



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 08.06.2023

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THE HON'BLE MR.JUSTICE G.R.SWAMINATHAN

**WP(MD)Nos.612, 11079, 22393, 22394, 22395, 22396, 22397, 22398, 22399
of 2022 & 22400 of 2022**

G.Ganesan	... Petitioner in WP(MD)No.612 of 2022
Dr.M.Arunachalam	... Petitioner in WP(MD)No.11079 of 2022
R.Arunkumar	... Petitioner in WP(MD)No.22393 of 2022
J.Thavaseelan	... Petitioner in WP(MD)No.22394 of 2022
G.Anbalagan	... Petitioner in WP(MD)No.22395 of 2022
Dr.D.Senthil Kumar	... Petitioner in WP(MD)No.22396 of 2022
M.Venkatesh	... Petitioner in WP(MD)No.22397 of 2022
R.Dinesh	... Petitioner in WP(MD)No.22398 of 2022
P.Ajeeth	... Petitioner in WP(MD)No.22399 of 2022

v.

1.The Principal Secretary to Government,
Syndicate Member, Anna University,
Higher Education Department,
Government of Tamil Nadu,
Secretariat, Chennai – 600 009.



2. The Administrative Head,
AICTE, Nelson Mandela Marg,
Vasant Kunj, New Delhi - 110 070.

3. The Regional Director,
AICTE, Southern Regional Office,
Shastri Bhavan, 26, Haddows Road,
Nungambakkam, Chennai – 600 006.

4. The Secretary & Correspondent,
KLN College of Information Technology,
Pottapalayam, Manamadurai Taluk,
Sivagangai District – 630 612.

... Respondents

Prayer in WP(MD)No.612 of 2022 : Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, to direct the respondents 1 to 4 to consider the petitioner's representation dated 20.12.2021 to settle the petitioner's pending terminal benefits within a stipulated time frame.

Prayer in WP(MD)No.11079 of 2022 : Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, to direct the respondents 1 to 4 to consider the petitioner's representation dated 30.05.2022 to settle the pending terminal benefits for the petitioner's entire period of service within a stipulated time frame.

Common Prayer in WP(MD)No.22393 to 22399 of 2022 : Writ Petitions filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, to direct the respondents 1 to 4 to consider the respective petitioners' representation dated 05.05.2022 and 04.07.2022 to settle the respective petitioners' pending terminal benefits within a stipulated time frame.



in all cases : -

For Petitioners : Mr.K.Krishna

For Respondents : Mr.N.Satheesh Kumar,
Additional Government Pleader for R1

Mr.N.Dilipkumar for R2 & R3

Mr.R.G.Shankar Ganesh for R4

COMMON ORDER

Heard the learned counsel on either side.

2.The petitioners herein served the respondent educational institutions in teaching capacities. All of them entered the institutions as lecturers and over the years, they were promoted as Associate Professors in various disciplines. They were relieved from service. The grievance of the petitioners is that their terminal benefits including gratuity have not been settled. That led to the filing of these writ petitions.

3.The institution has filed its counter affidavit and the learned counsel appearing for the institution took me through its contents. He questioned the very maintainability of these writ petitions. He relied on the recent decision of the Hon'ble Supreme Court reported in *(2023) 4 SCC 498 (St.Mary's Education Society v. Rajendra Prasad Bhargava)*. He pressed for dismissal of these writ



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4.I carefully considered the rival contentions and went through the materials on record. The Hon'ble Supreme Court in the above decision had held as follows :

“75.We may sum up our final conclusions as under:

75.1.An application under Article 226 of the Constitution is maintainable against a person or a body discharging public duties or public functions. The public duty cast may be either statutory or otherwise and where it is otherwise, the body or the person must be shown to owe that duty or obligation to the public involving the public law element. Similarly, for ascertaining the discharge of public function, it must be established that the body or the person was seeking to achieve the same for the collective benefit of the public or a section of it and the authority to do so must be accepted by the public.

75.2. Even if it be assumed that an educational institution is imparting public duty, the act complained of must have a direct nexus with the discharge of public duty. It is indisputably a public law action which confers a right upon the aggrieved to invoke the extraordinary writ jurisdiction under Article 226 for a prerogative writ. Individual wrongs or breach of mutual contracts without having any public element as its integral part cannot be rectified through a writ petition under Article 226. Wherever Courts have intervened in their exercise of jurisdiction under Article 226, either the service conditions were regulated by the statutory provisions or



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the employer had the status of “State” within the expansive definition under Article 12 or it was found that the action complained of has public law element.

75.3. It must be consequently held that while a body may be discharging a public function or performing a public duty and thus its actions becoming amenable to judicial review by a constitutional court, its employees would not have the right to invoke the powers of the High Court conferred by Article 226 in respect of matter relating to service where they are not governed or controlled by the statutory provisions. An educational institution may perform myriad functions touching various facets of public life and in the societal sphere. While such of those functions as would fall within the domain of a “public function” or “public duty” be undisputedly open to challenge and scrutiny under Article 226 of the Constitution, the actions or decisions taken solely within the confines of an ordinary contract of service, having no statutory force or backing, cannot be recognised as being amenable to challenge under Article 226 of the Constitution. In the absence of the service conditions being controlled or governed by statutory provisions, the matter would remain in the realm of an ordinary contract of service.

75.4. Even if it be perceived that imparting education by private unaided school is a public duty within the expanded expression of the term, an employee of a non-teaching staff engaged by the school for the purpose of its administration or internal management is only an agency created by it. It is immaterial



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whether “A” or “B” is employed by school to discharge that duty. In any case, the terms of employment of contract between a school and non-teaching staff cannot and should not be construed to be an inseparable part of the obligation to impart education. This is particularly in respect to the disciplinary proceedings that may be initiated against a particular employee. It is only where the removal of an employee of non-teaching staff is regulated by some statutory provisions, its violation by the employer in contravention of law may be interfered with by the Court. But such interference will be on the ground of breach of law and not on the basis of interference in discharge of public duty.

75.5. From the pleadings in the original writ petition, it is apparent that no element of any public law is agitated or otherwise made out. In other words, the action challenged has no public element and writ of mandamus cannot be issued as the action was essentially of a private character.”

5.It is true that the fourth respondent is a private institution which is not receiving aid from the State. However, on that ground, the petitioners cannot be non-suited. The issue pertains to disbursement of their terminal benefits. The learned counsel for the petitioners drew my attention to the notification dated 22.03.2021 issued by the AICTE and published in the gazette of India No.119 dated 25.03.2021. The regulations are known as All India Council for Technical Education (Redressal of Grievance of Faculty/Staff Member)



Regulations, 2021. It provides for constitution of Grievance Redressal Committee at the State/University level. The expression “grievance” has been defined in clause 3(i) in the following terms :

“Grievance” means and includes, complaint(s) made by an aggrieved Faculty/Staff Member(s) in respect of the following service related matters namely :

i) Withholding of, or refusal to return, any document in the form of certificates of degree, diploma, experience certificate, relieving order or any other award or other document deposited for the purpose of seeking appointment in such institution.

(ii) Non-payment of salaries/wages and /or benefits or any other allowances or dues etc., during services or retirement/resignation, as the case may be;

(iii) Discrepancies between their wages and/or benefits and other members of staff in similar roles/post/experience.

(iv) Termination without giving any reason or notice or memorandum

(v) Non-payment of gratuity amount as per prevailing Govt. rules in force on resignation/retirement; and

(vi) Any other liability which is directly connected with their service and causing financial loss or any harm or trauma.”

5.I, therefore, conclude that non-settlement of the terminal benefits thus involves breach of the statutory functions of the concerned institution. In any



event, the writ court would be competent to direct the management to pay the gratuity payable to an employee who has resigned or retired from service.

These writ petitions have been filed in the nature of writ of mandamus. I direct the fourth respondent to pay the admitted and eligible amounts to the respective petitioners herein. I consciously refrain from quantifying the figures. The benefits shall be disbursed by the management to the petitioners herein within a period of ten weeks from the date of receipt of copy of this order. The fourth respondent is also directed to pass a formal order in respect of each of the petitioners herein quantifying their eligible amounts. The petitioners can very well receive the amounts disbursed by the management without prejudice to their contention that they are entitled to something more.

6. These writ petitions are disposed of on these terms. No costs. The learned counsel appearing for the petitioners states that the articles pertaining to the petitioners are presently kept in the lockers allotted to them in the college. The management is directed to permit the petitioners to take them back.

08.06.2023

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G.R.SWAMINATHAN, J.

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