



W.P.(MD)Nos.20722 to 20724 of 2013

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 05.04.2022

PRONOUNCED ON : 05.09.2022

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)Nos.20722 to 20724 of 2013

and

M.P.(MD)Nos.1, 1 and 1 of 2013

W.P.(MD)No.20722 of 2013:

N.J.Satheesh Kumar

... Petitioner

vs.

- 1.The Director of Collegiate Education,
College Road, Nungambakkam,
Chennai 006.
- 2.The Joint Director of Collegiate Education,
Tirunelveli Region,
Tirunelveli.
- 3.Manonmaniam Sundaranar University,
represnted by its Registrar,
Abishekapatti, Tirunelveli.



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4.Malankara Catholic College
represented by its Secretary,
Mariagiri, Kaliakkavilai – 629 153,
Kanyakumari District.

5.Bishop of Marthandam Diocese,
Bishop's House,
Marthandam - 629 165,
Kanyakumari District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order passed by the 5th respondent in Ref.No.MCC/Appeal No.3 of 2013, dated 18.11.2013, confirming the order of the 4th respondent in Ref.No.MCC/SFCL/STO-3, dated 12.10.2012, to quash the same and to direct the 4th respondent to reinstate the petitioner in to services with all attendant benefits.

W.P.(MD)No.20723 of 2013:

V.P.Mary Josphine

... Petitioner

vs.

1.The Director of Collegiate Education,
College Road, Nungambakkam,
Chennai 006.

2.The Joint Director of Collegiate Education,
Tirunelveli Region,
Tirunelveli.



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3.Manonmaniam Sundaranar University,
represented by its Registrar,
Abishekapatti, Tirunelveli.

4.Malankara Catholic College
represented by its Secretary,
Mariagiri, Kaliakkavilai – 629 153,
Kanyakumari District.

5.Bishop of Marthandam Diocese,
Bishop's House,
Marthandam - 629 165,
Kanyakumari District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order passed by the 5th respondent in Ref.No.MCC/Appeal No.1 of 2013, dated 18.11.2013, confirming the order of the 4th respondent in Ref.No.MCC/SFCL/STO-1, dated 12.10.2012, to quash the same and to direct the 4th respondent to reinstate the petitioner in to services with all attendant benefits.

W.P.(MD)No.20724 of 2013:

A.Sanal

... Petitioner

vs.

1.The Director of Collegiate Education,
College Road, Nungambakkam,
Chennai 006.



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2.The Joint Director of Collegiate Education,
Tirunelveli Region,
Tirunelveli.

3.Manonmaniam Sundaranar University,
Represented by its Registrar,
Abishekapatti, Tirunelveli.

4.Malankara Catholic College
represented by its Secretary,
Mariagiri, Kaliakkavilai – 629 153,
Kanyakumari District.

5.Bishop of Marthandam Diocese,
Bishop's House,
Marthandam - 629 165,
Kanyakumari District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order passed by the 5th respondent in Ref.No.MCC/Appeal No.2 of 2013, dated 18.11.2013, confirming the order of the 4th respondent in Ref.No.MCC/SFCL/STO-2, dated 12.10.2012, to quash the same and to direct the 4th respondent to reinstate the petitioner in to services with all attendant benefits.

In all cases:

For Petitioner
For R1 & R2

: Mr.R.Subramanian
: Mr.V.Om Prakash
Government Advocate (Civil side)



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For R3 : Mr.M.Mahaboob Athiff
for M/s.Ajmal Associates
For R4 & R5 : Mr.Isaac Mohanlal
Senior Counsel
for Mr.Ragatheesh Kumar

COMMON ORDER

These three Writ Petitions are filed with a similar prayer. The Writ Petition W.P.(MD)No.20722 of 2013 is filed for issuance of a Certiorarified Mandamus, to quash the impugned order passed by the 5th respondent in Ref. No. MCC/Appeal No.3 of 2013, dated 18.11.2013, confirming the order of the 4th respondent in Ref. No. MCC/SFCL/STO-3, dated 12.10.2012 and to direct the 4th respondent to reinstate the petitioner in to services with all attendant benefits.

2. The Writ Petition W.P.(MD)No.20723 of 2013 is filed for issuance of Writ of Certiorarified Mandamus, to quash the impugned order passed by the 5th respondent in Ref.No.MCC/Appeal No.1 of 2013, dated 18.11.2013, confirming the order of the 4th respondent in Ref.No.MCC/SFCL/STO-1, dated 12.10.2012 and to direct the 4th respondent to reinstate the petitioner in to services with all



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attendant benefits.

3. The Writ Petition W.P.(MD)No.20724 of 2013 is filed for issuance of Writ of Certiorarified Mandamus, to quash the impugned order passed by the 5th respondent in Ref.No.MCC/Appeal No.2 of 2013, dated 18.11.2013, confirming the order of the 4th respondent in Ref.No.MCC/SFCL/STO-2, dated 12.10.2012 and to direct the 4th respondent to reinstate the petitioner in to services with all attendant benefits.

4. The brief facts of the case are that the petitioner in W.P.(MD)No.20722 of 2013 is qualified M.Sc., M.Phil., in Computer Science and was appointed as Lecturer in Software Engineering in the fourth respondent College on 18.02.2003 and continued up to 31.10.2003. Later on, he was appointed as Guest Lecturer from 15.12.2003 for a period of one year and he was on probation for two years on the permanent basis from 2004. The petitioner has put in 9 years of service and he is the next to the Head of Department and there are 8 other Lecturers apart from the petitioner. The petitioner in W.P.(MD)No.20723 of 2013 is qualified



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M.A. M.Phil. M.Ed. D.J. in Tamil and the 3rd respondent had approved the petitioner qualifications from 20.07.1998 vide proceedings dated 04.02.2010, the petitioner was appointed as Lecturer in Tamil in the 4th respondent college on 19.07.1998, completed probation in 2 years, had served 14 years, now serving as Head of Department of Tamil and on the date of appointment the petitioner possessed the requisite qualification for being appointed as Lecturer / Assistant Professor. The petitioner in W.P.(MD)No.20724 of 2013 is qualified M.C.A. M.Phil. and M.Tech. in Computer Science, the 3rd respondent approved the petitioner's qualification from June 2007, the petitioner was appointed as Lecturer in Software Engineering in the 4th respondent college on 16.07.2001, completed probation in 2 years, has served for 11 years in the college and is designated as Head of the Department and had possessed requisite qualification for the post of Lecturer / Assistant Professor.

5. The petitioners submitted that the fourth respondent College is a religious minority institution and is a self-finance College affiliated to the third respondent University and the Provisions of Tamil Nadu Private Colleges



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Regulation Act, 1976, are applicable. The definition of Private Colleges in the said Act is stated as a College maintained by Education Agency approved by or affiliated to a University. The petitioner N.J.Satheesh Kumar is the Unit Secretary of Madurai Kamaraj Manonmaniam Sundaranar University Teachers Association (MUTA), the petitioner V.P. Mary Josphine is the Vice President of Madurai Kamaraj Manonmaniam Sundaranar University Teachers Association (MUTA) and the petitioner A. Sanal is the Joint Secretary of Zone IV of Madurai Kamaraj Manonmaniam Sundaranar University Teachers Association (MUTA). The fourth respondent College has 9 Graduate courses and 9 Post Graduate courses. As far as the Department of Software Engineering is concerned, the College has B.Sc. (Software engineering) and M.Sc. (Software Engineering) and there is enough work load for all the nine Teachers in the Department and the petitioner has been given 18 hours of teaching. Likewise there is enough work load for all the four teachers in the Department of Tamil and the petitioner is teaching 16 hours though the petitioner was given only 12 hours as per the Tamil Nadu Government norms.



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6. The contention of the petitioners is that the students of the fourth respondent College protested against the collection of exorbitant fees, non-disbursement of scholarship to the minority students sanctioned by the Government of India and for other just causes. The College is granting regular course as well as satellite course. In the case of satellite courses, the University actually runs the Courses in the College Centre in collaboration with the College and 70% of the fees collected could be taken by College and a 30% to be taken by the University. In the fourth respondent College MBA course is a satellite course but in the prospectus, it has not been mentioned and the fees collected from the students are exorbitant and are many times higher than the fees prescribed by the University. The students went on strike from 10.10.2012 and since the functioning of the College was paralyzed, the petitioner Mary Josphine, who is the Staff Secretary and Vice President of MUTA intervened to pacify the students. The contention of the petitioners is that their intention was to restore normalcy in the College. But the fourth respondent has issued orders of termination dated 12.10.2012 to the petitioners, aggrieved over the petitioners had filed writ petitions in W.P. (MD) No.16567/2012, W.P. (MD) No.16560/2012, W.P. (MD)



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No.16610 of 2012 and the same was admitted and an interim order was granted. Based on the interim order, the petitioners were granted permission to continue their work, but the salary was not paid. Subsequently, the respondents deliberately refused to permit the petitioners to work by interpreting the interim order. When the Writ Petitions were taken up for final hearing, the respondents informed the Court that an Appeal would lie before the fifth respondent, the petitioners submitted to withdraw the writ petitions with liberty and the writ petitions were dismissed as withdrawn on 01.10.2013. On 03.10.2013, the petitioners preferred appeal before the fifth respondent. But the fifth respondent hurriedly dismissed the appeal by passing a non-speaking order, dated 18.11.2013, without even considering the contentions on merits. Aggrieved over the same, the present Writ Petitions are filed.

7. The respondents 4 and 5 have filed counter affidavit in all the Writ Petitions stating that the Malankara Catholic College is one among the recognized educational institutions established and administered by Malankara Catholic Trust. The Trustees are all Priests of the Syro Malankara Catholic Diocese,



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Marthandam, which comes under Roman Catholic Order of Christianity. The College was established in the year 1988 and it is affiliated to Manonmaniam Sundaranar University which is a self-financing unaided Co-education Arts and Science College. The petitioner in W.P.(MD)No.20722 of 2013 was appointed as Lecturer in Software Engineering on 18.02.2003, the petitioner in W.P. (MD) No. 20723 of 2013 was appointed as Lecturer in Tamil on 19.07.1998 and the petitioner in W.P.(MD)No.20724 of 2013 was appointed as Lecturer in Software Engineering College on 16.07.2001. Their nature of employment is contractual and the contract of employment of petitioners were terminated, vide letter of Correspondent, dated 12.10.2012, as their service were found no longer required as per rules and regulations governing the College. The petitioners have been paid three months salary in lieu of three months notice and the petitioner is not in service from 13.10.2012. Challenging the said letter, the petitioners preferred the Writ Petitions in W.P.(MD)Nos.16567, 16560 and 16610 of 2012 and the same was admitted with an interim stay. The College preferred vacate stay petition in M.P.(MD)No.2 of 2012 in all the Writ Petitions. After elaborate arguments, this Court was about to dismiss the Writ Petitions and the petitioners requested to



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withdraw the Writ Petitions with a liberty to prefer an appeal before the Bishop of the Diocese and the Hon'ble Court dismissed the Writ Petitions, vide order, dated 01.10.2013, with a liberty to file an appeal before Bishop. The petitioners preferred an appeal on 03.10.2013. Thereafter, vide letter, dated 05.10.2013, the petitioners were requested to appear for personal hearing on 09.11.2013 and the petitioners submitted their case. The entire issue along with the grievances of the petitioner were considered in detail by the respondents. On overall consideration of the contents of appeal as well as oral and written submissions and in accordance to rules and regulations of the Diocese, it was found that the continuance of the petitioners in service is no longer required as the same would not sub-serve the interest of the institution. Accordingly, the respondents rejected the appeal confirming the order of termination. The contention of the respondents is that the petitioners' employment was purely contractual in nature and they are not holding any post approved or sanctioned under the Government Aid. It is purely self-financed post and never accessed for grant in aid. Since the College being unaided minority educational institution, some of the provisions of the Tamil Nadu Private Colleges (Regulation) Act, 1976 and Rules does not apply to



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the College. Therefore, the petitioners' reliance on those provisions is untenable. Further the petitioners were habitually involved in disruptive activities like inducing students to flash strikes, bring sudden agitations inside the College campus for flimsy reasons and on feeble grounds and scarcely represents any issue before the Principle or to the Correspondent of the College. Always indulge in disrupting the college and at times the College had to be closed on account of their behaviour.

8. On 13.09.2012, 14.09.2012 and 15.09.2012 similar incidents took place where the petitioners let few students to such kinds of disruptive activities and classes could not be conducted on that three days. On 16.09.2012, the classes were resumed and the Correspondent and the Principle called the petitioners in person and gave repeated instructions not to be involved in such kinds of activities. On 10.10.2012, the same set of people under the leadership of the petitioners campaigned strikes inside the camps and created total chaos in the College and disrupted to conduct the classes and went on shouting slogans and went to the extent of damaging furniture, electronic devices, electronic



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equipment, lab articles, water pipes, name board of college, garden, electronic devices and connections including internet wires, wind shields of college vehicles. The students particularly the 847 girl students were terrified and put to panic. As a result, the College had to be closed indefinitely from 10.10.2012 onwards. Considering the conduct and behaviour of the petitioners, the College was of the view that their continuance in service was no longer required and the same would not serve its interest and decided to terminate their service as per the terms and conditions set out in the rules and regulations governing the college. Instead of taking disciplinary action and imposing punishments, the College decided to relieve them innocuously without attaching any stigma on them. Therefore, the fourth respondent issued a letter, dated 12.10.2012, terminating their service and three months salary was deposited in their accounts. Afterwards, the College was reopened on 25.10.2012 and on that day around 10.00 AM, the petitioners trespassed in the College and tried to disrupt the functioning of the College again. Even after termination, they damaged the articles, which entailed in a loss of Rs.6,50,000/-. The College was closed again at 11.30 AM. The College had to lodge complaints against the petitioners in FIR No.801 of 2012,



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dated 25.10.2012, was registered under Sections 147, 341, 294(b), 506(I) of Indian Penal Code and under Section 3(1) of TNPPDL Act. Thereafter, charge sheet was filed before the Judicial Magistrate Court, Kuzhithurai and the same is pending. Because of the above incident, the examination venue was shifted to St. Jude's College, Thoothoor, Kanyakumar District and the students of the College had to take the semester examination at a distant place from 05.11.2012 to 08.12.2012.

9. The College reopened on 10.12.2012 and the petitioners again trespassed and created scenes and abused the Principal and the Correspondent in filthy language and a complaint was lodged on 10.12.2012, which continued on 11.12.2012, wherein few students went on to strike. This time the watchman was injured and suffered injuries, admitted himself as in-patient in the Government hospital and took permission for three days and he has also lodged compliant on 11.12.2012. Then the College was closed indefinitely, then reopened on 07.12.2012 and the petitioners were precluded from entering into the campus, thereafter, the College was functioning smoothly till date. After about two months



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from the date of termination on 17.12.2012, the petitioners filed the earlier writ petitions, based on the interim order the petitioners were permitted to remain in College from 02.01.2013 onwards. The petitioners never regretted for causing harm for the peaceful atmosphere. In order to avoid the imposition of punishments which would affect the careers of the petitioners, it was decided to issue termination order. The petitioners were granted Provident Fund as well as the gratuity and no other monetary benefits are payable to the petitioners. Therefore, the respondents prayed to dismiss the Writ Petition.

10. The petitioners filed a reply affidavit stating that no such incident happened as stated in the counter affidavit, classes were conducted on 13.09.2012, 14.09.2012. However, on 15.09.2012 it was a holiday and 16.09.2012 was Sunday. Therefore, no classes were conducted on those days and it is not due to the interruptions created by the petitioner as alleged by the respondents.

11. Heard Mr.R.Subramanian, the Learned Counsel for the petitioner, Mr.V.Om Prakash Learned Government Advocate (Civil side) for 1st and 2nd



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respondents, Mr.M.Mahaboob Athiff for M/s.Ajmal Associates the Learned Counsel for 3rd respondent and Mr.Isaac Mohanlal, the Learned Senior Counsel for Mr.Ragatheesh Kumar for 4th and 5th respondents and perused the materials placed on records.

12. The Learned Senior Counsel appearing for the respondent college submitted that the college is a self-financing unaided minority institution affiliated to Manonmaniam Sundaranar University and the Tamil Nadu Private Colleges Regulation Act, 1976 and the Rules made thereunder is not applicable to college. However, the Learned Counsel appearing for the petitioners submitted that the Tamil Nadu Private Colleges Regulation Act, 1976 is applicable to the respondent college and relied on the judgment rendered in Jawahar College Staff Association VS University of Madras and others reported in 1993 -2-L.W. 652 wherein it is held as follows:

“4. ... A reading of the above two provisions makes it clear that whether a private college is an aided or unaided college; whether it came into existence either before or after the date when the Act came into force makes no difference as long as it is a college which is maintained by an educational agency and approved by or affiliated to a university and permitted or deemed to be permitted under the Act it has



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to be held that it is a Private College falling within the scope of the Act. It is not disputed before us that the college in question is managed and maintained by an educational agency known as Jawahar Education Society consisting of body of persons.... ”

However, the Learned Counsel for the respondent college refuted to the said plea of the petitioners and submitted that in the aforesaid judgment the petitioner college therein was a non-minority college and the Act is applicable to the said non-minority college. In the present case the respondent college is a self-financing minority institution and hence the Act is not applicable. In other words, the Act is applicable only for the aided non-minority college and not applicable to minority college and not applicable to self-financing minority college at all.

13. The Learned Senior Counsel further submitted that Chapter IV of the Tamil Nadu Private Colleges Regulation Act under the heading “Terms and Conditions of Service of Teachers and other persons employed in Private Colleges”, section 20 states that any person aggrieved over the termination, dismissal from service etc shall prefer an appeal to appellate authorities. Under section 21 the second appeal is before the Tribunal. Under section 24 it is stated that the section 18(2) to 22 (both inclusive) is not applicable to the minority



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college. The Learned Senior Counsel appearing for the college submitted that in the present case the respondent college is a minority institution, the challenge in the present case is the termination order, since the section 18(2) to 22 are not applicable to the minority institution as per section 24 and hence the Tamil Nadu Private Colleges Regulation Act is not applicable to the present case.

14. In another case filed in W.P.(MD) No.11785 & 11786 of 2012 a plea was raised to direct the Courts to number the appeals filed against the disciplinary proceeding orders passed by the colleges. In the judgment dated 07.08.2019 rendered in the aforesaid case the High Court while considering the issue had directed the Government to reconstitute the Tribunal. Thereafter the Government had issued G.O.Ms.No.171, Higher Education (D2) Department, dated 24.11.2020 and thereby reconstituted the Tribunal. However the said G.O. specifically states that the Tribunal is not applicable to the minority institutions. Hence as per section 24 of the Tamil Nadu Private Colleges Regulation Act, the Act is not applicable to the minority institutions and as per G.O. 171 the Tribunal is not applicable to the minority institutions.



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15. The Learned Counsel for the 3rd respondent submitted that the writ petitions are not maintainable against minority institutions, since they are not “State” within the meaning of Article 12 as held in Committee of Management of Delhi Public School and another VS M.K. Gandhi and others reported in (2015) 17 SCC 353. Writ petitions are not maintainable against the “Private Unaided Minority” institutions as held in the case of Committee of Management La Martiniere College Lucknow VS Vatsal Gupta and others reported in (2016) SCC online SC 743. The reason behind is that no grant-in-aid is granted to the institution and moreover for enforcing “contract for personal service”, writ jurisdiction cannot be invoked. As per the G.O. Ms. No. 171 the employees in minority institutions cannot file cases in Tribunal. Only remedy available is to file a civil suit for damages, if otherwise maintainable.

16. The Learned Counsel appearing for the 3rd respondent further submitted that the issue of applicability of Act was considered by the Hon’ble Division Bench of Madras High Court in Association of University Teachers represented



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by its General Secretary VS The State of Tamil Nadu and others reported in 1991-1-L.W. 180 wherein it has been held that,

“30. Thus, in our considered opinion, we are of the view that the implementation of the provisions of [Section 19\(3\)](#) (a) and (b) of the Act will not constitute inroad into the fundamental rights secured under [Art. 30\(1\)](#) of the Constitution of India to a minority institution. On the other hand, [Section 19\(1\)](#) and (2) of the Act insisting upon prior permission or approval does really encroach upon the rights of the minority institution to administer the institutions of their choice as repeatedly laid down by almost all the decisions of the Supreme Court. Once we come to the said conclusion that the enforcement of the provisions of [Section 19\(3\)](#) (a) and (b) will not constitute interference with the rights of the minority institutions secured under [Art. 30\(1\)](#) of the Constitution of India, there is no justifiable reason for adopting different norms from those applicable to non-minority institutions. Therefore, we have to necessarily come to the conclusion that the exemption granted in respect of those by means of [Section 24\(3\)](#) in favour of the minority becomes inevitably unwarranted, unjustified, unreasonable as well as arbitrary and discriminatory and void to the extent it excludes the application of [Section 19\(3\)](#) (a) and (b) of the College Act.

31. Consequently, we declare that (a) the words “.... or administered” in Section 2(7) of the Tamil Nadu Private Colleges (Regulation) Act, 1975 is ultra vires of [Art. 30\(1\)](#) of the Constitution of India; and (b) the provisions of [Section 24\(3\)](#) is in so far as it excludes the application of the provisions contained in [Section 19\(3\)](#) (a) and (b) of the Act to a minority College is violative of [Art. 14](#) of the Constitution of India and void to that extent.”

The Hon’ble Division Bench has held that the section 19(3) (a) and (b) of the Tamil Nadu Private Colleges Regulation Act is violative of Article 14 of the



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Constitution of India and exemption granted in section 24(3) in favour of the minority institutions is inevitably unwarranted, unjustified, unreasonable, arbitrary and discriminatory and void to that extent.

17. The Hon'ble Division Bench has also considered section 20 and 21 wherein the applicability of the appellate remedy was considered. The relevant portion is extracted hereunder:

*“26. Now coming to the provisions of the College Act, with which we are concerned, it could be seen that [Section 20](#) of the said Act provides for a first appeal against orders of punishment imposed upon teachers and other persons employed in any private College to such authority or officer as may be prescribed. **Rule 14 of the Rules stipulates that the authority to whom an appeal under [Section 20](#) shall lie shall be the Government.** By the very nature of relief provided for, the said provision cannot be invoked by the College concerned. The provision of [Section 21](#) provides a further appeal in the nature of a second appeal against an order made in an appeal both at the instance of the teacher or other person employed in any private College or the Educational Agency to the Tribunal. The constitution of the Tribunal is dealt with under [Section 38](#) of the Act under which the Government is empowered to constitute, by notification, as many Tribunals as may be necessary and that each of such Tribunal shall consist of one person who shall be a judicial officer not below the rank of a District Judge with such jurisdiction over such area or in relation to such class of private Colleges as may from time to time be determined by the Government. The Tribunal also has been conferred with the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908. S. 39 provides the period of limitation and also for hearing, conducting enquiry and making such orders*



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as the Tribunal deems just and equitable, including the passing of such interlocutory orders as it deems fit.

27. S. 40 of the Act lays down that if the appellate authority, in an order passed on an appeal under [S. 20](#) of the Act made an order restoring a teacher or other person employed in any private college, no appeal to the Tribunal under [S. 21](#) shall be proceeded with by the Tribunal unless the Educational Agency deposits with the Tribunal all arrears of pay and allowances due to such teacher or other person from the date of his dismissal, removal or reduction in rank or termination otherwise upto the date of deposit and further continues to deposit the pay and allowances due to such teacher or other person until the termination of the proceedings before the Tribunal. The section contemplates the deposit within such time as may be prescribed and Rule 24 stipulates that the deposit contemplated under [Section 40\(1\)](#) shall be made with the Tribunal at the time of appeal or before the transfer of the appeal under [Section 22](#), in cash. S. 40(4) lays down that if the Educational Agency fails to deposit the amount as aforesaid, the Tribunal shall, unless the Educational Agency shows sufficient cause to the contrary, stop all further proceedings and make an order directing the Educational Agency to restore such teacher or other person to service as such.

28. On careful consideration of the scheme of the appellate provisions referred to above contained in the College Act, we are of the view that those provisions suffer the vice pointed out in the cases reported in both the earlier decisions of the Supreme Court as well as the later decisions. There could be no comparison between the provisions with which we are concerned in these cases and those concerned and considered in (A.I.R) 1987 S.C. 311 and (1988-I-LLJ-263). **The onerous condition laid down for making the deposit of arrears** as a condition precedent for filing and proceeding further with the appeal to the Tribunal, notwithstanding the power given to the Tribunal to provide otherwise in any one case for sufficient cause, renders in not an effective remedy so far as the Educational



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Agency is concerned. It is all the more so, on account of the further declaration by [S. 40\(4\)](#) itself of the drastic consequences of such non-deposit resulting in not only stoppage of all further proceedings but the passing of an order to restore the teacher or other person to duty. ***If only the provision for an appeal against the order of punishment passed by the Educational Agency has been made to the Tribunal itself at the first instance. There will be a possibility of our considering the appellate provisions to a Tribunal to be regulatory. But, unfortunately, the first appeal under [S. 20](#) is not to any judicial Tribunal or a Court and such a provision suffers the vice of interference with the autonomy of the Educational Agency and the Minority Institution in its internal administration as pointed out by the decisions of the Supreme Court. Atleast something could be said in favour of the scheme of appeal provided under [Sections 20 to 22](#) taken together being regulatory if the right given to the Educational Agency to invoke the power under [Section 21](#) read with [Section 40](#) of the Act is not conditioned upon an onerous liability of depositing the entire arrears due before an appeal is filed or proceeded with and no penal stipulation as contained in [S. 40\(4\)](#) of the Act is tagged on to the appellate provisions. As the scheme of the provisions stands, we consider that the appeal to the Tribunal provided for the Educational Agency with such onerous stipulations are neither effective, nor merely regulatory serving the interest of both sides, but they are in fact and substance merely illusory as for as the Educational Agency is concerned and therefore this application of [Sections 20 to 22](#) of this College Act to minority college will constitute interference with the internal management of the Minority Institutions. Consequently, we are unable to agree with the learned Counsel for the petitioner/appellants that the provisions of [Section 24\(3\)](#) in so far as it excludes the application of [Section 20 to 22](#) or any rules providing for all or any of the matters specified therein or any order made in relation thereto to a minority college could be said to be bad and violative of either [Art. 14](#) or [Art. 30\(1\)](#) of the Constitution of India. The submission made in this regard therefore fails and is rejected.***



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18. The Hon'ble Court in the judgment stated supra has held that since the first appeal ought to be preferred before the Government (or authority appointed by the Government), then that would amount to interference in the administration of the minority institution. However the Learned Counsel for the 3rd respondent submitted that in all minority institutions the first appeal is before an appellate authority who is the higher authority than the disciplinary authority within their own administration and not the Government (or authority appointed by the Government). In the present case the Secretary is the Disciplinary Authority, the 4th respondent herein and the Appellate Authority is the Bishop, the 5th respondent herein.

19. The judgment further observed that under section 40 an onerous condition is imposed to pay all arrears of pay and allowances due to such teacher or other person and if not deposited then further proceedings would be stopped.

The section 40 reads as under:

“40. (1) If the appellate authority referred to in section 20 has, in any appeal under that section against the dismissal and allowances or



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removal or reduction in rank or the termination or otherwise of the appointment of any teacher or other person employed in any private college, made an order restoring private such teacher or other person as such, no appeal against the colleges in order of such restoration shall be preferred to the Tribunal and no appeal against the order of such restoration which, under section 22 stands transferred to the Tribunal, shall be proceeded with by the Tribunal, unless the educational agency deposits with the Tribunal all arrears of pay and allowances due to such teacher or other person from the date of his dismissal or removal or reduction in rank or termination otherwise of his appointment up to the date of deposit, and continues to deposit the pay and allowances due to such teacher or other person until the termination of the proceedings before the Tribunal.”

20.The learned Counsel for the 3rd respondent submitted that while observing so the Division Bench was under the impression that the first appellate authority is “Government”, but in the minority institution the first appellate authority is “Bishop”, who would never order payment of arrears of pay and allowances if it is affecting the interest of the college. Even otherwise section 40 may be affecting the interest of the minority institutions and that alone may be interfering in the administration and not section 21 appeal to Tribunal.

21. The judgment further held that, if the provision for an appeal against the order of punishment passed by the Educational Agency has been made to the



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Tribunal at the first instance itself, then the appellate provisions to a Tribunal shall be considered as regulatory. But the first appeal under section 20 is not to any judicial Tribunal or a Court but to the Government and hence it amounts to interference with the autonomy of the Minority Institution. The Learned Counsel submitted that it is clear that the Division Bench would have held that the second appeal to Tribunal is maintainable, had it been brought to the notice of the Division Bench that the first appeal is before the Bishop and not to Government. Hence the Learned Counsel submitted that Tribunal being a judicial forum the second appeal is maintainable against the first appellate order passed by Bishop.

22. Considering the aforesaid submission and discussion, this Court is of the considered opinion that the Learned Counsel for the 3rd respondent is absolutely right in stating that the section 21 provides for appellate remedy before the Tribunal and as per the judgment stated supra the Division Bench has held that remedy before Tribunal is only regulatory and it would not amount to interfering in the constitutional right of “right to administer” and therefore the section 21 can be invoked to file second appeal before Tribunal.



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23. But the present G.O. Ms. No. 171, reconstituting Tribunal states it is not applicable to minority institutions. This Court is anguished on the non-availability of the appeal remedy to the employees working in minority institution, especially the employees cannot approach an independent judicial forum to redress their grievance to test the legal validity of the orders. Hence the basis on which the Tribunal was reconstituted ought to be seen.

24. When the Tribunal was wound up with effect from 31.01.2002, several cases were filed before the High Court invoking Article 226. When the issue was challenged in writ petitions in W.P.(MD) No.11785 & 11786 of 2012, the Hon'ble High Court had directed the Government to reconstitute the Tribunal. The Government has passed the G.O.Ms.No.171, Higher Education (D2) Department, dated 24.11.2020 but with a stipulation the Tribunal is not applicable to minority institution. The G.O. has not spelt out the reasons for exempting the minority institutions. Therefore this Court is of the considered opinion that there is no rational reasoning to exempt the minority institutions from Tribunal jurisdiction.



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25. In Tamil Nadu more than fifty percent of the institutions are minority institutions and the Tribunal is not applicable to the minority institutions as per G.O., which would indicate employees in minority institutions are not having proper forum to redress their grievance. The Tribunal is constituted only to cover fifty percent of the colleges alone, which is absolutely drain on the recourses of the State Exchequer. The government ought to have issued the G.O. to constitute Tribunal that is applicable to minority institutions also thereby covering all educational institutions, since Tribunals being a judicial forum and the object of constituting Tribunal is to reduce case load of the judiciary or to bring in subject expertise for technical matters. Therefore this Court is of the considered view that invoking Tribunal jurisdiction will not interfere in constitutional right of “Right to Administer”.

26. On the basis of the aforesaid analysis, therefore this Court is of the considered opinion that

a. “Right to Administer” may be infringed if the government or educational



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authorities is sitting as appellate authorities. But if the first appellate authority is higher authority within the management of the minority institution, then the same would not infringe the rights of the minorities. Therefore under section 20 the appellate authority should be the higher authority within the management of the minority institutions.

b. If the Tribunal is second appellate forum then the right to administer is not affected since Tribunal is only a judicial forum. Therefore this Court is of the considered opinion that the Tribunal constituted under G.O. Ms. No. 171 is applicable to minority institutions also.

c. The condition stipulated in section 40 is affecting the rights of the minority institutions and the same is not applicable to minority institutions. The Tribunal shall not insist to pre deposit the arrears of pay or other allowances while hearing the appeal.

27. This Court has held that the Tribunal has jurisdiction to hear the cases



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as second appeal from the first appellate order, hence the petitioners ought to prefer an appeal before the Tribunal against the order of the 5th respondent, the Bishop herein, who is the first appellate authority. But the petitioners were out of employment from the respondent college from 2012 onwards and the present case is the second round of litigation. If remit back or transferred to Tribunal it may take few more years to end the litigation and hence this Court proceeded to hear the case on merits as well.

28. The Learned Counsel for the respondent college submitted that the termination is “termination simpliciter”, hence the same cannot be challenged and has relied on Municipal Committee, Sirsa VS Munshi Ram reported in (2005) 2 SCC 382, wherein it has been held that there was some sort of misconduct as noticed in the evidence of the witnesses and the same cannot be used for coming to the conclusion that an order of termination which is otherwise simpliciter in nature is motivated by any consideration other than the decision of the management as to the satisfactory nature of the workman concerned. The Learned Counsel further relied on the following judgments.



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- a. Krishnadevaraya Education Trust and another VS L.A. Balakrishna (2001) 9 SCC 319
- b. Union of India and others VS A.P. Bajpai and others (2003) 2 SCC 433
- c. Jai Singh VS Union of India and others (2006) 9 SCC 717

After referring to aforesaid judgments this Hon'ble Court is of the considered opinion that whether the order of termination is simpliciter or punitive has to be decided with regard to the facts and circumstances of each case. The distinction between the foundation and motive in relation to an order of termination either is thin or overlapping. It may be difficult either to categorise or classify strictly orders of termination simpliciter falling in one or the other category, based on misconduct as foundation for passing the order of termination simpliciter or on motive on the ground of unsuitability to continue in service. If the findings were arrived at in an enquiry as to misconduct, behind the back of the office or without a regular departmental enquiry the simple order of termination is to be treated as founded on the allegations and will be bad. But if the enquiry was not held, no findings were arrived at and the employer was not inclined to conduct an enquiry but at the same time, he did not want to continue the employee against whom



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there were complaints, it would only be a case of motive and the order would not be bad. In the present case the 1st order of termination dated 12.10.2012 states as under:

“As your service as contractual lecturer in the Self-Financed courses is no longer required in the college your employment is terminated with immediate effect”

29.This was challenged in the earlier round of litigation and then the appellate authority had considered the submissions of the petitioners and had passed an order dated 18.11.2013, which is impugned in this writ petition, wherein it has been held as under:

“On perusal of the entire records and on consideration of your submissions, I am of the view that your continuance in service is no longer required and the same would not sub serve the interest of the institution.

Your service has been found terminated by order of the Correspondent / Secretary dated 12.10.2012 only in accordance with the Rules and Regulations governing the Diocesan Colleges by paying 3 months salary in lieu of the 3 months notice period for you. On an overall consideration, it could be seen that the said measure of termination has been taken only in your interest so as avoid any stigma to your career.

The order of termination dated 12.10.2012 is confirmed and your appeal is rejected as devoid of merits.”



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30. On perusal of the above two orders, it is seen that no findings based on any enquiry were arrived at, but at the same time, the college did not want to continue the employees / petitioners against whom there were complaints, then it would only be a case of termination simpliciter and the order would not be bad. Therefore this Court is of the considered opinion that the termination is only “termination simpliciter”. The petitioners have not raised any other legal ground to interfere in the “termination simpliciter” order.

31. In the result the writ petitions are devoid of merits and hence dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Index : Yes / No
Internet : Yes

05.09.2022

Tmg



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To

- 1.The Director of Collegiate Education,
College Road, Nungambakkam,
Chennai 006.
- 2.The Joint Director of Collegiate Education,
Tirunelveli Region,
Tirunelveli.



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S.SRIMATHY, J

Tmg

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.

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