



W.P(MD)No.15487 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.03.2023

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.15487 of 2020

and

W.M.P(MD)No.13003 of 2020

R.Kamaraj

... Petitioner

Vs

- 1.The State represented by
The Principal Secretary,
Higher Education Department,
Fort St.George, Chennai – 600 009.
- 2.The Director of Collegiate Education,
D.P.I.Campus, College Road,
Nungambakkam, Chennai – 600 006.
- 3.The Joint Director of Collegiate Education,
Madurai Region, Madurai.
- 4.Madurai Institute of Social Sciences,
Represented by its Secretary,
No.9, Alagar Kovil Road,
Madurai – 625 002.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order passed by the fourth respondent in no. Nil,



W.P(MD)No.15487 of 2020

dated 17.10.2020 and quash the same and direct the respondents to reinstate the petitioner into service with all attendant and service benefits.

For Petitioner : Mr.M.Saravanan

For Respondents : Mr.N.Satheeskumar
Additional Government Pleader
for R.1 to R.3

Mr.K.Ragatheeskumar
for M/s.Isaac Chambers for R.4

ORDER

Heard the learned counsel on either side.

2.The petitioner joined the fourth respondent College as Assistant in clerical cadre. The Management issued as many as three charge memos on the petitioner. The petitioner denied the charges set out therein. Instead of appointing an enquiry officer, the college Committee itself chose to directly conduct the enquiry. It is stated by the petitioner that only on one date, the enquiry was held. While the learned counsel appearing for the Management would claim that during enquiry, the petitioner after pleading guilty walked out without affixing his signature. The learned counsel appearing for the petitioner would contend that only a few questions were asked and thereafter the petitioner was asked to leave the enquiry room. The so-called enquiry report



W.P(MD)No.15487 of 2020

was not served on the petitioner in the first instance. It was served on the petitioner only along with the impugned order dated 17.04.2020 whereby the petitioner was dismissed from service. Challenging the same, the present writ petition has been filed.

3.The learned counsel appearing for the petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition and called upon this Court to quash the impugned order and grant relief as prayed for. He also would state that this Court had granted interim order at the time of admission and as on date, the petitioner is very much working in the fourth respondent institution.

4.The contesting respondent had filed the typed set of papers. The learned Standing Counsel took me through its contents. He called upon this Court to dismiss the writ petition. He submitted that in the alternative, this Court ought to remand the matter considering the gravity of charges.

5.I carefully considered the rival contentions and went through the materials on record.



W.P(MD)No.15487 of 2020

6.The action taken by the Management is riddled with irregularities and illegalities. The fourth respondent is an aided non-minority institution. Before passing final order which would amount to major penalty, the petitioner ought to have been served with a copy of the enquiry report and his further representation must have been obtained. In this case, the enquiry report was served along with the impugned order. This is the first breach of procedure.

7.The College Management was obliged to obtain prior approval from the competent authority under Section 19(1) of the Tamil Nadu Private Colleges (Regulation) Act, 1976. In this case, such an approval was not obtained. This is the second illegality. On these twin grounds, the order impugned in this writ petition is set aside. Since the petitioner is now working in the fourth respondent institution pursuant to the interim order granted by this Court the question of reinstatement does not arise. For the period post-interim order, the Department has to make payment. For a period between the date of passing of the impugned order and the date of grant of interim order, the College Management is directed to pay the petitioner's salary.

8.The learned counsel appearing for the Management would state that petition was submitted seeking permission to validate the impugned order of dismissal. Since it was rejected by the competent authority, an appeal has been



W.P(MD)No.15487 of 2020

filed before the Director of Collegiate Education under Section 37 of the Tamil Nadu Private Colleges (Regulation) Act, 1976. I am more than satisfied that if the enquiry held against the petitioner is utterly vitiated, the so-called enquiry report cannot be called as enquiry report at all. It lacks the basic features of an enquiry report. Since serious allegations have been made, the disciplinary authority must have examined witnesses in support of the charges. Documents must have been marked. In this case, no witness was examined and no document was marked. Instead, a tall claim has been made that the petitioner pleaded guilty to the charges but failed to affix his signature. The version given by the Management is unbelievable. Applying Section 114 of the Evidence Act, 1872, it is impossible to believe that the petitioner who is locked in bitter contest with the Management would have readily pleaded guilty. Since the petitioner's signature has not been obtained and no other convincing material has been placed before me, it is not possible for this Court to believe that the petitioner pleaded guilty of the charges made against him. Considering the facts and circumstances obtaining in this case, I am not inclined to remand the matter. The orders impugned in this writ petition are set aside.



W.P(MD)No.15487 of 2020

9.This writ petition is allowed. There shall be no order as to costs.

Consequently, connected miscellaneous petition is closed.

15.03.2023

Index : Yes / No
Internet : Yes / No
NCC : Yes / No
MGA

To

- 1.The Principal Secretary, Higher Education Department,
Fort St.George, Chennai – 600 009.
- 2.The Director of Collegiate Education,
D.P.I.Campus, College Road,
Nungambakkam, Chennai – 600 006.
- 3.The Joint Director of Collegiate Education,
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W.P(MD)No.15487 of 2020

G.R.SWAMINATHAN, J.

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W.P(MD)No.15487 of 2020
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