



W.P(MD)Nos.20240, 21999 and 22000 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 31.10.2022

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)Nos.20240, 21999 and 22000 of 2022

and

W.M.P.(MD)Nos.14708, 16162 and 16163 of 2022

W.P.(MD)No.20240 of 2022:-

Nadar Mahajana Sangam
S.Vellaichamy Nadar College,
College Committee,
Rep. by its Secretary,
A.M.S.G. Ashokan.

... Petitioner

Vs.

1.The Joint Director of Collegiate Education,
Madurai Region, Madurai- 02.

2.M.Dhanasekaran,
Assistant Professor and H.O.D (Mathematics Department),
Nadar Mahajana Sangam S.Vellaichamy Nadar College,
Nagamalai, Madurai.

3.S.Subbulakshmi,
Assistant Professor and H.O.D (History Department),
Nadar Mahajana Sangam S.Vellaichamy Nadar College,
Nagamalai, Madurai.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling for the records related to the impugned order of the 1st respondent dated 23.08.2022 in Na.Ka.No.7192/E3/2021 and quash the same.



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For Petitioner : Mr.Isaac Mohanlal, Senior Counsel,
For Mr.N.Dilip Kumar.

For Respondents : Mr.S.Shaji Bino,
Spl. Govt. Pleader for R1.
Mr.T.Lajapathi Roy for R2 & R3.

W.P.(MD)No.21999 of 2022:-

M.Dhanasekaran

... Petitioner

Vs.

- 1.The State of Tamilnadu,
Rep. by its Principal Secretary to Government,
Higher Education (G1) Department,
Secretariat, Chennai 9.
- 2.The Director of Collegiate Education,
DPI Campus, Chennai 6.
- 3.The Regional Joint Director of Collegiate Education,
O/o. the Regional Joint Director of Collegiate Education,
Madurai.
- 4.Nadar Mahajana Sangam S.Vellichamy Nadar College,
Represented by its Secretary and Correspondent,
Nagamalai, Madurai - 19.
- 5.A.M.S.G.Ashokan,
The Secretary and Correspondent,
Nadar Mahajana Sangam S. Vellaichamy Nadar College,
Nagamalai, Madurai 19.
- 6.The Principal,
Nadar Mahajana Sangam S. Vellaichamy Nadar College,
Nagamalai, Madurai 19.

... Respondents



W.P(MD)Nos.20240, 21999 and 22000 of 2022

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records pertaining to the Impugned Resolution dated 18.08.2022 and the Consequential Impugned Order of suspension and charge memo dated 18.08.2022 on the file of the Respondent No.4 and quash the same as illegal.

For Petitioner : Mr.T.Lajapathi Roy

For Respondents : Mr.S.Shaji Bino,
Spl. Govt. Pleader for R1 to R3.
Mr.Isaac Mohanlal, Senior Counsel,
For Mr.N.Dilip Kumar for R4.
No appearance for R5 & R6.

W.P.(MD)No.22000 of 2022:-

S.Subbulakshmi

... Petitioner

Vs.

- 1.The State of Tamilnadu,
Rep. by its Principal Secretary to Government,
Higher Education (G1) Department,
Secretariat, Chennai 9.
- 2.The Director of Collegiate Education,
DPI Campus, Chennai 6.
- 3.The Regional Joint Director of Collegiate Education,
O/o. the Regional Joint Director of Collegiate Education,
Madurai.
- 4.Nadar Mahajana Sangam S.Vellichamy Nadar College,
Represented by its Secretary and Correspondent,
Nagamalai, Madurai 19.
- 5.A.M.S.G.Ashokan,
The Secretary and Correspondent,
Nadar Mahajana Sangam S. Vellaichamy Nadar College,
Nagamalai, Madurai 19.



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6.The Principal,

Nadar Mahajana Sangam S. Vellaichamy Nadar College,
Nagamalai, Madurai 19.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records pertaining to the Impugned Resolution dated 18.08.2022 and the Consequential Impugned Order of suspension and charge memo dated 18.08.2022 on the file of the Respondent No.4 and quash the same as illegal.

For Petitioner : Mr.T.Lajapathi Roy

For Respondents : Mr.S.Shaji Bino,
Spl. Govt. Pleader for R1 to R3.
Mr.Isaac Mohanlal, Senior Counsel,
For Mr.N.Dilip Kumar for R4.
No appearance for R5 & R6.

COMMON ORDER

Heard Mr.Isaac Mohanlal, learned senior counsel, Mr.T.Lajapathi Roy, learned counsel and Mr.S.Shaji Bino, learned Special Government Pleader for the appearing parties.

2.Dr.M.Dhanasekaran and Dr.S.Subbulakshmi are Associate Professors working in Nadar Mahajana Sangam S.Vellaichamy Nadar College, Nagamalai, Madurai – 19. They are heads of the department of Mathematics and History



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respectively. The College Committee has passed resolution on 18.08.2022 for initiating disciplinary action against them. The resolution also sets out the articles of charge framed against them. They have been called upon to offer their explanation in response to the charge memo. Considering the seriousness of the charges, they have also been placed under suspension by the College Secretary. They question the impugned resolution dated 18.08.2022 passed by the College Committee and the consequential order of suspension and charge memo in W.P.(MD)Nos.21299 and 22000 of 2022.

3.In the meanwhile, the Joint Director of Collegiate Education, Madurai Region has informed the College Management that the orders of suspension are unsustainable and that Dr.M.Dhanasekaran and Dr.S.Subbulakshmi must be reinstated in service. Questioning this communication dated 23.08.202, the College Management has filed W.P.(MD)No.20240 of 2022.

4.The learned counsel appearing for the suspended Associate Professors reiterated all the contentions set out in the affidavits filed in support of their writ petitions. He pointed out that the tenure of the College Committee had long since been expired. As on date, there is no College Committee in existence. Only the College Committee will have the jurisdiction to take



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disciplinary action. The College Secretary has only been empowered to carry on day to day administration. Therefore, the impugned orders are patently without jurisdiction. The learned counsel would further argue that since two months have lapsed after passing of the order of suspension and the competent authority has not extended the period of suspension, the staffs in question are deemed to have been reinstated. He also further alleged that the proceedings are vitiated by malices. He pointed out that when the competent authority had directed the inclusion of Dr.M.Dhanasekaran and Dr.S.Subbulakshmi in the admission committee, the College Management has deliberately kept them out. They had filed writ petition before this Court. Anchored by the said development, the College Management had suspended them from service. According to him, the impugned proceedings are vitiated by malafides and they are liable to set aside on that ground also.

5.The learned senior counsel appearing for the College Management submitted that the communication of the Joint Director of Collegiate Education had no authority or jurisdiction to call upon the Management to take back the suspended staffs. This order has been passed without notice to the Management. It is thus violative of principles of natural justice. It is true that the tenure of the College Committee is three years and the said period has since



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been expired. Election is to be held to elect the members of the Executive Committee and the Educational Agency on 06.11.2022. If it is to concluded that the College Committee is not in existence, that will lead to an administrative vacuum. In any event, the College Secretary has been visited with the power to carry on day to day administration. This power would certainly include the power to initiate disciplinary action. He also seriously faulted the conduct of the staffs in question. According to him, they had acted in a defined manner and even quit when the meeting of the academic counselling was going on. He strongly reverted the allegation of malafides. Dr.M.Dhanasekaran and Dr.S.Subbulakshmi have been suspended for not implementing the revised syllabi last year. His further contention is that even though two months have lapsed, the suspended staffs cannot insist that they should be taken back to duty. At best, they can seek payment of the full salary and nothing more. He called upon this Court to quash the communication of the Joint Director of Collegiate Education, Madurai Region and dismiss the writ petitions filed by the suspended staffs.

6.I carefully considered the rival contentions and went through the materials on record. The learned counsel appearing for the suspended staffs namely, Dr.M.Dhanasekaran and Dr.S.Subbulakshmi after getting instructions



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categorically informed the Court that they would in future abide by the directions that have been issued by the academic councils. Even while reiterating as members of academic councils, they are entitled to express their views. They made it clear that once a decision has been taken by academic councils, they are bound by the same. This undertaking given by Dr.M.Dhanasekaran and Dr.S.Subbulakshmi is placed on record.

7.I sustain the contentions of the learned senior counsel appearing for the College Management that the issuance of the impugned orders is relatable to the filing of W.P.(MD)No.17819 of 2022 filed by the staffs in question for directing the college management to include them in the admission committee. This is because Dr.M.Dhanasekaran and Dr.S.Subbulakshmi have been suspended last year on similar grounds. It is quite possible that the relationship between the staffs in question and the College Management is under strain but on that ground, the impugned orders cannot be said to be vitiated by malafides.

8.The primary ground urged by the learned counsel for the suspended staffs is that the impugned orders passed by the College Management is without jurisdiction and that in any event, they have to be reinstated in service. The question that posed by the College Management is whether the direction issued



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by the Joint Director of Collegiate Education for reinstating the staffs in question is sustainable.

9.The suspension orders are dated 18.08.2022 and it appears to have been served on 23.08.2022. We are now in 27.10.2022. Admittedly, two months have elapsed. Section 19(3) of the Tamil Nadu Private Colleges (Regulation) Act, 1976 is as follows:-

“(3) (a) No teacher or other person employed in any private college shall be placed under suspension, except when an inquiry into the gross misconduct, within the meaning of the Code of Conduct prescribed under sub-section (1) of section 18, of such teacher or other person is contemplated.

(b) No such suspension shall remain in force for more than a period of two months from the date of suspension and if such inquiry is not completed within that period, such teacher or other person shall, without prejudice to the inquiry, be deemed to have been restored as teacher or other employee :

Provided that the competent authority may, for reasons to be recorded in writing, extend the said period of two months, for a further period not exceeding two months, if, in the opinion of such competent authority, the inquiry could not be completed within the said period of two months for reasons directly attributable to such teacher or other person.”



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10.The competent authority has not extended the suspension period of two months by any further period. Therefore, Dr.M.Dhanasekaran and Dr.S.Subbulakshmi are deemed to have been reinstated. If the College Management still does not wish to assign teaching duties to them, they will be entitled to full monthly salary that shall be paid without default.

11.As per Section 11 of the Tamil Nadu Private Colleges (Regulation) Act, 1976, every college not being a minority college shall have a College Committee. Every College Committee shall have a Secretary. As per Section 14(1)(c), the College Committee shall have the power to take disciplinary action against teachers and other persons of the private college. Rule 8 of the Tamil Nadu Private Colleges (Regulation) Rules, 1976 mandates that the educational agency of every college other than minority college shall constitute a committee. The term of office of the members of the committee shall be three years. As per Rule 9 (2), the term of office of the Secretary shall ordinarily be three years. A comparison of the language and text of Rule 8(2) and Rule 9 (2) of Tamil Nadu Private Colleges (Regulation) Rules, 1976 makes the distinction clear. While the term of office of the Secretary shall ordinarily be three years, the term of office of the members of the committee shall be three years. There is a reason for maintaining this distinction between the term of



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office of the members of the committee and the term of office of the Secretary.

There cannot be an administrative vacuum after the tenure of the College Committee expires till the new College Committee is constituted, the Secretary will be in-charge of the day to day affairs of the college. It is only the College Committee that is competent to take disciplinary action against the teachers of the private college. In this case, the tenure of the College Committee has already expired. This is made clear by the communication issued by the Director of Collegiate Education, Chennai vide proceedings dated Mu.Mu.No.9093/G2/2019 dated 08.07.2022. The Director of Collegiate Education had permitted the College Secretary namely, Shri.A.M.S.G.Ashokan to continue to function as Secretary for three more months or new set of members are elected for the College Committee. An extension order was passed on 12.09.2022. If the College Committee is existence, it was unnecessary for the Director of Collegiate Education to pass such an order. The said order is addressed to Shri.A.M.S.G.Ashokan and it has been enclosed in the typed set of papers filed by the College Management. The College Management has not taken a stand that issuance of such a communication is illegal. Therefore, I have to necessarily come to the conclusion that as on date there is no College Committee in existence for Nadar Mahajana Sangam S.Vellaichamy Nadar College.



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12.The next question that arises for consideration is whether the College Secretary could have taken action in the matter. The learned senior counsel for the College Management would contend that the expression 'day to day affairs' would include the power to initiate disciplinary action. I am not able to accept the said contention. This is for two reasons. In the case on hand, it is not as if the College Secretary has taken action on his own. On the other hand, he is one of the signatories to the resolution passed by a body calling itself the College Committee. Secondly, when the statute confers powers only on the College Committee to take disciplinary action against erring staff, the College Secretary usurps such a power. The proceedings issued by the Director of Collegiate Education authorise the College Secretary to continue to function as Secretary till the new office bearers are elected. Such an order was passed to avoid administrative vacuum. The said proceedings cannot be stretched to mean that the College Secretary is virtually the College Committee. Of course, a question has been raised by the learned senior counsel as to what could be the response if a college staff commits a grave misconduct. I am afraid that it is not the function of the Court to answer hypothetical question. If there is any lacuna in the statute, it is for the legislature and the executive to set things right. The Court's function is merely to implement the law as its exists. The statutorily rules clearly stipulates that the tenure of the members of the College Committee



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is three years. On the other hand, some leeway is provided in the case of the tenure of the College Secretary. Having noted this distinction, the result is as to follow.

13.I do not want to go into the question as to whether the Joint Director of Collegiate Education, Madurai Region to issue the communication dated 23.08.2022 calling upon the College Management to take back the staffs in question. This is because the said order is in accord with the conclusion I have arrived at.

14.In this view of the matter, W.P.(MD)Nos.21999 and 22000 of 2022 are allowed and W.P.(MD)No.20240 of 2022 is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

31.10.2022

Index : Yes / No
Internet : Yes/ No
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G.R.SWAMINATHAN, J.

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To:-

- 1.The Principal Secretary to Government,
Higher Education (G1) Department,
Secretariat, Chennai 9.
- 2.The Director of Collegiate Education,
DPI Campus, Chennai 6.
- 3.The Joint Director of Collegiate Education,
Madurai Region, Madurai- 02.
- 4.The Regional Joint Director of Collegiate Education,
O/o. the Regional Joint Director of Collegiate Education,
Madurai.

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