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W.P.No.24395 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.07.2023

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.24395 of 2015

1. Dr.S.Sudharshan (Died)
2. Manimegalai
3. Lavanya
4. Jayaprakash
(P2 to P4 substituted as
legal representatives of the
deceased sole petitioner
vide order dated 21.02.2023
made in W.M.P.No.14114 of
2022 in W.P.No.24395 of 2015)

... Petitioners

Vs.

1. Sri Ramakrishna Mission Vidhyalaya,
College of Education,
Sri Ramakrishna Vidhyalaya Post,
Coimbatore – 641 020.
2. The Director of College Education,
Nungambakkam,
Chennai – 600 006.
3. The Secretary,
Education Department,
Secretariat,
Fort St. George,
Chennai – 600 009.

... Respondents



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Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records of the first respondent Rc.No.3/DP(SS)/2008 dated 20.10.2011 and quash the same as of no legal consequence and direct the respondents to pay the petitioner all the monetary benefits including the pension that is legally payable to the petitioner.

For Petitioners : Mr.V.Singan

For Respondents

For R1 : Mr.M.Sriram

For R2 & R3 : Mr.M.P.Murugan Raja
Government Advocate.

ORDER

This writ petition has been filed challenging the order dated 20.10.2011 passed by the first respondent in Rc.No.3/DP(SS)/2008, thereby removing the petitioner from the service.

2. Now the sole petitioner died and his legal representatives are impleaded as parties to this petition. The deceased petitioner was employed as Associate Professor in History in the first respondent college. During his tenure, he had availed financial assistance from the University Grant Commission for the purpose of carrying research work.



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A sum of Rs.80,000/- was allotted in which a sum of Rs.29,940/- was sanctioned as first installment and he had not even availed the first installment in full. The financial assistance for the purpose of carrying project work is based on contract and wherever the concerned professor who has availed the loan was not able to complete the project, it is only expected to be refunded to the University Grants Commission.

3. While being so, the first respondent on a mistaken appreciation regarding the vouchers submitted by the deceased petitioner regarding the expenses incurred by him for the purpose of project work has chosen to issue a show cause notice and placing him under suspension. After enquiry, all the charges were proved against the deceased petitioner and he was terminated from service by the impugned proceeding.

4. Even prior to that, the first respondent terminated the deceased petitioner from service and the same was rejected by the second respondent on the ground that the punishment imposed on the deceased petitioner was disproportionate to the quantum of guilt and the charges



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levelled against him. Aggrieved by the same, the first respondent filed writ petition in W.P.No.23593 of 2009 and this Court by an order dated 31.03.2011 set aside the order passed by the second respondent and remitted back the matter to the first respondent for reconsideration. However, the first respondent without conducting any enquiry terminate the deceased petitioner disproportionate to the charges levelled against him.

5. The learned counsel appearing for the petitioners submitted that the appellate authority constituted under the Tamil Nadu Private Colleges Regulation Act as against the order of dismissal of a teacher or an employee of the college is the Director of College Education. The authority granting previous approval for such termination of the employee is also the Director of College Education. Therefore, the authority granting permission by himself cannot be the appellate authority, since no man can be a judge of his own cause.

5.1. In fact, earlier the second respondent categorically pointed out that the punishment imposed on the petitioner was disproportionate



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with the charges proved as against the petitioner. In fact, the respondent framed three charges as against petitioner in which the deceased petitioner availed a sum of Rs.3,406/- for his train tickets and thereafter he canceled the same for unlawful enrichment. The second charge was that he produced inflated distance schedule in order to claim more money. The third charge was that he produced bills improperly. Therefore, he claimed a sum of Rs.3,406/- and all the charges are not grave in nature, as such the order or termination is higher punishment and disproportionate to the charges levelled against the deceased petitioner.

5.2. He further submitted that availment and utilization of funds for the purpose of project work by a teacher of the college by the University Grants Commission is based on contract and wherever there is a breach of contract, the person who affected by the breach of contract is only entitled to recall the amount or to sue for damages. However, the disciplinary proceeding has been initiated and the order of removal from service is grave in nature. Now the first petitioner is died as such his legal heirs are entitled to get all the monetary benefits including the



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pensionary benefits. In support of his contention, he relied upon the following judgments :-

(i) (2003) 5 SCC 200 – Secretary, School committee Vs. Government of T.N. & ors.

(ii) 1998 Writ LR 769 – Management of MGR Higher Secondary School Vs. Nag Balaji Singh & ors.

6. The learned counsel appearing for the first respondent filed counter and it revealed that admittedly all the three charges are proved as against the deceased petitioner. Though the second respondent rejected the prior dismissal order, it was challenged by the first respondent in W.P.No.23593 of 2009 and this Court categorically observed that the charges alleged and proved against the deceased petitioner includes misappropriation of money. It is a well settled proposition of law that if the charge of misappropriation is proved, the management will lose confidence in such member and he/she cannot be retained in service and for the proven charge of misappropriation dismissal can only be the punishment. Therefore, it cannot be said that the punishment of termination is disproportionate to the proved charges as against the deceased petitioner.

7. Heard Mr.V.Singan, learned counsel appearing for the



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petitioner Mr.M.Sriram, learned counsel appearing for the first respondent and Mr.M.P.Murugan Raja, learned Government Advocate appearing for the respondents 2 & 3.

8. The deceased petitioner was working as Associate Professor in History department in the first respondent college. He availed financial assistance from the University Grand Commission for the purpose of carrying research work. During his research, he submitted train tickets for reimbursements of Rs.3,406/-, as if he travelled on 13.02.2007. However, on the same day, he cancelled the said tickets and got refund the said amount. Further the petitioner produced a fabricated bill in the name of non-existent agency called Sri Arangan Travels and claimed a sum of Rs.26,840/-, as if he had gone to several schools for research work. That apart, the deceased petitioner produced the travel bills by vouchers dated 14.09.2007 and 13.09.2007 without chronological order.

9. After service of show cause notice and without satisfying



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the explanation submitted by the deceased petitioner, enquiry was conducted and all the three charges were proved. Therefore, the first respondent terminated the deceased petitioner and sent for approval of the second respondent. After getting approval from the second respondent the first respondent passed the impugned order and terminate the deceased petitioner from his service.

10. In fact, in earlier occasion though the second respondent was not accepted the order of removal, it was challenged by the first respondent before this Court in W.P.No.23593 of 2009 and this Court by an order dated 31.03.2011, set aside the order passed by the first respondent and remitted the matter fresh consideration. In that order, this Court observed that the terms and conditions of service of teachers and other persons employed in private colleges including the deceased petitioner are coming under Chapter IV of the Tamil Nadu Private Colleges (Regulation) Act, 1976.

11. Section 19 of the Tamil Nadu Private Colleges (Regulation)



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Act, deals with dismissal, removal or reduction in rank or suspension of teachers or other persons employed in private colleges. As per Section 19(1) of the Tamil Nadu Private Colleges (Regulation) Act, prior approval of the competent authority before dismissing, removing or reducing the rank of teacher has to be obtained by the college committee and proposal has to be submitted under Rule 19(2) of the Tamil Nadu Private Colleges (Regulation) Act. The competent authority shall record his satisfaction that there are adequate and reasonable ground for such proposal before approving such approval, rejection or reduction or termination of approval.

12. Section 19 (1) and (2) of the Tamil Nadu Private Colleges (Regulation) Act, 1976, reads as follows :-

19(1) Subject to any rule that may be made in this behalf, no teacher or other person employed in any private college shall be dismissed, removed or reduced in rank nor shall his appointment be otherwise terminated except with the prior approval of the competent authority.

(2) Where the proposal to dismiss, remove or



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reduce in rank or otherwise terminate the appointment of any teacher or other person employed in any private college is communicated to the competent authority, that authority shall, if it is satisfied that there are adequate and reasonable grounds for such proposal, approve such dismissal, removal, reduction in rank or termination of appointment.....”

13. The proposal seeking prior approval to terminate the service of the deceased petitioner, which was sent by the first respondent was rejected on the ground of proportionality of punishment alone. Therefore, this Court concluded that the charges alleged and proved against the deceased petitioner included misappropriation of money. It is well settled proposition of law that if the charge of misappropriation is proved, the management will lose confidence on such member and he/she cannot be retained in service and for the proven charge of misappropriation dismissal can only be the punishment.

14. The learned counsel appearing for the petitioner relied upon the judgment reported in **(2003) 5 SCC 200** in the case of **Secretary, School Committee Vs. Government of T.N. & ors.**, the Hon'ble Supreme



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Court of India held as follows :-

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“10. Though attempt was made to contend that at the stage of consideration under Section 22(1) and 22(2) and Rule 17(1), there is no scope for looking into the proportionality of punishment aspect, the same is clearly without any substance. What an authority is required to do at that stage is to see whether the proposed punishment is to be approved. Obviously, it has to consider whether the punishment as proposed is a proper one; otherwise there is no need for seeking its approval. The crucial words used in sub-section (2) of Section 22 are “adequate and reasonable grounds” for the proposal. The proposal relates to dismissal, removal or reduction in rank or otherwise termination of appointment of any teacher or any other person employed in a private school. While considering whether adequate and reasonable grounds exist for giving approval, the authority is certainly required to look into the gravity of the proved charges and whether the punishment as proposed commensurates with it. Any other interpretation would make the question of approval an exercise in futility”

15. Thus, it is clear that while considering whether adequate and



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reasonable grounds exist for giving approval, the authority is certainly required to look into the gravity of the proved charges and whether the punishment as proposed commensurates with it. In the case on hand, the charge of misappropriation of money has been proved as against the deceased petitioner. Therefore, the above judgments cited by the learned counsel appearing for the petitioners are not applicable to the case on hand. Therefore, the second respondent rightly approved the proposal of termination of the deceased petitioner from his service.

16. In view of the above discussion, this Court finds no infirmity or illegality in the order passed by the first respondent and the writ petition is devoid of merits. Accordingly the Writ Petition stands dismissed. There shall be no order as to cost.

17.07.2023

Internet: Yes

Index : Yes/No

Speaking/Non Speaking order

rts



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1. The Secretary,
Education Department,
Secretariat,
Fort St. George,
Chennai – 600 009.
2. The Director of College Education,
Nungambakkam,
Chennai – 600 006.
3. Sri Ramakrishna Mission Vidhyalaya,
College of Education,
Sri Ramakrishna Vidhyalaya Post,
Coimbatore – 641 020.



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G.K.ILANTHIRAIYAN. J.

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