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W.A. No.840 of 2024



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 14.10.2024

DELIVERED ON: 29.10.2024

CORAM:

**THE HONOURABLE MR. JUSTICE D.KRISHNAKUMAR
and**

THE HON'BLE MR.JUSTICE P.B.BALAJI

W.A.No.840 of 2024

and CMP. Nos.5860 & 5864 of 2024

Dr.V.Joseph

.. Appellant

Vs

- 1.The Secretary and Correspondent,
Loyola College, Nungambakkam,
Chennai – 600 034.
- 2.Rev.Dr.Francis P.Xavier,
Vice Chairman,
Loyola College Governing Body,
Chennai – 600 034.
- 3.The State of Tamil Nadu,
Rep. by its Secretary,
Education Department,
Fort St. George, Chennai – 600 009.
- 4.Director of Collegiate Education,
9th Floor, EVK Sampath Building,
College Road, Chennai 600 006.
- 5.The Regional Joint Director of Collegiate Education,

1/12



Office of the Regional Joint Director of College
Education, Institute of Advanced Study in Education
Campus, Saidapet, Chennai – 600 015.

..Respondents

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent to set aside the impugned order passed by the learned Judge of this Court dated 17.11.2023 in W.P. No.4561 of 2020.

For Appellant : Mr.T.Gowthaman
Senior Counsel for
Mrs.S.Karpagapriya
For Respondents : Mr.Godson Swaminathan
for M/s.Isaac Chambers for R1 & R2
Mr.R.Neethiperumal for R3 to R5

J U D G M E N T

(Judgment of the Court was made by MR.JUSTICE P.B.BALAJI, J.)

The Writ Appeal has been preferred by the Writ Petitioner aggrieved by the order in WP.No.4561 of 2020 dated 17.11.2023.

2. The Writ Petitioner was appointed as a lecturer in Physics Department in the 1st respondent Institute viz., Loyola College on 01.07.1991. Certain charges were framed against him and a Retired Judge, one Mr.Pauldas was appointed as Enquiry Officer to enquire into the said



charges. The Enquiry Officer submitted his report on 03.04.2018 holding that none of the charges stood proved against the petitioner. However, the College issued a show cause notice on 12.06.2018, disagreeing with the findings of the Enquiry Officer.

3. The said show cause notice was challenged by the petitioner in WP.No.16679 of 2018 and the same was allowed by the Writ Court on 08.03.2019 with the direction to the College to issue a fresh show cause notice setting out reasons for disagreeing with the findings of the enquiry report and thereafter, take a fresh decision and pass final orders in the disciplinary proceedings.

4. Subsequent to the disposal of the said writ petition, the College issued a fresh show cause notice only on 08.02.2020, calling upon the petitioner to submit his explanation. It is the case of the petitioner that the said show cause notice did not contain any particulars or reasons for differing with the findings arrived at by the Enquiry Officer. Thereafter, the petitioner also retired from service and therefore claimed that the second show cause notice was liable to be set aside. However, the Writ Court



disposed the Writ Petition on the ground that the disciplinary proceedings having already been initiated and it was always open to the petitioner to exhaust his remedies by submitting his explanation to the show cause notice by including Dissent Note of the College assigning reasons for disagreeing with the report of the Enquiry Officer and there was no ground to interfere with the show cause notice and proceeded with to dispose of the writ petition.

5. We have heard learned Senior Counsel, Mr.T.Gowthaman appearing for Mrs.S.Karpagapriya, learned counsel for the appellant and Mr.Godson Swaminathan appearing for M/s.Isaac Chambers for the respondents 1 & 2 and Mr.R.Neethiperumal, learned counsel for the respondents 3 to 5. We have also perused the records including the order of the Writ Court.

6. It is an admitted case that the enquiry conducted at the instance of the first respondent College ended in favour of the appellant with the Enquiry Officer, Retired Judge of Civil Court having found the charges not proved against the appellant. No doubt, the Management is within his rights



to disagree with the findings of the report submitted by the Enquiry Officer.

However, the only condition was that there should assign reasons for differing with the findings rendered by the Enquiry Officer.

7. However, the learned Senior Counsel Mr.T.Gowthaman appearing for the appellant would invite our attention to exchange of correspondence between the appellant and the Management in and by letter dated 25.06.2019, where the appellant had submitted his request for Voluntary Retirement of Service on 06.03.2019, with effect from forenoon of 09.07.2019 and requesting the Management to relieve him from 09.07.2019. In and by letter dated 13.08.2019, the appellant has addressed a letter to the Secretary, Loyola College requesting permission to attend his nephew's marriage at Myanmar on 19.10.2019, in respect of which he has sought for utilising Earned Leave from 14.10.2019 to 20.10.2019. In and by certificate dated 17.08.2019 signed by the Secretary and Correspondent of the said Loyola College addressed to Joint Directorate of Collegiate Education, Chennai, it has been certified by the 1st respondent that the appellant is eligible to go abroad for a period between 14.10.2019 and 20.10.2019 (Earned Leave) and that the appellant has no contractual obligation to serve



the College as on date and that there is no disciplinary action pending against the appellant.

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8. Placing heavy reliance on the above said letter, the learned counsel for the appellant would submit that when the Secretary and Correspondent of the 1st respondent College himself had certified that there is no disciplinary action pending against the appellant, no grounds existed for the 1st respondent to initiate proceedings by issuance of a second show cause notice thereafter. He would therefore submit that it would be an exercise in futility to direct the appellant to undergo the agony of offering explanation to the show cause notice and thereafter, going through the rigors of a domestic enquiry. He would therefore pray for the Writ Appeal being allowed.

9. Per contra, Mr. Godson Swaminathan, learned counsel for the respondents 1 and 2 would submit that the respondents have explained as to how the Certificate dated 17.08.2019 came to be issued and that cannot be taken as a blanket protection as if the appellant has been let off in the disciplinary proceedings. The letter was given only in the circumstances of permitting the appellant to go abroad to attend a relative's wedding and it



cannot be put against the Management. He would further refer to the order passed by Writ Court in WP No.16679 of 2018, where this Court had granted liberty to the respondent College to issue a fresh show cause notice with reasons and proceed with enquiry and pass orders in accordance with law. He would therefore submit that the order of the Court does not warrant any interference and the Writ Appeal is liable to be dismissed.

10. We have paid careful consideration to the arguments advanced by the learned Senior Counsel appearing for the appellant and the learned counsel for the respondents.

11. Admittedly, in respect of earlier disciplinary proceedings the petitioner moved this Court in WP No.16679 of 2018 and the said writ petition was disposed of on 08.03.2019, giving liberty to the respondents to issue a fresh show cause notice setting out reasons for deviating from the enquiry report and communicate the same to the writ petitioner and also stating that the writ petitioner would be at liberty to submit his explanation to the said show cause notice to be issued and thereafter, the Competent Authority shall consider the materials available on record and take a decision



and pass final orders. Though the said Writ Petition was disposed of in March 2019, thereafter the respondents have not chosen to initiate any action, muchless issue a second show cause notice to the appellant citing reasons for disagreeing from the findings of the Enquiry Officer. It is only during this period, the appellant sought for leave to go abroad in the month of August 2019. The respondents have issued a certificate on 17.08.2019 which was signed only by the Secretary and Correspondent who has chosen to initiate the proceedings vide the second show cause notice dated 08.02.2020. In the said certificate dated 17.08.2019, the Secretary and Correspondent has categorically stated that there is no disciplinary action pending against the appellant. Thus, it clearly implies that the respondents, pursuant to the order in WP No.16679 of 2018, have decided not to take any further action against the appellant and have dropped the proceedings accepting the findings rendered by the Enquiry Officer, Retired Judge of Civil Court.

12. While that being the position, more importantly the appellant has also submitted his Voluntary Retirement from service from 09.07.2019 and



even as late as June 2019, he has addressed the Secretary to relieve him from services from 09.07.2019 and in this context, viewing the Certificate dated 17.08.2019 issued by the very same Secretary of the College, there is significance in the statement that the appellant has no contractual obligation to serve the College as on date. It probably only implied that the request for Voluntary Retirement has been acceded to by the respondents. In any event, when the Secretary himself has certified that there is no disciplinary proceedings against the appellant as late as in August 2019, much after an order passed in WP No.16679 of 2018, giving liberty to the respondents to issue a fresh show cause notice, it is a only indication that the respondents have chosen to drop the proceedings against the appellant. That being the position, the second show cause notice dated 08.02.2020 is clearly without jurisdiction and also belated, considering the fact that the report of the Enquiry Officer is dated 03.04.2018.

13. The Writ Court has lost sight of the fact that the respondents themselves have given a clean chit to appellant in and by Certificate dated 17.08.2019 and it was therefore not open to them to subsequently refer to



the order passed in WP No.16679 of 2018 and once again choose to reopen the matter, by issuing a new show cause notice.

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14. For all the above stated reasons, the Writ Appeal is allowed. Consequently, connected Miscellaneous Petitions are also closed. There is no order as to costs.

(D.K.K.J.,) (P.B.B.J.,)

29.10.2024

Internet: Yes/No
Index : Yes/No
Speaking Order/Non Speaking Order
rkp

To

1.The Secretary and Correspondent,
Loyola College, Nungambakkam,
Chennai – 600 034.

2.Rev.Dr.Francis P.Xavier,
Vice Chairman,
Loyola College Governing Body,
Chennai – 600 034.

3.The State of Tamil Nadu,
Rep. by its Secretary,

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Education Department,
Fort St. George, Chennai – 600 009.

4. Director of Collegiate Education,
9th Floor, EVK Sampath Building,
College Road, Chennai 600 006.

5. The Regional Joint Director of Collegiate Education,
Office of the Regional Joint Director of College
Education, Institute of Advanced Study in Education
Campus, Saidapet, Chennai – 600 015.

D. KRISHNAKUMAR. J.,



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P.B.BALAJI, J.

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Pre-delivery Judgment in
W.A.No.840 of 2024
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