



W.P.(MD)No.4632 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.02.2023

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.(MD)Nos.4632 of 2018 and 11621 of 2013

and

W.M.P(MD) Nos.4715, 4716 of 2020 and 1 of 2013

W.P.(MD)No.4632 of 2018

P.Subhathra

... Petitioner

Vs.

- 1) The State of Tamil Nadu,
represented by its Secretary,
Department of Higher Education,
Fort St. George,
Chennai – 600 009.
- 2) The Director of Collegiate Education,
College Road, Chennai – 600 006.
- 3) The Joint Director of Collegiate Education,
Madurai Region, Shenoy Nagar,
Madurai – 625 023.
- 4) The Secretary / Correspondent
Virudhunagar Hindu Nadars'
Senthilkumara Nadar College,
Virudhunagar – 626 001.



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4) The Principal,
Virudhunagar Hindu Nadars'
Senthilkumara Nadar College.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India to issue a writ of Certiorarified Mandamus, to call for the records relating to the impugned proceedings issued by the 4th respondent college in Rc.No.9/2004-OS dated 25.10.2017 refusing regularization of her services for the period of suspension from 23.03.2004 to 26.05.2004, quash the same and further direct the 4th and 5th respondents herein to regularise the said services from 23.03.2004 to 26.05.2004 with all attendant benefits including arrears of salary and allowances.

For Petitioner : Ms.M.F.Rooshi Mass
for M/s.Isaac Chambers
For R1 to R3 : Mr.S.Saji Bino
Special Government Pleader
For R4 : Mr.D.Nallathambi

W.P.(MD)No.11621 of 2013

The Secretary,
Virudhunagar Hindu Nadars'
Senthilkumara Nadar College Committee,
Virudhunagar.

... Petitioner

Vs.



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- 1) The State of Tamil Nadu,
represented by its Secretary,
Department of Higher Education,
Fort St. George,
Chennai – 600 009.
- 2) The Director of Collegiate Education,
College Road, Chennai – 600 006.
- 3) The Joint Director of Collegiate Education,
Madurai Region, Shenoy Nagar,
Madurai – 625 023.
- 4) P.Subathra

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a writ of Certiorari, to call for the records of the order dated 28.06.2013 passed by the second respondent in Na.Ka.No. 41051/G4/2008 and quash the same.

For Petitioner	: Mr.D.Nallathambi
For R1 to R3	: Mr.S.Saji Bino Special Government Pleader
For R4	: Ms.M.F.Rooshi Mass for M/s.Isaac Chambers



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COMMON ORDER

Since the issue involved in these writ petitions is one and the same, they have been taken up together and disposed of by this common order.

2. W.P.(MD).No.4632 of 2018 has been filed by the petitioner challenging the impugned proceedings issued by the 4th respondent College dated 25.10.2017, refusing regularisation of her services for the period of suspension from 23.03.2004 to 26.05.2004 and to quash the same and consequently direct the respondents 4 and 5 to regularise the said services from 23.03.2004 to 26.05.2004 with all attendant benefits including arrears of salary and allowances. W.P.(MD).No.11621 of 2013 has been filed by the Secretary of the College, challenging the impugned order passed by the second respondent dated 28.06.2013. The petitioner in W.P.(MD).No.4632 of 2018 hereinafter referred to as the petitioner and the petitioner in W.P.(MD).No.11621 of 2013 hereinafter referred to as the College.



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3. The case of the petitioner is that she was appointed as Lecturer in the fourth respondent College, Department of Botany, on 15.09.1999. The appointment was made after her name was forwarded by the Employment Exchange and selected by a duly constituted Selection Committee, which included three members from the Madurai Kamaraj University. The petitioner has possessed M.Sc., (Botany) and M.Phil., (Marine Biology). Before the appointment, she was working as Lecturer in the same College for 1 ½ years in the Department of Micro Biology. The second respondent, the Director of Collegiate Education approved her appointment vide order dated 18.09.2001. The elections to various office bearers in the fourth respondent College were held in the year 2002. One Mr.V.V.S.P.Vanniyarajan was elected as the then Secretary cum Correspondent of the College. Ever since he assumed office, he started giving troubles to her in various ways. He indulged in sexual harassment and criminal complaints came to be lodged against him. Based on the complaint, the Secretary to the Government, the Director of Collegiate Education, the District Collector and the Police conducted enquiries. On 02.03.2004, the girl students sent complaints to the then



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Chief Minister. A Lecturer in the Computer Department viz., Mr.Suresh was also dismissed from service for the reason that he protested the acts of the said Secretary. On 06.01.2004, the said Secretary suddenly called the petitioner to his room and gave a questionnaire to her with certain allegations and coerced to submit a reply in writing within five minutes. Out of fear and compulsion, she gave her explanation as demanded.

4. It is the further case of the petitioner that on 18.01.2004, she was admitted in the Government Hospital, Virudhunagar for treatment and she has applied for causal leave for five days from 19.01.2004 to 23.01.2004. She was advised to take rest for at least seven weeks. Since she had applied for casual leave initially for five days, she requested the fourth respondent to convert the casual leave into medical leave for those seven weeks starting from 19.01.2004 to 04.03.2004. She returned on 05.02.2004 with the joining report to the Head of the Department to be submitted to the fifth respondent Principal, but he refused to receive the same. The fifth respondent also refused to permit her to join duty. She has informed the same to the second respondent, the Director of



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Collegiate Education and the third respondent, the Joint Director through telegram. Thereafter, she has sent a detailed representation to them regarding the same on 06.03.2004.

5. In the mean while, the Secretary of the College has issued a memo against the petitioner on 23.01.2004, stating that she was not efficient in teaching. The petitioner has given her explanation on 13.02.2004 denying the allegation. Subsequently, on 08.03.2004 and 09.03.2004, she was permitted to sign the attendance register. The above incident affected her very severely. She was advised to go on medical leave from 10.03.2004 to 07.04.2004. On 15.03.2004, the Secretary of the College directed her to appear before the Medical Board. She appeared before the Medical Board on 22.03.2004. The Medical Board issued the Fitness Certificate and she joined duly on 23.03.2004. Thereafter, she was placed under suspension on 23.03.2004. Challenging the same, she has filed a writ petition in W.P.No.11041 of 2004, to quash the said order of suspension, dated 23.03.2004. This Court, by order dated 22.04.2004, stayed the order of suspension and hence, she resumed



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duty on 26.05.2004. However, no enquiry was conducted and no further action was taken. In the mean while, the fourth respondent issued another memo leveling certain charges against her. The previous charge memo dated 23.01.2004 was not withdrawn and the new charge memo did not contain even a reference about the earlier charge memo dated 23.01.2004. On 16.06.2005, she has submitted her explanation denying the charges as false. Not satisfied with the explanation given by the petitioner, the fourth respondent has dismissed the petitioner from service on 01.12.2005. As against the dismissal order, she has preferred an appeal before the second respondent on 20.01.2006. The second respondent has rejected the petitioner's appeal vide order dated 30.08.2006. Against which, the petitioner has preferred a revision petition before the first respondent on 30.06.2008. The first respondent has also confirmed the order passed by the original authority as well as the appellate authority. Challenging the same, the petitioner has filed a writ petition in W.P.(MD).No.8698 of 2008 before this Court. This Court, by order dated 29.08.2012, allowed the writ petition and set aside the order passed by the second respondent dated 30.08.2006 and further



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directed the second respondent to take the appeal dated 20.01.2006 on file and decide the same on merits and in accordance with law, within a period of four months from the date of receipt of a copy of this order. The second respondent, the Director of Collegiate Education, after affording due opportunity to the fourth respondent College and the petitioner, set aside the termination order with the direction to reinstate the petitioner into service, by proceedings dated 28.06.2013. However, the said order was not implemented. Hence, again the petitioner has filed a writ petition in W.P.(MD).No.11621 of 2013 and the same is pending without any interim order. In the mean while, the petitioner has made a representation to regularise her service from 23.03.2004 to 26.05.2004. However, the said representation was rejected. Challenging the same, the present writ petition has been filed.

6. The learned counsel appearing for the petitioner would submit that once the termination order is set aside by the second respondent, immediately, the petitioner is entitled to regularise her service, in terms of Rule 54-B of the Fundamental Rules. However, without considering



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the same, the fourth respondent College has mechanically passed the rejection order, which is not sustainable one. Hence, this Court may issue a direction to the respondents to regularise the service of the petitioner, in terms of Rule 54-B of the Fundamental Rules, within a reasonable time as fixed by this Court.

7. The learned counsel appearing for the fourth respondent College would submit that there is no positive direction issued by this Court. In the absence of positive direction, the second respondent, the Director of Collegiate Education set aside the termination order and without imposing any punishment to the petitioner, they mechanically set aside the impugned order passed by the fourth respondent College, which is not sustainable one. Hence, he prayed for allowing the writ petition filed by the fourth respondent College.

8. Heard the learned counsel appearing for the petitioners and the learned Special Government Pleader appearing for the respondents 1 to 3.



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9. The facts in the present case are not in dispute. Admittedly, the petitioner entered into service in the fourth respondent College in the year 1999. Subsequently, for certain allegations, she was removed from service by the fourth respondent College on 01.12.2005. However, the said dismissal order was confirmed by the second respondent as well as the first respondent. Challenging the termination order, the petitioner has filed a writ petition in W.P.(MD).No.8698 of 2008 before this Court and this Court, by order dated 29.08.2012, allowed the writ petition. Thereafter, the second respondent conducted a detailed enquiry in between the petitioner as well as the fourth respondent and set aside the termination order on 28.06.2013. It is also an admitted fact that the fourth respondent College has not challenged the earlier order passed by this Court, based on which, the impugned order dated 28.06.2013 has been passed by the second respondent.

10. It is an admitted case of both the parties that the earlier termination order passed by the college committee was challenged before this Court, wherein a direction was issued to hear the petitioner and pass



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appropriate orders and subsequently, the present impugned order has been passed. Challenging the same, the college has filed the writ petition before this Court. However, the allegation made against the petitioner as if he has unauthorisedly absent without obtaining permission for availing medical leave, for which, the services of the petitioner was terminated, which is highly disproportionate and the same was considered by the second respondent. Thereafter, the impugned order is passed.

11. Without challenging the earlier order passed by this Court, now the writ petition in W.P.(MD).No.11621 of 2013 has been filed by the Secretary of the College, challenging the order of the second respondent, which is not sustainable one. Further, once the termination order is set aside by the authority. Pursuant to the direction issued by this Court, the petitioner is entitled to regularise her service, in terms of Rule 54(b) of the Fundamental Rules. However, without considering the same, the fourth respondent College has mechanically rejected the petitioner's application, which is not sustainable one.



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12. In the result, the writ petition in W.P.(MD).No.11621 of 2013 filed by the fourth respondent College is dismissed and the writ petition in W.P.(MD).No.4632 of 2018 filed by the petitioner is allowed and the impugned order passed by the fourth respondent dated 25.10.2017, is set aside and the matter is remanded back to the fourth respondent College, to pass appropriate orders for regularisation of service of the petitioner, in terms of Rule 54-B of the Fundamental Rules, within a period of six weeks from the date of receipt of a copy of this order. No costs. Consequently, the connected Miscellaneous Petitions are closed.

08.02.2023

akv

To

- 1) The Secretary,
State of Tamil Nadu,
Department of Higher Education,
Fort St. George,
Chennai – 600 009.
- 2) The Director of Collegiate Education,
College Road, Chennai – 600 006.



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- 3) The Joint Director of Collegiate Education,
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M.DHANDAPANI,J.

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