



Writ Appeal No.874 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 04.10.2023

Delivered on : .12.2023

CORAM

**THE HONOURABLE MR. JUSTICE R.SURESH KUMAR
AND
THE HONOURABLE MR. JUSTICE K.KUMARESH BABU**

**Writ Appeal No.874 of 2019
and C.M.P.No14836 of 2019**

Dr.K.Venkata Rao

... Appellant

Vs

- 1.Vel Tech Dr.RR & SR Technical University,
Represented by its Registrar having
its Administrative Office at
No.42, Avadi-Vel Tech Road,
Avadi, Chennai – 600 062.
- 2.District Collector,
Thiruvallur District,
Thiruvallur – 602 001.
- 3.Government of Tamil Nadu,
Represented by the Secretary,
Department of Higher Education,
Fort St.George,
Chennai – 600 009.
- 4.Union of India,

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Represented by the Secretary,
Department of Higher Education,
Ministry of Human Resource Development,
Shastri Bhawan, New Delhi – 110 001.

... Respondents

PRAYER:- Writ Appeal filed under Clause 15 of Letter Patent against the order dated 21.04.2017 made in W.P.No.4160 of 2014.

For Appellant : Mr.R.Sankara Subbu

For Respondents : Mr.S.Thankasivan for R1

: Mr.K.V.Sanjeev Kumar for R2 & R3
Special Government Pleader

: Mr.D.G.Babu for R4

JUDGMENT

(ORDER OF THIS COURT IS DELIVERED BY K.KUMARESH BABU.,J.)

This intra-Court appeal is directed against the order passed by the learned Single Judge dated 21.04.2017, made in W.P. No.4160 of 2014.

2. The brief facts of the case is that, the appellant herein was appointed as a professor in the first respondent University in the Department of Aeronautics with a cumulative salary of Rs.1,20,000/- on and from



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10.07.2013. It is the case of the appellant that his appointment was permanent, but the original appointment order was not issued to the appellant at the time of his appointment or even after serving the order of termination. He was assigned with two subjects for teaching, namely, rockets and missiles for the B.Tech students of VII semester and internal combustion engine for the M.Tech students of I semester for the academic year 2013-14. Although as per the UGC and AICTE norms, the re-employed Professors should be allotted only one theory subject, the first respondent University has allotted two theory subjects to the appellant and had curtailed his scope for active research.

3. Further case of the appellant is that on 24.12.2013, the first respondent University demanded the appellant to submit his resignation. On refusing to do so, the first respondent University blocked bio-metric attendance. On 30.12.2013 the appellant made a representation to the President of the first respondent University. There was no reply or an opportunity to be heard was not given to the appellant. Thereafter, the first respondent vide his proceedings had issued the impugned order of



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termination to the appellant. Challenging the order of the first respondent the appellant has filed a Writ Petition.

4. The learned single Judge had held that in the appointment order itself it is mentioned as the contract of the appellant shall be liable to be terminated at the discretion of the Management, so the termination of the service before completion of one year does not give any cause of action for him to challenge the order of termination before the Court of law and has dismissed the writ petition. Challenging the said order passed by the learned Judge of the Writ Court, the present appeal has been filed.

5. Heard Mr.R.Sankara Subbu, learned counsel appearing for the appellant, Mr.S.Thankasivan, learned counsel appearing for first respondent, Mr.K.V.Sajeev Kumar, Special Government Pleader appearing for second and third respondents and Mr.D.G.Babu, learned counsel appearing for the fourth respondent.

6. Assailing the order of the learned Single Judge, the learned



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counsel for the appellant would contend that, the appellant possess Doctorate of Philosophy in the year 2012. The appellant served as an Scientist (Researcher) in Indian Space Research Organisation, Thiruvananthapuram for three decades. Thereafter he held various positions as full-time academician in the capacities of professor, Dean, Director and Principal for 12 years. On 10.07.2013 the appellant was appointed as a professor for research in VelTech University in the department of Aeronautics. The pay of the appellant was fixed Rs. 1.20 Lakhs on monthly basis. He would contend that at the time of joining, the first respondent University, the appellant had signed two copies of the appointment order. The first copy was retained by S-HRD and the second copy was signed and returned to the Registrar, of the first respondent University. But this appellant was not provided with the appointment order.

7. He would further submit that at the time of signing the appointment order, the appellant had signed in all the two pages of the appointment order. But in the appointment order produced by the first respondent the signature of Registrar alone is there at the first page and it is



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found that a new condition of probation for a period of one year is inserted in the appointment order. Such a condition of probation is made solely for the purpose of the case. He would submit that the order copy of appointment submitted by the first respondent is contrary to the order of appointment shown and got signed by the appellant on 10.07.2013.

8. He would further submit that on 24.12.2013, the Registrar of the first respondent University demanded the appellant to submit his resignation. Regarding the same the appellant has made representation to the President, of the first respondent University on 30.12.2013, to get his original order of appointment and on the same day he had also preferred a complaint before the District Collector, Thiruvallur to seek his intervention to get his original order of appointment and other benefits from the first respondent University. Even after that the appellant was not served with the appointment order but also his biometric attendance system was blocked. The order of termination was only served to the appellant on 20.01.2014 at the University campus.



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9. He would also contend that the appellant was allotted two subjects and the pass percentage shown by the first respondent University of the students in the appellant department are false and as the first respondent University has produced the examination results obtained by the students in the internal cycle test and those were not the final examination marks. He would further submit that the appellant has taken up the position as HOD as per the circular Ref No.VTU/Reg/Gen/122 dated 23.07.2013 of the Registrar. But the appellant was not able to continue as HOD as per the AICTE norms. As this appellant is superannuated and was re-appointed as Professor and aged above 65, so he was barred from taking up administrative position. He would further submit that the appellant was not served with any warning letters as alleged by the first respondent University.

10. He would submit that the appellant was duty bound and had attended all the meetings of the Universities. The appellant states that he was not under any probation as stated in the fabricated order of the ap-
pointment as the appointment of the appellant was under the UGC norms. The appointment of the appellant was for a specific Research work and he



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was appointed to that post considering all his previous and vast experience in the field of research. The appellant has also contributed for Provident Fund as a permanent employee. He would also submit that the appellant has made two proposals for research development but the same was not appreciated and was not supported financially by the first respondent University.

11. He would also contend that despite several request made by the appellant for getting his appointment order the first respondent University had refused to provide the original order of appointment. The order of termination by the first respondent University is unjust but the learned Single Judge had failed to note that the appellant was not served with the original order of appointment and has terminated his services with charging allegations against the appellant who had served in various eminent positions and possess high academic qualifications. Therefore the order passed by the Writ Court is liable to be interfered with, hence he seeks indulgence of this Court.



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12. On the other hand, Mr.S.Thankasivan, learned counsel appearing for first respondent would submit that the appellant was interviewed by a high level committee of the first respondent University and was appointed on probation from 10.07.2013 to 09.07.2014. Further he would submit that it was specifically stipulated in the order of appointment that he shall be governed by the Conduct Rules, and one clause of the appointment order states that in the event of the service of the appellant is not being satisfactory, the contract for appointment shall be liable to be terminated at the discretion of the management without any notice. By accepting all the terms and conditions of the service, the writ petitioner joined the service on 10.07.2013.

13. The learned counsel would submit that, appointment order is always prepared in two copies. In the first copy, the appellant also signed as token of his acceptance of all terms and conditions of service. The second copy was duly signed by the Registrar of the institution and handed over to the appellant as being done in the usual course for all appointments. The first copy of the appointment is retained by the Management, second copy is



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given to the employee. It is submitted that as alleged by the appellant the first respondent University did not demand any resignation from the appellant on 24.12.2013 and that his biometric attendance system was also not blocked.

14. He would further submit that, the appellant was not duty conscious from the time of his appointment. The first respondent has served various warning letters and despite the warnings the appellant failed to improve his performance. The appellant in the capacity as a professor did not acknowledge any of the routine circulars issued by the superior authorities of the first respondent University. He would further submit that when the appellant was told to take charge as the Head of Aeronautics Department in the first respondent University in July 2013, he refused to take over the position and the same is recorded in the letter of the DEAN dated 26.07.2013.

15. He would submit that on 19.8.2013, the HOD of Aeronautics Department submitted a written complaint to the Dean regarding the poor



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performance of the appellant. Various students of the M-Tech program had also complained about the poor performance of the appellant and the highest pass percentage of students in the appellant Department is only 53%. The appellant was issued with a warning letter on 16.12.2013 by the Registrar, but the appellant refused to acknowledge the warning letter. He would further submit that due to the disobedience and poor performance of the appellant the first respondent University decided to terminate the service of the appellant during the probationary period itself and on 24.12.2013, the first respondent University has issued the order of termination in consonance with Clause 4 of the Order of appointment dated 10.07.2013.

16. He would submit that such a decision of termination was taken to safeguard the interest of the students as the first respondent University is one of the highly reputed educational institution. On 24.01.2013 the appellant has accepted the order of termination and had submitted a letter for return of his original qualification certificates, salary etc, and the same were returned and the appellant was relieved. He would further submit that the appellant himself has acted upon the order of termination and hence he is not entitled to challenge the said order. The appellant was admittedly



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under probation and his performance was found to be highly unsatisfactory and poor, the first respondent University has rightly terminated his service as per clause 4 of the agreed terms and conditions of service. Therefore, absolutely there is no infirmity in the order passed by the learned Single Judge in conforming the order of termination and rejecting the claim as that the appellant was not issued with the order of appointment and thus does not warrant any interference of this Court.

17. We have considered the said rival submissions made on both sides and have perused the materials placed before this Court.

18. It is an admitted fact that the appellant was appointed as a Professor in the 1st respondent's College on 10.07.2013. Even though the appellant had disputed the order of appointment as being a permanent in nature and not on probation as claimed by the 1st respondent, the appellant was not able to produce any substantial document to drive home his claim. Further, a perusal of the order of appointment, in clear terms indicates that the appointment is contractual in nature and liable to be terminated at the discretion of



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the Management. The appointment order also clearly indicates that the appointment is that the appellant was in probation for a period of one year and that the Management had reserved the right of extending the period of probation for a further period of one year or part thereon at its discretion.

19. A further condition had also been stipulated that in the event the appellant resigning during the period of probation he should give two months notice or submit two months salary in lieu of such notice. It was also mandated that the appellant performed all the task that may be assigned by the Management from time to time. Further, the order of appointment also indicates that the duplicate copy of the appointment order should be signed and returned for having accepted the offer. A reading of the aforesaid clause would clearly indicate that what was handed over to the appellant and presented before this Court was the original copy of the appointment order and only a duplicate copy of the said order was to be returned back to the 1st respondent's institution after being signed as a proof of his accepting the offer. Therefore, we are of the view that the appellant is trying to make a tall claim that the original order of appointment is different from what has been



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given to him. On that ground alone, the claim of the appellant would have to be rejected.

20. Be that as it may, the order of appointment is clear in its terms namely that the appointment was contractual and the appellant had been appointed initially on probation. The appellant had not produced any materials whatsoever to dispute the claim of the appellant with regard to his performance of his duty. When the appellant had failed to perform in his duty by producing a satisfactory result of his wards in the examination, it is always open to the Management to discharge him from service. An employee cannot as a matter of right claim to be retained in service in spite of his deficiencies which had been noted by the Management. The learned Judge had rightly considered all these aspects and had rejected the claim of the appellant and therefore, we do not find any infirmity in the order impugned in his appeal.

21. In view of the aforesaid findings and reasonings this Writ Appeal fails and is accordingly, dismissed. However, there shall be no order as



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to costs. Consequently, connected miscellaneous petition is closed.

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(R.S.K.,J.) (K.B., J.)
.12.2023

Index: Yes/No
Speaking Order/Non Speaking Order
Neutral Citation:Yes/No
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R.SURESH KUMAR., J.
and
K.KUMARESH BABU.,J.

gba

To

- 1.District Collector,
Thiruvallur District,
Thiruvallur – 602 001.
- 2.Government of Tamil Nadu,
Represented by the Secretary,
Department of Higher Education,
Fort St.George,
Chennai – 600 009.
- 3.Union of India,
Represented by the Secretary,
Department of Higer Education,
Ministry of Human Resource Development,
Shastri Bhawan, New Delhi – 110 001.

A Pre-delivery order made in

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