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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.12.2024

CORAM :

THE HONOURABLE DR.JUSTICE ANITA SUMANTH
and
THE HONOURABLE MR.JUSTICE G. ARUL MURUGAN

W.A.No.120 of 2022
and CM.P.Nos.907 and 3345 of 2022

The Secretary
Auxilium College (Autonomous)
Gandhi Nagar, Vellore – 632 006.

.... Appellant

vs

1. Dr.C.Praba
W/o Kamalanathan
No.18, Annai Illam, Jothi Nagar,
Katpadi, Vellore & District – 632 007.
2. The Director of Collegiate Education,
9th Floor, EVK Sambath Maligai, DPI Campus,
Nungambakkam, Chennai – 600 008.
3. The Joint Director of Collegiate Education
Vellore Region, Vellore – 632 006.

.... Respondents

Prayer: Appeal filed under Clause 15 of Letters Patent against order dated 03.12.2021
made in W.P.No.21934 of 2021 on the file of this Court.



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W.A.No.120 of 2021



For Appellant :: Mr.Godwon Swaminathan
for M/s.Issac Chambers

For Respondents :: Mr.NGR.Prasad
For Ms.L.Parvin Banu – R1

Mr.D.Ravichander
Special Government Pleader – R2 & R3

JUDGMENT

(Delivered by Dr. ANITA SUMANTH..J)

The Auxilium College (in short ‘college’), an autonomous, unaided institution has filed this Writ Appeal challenging the order of the Writ Court dated 03.12.2021. The Writ Court considered the prayer of the Writ Petitioner/R1 in this Writ Appeal (hereinafter referred to as ‘Writ Petitioner’) for a certiorarified mandamus challenging order dated 16.08.2021 that had been passed by the appellant. In the writ petition, a consequential direction was sought to the respondents to continue the services of the Writ Petitioner as Assistant Professor, Economics, with all monetary and other benefits with continuity of service.

2. We have heard Mr.Godson Swaminathan, learned counsel for the appellant, Mr.N.G.R.Prasad, learned counsel appearing on behalf of Ms.L.Parvin Banu, learned counsel on record for R1/Writ Petitioner and Mr.D.Ravichander,



learned Special Government Pleader for R2 and R3, being Director and Joint Director of Collegiate Education.

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3. The submissions of the appellant are that R1 had been appointed as Assistant Professor on 14.08.2020 in their college. Her appointment had been approved and she was initially on probation for a period of two years. While so and in preparation for the second semester examinations, a meeting of the College Council had been called on 12.04.2021. One of the agenda items related to the setting of questions for the semester examination and formulation of a question bank.

4. In the course of the meeting, the faculty who were all present and participating in the meeting, including the Writ Petitioner, had been specifically informed that they would have to submit 100 Multiple Choice Questions (MCQs) with answer key to the Controller of Examinations (COE) in word format prior to 30.04.2021. They had been specifically advised not to take the questions from the internet.

5. The Writ Petitioner had duly submitted the questions. Later on, the College had come to know that the questions had been taken from the internet. They had further been informed by the staff and students that the same MCQs as



had been given to the COE had been leaked by the writ petitioner to the students as well.

6. A show cause notice had come to be issued on 30.07.2021 putting the aforesaid allegations to the Writ Petitioner and calling for a reply within 24 hours as to why disciplinary action not be initiated. A reply was submitted the very next day by the Writ Petitioner, that is on 31.07.2021.

7. Inter alia, she concedes to the position that the MCQs furnished by her to the COE had been collected from various institutions/Universities, specifically from the Nehru Institute of Engineering and Technology (Department of Mechanical Engineering). In addition, she had prepared some questions herself. There is no response to the allegation of leakage of questions.

8. On 02.08.2021, an additional reply was filed by the Writ Petitioner, where, she again acceded to the collection of MCQs from the website. Importantly, she agreed that those very questions that had been sent to the COE had also been given to the students in order to enable them to study for the examinations. She concluded with a promise that she would be careful in future, not to divulge the question bank to the students and apologized for her conduct.

9. An enquiry report was thereafter prepared by the Secretary of the appellant college concluding that the Writ Petitioner had accepted the malpractices



committed by her. This was followed by another show cause notice dated 11.08.2021.

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10. Learned counsel for the appellant would point out that, in fact, there had been no necessity to pursue the matter further in view of the Writ Petitioner having accepted her defalcations and faults. However, with a view to ensuring that proper procedure was followed, a show cause notice was issued on 11.08.2021 proposing the punishment of dismissal.

11. The Writ Petitioner responded to the said show cause notice on 12.08.2021, wherein she again agreed that it was a mistake to have taken questions from the website and moreover, give them to the students. She submitted that it was not an intentional act but was done accidentally. Expressing regret, she promised that she would not repeat such actions again.

12. Two versions of letter dated 12.08.2021 are placed in the compilation, both significantly similar, barring that in one version, the sentence '*I did not do this intentionally but it happened accidentally*' does not figure. Except for this minor difference, acquiescence to the mistakes committed by taking questions from the internet as well as distributing them to the students, has been categorically admitted by the Writ Petitioner.



13. On 15.07.2021, she resigns from the institution and was relieved on the same day. The relieving order dated 16.08.2021, was challenged in the Writ Petition. It is relevant to note that it is for the first time, in the affidavit filed in support of the writ petition that the writ petitioner raises an objection to the proceedings attempting to state that the allegations were foisted on her and that she was innocent. This defence does not figure at any point in the proceedings as part of her replies to the notice or in the course of the enquiry.

14. Before the learned Judge, a detailed counter was filed by the appellant, where they point to the responsibility cast upon the member of the faculty in framing of question papers and setting the answer key. The faculty is required to value the answer papers as well, and are required to maintain discretion, conforming to the procedures and norms set by the Academic Council in this regard.

15. Making reference to the correspondences exchanged between the parties, the appellant argues that the malpractices indulged in by the Writ Petitioner had been duly established by her own concession and the Writ Petition hence had no merit whatsoever.

16. Upon consideration of the rival contentions, learned Judge has, on 03.12.2021, allowed the Writ Petition directing the appellant to reinstate the



petitioner forthwith by passing appropriate orders within two (2) weeks from date of receipt of a copy of that order. Liberty was granted to the appellant to proceed against the Writ Petitioner in the event they were of the view that they were in possession of materials to support their allegations against the Writ Petitioner. It is as against this order that the College is in appeal.

17. At the hearing on 04.02.2022, an order of interim stay till 04.03.2022 was obtained by the appellant. We are given to understand that pending this Writ Appeal, there were negotiations qua the parties for compensation to be paid to the Writ Petitioner. However, this did not fructify, as the college being an autonomous institution, without aid or support from the Government, would have had to pass on the burden of such payment to the students which it was not inclined to do.

18. We have heard learned counsel in detail. Several cases have been cited before us and detailed references have been made to the documents. Our decision is as under.

19. The dates and events are more or less admitted. The Writ Petitioner had joined the services of the appellant institution on 17.08.2020, vide appointment order dated 14.08.2020. Her probation was for two years.



20. The first event of relevance is the resolution of the meeting of the College Council on 12.04.2021 in the Conference Hall of the Administrative Block. The agenda for the meeting was as follows:

Agenda:

- *II CA and Semester Examination.*
- *Question setting for Semester and Question Bank.*
- *Semester and Exam fee payment.*
- *Syllabus completion and Last working day.*
- *Calendar planning for 2021-2022.*
- *Stock verification.*
- *Project proposal for seed money.*
- *Interactive board.*
- *Staff e-content preparation.*

21. The discussions in the College Council meeting reveal that the pattern for the semester examination was discussed. Since the examination fell in the aftermath of the Covid-19 pandemic, there was a specific reference to the conduct of examinations in-person. One of the resolutions passed, which is material for the purpose of this Writ Appeal, relates to the formulation of question papers and answer key. That item reads as follows:

** The staff members were asked to submit 20 x 5 units – 100 MCQ with key of their course to COE before 30.04.2021 in word format. Staff members were advised not to take question from internet.*



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22. Needless to say the staff members were expected to maintain discretion and total secrecy in regard to the formulation of the question bank comprising 100 MCQs. The questions formulated were to be handed over to the COE with answer key. The Writ Petitioner has, admittedly, formulated the question bank and handed over the same to the COE.

23. The next relevant event is a show cause notice from the appellant to the Writ Petitioner dated 30.07.2021, in the following terms:

From
30.07.2021
The Secretary,
Auxilium College (Autonomous),
Gandhi Nagar, Vellore-632 006.

Date:

To
Dr.C.Praba,
Asst. Professor of Economics,
Auxilium College (Autonomous),
Gandhi Nagar, Vellore-632 006.

Sub: Malpractice in the Examination – Leaked out question paper –Reg.

Madam,
For the Semester Examinations to be held in May 2021, due to the COVID-19 lockdown, it was decided in the College Council held on 12.04.2021 to conduct the examinations online using the Multiple Choice Questions pattern. The examination would be for a one-hour duration and 60 questions are to be answered by the students. Hence, all the staff members were requested to prepare the question



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papers consisting of 100 multiple choice questions and submit the same to the Controller of Examinations on or before 30.04.2021. The Controller of Examinations will select 60 questions out of these 100 questions.

I have come to know from the staff and students that you have leaked out to the students on 03.05.2021, all the 100 questions with the answers which you have submitted to the Controller of Examinations for Semester Examinations (6th Semester Course – Non-Major Elective: Women Entrepreneurship) to be held on 11.05.2021. Thus you breached the trust we have placed in the staff and were involved in malpractice in the conduct of the above-stated examinations.

Besides, you have deviated the attention of the College authorities by conveniently changing the title of the course from Women Entrepreneurship to Entrepreneurship and Project Management when you sent the questions and answers to the students so that you may not be trapped.

This shows your dereliction from duty, the insincerity of character, teaching students corrupt ways of behaviour and breaking the trust we have placed in you.

Kindly Show Cause within 24 hours in writing why disciplinary actions should not be taken against you.

24. The responses of the Writ Petitioner are very relevant and have been issued in seriatim. The first response dated 31.07.2021 reads thus:

From

Date: 31.07.2021

Dr.C.Praba

Assistant Professor of Economics

Auxilium College

To

The Secretary

Auxilium College (Autonomous)

Gandhi Nagar, Vellore.



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Respected Sister

Sub: Response to your letter “Malpractice in the Examination – Leaked out question paper” dated on 30.07.2021 – reg.

The NME (Women Entrepreneurship- Semester VI) you mentioned in the letter was handled by me. I used to give question bank to the students collected from various Institution/University in and around the country. Likewise, for the above-mentioned NME I distributed the materials collected from Nehru Institute of Engineering and Technology offered by the department of Mechanical Engineering as an allied paper and questions prepared by my own. You can get verified with the following details of all the subjects I handled in the even semester.

Thank you

25. The second response is dated 02.08.2021 and reads as follows:

From

02.08.2021

C.Praba

Assistant Professor of Economics

Auxilium College

To

The Principal

Auxilium College (Autonomous)

Vellore.

Dated:

Respected Sister

I was handling NME - Women Entrepreneurship for the III yr students. I prepared question bank of the same subject consisting of 128 questions comprising of 100 MCQ's and 28 very short answers questions collected by website. Among which I sent 100 MCQ's to the college COE and gave to students to study for the exam. I promise you that in future I will be careful & will not send that prepared will not be sent to students. I apologize for my activity.

Thank you

26. A reading of responses dated 31.07.2021 and 02.08.2021 leaves us no doubt whatsoever that the Writ Petitioner has, at the very inception, admitted to the



malpractices committed by her. She has admitted categorically that she has collated the question bank of 100 MCQs from the internet and that she has divulged those questions to the students as well. She has been specific in regard to the Institution from whose website the questions have been collected, being Nehru Institute of Engineering and Technology.

27. In order to ensure that proper procedure was followed, an enquiry was caused, the Writ Petitioner inquired, and an enquiry report submitted on 06.08.2021. The Enquiring Officer, i.e, the Secretary of the appellant college, has documented the results of the enquiry in the following terms:

ENQUIRY REPORT

By the Secretary, Auxilium College, Vellore-6

with

Dr.C.Praba, Asst. Prof. of Economics

06.08.2021

I, Sr. Alice K.T., the Secretary, Auxilium College (Autonomous), met Dr.C.Praba, Assistant Professor of Economics, on 06.08.2021, for a personal hearing. She was allowed to express her views. During the enquiry, she kept on insisting that sending the question paper to the students is not wrong. For her, the question paper is study material and Question Bank.

On asking her how 100 multiple choice questions which she had sent to the Controller of Examinations, become a Question Bank for a 5 unit syllabus, she had no answer. Also, she did not answer the question why she took the questions from the website of Nehru Institute of Engineering Technology under the title "Entrepreneurship and Project Management" for the subject "Non-Major Elective: Women Entrepreneurship" taught in our College.



From my enquiry with Dr.Praba, I felt that she has not taken seriously the concept of secrecy and confidentiality of matters regarding the examination though sufficient instructions were given periodically to the staff members by the Controller of Examinations, Principal and the Heads of the Departments.

Later, Dr.Praba accepted that she had sent questions to the students (I, II and III years) taking them from various websites and submitted them to the Controller of Examinations. She also accepted that she had sent the same questions to the students on 03.05.2021, a week before the examinations.

She cried and apologised for leaking out the question papers to the students and thus she accepted her fault.

As the Enquiry Officer, in my enquiry with Dr.Praba, I come to the conclusion that Dr.Praba has accepted her malpractice in the examination by way of leaking out the question paper to the students.

28. A second show cause notice thus came to be issued on 11.08.2021, where, after chronicling the events that had taken place thus far, the appellant has proposed the punishment of dismissal calling for the reply of the Writ Petitioner within 24 hours.

29. Two replies have been filed by the Writ Petitioner, both dated 12.08.2021, and substantially identical, barring one sentence. The reply placed at page 118 of compilation dated 06.01.2022 is extracted below as it contains the additional sentence:

From
C.Praba

Date: 12.08.2021



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W.A.No.120 of 2021



*Asst. Prof. of Economics
Auxilium College,
Vellore.*

*The Secretary
Auxilium College
Vellore.*

Respected Sister

Sub: Response to your letter dated 11.08.2021 – reg.

Inspite of the instructions given by the college Controller of examinations (COE) regarding setting multiple choice questions (MCQ's) from website, it is my mistake that I took questions from website for the even semester examination 2021. I accept my fault and promise you that in future I will not do it and distribute the questions and answers collected from web-sources to the students to study. I did not do this intentionally but it happened accidentally. Again I express my regret and promise you I will not repeat the same in future. Kindly consider my apology.

Thank you

30. This was followed by two letters, one dated 15.07.2021 and another dated 16.08.2021, where the writ petitioner cites health issues and tenders her resignation. The relieving order was issued on 16.08.2021.

31. On a detailed consideration of the dates and events that have been set out above, we have no doubt in our mind that the Writ Petitioner has accepted the faults committed by her. Hence, there really remains nothing further to be looked into in terms of the events leading to the dismissal itself. Importantly, learned counsel appearing for the Writ Petitioner does not dispute any of the documents



that have been produced and hence, the documents are accepted, admitted and form part of the records.

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32. The Writ Court, in allowing the Writ Petition, has found fault with the procedure followed by the Management. At paragraph 9, learned Judge says that dismissal, being a serious matter, the least that could have been done was to follow due process of law. According to the Writ Court, the explanation tendered by the Writ Petitioner was not considered by the college.

33. We, however, find that the Writ Petitioner had clearly and unambiguously accepted the defaults committed and tendered an apology and this hardly qualifies as an 'explanation'. We, hence, do not agree with the learned Judge on this count.

34. If at all, the only difference of opinion may have been on the quantum of punishment not on the visitation thereof, which in our opinion, is quite justified. The punishment is one of dismissal. The writ petitioner has never challenged the same on the ground of proportionality. In any event, and in the interests of completion, we examine this aspect too.

35. Quite apart from the collection of substantial materials from the internet which the faculty was specifically directed not to do, the Writ Petitioner has also accepted that the materials taken from the website along with twenty five other



questions of her own have been given to the students. This is a serious deviation from what is expected from a member of the faculty.

36. Needless to say, it is not in the interests of either the students or the Institution for the questions to be leaked in advance of the examinations. Apart from being a grave act of misconduct, it would prevent healthy competition as the students are not encouraged to study and prepare for the examinations. In such circumstances, where we are of the view that the defaults committed are serious and contrary to the interests of the institution as well as the students, we conclude that the punishment imposed is also proportionate calling for no intervention. Accordingly, the reinstatement ordered by the learned Judge is set aside as it tantamounts to brushing aside the admitted defalcations committed by the Writ Petitioner.

37. There is yet another unfortunate consequence. In Memo dated 30.07.2021, the authority has referred to information received on 03.05.2021 to the effect that the Writ Petitioner had leaked the questions. This information had come to the knowledge of the appellant only proximate to the issuance of the Memo. In the meanwhile, the examination was conducted on 11.5.2021, meaning that the conduct of examination where the questions had been leaked was itself compromised.



38. The students who have written that examination were privy to the questions in advance which is wholly contrary to a fair and proper scheme of examinations. It is also unknown as to how many students had had the advantage of leaked questions. If the Writ Petitioner had leaked the questions selectively, only to some students and not to the others, then those who had received the questions would have had an unfair advantage over the other candidates. Viewed in this angle as well, the actions of the Writ Petitioner are extremely serious.

39. The conclusion of the Writ Court at paragraphs 13 and 14 are as follows:

13. The 3rd respondent is directed to reinstate the petitioner forthwith by passing appropriate order in this regard within a period of two weeks from the date of receipt of a copy of this order.

14. The 3rd respondent is however, at liberty to proceed against the petitioner, in case, they have any materials to support their allegation against the petitioner, if they are so advised.

40. Mr.Godson has acceded to conducting yet another enquiry as indicated by the Writ Court at paragraph 14 of the order. We record the same as also their undertaking that the enquiry will be completed within a period of three (3) months from date of first hearing for which notice will be sent forthwith. Needless to say, that the Writ Petitioner will co-operate in the conduct of enquiry. We also make it



clear that if the Writ Petitioner does not attend the enquiry or co-operate with the same, the appellant may, after reasonable efforts in the direction of conducting a proper enquiry, close the matter, reiterating the decision under order dated 16.08.2021.

41. What remains is the plea for subsistence allowance/compensation put forth by Mr.Prasad, for the period from the time of dismissal of the Writ Petitioner, till date. In this regard, the following cases have been cited by Mr.Godson and Mr.N.G.R.Prasad respectively:

Appellant:

- (i) *RT.Rev. B.P.Sugandhar Bishop in Medak v. D.Dorothy Dayasheela Ebeneser*¹
- (ii) *Channabasappa Basappa Happali v. The State of Mysore*²
- (iii) *Hiran Mayee Bhattacharyya v. Secretary. S.M.School for Girls and others*³
- (iv) *Delhi Transport Corporation v. Shyam Lal*⁴
- (v) *U.P. State Spinning Co. Ltd. v. R.S.Pandey and Another*⁵
- (vi) *Union of India v. Y.S.Sadhu, Ex-Inspector*⁶
- (vii) *Manoj H.Mishra v. Union of India and others*⁷
- (viii) *Chairman, Life Insurance Corporation of India and Others v. A.Masilamani*⁸
- (ix) *Union of India and Others v. Sabyasachi Jyoti and others*⁹

¹ (1996) 4 Supreme Court Cases 406

² 1971 (1) Supreme Court Cases 1

³ (2002) 10 Supreme Court Cases 293

⁴ (2004) 8 Supreme Court Cases 88

⁵ (2005) 8 Supreme Court Cases 264

⁶ (2008) 12 Supreme Court Cases 30

⁷ (2013) 6 Supreme Court Cases 313

⁸ (2013) 6 Supreme Court Cases 530

⁹ (2018) 14 Supreme Court Cases 78



(x) *The Chairman & Managing Director, Tamil Nadu Road Infrastructure Development Corporation, IV Floor, LLA Building, 735, Anna Salai, Chennai 600 002 and another v. T.Janarthanan*¹⁰

(xi) *Managing Director, ECIL, Hyderabad and others v. B.Karunakar and others*¹¹

Writ Petitioner/R1:

(i) *Jagdish Prasad Saxena v. State of Madhya Bharat*¹²

(ii) *Shanmugam S. v. Presiding Officer, Labour Court*¹³

(iii) *State Bank of Patiala and another v. Ram Niwas Bansal (Dead) Through Legal Representatives*¹⁴

(iv) *M.Arumugam v. The Chairman, Tamil Nadu Electricity Board, 800, Anna Salai, Chennai-600 003 and others*¹⁵

(v) *M/s.American International School, 100 Ft. Road, Taramani, Chennai-600 113. Rep. By its Chief Business Officer, Mr.Alankrit V.Arora v. The Assistant Provident Fund Commissioner, Employees Provident Fund Organization, 37, Royapettah High Road, Chennai-600 014 and others*¹⁶

(vi) *The Chairman & Managing Director, Tamil Nadu Road Infrastructure Development Corporation, IV Floor, LLA Building, 735, Anna Salai, Chennai 600 002 and another v. T.Janarthanan*¹⁷

42. We will now proceed to discuss the cases cited at the Bar. In the case of *D.Dorothy Dayasheela Ebeneser*¹⁸, the Supreme Court, at paragraph 6 of that judgement, has held that ‘*in a case where there are grave charges of misconduct whatever may be the reason for not completing the enquiry within the prescribed*

¹⁰ [WA.No.3417 of 2023 dated 23.04.2024 (Madras High Court)]

¹¹ (1993) 4 Supreme Court Cases 727

¹² [Civil Appeal No.348 of 1958, dated 28.10.1960 Supreme Court of India]

¹³ (2005) 1 MLJ 223

¹⁴ (2014) 12 Supreme Court Cases 106

¹⁵ (2016) SCC OnLine Mad 15753

¹⁶ [W.P.Nos.703 & 704 of 2017, dated 08.08.2023 Madras High Court]

¹⁷ [WA.No.3417 of 2023 dated 23.04.2024 (Madras High Court)]

¹⁸ Foot Note Supra (1)



time, the interest of the institution and the employee would be best served if a direction is given to the Management to continue to pay to the employee the salary and allowances of the post held by him instead of directing reinstatement/restoration of the employee into the service’.

43. The above observations would really not apply to the present case, seeing as the defalcations/malpractices are admitted and the Writ Petitioner has acceded to the same.

44. In *Hiran Mayee Bhattacharyya*¹⁹, on which reliance is placed by both parties, the Supreme Court, at paragraphs 4 and 5 has held as follows:

4. We, therefore, direct the disciplinary authority to furnish a copy of the enquiry report to the appellant and then permit her to submit her representation/explanation to the same and pass final orders thereafter. However, this will not lead to reinstatement or to back wages inasmuch as this Court has decided in the case of Managing Director, ECIL, Hyderabad v. B.Karunakar [(1993) 4 SCC 727] that there need be no reinstatement nor back wages need be paid when the Court directs that the principles of natural justice should be followed. We therefore, remit the matter to the disciplinary authority, being Secretary, Shibarampur Madhyamik High School for Girls, Shibarampur, Calcutta 700 061 for the aforesaid purposes. The termination order already passed will remain, but subject to the result of the fresh consideration as directed above.

5. The abovesaid disciplinary authority is directed to give a copy of the enquiry report to the appellant within one month from the receipt of a copy of this order and thereafter grant four weeks for filing an explanation. On receiving the same the disciplinary authority may decide the matter within six weeks thereof. If the

¹⁹ Foot Note Supra (2)



appellant is entitled to any subsistence allowance from the date of her removal till the date of termination already made, she may make appropriate application therefor. If the application is so made, the disciplinary authority will consider the same on its own merits.

45. This decision is also not apposite to this case in so far as we have found that the enquiry has been conducted properly and due process has been followed. In the case of *Hiran Mayee Bhattacharyya*²⁰, a copy of the enquiry report had not been submitted to the employee, which deficiency has been set right by the Hon'ble Supreme Court in the proceedings before them. On the question of entitlement to subsistence allowance, the employee has been permitted to make an application before the authorities.

46. The payment of subsistence allowance is provided for under the Tamil Nadu Payment of Subsistence Allowance Act 1981 ('Act') to an 'employee'. Section 3 of the Act states that an employee who is placed on suspension shall, during the period of suspension, be entitled to receive payment towards subsistence from the employer.

47. An 'employer' is defined as the owner of an establishment and an 'establishment' is defined as any place where any industry, trade, business, undertaking, manufacture, occupation or service is carried on, and with respect to

²⁰ Foot Note Supra (2)



which the executive power of the State extends barring an office or department of the State or Central Governments, railway administration, mine or oil-field, major port or Central PSU.

48. The Appellant is an autonomous institution not aided by the State. Hence the question of subsistence allowance as understood under the Act does not arise. The eligibility of the writ petitioner to compensation for subsistence would have arisen only if she had been suspended and pending such suspension. In the present case, the services of the writ petitioner had been terminated after due enquiry. Pending writ appeal the order of the writ court had been stayed between 04.02.2022 and 04.03.2022. However neither party appears to have been aware of the fact that the interim orders had been limited and had not been extended and the question of compensation had been raised only during the pendency of the writ appeal.

49. The submission of the Writ Petitioner that necessary approvals and permissions as required under the provisions of the Tamil Nadu Private Colleges (Regulation) Act, 1976 have not been obtained prior to the dismissal is also found to be incorrect in light of Section 24(3) of the Tamil Nadu Private Colleges (Regulation) Act, 1976, which states that the provisions of Section 18 (2) and of Sections 19 to 22 (both inclusive) of that Chapter or any rule providing for all or



any of the matters specified therein or any order made in relation to any such matter, shall not apply to a minority college, such as the appellant.

50. In the case of *R.S.Pandey*²¹, the issue of what would constitute appropriate action post an order of dismissal has been considered at paragraphs 25 and 26 of that judgment. The Bench also made reference to the locus classicus in *Managing Director, ECIL V. B.Karunakar*²² specifically paragraphs 25 and 26 thereof, that read as follows:

25. The residual question is what would the appropriate direction in such a case be. Stand of the employer is that it could have justified the order of termination by adducing any evidence even if it was held that there was some defect in the departmental proceedings. The solution is found in what was stated by this Court in Managing Director, ECIL v. B.Karunakar [(1993) 4 SCC 727. In para 31, it was observed as follows: (SCC p. 758, para 31)

"In all cases where the enquiry officer's report is not furnished to the delinquent employee in the disciplinary proceedings, the courts and tribunals should cause the copy of the report to be furnished to the aggrieved employee if he has not already secured it before coming to the court/tribunal and give the employee an opportunity to show how his or her case was prejudiced because of the non-supply of the report. If after hearing the parties, the court/tribunal comes to the conclusion that the non-supply of the report would have made no difference to the ultimate findings and the punishment given, the court/tribunal should not interfere with the order of punishment. The court/tribunal should not mechanically set aside the order of punishment on the ground that the report was not furnished as is

²¹ Foot Note Supra (5)

²² (1993) 4 SCC 727



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regrettably being done at present. The courts should avoid resorting to short cuts. Since it is the courts/tribunals which will apply their judicial mind to the question and give their reasons for setting aside or not setting aside the order of punishment (and not any internal appellate or revisional authority), there would be neither a breach of the principles of natural justice nor a denial of the reasonable opportunity. It is only if the court/tribunal finds that the furnishing of the report would have made a difference to the result in the case that it should set aside the order of punishment. Where after following the above procedure, the court/tribunal sets aside the order of punishment, the proper relief that should be granted is to direct reinstatement of the employee with liberty to the authority/management to proceed with the inquiry, by placing the employee under suspension and continuing the inquiry from the stage of furnishing him with the report. The question whether the employee would be entitled to the back wages and other benefits from the date of his dismissal to the date of his reinstatement if ultimately ordered, should invariably be left to be decided by the authority concerned according to law, after the culmination of the proceedings and depending on the final outcome. If the employee succeeds in the fresh inquiry and is directed to be re-instated, the authority should be at liberty to decide according to law how it will treat the period from the date of dismissal till the reinstatement and to what benefits, if any and the extent of the benefits, he will be entitled. The reinstatement made as a result of the setting aside of the inquiry for failure to furnish the report, should be treated as a reinstatement for the purpose of holding the fresh inquiry from the stage of furnishing the report and no more, where such fresh inquiry is held. That will also be the correct position in law."

26. In view of above, we set aside the order of learned Single Judge as affirmed by the Division Bench by the impugned judgment and direct that within a period of four months the enquiry shall be completed by starting from the stage of service of show-cause notice and consideration of the reply, if any, filed in accordance with the standing orders holding the field.



Respondent 1 shall be reinstated to service but without any back wages and other service benefits and his reinstatement shall be solely for the purpose of completing the departmental proceedings. His entitlements, if any, would be adjudicated by the authorities depending upon the result of the disciplinary proceedings.

51. We draw a cue from the conclusion at paragraph 26, where the college has been directed to reinstate the employee in service without backwages and other service benefits solely for the purpose of completing the departmental proceedings. The Bench has proceeded to note that the entitlement of the employee, if any, would be adjudicated by the authorities depending upon the result of the departmental proceedings.

52. In the present case, we do not proceed to reinstate the employee for the purpose of completing the enquiry, as we have found, on the basis of the records produced, that there was no infirmity in her dismissal. It is solely based on the concession of the Appellant that the ensuing enquiry has been directed to be conducted. Needless to state, now that the Appellant has acquiesced to the conduct of enquiry, such conduct shall be de novo, uninfluenced by any of the observations contained in the order of the Writ Court or in this order, and completed within the time frame stipulated in paragraph 38 supra.



53. In the case of *Y.S.Sadhu, Ex- Inspector*²³ bearing in mind the procedural irregularities in that case, the Court has observed that there would not be any reinstatement but the proceedings would continue from the state where it stood before the vulnerability surfaced.

54. In the case of *A.Masilamani*²⁴, the Supreme Court has reiterated the settled proposition that once the Court has set aside the direction on the ground that the enquiry was not properly conducted, the employee cannot be reinstated. They would proceed to state that the case must be remitted to the disciplinary authority for it to conduct the enquiry from the point that it stood vitiated and conclude the same.

55. Reference has been made to cases of *ECIL v. B.Karunakar*²⁵, *Hiran Mayee Bhattacharyya v. S.M. School for Girls*²⁶, *U.P. State Spg. Co. Ltd. v. R.S.Pandey*²⁷, and *Union of India v. Y.S.Sadhu*²⁸, which we have already discussed in the paragraphs supra. In conclusion, the Bench states as follows:

21. After hearing the counsel for the parties, we are of the view that the impugned judgment and order dated 10.1.2011, in LIC v. A.Masilamani [Writ Appeal No.7 of 2011, decided on 10.1.2011 (Mad)] as well as the order of the learned Single Judge dated 17.2.2010, passed in A.Masilamani v. LIC [Writ Petition No.11152

²³ Foot Note Supra (6)

²⁴ Foot Note Supra (8)

²⁵ Foot Note Supra (21)

²⁶ Foot Note Supra (3)

²⁷ Foot Note Supra (5)

²⁸ Foot Note Supra (6)



of 2002 decided on 17.2.2010 (Mad)], cannot be sustained in the eye of the law and are therefore hereby, set aside. The present appeal is allowed. The matter is remitted to the disciplinary authority to enable it to take a fresh decision, taking into consideration the gravity of the charges involved, as with respect to whether it may still be required to hold a de novo enquiry from the stage that it stood vitiated, i.e. after issuance of the charge-sheet. The disciplinary authority while taking such a decision must bear in mind that charges are merely technical as the loan was taken for construction of a residential premises and the said loan was used effectually to construct the premises as per sanctioned plan and only then the premises was put to commercial use.

56. Mr.Prasad cites the case of *T.Janarthanan*²⁹, where reference is made to a paragraph in the case of *Jagadish Prasad Saxena*³⁰ to state that departmental enquiry is not an empty formality and is a serious proceeding intended to give the officer a chance to meet the charge and to prove his innocence. The relevant paragraph reads as follows:

“13.The departmental enquiry is not an empty formality; it is a serious proceeding intended to give the officer concerned a chance to meet the charge and to prove his innocence. In the absence of any such enquiry it would not be fair to strain facts against the appellant and to hold that in view of the admissions made by him the enquiry would have served no useful purpose. That is a matter of speculation which is wholly out of place in dealing with cases of orders passed against public servants terminating their services.”

²⁹ Foot Note Supra (17)

³⁰ Foot Note Supra (12)



57. For the same proposition, learned counsel also refers to the decision of this Court in *Shanmugam.S*³¹. In light of our conclusion that there are no procedural infirmities in the conduct of the enquiry at the first instance, and that the second innings now extended to the Writ Petitioner is only an act of concession by the college, we do not see the relevance of these cases.

58. In the present case, the matter had come up for admission on 04.02.2022 and an order of interim stay was granted till 04.03.2022. It does not appear to have been extended thereafter, despite the matter having been come up more than a dozen times.

59. Learned counsel for R1 would, in this regard, refer to a decision of a learned Judge of this Court in *American International School*³² and to the observations of the Supreme Court in *State Bank of Patiala*³³, pointing out that there had been a substantial period when the Writ Appeal was pending without the benefit of stay. This, according to him, would render support to the contention that in the absence of the stay, the Writ Petitioner was, all the more, entitled to compensation/subsistence allowance till date.

³¹ Foot Note Supra (13)

³² Foot Note Supra (16)

³³ Foot Note Supra 14



60. The relevant paragraph in the case of *State Bank of Patiala*³⁴ is extracted

below:

30. In the case at hand, the said stage is over. The Full Bench on the earlier occasion had already rendered a verdict that the serious prejudice had been caused and, accordingly, had directed for reinstatement. The said direction, if understood and appreciated on the principles stated in B.Karunakar (supra), is a direction for reinstatement for the purpose of holding a fresh enquiry from the stage of furnishing the report and no more. In the case at hand, the direction for reinstatement was stayed by this Court. The Bank proceeded to comply with the order of the High Court from the stage of reply of enquiry. The High Court by the impugned order had directed payment of back wages to the delinquent officer from the date of dismissal till passing of the appropriate order in the disciplinary proceeding/superannuation of the petitioner therein whichever is earlier. The Bank has passed an order of dismissal on 22.11.2001 with effect from 23.4.1985. The said order, as we perceive, is not in accord with the principle down by the Constitution Bench decision in B.Karunakar (supra), for it has been stated there that in case of non-furnishing of an enquiry report the court can deal with it and pass as appropriate order or set aside the punishment and direct reinstatement for continuance of the departmental proceedings from that stage. In the case at hand, on the earlier round the punishment was set aside and direction for reinstatement was passed. Thus, on the face of the said order it is absolutely inexplicable and unacceptable that the Bank in 2001 can pass an order with effect from 23.4.1985 which would amount to annulment of the judgment of the earlier Full Bench. As has been held by the High Court in the impugned judgment that when on the date of non-furnishing of the enquiry report the delinquent officer was admittedly not under suspension, but was in service and, therefore, he would continue in service till he is dismissed from service in accordance with law or superannuated in conformity with the Regulations. How far the

³⁴ Foot Note Supra (14)



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said direction is justified or not or how that should be construed, we shall deal with while addressing the other points but as far as the order of removal being made retrospectively operational, there can be no trace of doubt that it cannot be made retrospective.

61. As we have already opined, the grant of benefits, if any, are dependent on the result of the enquiry to follow. The specific argument put forth by the Writ Petitioner is that retrospective dismissal is illegal and for this proposition, he would rely on the decision in State Bank of Patiala above. The observations and conclusion of the Court in that case turn specifically on those dates and events.

62. The Bank had, in 2001, passed an order of dismissal with retrospective effect from 23.08.1985. We do not advert to the other facts in that case as the aforesaid fact alone would distinguish that case from the present case. In this case, there is no retrospective dismissal or retroactive action. The entire proceedings have transpired in seriatim and are based on the correspondences of the Writ Petitioner where she had accepted/conceded to the wrong doings.

63. It is only post issuance of show notices, receipt of responses from the writ petitioner acceding to the malpractices and independent enquiry that the order of dismissal was passed, terminating her services from that date onwards. The text of the relieving order dated 16.08.2021 reads '*As per your request, I accept your resignation from the post of Assistant Professor of Economics, Auxilium College*



(Autonomous), Vellore-6, and you are relieved from your duty from 16.08.2021

A.N. ' making it clear that it operated prospectively only. This argument is hence rejected as being misconceived on facts.

64. This Writ Appeal stands disposed in terms of this order. No costs.

Connected Miscellaneous Petitions are closed.

**[A.S.M., J] [G.A.M., J]
10.12.2024**

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Index:Yes

Neutral Citation:Yes

Speaking order

To

1. The Director of Collegiate Education,
9th Floor, EVK Sambath Maligai, DPI Campus,
Nungambakkam, Chennai – 600 008.
2. The Joint Director of Collegiate Education
Vellore Region, Vellore – 632 006.



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W.A.No.120 of 2022



DR. ANITA SUMANTH.,J.
and
G. ARUL MURUGAN.,J.

sl

W.A.No.120 of 2022
and CM.P.Nos.907 and 3345 of 2022

10.12.2024