



W.P.No.40151 of 2016

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

Reserved on:09.06.2023

Delivered on: 21.07.2023

**CORAM:**

**THE HONOURABLE MR.JUSTICE P.B.BALAJI**

**W.P.No.40151 of 2016**

**&**

**W.M.P.No.34194 of 2016**

K.Dhanalakshmi

... Petitioner

**Vs.**

1.The Director  
Directorate of Technical Education  
Chennai-600 025

2.Krishnasamy Memorial Polytechnic College  
Rep by its Chairman  
Cuddalore District  
Cuddalore-607 109

... Respondents

**PRAYER:** Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the entire records connected with the final order Roc.No.78/2016/KMPTC dated 26.10.2016 passed by the 2<sup>nd</sup> respondent and quash the same.



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For Petitioner : Mr.S.Sathia Chandran

For Respondents : Mr.D.Gopal, Govt. Advocate for R1

Mr.N.Karthikeyan for R2

### **ORDER**

The petitioner seeks issuance of a Writ of Certiorari to quash the final order in Roc.No.78/2016/KMPTC dated 26.10.2016.

2. The summary of the case pleaded by the petitioner in the affidavit in support of the Writ Petition is that she joined the service of the 2<sup>nd</sup> respondent college on on 01.06.2001 as instructor in Computer Technology. She completed 10 years of service and she was upgraded as Lecturer and she has put in 16 years of unblemished service in the 2nd respondent's college. The petitioner was appointed to the committee called Counselling Committee for girls. The petitioner states that four girls undergoing second year in Diploma Computer Technology course gave a joint representation on 22.08.2016 addressed to the HOD complaining about behaviour of one



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K.Balaji who was the HOD of the Electrical and Electronics Engineering in EEE lab. Similar complaint was given by two girls on 22.08.2016 to the principal of 2<sup>nd</sup> respondent's college. The petitioner also made a representation on 22.08.2016 complaining about the said HOD requesting for action to be taken against him. According to the petitioner the aggrieved students and parents lodged a complaint on 24.08.2016 against the said HOD with the Sub-Inspector of Police. However, to the petitioner's shock, without taking action on the said HOD, the 2<sup>nd</sup> respondent started harassing and victimizing the petitioner. The petitioner was served with a charge memo dated 21.09.2016 containing three charges viz.,

(i) she has misused her position and responsibilities and had sold computer applications practical lab manual to students which was against the code of conduct of the lecturer;

(ii) the enquiry officer had held the charge to be proved;

(iii) the petitioner instigated many girl students to indulge in agitation strike etc.,



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3. The case of the petitioner is that though the charge memo relied on three specific documents which were cited as reference, none of the copies were furnished to the petitioner despite specific request made by the petitioner on 23.09.2016. The petitioner was therefore forced to give a preliminary explanation on 29.09.2016 without having the benefit of perusing the three documents referred to in the charge memo. Pursuantly she was shocked to receive a communication dated 04.10.2016 from the 2<sup>nd</sup> respondent requiring her to show cause as to why penalty of Rs.10,000/- should not be levied against her and the annual increment with effect from 01.06.2015 should not be withdrawn and pay reduction be given effect from 01.11.2016. The petitioner gave her reply on 09.10.2016. However, according to the petitioner, without considering her reply, the impugned order came to be passed.

4. The 2<sup>nd</sup> respondent has filed a counter stating that the Writ Petition itself is not maintainable as the 2<sup>nd</sup> respondent is a self financing institution with no grant from the Government and that the petitioner has alternate



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remedy before the Labour forum. In so far as the merits of the matter, the 2<sup>nd</sup> respondent submitted that action was taken by the 2<sup>nd</sup> respondent as against K.Balaji, HOD and it is not as if no action was taken against him as put forth by the petitioner. In any event, according to the 2<sup>nd</sup> respondent there is no connection in so far as the charges against the petitioner and the action taken against the HOD, Mr.K.Balaji. The petitioner had sold computer manuals without permission of the institution and therefore she was rightly proceeded against. There is no infirmity in the impugned order and the 2<sup>nd</sup> respondent sought for dismissal of the Writ Petition.

5. The petitioner has filed a rejoinder to the counter affidavit, where she has stated that educational institutions are essentially dealing with public function and therefore the 2<sup>nd</sup> respondent is amenable to the Writ jurisdiction. Reliance is placed on the judgment of the Hon'ble Supreme Court in ***Dr. Janet Jeyapaul Vs. SRM University and Ors***, reported in ***2016 1 CTC 240***. The petitioner also highlighted that there is a clear violation of principles of natural justice and the action against the petitioner was clearly vindictive in



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nature because of the complaint made by her against Mr.K.Balaji, HOD of  
EEE department.

6. In so far as the sale of manuals, the petitioner contended that the material was given at the request of the students and the cost of xerox and spiral binding amounting to Rs.90/- alone was collected and the petitioner cannot be accused of selling the manuals. In so far as the complaints of the students against the petitioner, the petitioner has stated that the complaints are false and they were all at the instigation of Mr.K.Balaji, HOD of EEE department.

7. Heard Mr.S.Sathia Chandran, learned counsel for the petitioner and Mr.D.Gopal, learned Government Advocate for the 1<sup>st</sup> respondent and Mr.N.Karthikeyan for the 2<sup>nd</sup> respondent.

8. I have also perused the materials available on record, filed by way of typedsets, one on the side of the petitioner and one on the side of the 2<sup>nd</sup>



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respondent and also various decisions which have been relied on by the counsel for the petitioner and the 2<sup>nd</sup> respondent.

10. In so far as the preliminary objection with regard to maintainability of Writ Petition against the 2<sup>nd</sup> respondent is concerned, it is now settled law that “the words any person or authority” employed under Article 226 of the Constitution of India is not confined merely to statutory authorities and instrumentaries of the State but to persons or body performing public function/duty as well. The Hon'ble Supreme Court in ***Dr. Janet Jeyapaul Vs. SRM University and Ors***, reported in ***2016 1 CTC 240***, took note of the fact that imparting education to students at large is a public function and therefore such institutions should be made amenable to Writ jurisdiction under Article 226 of the Constitution. Moreover, Article 12 is relevant when the issue pertains to enforcement of fundamental rights of a person. Following the earlier ratio laid down by the Apex Court in ***Zee Telefilms Ltd*** case, the Hon'ble Supreme Court held that when there is a violation of any constitutional right or right of a citizen, then the aggrieved person has a



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remedy not only under the ordinary law but also under the Constitution and proceeded to hold that the Writ Petition was maintainable. In the instant case, it is seen that despite repeated requests for furnishing copies of the documents referred to in the charge memo, the same has not been provided to the petitioner and clearly the enquiry has been conducted irregularly. The petitioner complains of violation of principles of natural justice. The specific case of the petitioner is that she was not given copies of documents and she gave only a preliminary explanation and no witnesses were examined and the charge memo also did not contain list of witnesses proposed to be examined by the management and the petitioner was not given a fair opportunity before the impugned order came to be passed. In the light of such allegations this Court finds that the Writ Petition is maintainable.

11. In so far as the charges are concerned, the petitioner has been punished mainly on two grounds viz.,

(i) for the sale of manuals, without any prior authority or permission from the 2<sup>nd</sup> respondent college



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(ii) on the allegations made against her by several students of instigating them to strike and agitate etc., which has spoiled the entire harmony of the college itself.

12. In so far as the first charge, the petitioner has given her explanation that she had obtained oral permission from the Vice Principal as well as the HOD of the Computer Technology department before supplying the same to the students and moreover the allegation that the manuals were sold was also incorrect as she only collected the costs for photocopy and spiral binding and there was no profit involved at all to term her act as sale.

13. In so far as this charge is concerned, the 2<sup>nd</sup> respondent has merely held that since there is no evidence or proof of oral permission given by the Vice Principal. It is seen that the petitioner was not given any copies and the impugned order also does not refer to any witnesses having been examined or other documents relied on. Also considering the specific explanation offered by the petitioner that she never gave the manuals with profit motive but only



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to help the students and she collected the actual costs alone, cannot be lightly brushed aside. Such an act undertaken by a teacher in the interest of the students cannot be found fault with on the ground of misconduct, especially when her specific explanation was that she got permission from the Vice Principal and the HOD concerned.

14. The respondents have relied on certain documents by way of typedset wherein complaint letters have been given against the petitioner by certain girl students. On a perusal of the same, the complaints appears to be very unnatural and artificial. All the complaints referred to by the 2<sup>nd</sup> respondent are said to have been given on the same date viz., 22.08.2016. Such complaints appears to be stage managed for the purpose of fixing the petitioner. The date also only seems to suggest that all this was undertaken only after the petitioner went all out to take action against another HOD against whom there were several complaints. The counsel for the respondents placed reliance on *Zee Telefilms Ltd and another Vs. Union of India & Ors* reported in (2005)4 SCC 649.



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15. This Court has already discussed the said case which has been referred to in the latest judgment of the Hon'ble Supreme Court in ***Dr. Janet Jeyapaul's*** case. The ratio laid down by the Hon'ble Supreme Court in this case does not come to the aid of the 2<sup>nd</sup> respondent.

For all the above reasons, this Court finds that there is a clear violation of principles of natural justice in holding an enquiry that too relating to disciplinary action against the petitioner and the petitioner is entitled to relief from this Court and consequently Writ Petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

21.07.2023.

Internet: Yes  
Index: Yes/No  
Neutral Citation: Yes/No  
Speaking/Non-speaking order  
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To

1.The Director

Directorate of Technical Education

Chennai-600 025

2.The Chairman

Krishnasamy Memorial Polytechnic College

Cuddalore District

Cuddalore-607 109



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**P.B.BALAJI, J.,**  
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**Pre-delivery order in**  
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