



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.09.2024

CORAM

THE HONOURABLE MR.JUSTICE VIVEK KUMAR SINGH

W.P.No.9103 of 2022 and
W.M.P.No.8889 of 2022

D.Mathee Indhar

... Petitioner

Vs.

- 1.The Director of Collegiate Education,
Chennai 600 006.
- 2.The Regional Joint Director,
Office of the joint Director of Collegiate Education,
Chennai Region, Chennai 600 015.
- 3.The Administrative General & Official Trustee (AG&OT),
Madras High Court Building, Chennai 600 104.
- 4.The Secretary,
Pachayappa's Trust Board,
Pachayappa's College Campus, Chennai 600 030.
- 5.The Principal,
Pachayappa's College, Chennai 600 030.
- 6.The Principal,
C.Kanda Swami Naidu College for Women,
Cuddalore 607 001.

... 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 of the fourth respondent in his proceedings RC.No.A3/0220/21 dated 03.11.2021 thereby terminating the petitioner from his service of the 5th respondent College and quash the same as illegal as the same has been passed without approval of the competent authority/ 2nd respondent as contemplated under Section 19(1) of the Tamil Nadu Private Colleges (Regulation) Act, 1976 and consequently, directing the respondents to reinstate the petitioner in his service.

For Petitioner : Mr.R.Subramaniam for
Mr.G.Vasudevan

For Respondents : Mr.C.Jayaprakash, GA for R1 & R2
No representation for R3
Mr.M.R.Jothimanian for R4 to R6

ORDER

This Writ Petition has been filed for quashment of the proceedings of the fourth respondent in RC.No.A3/0220/21 dated 03.11.2021 thereby terminating the petitioner from his service by the 5th respondent College as illegal as the same has been passed without approval of the competent authority/ 2nd respondent as contemplated under Section 19(1) of the Tamil Nadu Private Colleges (Regulation) Act, 1976 and consequently, to direct the respondents to reinstate the petitioner in service.



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2. Heard the learned counsel on either side and also perused the materials available on record.

3. The petitioner was appointed as Laboratory Assistant temporarily on consolidated basis of Rs.2500/- per month and made permanent in the post of Junior Assistant under College Management on 10.03.2004. Inspite of putting long years of service as Junior Assistant, the petitioner has not been given proper promotion or other benefits payable to him. On 18.05.2011, the petitioner was transferred to the 6th respondent College, which is also run by the 4th respondent trust. Once again, he was transferred to Chellammal College, Guindy and after that, he came back to the 5th respondent College and entrusted the work of monitoring the student and to assist the 5th respondent. On 31.03.2021, the petitioner was again transferred to the 6th respondent College and during that time, he was under continuous leave due to some health issues and he also sent letters for extension of leave along with medical certificate. Due to impact of Covid-19 pandemic, the petitioner was under continuous treatment. In this situation, the transfer order issued to the petitioner was not communicated to him, but it was orally instructed. In



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the meantime, the name of the petitioner was removed from the attendance register. Immediately, the petitioner went to the 6th respondent College and asked for the transfer order for which they said they have not received the order. The 4th respondent served a Show Cause Notice to the petitioner on 20.10.2021 stating that already four proceedings and notices have been sent to him. Against which, the petitioner gave a representation to the 4th respondent seeking copies of those proceedings to enable him to give a proper reply. Till date, the petitioner has not been provided with the copies of the four proceedings specified in the Show Cause Notice. Thereafter, the 4th respondent issued an order of termination from service on 03.11.2021. The impugned order passed by the 4th respondent without approval of the 2nd respondent who is the competent authority is invalid as per Section 19(1) of the Tamil Nadu Private Colleges (Regulation) Act, 1976. In this connection, the petitioner made written representation to the respondents, but till date no action has been taken. Hence, he filed the present petition.

4. In support of his contention, he relied on the order of this Court in the case of *M.Arachelvi Vs. The Government of Tamil Nadu and others in W.P.No.8685 of 2021*.



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5. The learned Government Advocate appearing for the respondents 1 and 2 submitted that the petitioner was temporarily appointed as Laboratory Assistant on consolidated basis and made permanent in the post of Junior Assistant under College Management on 10.03.2004. The said post was not an aided post and no grants was paid from the Government. He further submitted that the College Management is the sole authority to decide the issue related to the service and other matters of the teaching and non teaching staff serving in management / self financing wing of aided private colleges. The Tamil Nadu Private Colleges Regulation Act 1976 and the Tamil Nadu Private College Regulation Rules, 1976 do not speak anything about the persons appointed in the self-financing wing. The college Management pays the salary for the staff of the self finance /management wing. Hence, the Government cannot interfere in the service matters pertaining to management staff of aided private colleges.

6. The learned counsel appearing for the respondents 4 to 6 submitted that the Great Philanthropist viz., late Shri Pachayappa Mudaliar had executed a Will dated 22.03.1794 for charities and thereafter, a trust was established in his name called Pachayappa's Trust to provide education to the



poor students under the management of the said Trust Board. In the year 1982, the Pachayappa's Trust Board established several educational institutions and manages 6 colleges in Chennai, Kanchipuram and Cuddalore. The Management of Pachayappa's Trust and its Educational institutions are under the control of Administrator viz., Mr. Justice V. Parthiban, retired Judge of this Court as appointed by the Hon'ble Division Bench of this Court by an order dated 19.12.2023. The petitioner was initially appointed as Junior Assistant / Management staff on 10.03.2004 by the management of the Pachaiyappa's Trust Board, adhering to the Rules of the Management of the Pachayappa's Charities and posted at Pachaiyappa's College, Chennai and his service is wholly under the purview of the Management Rules. If the services of the petitioner was found unsatisfactory during the period of service, he will be terminated from service immediately without any notice. Though the petitioner was relieved from his duty on 31.03.2021 by the Principal, Pachaiyappa's College, Chennai, in order to enable him to join at the new station, the petitioner has failed to join duty at the transferred place as per the transfer order dated 30.03.2021 and the same was revealed in the communication dated 07.04.2021.



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7. He further submitted that on 08.04.2021, the petitioner submitted a medical leave for the period from 01.04.2021 to 02.05.2021, but he failed to report to duty till 27.05.2021. Thereafter, he was instructed to join duty immediately at C.Kandaswami Naidu College, Cuddalore, failing which action would be taken as per the rules in force vide letter dated 17.06.2021. The said communication has been returned back to the office with an endorsement as there is no such person in the address. Since the petitioner has failed to join duty and violated the orders of management, a show cause notice has been issued. After several unresponded notices, another show cause notice was issued to him. Despite the petitioner has not come forward to submit his explanation, the order of termination from service has been passed against him on 03.11.2021. He further submitted that the management is the authority to decide the issue related to the service and other matters of the teaching and non-teaching staff serving in management/ self-financing wing of the Private Colleges. Therefore, the Tamil Nadu Private College Regulation Act, 1976 and the Tamil Nadu Private College Regulation Rules, 1976 are not applicable to the service of the petitioner. Since the petitioner is the management staff of the Pachaiyappa's Trust, the Writ Petition filed related to service of the petitioner is not maintainable under Article 226 of



the Constitution of India as per the judgments of the Hon'ble Supreme Court of India, which were reported in ***(2023) 4 SCC 539 (S.K.Varshney Vs the Principal, Our Lady of Fatima Higher Secondary School)*** and ***(2023) 4 SCC 498 (St.Mary's Education Society and another vs. Rajendra Prasad Bhargava and others)***. He also submitted that the judgments of the Hon'ble Supreme Court cited by the petitioner is not applicable to the present case on hand.

8.Considered the rival submissions made on either side and also perused the materials available on record.

9. On perusal of the records, it reveals that 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. The Writ Petition under Article 226 of the Constitution of India against a private educational institute would be justified only if a public law element is involved and if it is only a private law remedy, no writ petition would lie. In the present case also, there is no



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question of public law element involved inasmuch as the grievances of the petitioner is of personal nature. However, taking a lenient and sympathetic view, this Court directs the petitioner to approach the competent authority for redressal of his grievance within a period of one month from the date of receipt of a copy of this order and the Competent Authority is directed to consider the case of the petitioner strictly in accordance with law, preferably, within a period of two months therefrom.

10. With the above directions, this Writ Petition is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

06.09.2024

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Index : Yes / No

Speaking order / Non-speaking order

To

1.The Director of Collegiate Education,
Chennai 600 006.

2.The Regional Joint Director,
Office of the joint Director of Collegiate Education,
Chennai Region, Chennai 600 015.

3.The Administrative General & Official Trustee (AG&OT),
Madras High Court Building, Chennai 600 104.



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