



WEB COPY

W.A(MD)No.907 of 2021:

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.06.2022

CORAM:

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

and

THE HONOURABLE **MRS.JUSTICE S.SSRIMATHY**

W.A(MD)Nos.907 and 1000 of 2021

and

C.M.P(MD)Nos.4119 and 4536 of 2021

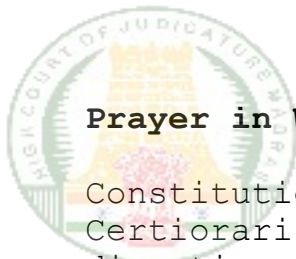
W.A(MD)No.907 of 2021:

- 1.The Secretary,
Virudhunagar S.Vellaichamy Nadar Polytechnic College,
Virudhunagar.
- 2.The Chairman,
Virudhunagar S.Vellaichamy Nadar Polytechnic College,
Virudhunagar - 626 001.
- 3.Mr.V.P.P.K.C. Narayanamoorthi,
The Secretary,
Virudhunagar S.Vellaichamy Nadar Polytechnic College,
Virudhunagar - 626 001.
- 4.The Principal,
Virudhunagar S.Vellaichamy Nadar Polytechnic College,
Virudhunagar - 626 001. ... Appellants/respondents 3 to 6

Vs.

- 1.R.V.Rajavel ... 1st Respondent/writ petitioner
- 2.The State of Tamil Nadu, rep. by its,
Secretary to Government,
Higher Education Department,
Secretariat, Chennai.
- 3.The Director,
Directorate of Technical Education,
53, Sardhar Patel Road,
Guindy, Chennai - 600 025.
... Respondents 2 & 3/Respondents 1 & 2

Prayer: Writ Appeal filed under Clause 15 of the Letter Patent, to allow the writ appeal by setting aside the order dated 19.03.2021, passed by this Court in W.P(MD)No.8717 of 2020.



Prayer in WP(MD). 8717 of 2020 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a writ of Certiorarified Mandamus or any other appropriate writ or order or direction in the nature of writ calling for the records relating to impugned order passed by the 3rd Respondent in his proceedings Kuripaanaai No.F 50-201-A3/O-10826-3173 dated 14-11-2018 and quash the same as illegal and consequentially to direct the respondents to reinstate the petitioner as lecturer in the 4th Respondent college along with monitary and service benefits including the salary for the priod between 14-11-2018 and as on date of reinstatement within the period that may eb stipulated by this Honourable Court.

For Appellant :Mr.S.Ramsundarvijayraj
For R-1 :Mr.M.Ajmal Khan,
Senior Counsel for
M/s.Ajmal Associates
For R-2 & R-3 : Mr.S.Saji Bino,
Special Government Pleader

W.A(MD)No.1000 of 2021:

R.V.Rajavel ... Appellant/Petitioner

vs.

- 1.The State of Tamil Nadu rep.,
by its Secretary to Government,
Higher Education Department,
Secretariat,
Chennai.
- 2.The Director,
Directorate of Technical Education,
53, Sardhar Patel Road,
Guindy,
Chennai - 600 025.
- 3.The Secretary,
Virudhunagar S.Vellaichamy Nadar Polytechnic College,
Virudhunagar - 626001.
- 4.The Chairman,
Virudhunagar S.Vellaichamy Nadar Polytechnic College,
Virudhunagar - 626001.
- 5.Mr.V.P.P.K.C.Narayanamoorthi,
The Secretary,
Virudhunagar S.Vellaichamy Nadar Polytechnic College,
Virudhunagar - 626001.



6.The Principal,
Virudhunagar S.Vellaichamy Nadar Polytechnic College,
Virudhunagar - 626001. ... Respondents/Respondents

Prayer: Writ Appeal filed under Clause 15 of the Letter Patent, to allow the writ appeal by setting aside the order dated 19.03.2021, passed by this Court in W.P(MD)No.8717 of 2020.

Prayer in WP(MD) . 8717 of 2020 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a writ of Certiorarified Mandamus or any other appropriate writ or order or direction in the nature of writ calling for the records relating to impugned order passed by the 3rd Respondent in his proceedings Kuripaanaai No.F 50-201-A3/O-10826-3173 dated 14-11-2018 and quash the same as illegal and consequentially to direct the respondents to reinstate the petitioner as lecturer in the 4th Respondent college along with monitary and service benefits including the salary for the priod between 14-11-2018 and as on date of reinstatement within the period that may eb stipulated by this Honourable Court.

For Appellant :Mr.M.Ajmal Khan,
Senior Counsel for
M/s.Ajmal Associates
For R-1 to R-3 :Mr.S.Saji Bino,
Special Government Pleader
For R-4 & R-5 :Mr.Ramsundarvijayaraj
For R-6 :Mr.G.Prabhu Rajadurai

COMMON JUDGMENT

(Judgment of the Court was delivered by **S.S.SUNDAR, J.**)

These two writ appeals arise against the order of the learned Single Judge of this Court, dated 19.03.2021, in W.P(MD)No.8717 of 2020,

2. Heard Mr.S.Ramsundarvijayaraj, learned counsel for the appellants in W.A(MD)No.907 of 2021 and for the respondents 4 and 5 in W.A(MD)No.1000 of 2021, Mr.M.Ajmal Khan, learned Senior Counsel for the first respondent in W.A(MD)No.907 of 2021 and for the appellant in W.A(MD)No.1000 of 2021 and Mr.S.Saji Bino, learned Special Government Pleader for the respondents 2 and 3 in W.A(MD) No.907 of 2021 and for the respondents 1 to 3 in W.A(MD)No.1000 of 2021.

3. The brief facts that are necessary for the disposal of the writ appeals are as follows:

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



(i) Challenging the order of termination of the writ petitioner, dated 14.11.2018, the appellant in W.A(MD)No.1000 of 2021, filed a writ petition in W.P(MD)No.8717 of 2020. The appellant/writ petitioner was appointed as a Lecturer in the Mechanical Engineering Department in 6th respondent S.Vellaichamy Nadar Polytechnic College, Virudhunagar, in the year 2015. The sixth respondent college submitted an application for approval of appointment of the writ petitioner as a Lecturer in Mechanical Engineering. The writ petitioner earlier filed a writ petition challenging the order refusing to approve his appointment in the College, in W.P(MD)No.3831 of 2018. While the matter stood thus, a charge-memo was issued by the 6th respondent/Institution against the appellant/writ petitioner for certain irregularities alleged to have been committed by him.

(ii) It is admitted that the management terminated the appellant from service by an order, dated 14.11.2018, without holding any enquiry. Even though the appellant was terminated from service, his writ petition in W.P(MD)No.3831 of 2018 was allowed, simultaneously, and his appointment was approved by order of Court. Therefore, the appellant challenged the order terminating him from service in W.P(MD)No.8717 of 2020 on 28.07.2020.

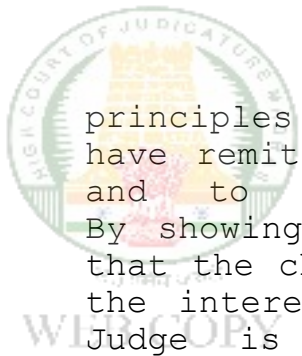
(iii) The writ petition was partly allowed by the learned Single Judge. While quashing the order of termination, the learned Single Judge observed that the writ petitioner is not entitled for the arrears of salary following the principle of 'No Work, No Pay'.

4. Challenging the order of the learned Single Judge, W.A(MD)No.907 of 2021, is filed by the management and W.A(MD)No.1000 of 2021, is filed by the writ petitioner.

5. The learned Senior Counsel appearing for the writ petitioner submitted that the order of the learned Single Judge denying salary for the entire period, is contrary to the principles laid down by this Court and the Honourable Supreme Court of India and further submitted that the reasons assigned by the learned Single Judge for denial of back wages cannot be sustained.

6. The learned Senior Counsel further submitted that the writ petitioner cannot be terminated at the whims and fancies of the management and the writ petitioner being terminated illegally, is entitled to get full wages, otherwise, it will amount to put the management in premium and recognizing the said illegal act.

7. On the other hand, the learned counsel appearing for the management, who are the appellants in W.A(MD)No.907 of 2021, submitted that the order of the learned Single Judge quashing the



principles of natural justice and that the learned Judge ought to have remitted the matter back to the management for fresh enquiry and to pass final orders pursuant to the charge-memo. By showing the charge-memo, the learned counsel also pointed out that the charges against the writ petitioner are serious concerning the interest of the management and therefore, the learned Single Judge is not correct in granting reinstatement without an opportunity to the management to establish that the writ petitioner is guilty of misconduct, which warrants proper punishment to protect the interest of the management.

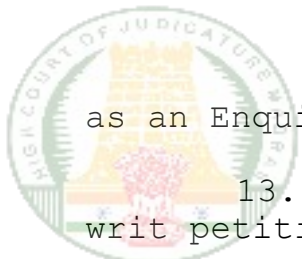
8. The learned counsel then submitted that the writ petitioner filed a writ petition challenged the order of termination, dated 14.11.2018, only on 28.07.2020 and that the huge delay of one year and eight months, cannot be ignored while ordering reinstatement. It is further stated that for the period during which the writ petitioner has slept over the issue, the teacher cannot be given the service and other monetary benefits. He also seriously wanted this Court to apply the doctrine of laches, to deny relief to the writ petitioner.

9. This Court after elaborately hearing the learned counsel appearing on either side, is of the view that the learned Judge while allowing the writ petition on the ground of violation of principles of natural justice ought to have remanded the matter for fresh consideration relating to charge-memo and permit the management to proceed further and complete the disciplinary proceedings by following the procedure required in law.

10. Though the writ petitioner has made serious allegation of malafides, the petitioner has not chosen to argue the writ petition on the ground of malafides so that this Court also may consider the allegations made in the affidavit filed in support of the writ petition on the ground of malafides. In the absence of such allegation being pressed into service by the writ petitioner before the learned Single Judge, this Court is not inclined to hold that the order of learned Single Judge quashing the order of termination is only on the ground of violation of principles of natural justice and the writ petitioner cannot be allowed to argue on other issues which were not canvassed before the learned Single Judge.

11. However, the learned counsel appearing for the writ petitioner submitted that the writ petitioner raised serious allegation of malafides and therefore, the petitioner will be put to serious prejudice if the management is asked to appoint an Enquiry Officer as they may appoint the Officer on their own whims and fancies.

12. The learned counsel appearing for the management fairly conceded that the management has no objection if the Joint Director of Education, is directed to appoint anyone of his choice



as an Enquiry Officer to conduct enquiry.

13. However, the learned senior counsel appearing for the writ petitioner has an objection and requested this Court to appoint any one of the advocates, who is practising in service side to conduct enquiry. Accordingly, this Court verified with **Mr.B.Saravanan(No.22 Law Chambers, Madurai Bench of Madras High Court, Madurai, Mobile No.9443716952)**, whether he is willing to be an Enquiry Officer. Mr.B.Saravanan, has given his consent and he is appointed as an Enquiry Officer to proceed further with the disciplinary proceedings that was commenced by charge-memo, dated 08.11.2018.

14. It is admitted before this Court fairly that the order of termination impugned in the writ petition was issued without holding enquiry. This Court is unable to find any justifiable reason for not reinstating the writ petitioner pursuant to the direction of the learned single Judge by the order impugned in the writ petition. Though this Court is of the view that the writ petitioner is not entitled to salary for the period from 14.11.2018 to 28.07.2020 on the ground of laches, this Court is unable to deny salary to the writ petitioner thereafter, as denial of employment is illegal.

15. Therefore, the management is directed to proceed further with the enquiry as directed earlier in the manner as provided under law, on the basis of the enquiry report that may be submitted by Mr.B.Saravanan. Except stating that the writ petitioner is not eligible to get salary for the period from 14.11.2018 to 28.07.2020, the management shall do the needful to pay the arrears of salary within a period of eight weeks from the date of receipt of a copy of this order. The management is also directed to reinstate the writ petitioner immediately within a period of two weeks from the date of receipt of a copy of this order.

16. The Enquiry Officer appointed by this Court is directed to conduct enquiry and complete the enquiry within a period of three months from the date of commencing enquiry after issuing notice to the management as well as the writ petitioner. Both the parties are directed to co-operate for the enquiry as the learned counsel who has now been requested by this Court has accepted this engagement *de hors* his other commitments.

17. The management is directed to pay a sum of Rs.50,000/- and the writ petitioner shall pay a sum of Rs.25,000/- to the Enquiry Officer. In case, the enquiry is delayed on account of non-cooperation of anyone of the parties, the party, who is responsible for the delay, will be held responsible for further remuneration that may be required.



The writ appeals are disposed of in the above terms. No Costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-III)

WEB COPY

// True Copy //

/07/2022

Sub Assistant Registrar(CS)

pm

To

1.The Secretary to Government,
State of Tamil Nadu,
Higher Education Department,
Secretariat, Chennai.

2.The Director,
Directorate of Technical Education,
53, Sardhar Patel Road,
Guindy, Chennai - 600 025.

3.Mr.B.Saravanan
No.22 Law Chambers,
Madurai Bench of Madras High Court,
Madurai. **Mobile No.9443716952**

+2 CC to M/s.AJMAL ASSOCIATES, Advocate (SR-27629,SR-27633[F] dated 23/06/2022)

+1 CC to M/s.SPL.GP (SR-27712,27713[F] dated 23/06/2022)

+2 CC to M/s.S. RAMSUNDARVIJAYRAJ, Advocate (SR-27848,27849[F] dated 23/06/2022)

+1 CC to M/s.G. PRABHU RAJADURAI, Advocate (SR-27652[F] dated 23/06/2022)

W.A(MD)Nos.907 and 1000 of 2021
22.06.2022

RD(06.07.2022) 7P 10C