.5,000/-.



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17. With the above directions, this Writ Petition is disposed of.

No Costs.

Index : Yes / No
Internet : Yes
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To

1. The Director of Collegiate,
Education, College Road,
Chennai – 6.
2. The Regional Joint Director,
Directorate of Collegiate Education,
Trichy Region,
Jamal Mohammed College Building,
TVS Toll Gate, Trichy.



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S.SRIMATHY, J

ksa

**Order made in
W.P.(MD)No.19599 of 2013**

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