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W.A.Nos.1111 and 1112 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.03.2024

CORAM

THE HON'BLE Mr. JUSTICE R.SURESH KUMAR
AND
THE HON'BLE Mr. JUSTICE K.KUMARESH BABU

W.A.Nos.1111 and 1112 of 2020

K.P.Karupannan

... Appellant in both WAs

Vs.

1.The Commissioner of Technical Education,
Chennai – 25.

2.The Chairman,
Governing Council,
Nachimuthu Polytechnic College,
Udumalai Road, Pollachi – 642 003.

3.The Principal Incharge,
Nachimuthu Polytechnic College,
Udumalai Road, Pollachi – 642 003.
Coimbatore District.

... Respondents in both WAs

4.C.Ramasamy

... 4th Respondent in W.A.No.1112/2020

Prayer : Appeals filed under Clause 15 of the Letters Patent Act, praying to set aside the order dated 04.09.2020 made in W.P.Nos.23498 of 2015 & 24136 of 2007 respectively.



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For Appellant : Mr.K.Srinivasamurthy
for M/s.Row & Reddy (in both WAs)

For R1 : Mr.C.Jayaprakash
Government Advocate (in both WAs)

For R2 & R3, R4 : Mr.D.Balaraman (in both WAs)

COMMON JUDGMENT

(Judgment of the Court was delivered by R.SURESH KUMAR, J.)

These two writ appeals arise out of common order passed by the Writ Court dated 04.09.2020 made in W.P.No.23498 of 2015 and W.P.No.24136 of 2007.

2. That the appellant with an educational qualification of M.Tech. Textile Technology and with an experience of 20 years in teaching was appointed as Head of the Department (Textiles) on 26.02.1999 at the 3rd respondent Polytechnic. While he was working, on 20.06.2007 a charge memo was issued against him for having indulged in acts of falsifying the records of the institution by applying and availing leave stating false reasons, that reasons were false. For having indulged in criminal cases, pursuant to which, a criminal case for the alleged offences punishable



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under Sections 419, 420, 170, 171, 120(b), 109, 506(i) and 143 I.P.C. had been initiated.

3. Therefore, the appellant/writ petitioner was triggered to file a writ petition challenging the said charge memo dated 20.06.2007 in the first writ petition i.e. W.P.No.24136 of 2007.

4. During the pendency of the writ petition, the petitioner/appellant attained the superannuation on 31.07.2015. Therefore, the 3rd respondent Institute had called for the particulars from the petitioner/appellant for the purpose of process of his pension papers.

5. On 23.04.2015 the appellant/petitioner submitted a representation to the 2nd respondent for continuing his service till the academic year i.e. May 2016 as that privileges can be availed by the appellant/petitioner by virtue of the import G.O.Ms.No.326 Education Department dated 10.02.1977. When that request made by the appellant/petitioner was pending consideration before the 2nd respondent, the appellant/petitioner since attained the superannuation on 31.07.2015 before which since he wanted the relief of permitting him to continue till



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the end of academic year, he had approached this Court by filing the second writ petition in W.P.No.23498 of 2015 seeking for a writ of mandamus directing the respondents 1 to 3 to continue the petitioner/appellant as Head of the Department (Textiles) in the 3rd respondent Polytechnic till 31.05.2016 in terms of G.O.Ms.No.326 dated 10.02.1977.

6. These two writ petitions were heard together and disposed by the learned Judge of the Writ Court by common order dated 04.09.2020 which is impugned herein.

7. The learned Judge in the said common impugned order has held that, the writ petitioner/appellant was not legally entitled to hold the post in view of the G.O.Ms.No.326 Education Department dated 10.02.1977, therefore, is not entitled to any benefits pursuant to his continuance on the strength of interim order granted by this Court. Hence, writ petition W.P.No.23498 of 2015 merits no consideration and accordingly the learned Judge dismissed the said writ petition.



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8. Insofar as W.P.No.24136 of 2007 is concerned, the learned Judge has held that in view of the reinstatement made by the 3rd respondent, nothing survives for adjudication and accordingly it was closed.

9. Assailing the said orders, Mr.K.Srinivasamurthy, learned counsel for the appellant would contend that, by virtue of G.O.Ms. No.326 the right of the petitioner/appellant is available to seek for extension of employment or continuation of employment till the academic year that should have been considered by the respondents. However, the official respondents i.e., the 1st and 2nd respondents since have not considered, the appellant had no other option except to approach this Court, therefore the second writ petition was filed.

10. Insofar as the charge memo issued against the appellant is concerned, that was, according to him, not sustained, therefore it was challenged. In the meanwhile, since there had been two charge memos issued against the appellant/petitioner and in the first charge memo, there were three charges and the second charge memo, there was one charge which in fact is impugned in the first writ petition, as against the charge



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memo consisting of 3 charges, the appellant/petitioner had successfully challenged the same, against which, though Special Leave Petition has been filed by the Institution/Management, it has become unsuccessful, therefore on 30.12.2011 the appellant/petitioner had been reinstated and had been continuously working.

11. Subsequently in the year 2019 since he has been acquitted from the criminal case, there has been no impediment for the College Management as well as the official respondents to permit the appellant to continue his service till the end of the academic year. Since that has not been granted or it has been kept pending, the second writ petition had been filed seeking such a relief, therefore the learned counsel would contend that the second writ petition ought to have been allowed by the learned Judge.

12. Insofar as the charge memo consisting of one charge is concerned, the said charge memo also was issued pursuant to the decision taken by the Governing Council of the 3rd respondent Institute. The very same Governing council for the same reasons had issued the first charge memo of three charges and the said three charges also met



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the fate of quashment, the same fate would have to be faced by the second charge memo consisting of one charge. Therefore the second charge also, which is impugned in the first writ petition, is to be quashed, he contended.

13. However, Mr.C.Jayaprakash, learned Government Advocate appearing for the official respondent has contended that, the application submitted by the appellant/petitioner for seeking extension of his service or permission for continuation of his service till the academic year upto 31.05.2016 having been considered was rejected on 31.07.2015 itself the date on which he attained the superannuation, therefore beyond which he had no business to continue in the 3rd respondent Institute. Therefore, if at all he had continued in the 3rd respondent Institute beyond 31.07.2015 till 31.05.2016 during that period the official respondent or the State or Department concerned are not liable to make any payment by way of teaching grant through the 3rd respondent Institute, he contended.

14. However, Mr.D.Balaraman, learned counsel appearing for respondents 2 and 3 would submit that, the order rejecting the plea raised by the petitioner/appellant to permit him to continue till the academic



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year, by order of the 1st respondent dated 31.07.2015, had already been communicated to the petitioner/appellant, despite that since he had approached this Court and got an interim order, by virtue of the interim order since he had to be continued in the College and to obey the order of this Court, the Institution had permitted the petitioner/appellant to continue in the institution without prejudice the right and contention of the respondent. The respondent accordingly filed a vacate stay petition, which however not been taken up and decided before 31.05.2016 the date on which the academic year comes to an end.

15. This in fact had been communicated by letter dated 31.08.2015 by the 3rd respondent Institution to the petitioner/appellant, hence the third respondent is not responsible for making any payment of salary for the period between 31.07.2015 and 31.05.2016.

16. The learned counsel appearing for respondents 2 and 3 also has submitted that, with regard to the charge memo that has been issued consisting of one charge which is impugned in the first writ petition against the writ petitioner/appellant is concerned, the Institution/Management has decided not to proceed further in the said disciplinary



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proceedings, no doubt, superannuation already attained by the petitioner/
appellant as early as on 31.07.2015.

17. The said rival submissions made by the learned counsel appearing for the parties having been taken into account and accordingly we delve into the issue.

(i) That insofar as the charge memo is concerned, as has been stated by the learned counsel appearing for the appellant/writ petitioner, all the four charges emanated only from the decision taken by the Governing Council of the Institute which has been split into 3 + 1, the charge memo with three charges already met the quashment, therefore the remaining one which also naturally has to face the same fate.

(ii) Be that as it may, since the Institution itself has come forward to state that, no further proceedings would be made by way of disciplinary proceedings pursuant to the charge memo and he has been permitted to retire from service on attaining the superannuation, since there has been no scope for having enquiry by way of disciplinary proceedings, the charge memo which is impugned in the first writ petition will have no effect, therefore to that extent what has been stated



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by the learned Judge in respect of the said writ petition in the impugned order is to be accepted.

(iii) Insofar as the second writ petition pertains to the continuation of his service till the end of the academic year is concerned, though on 31.07.2015 the date on which the superannuation reached by the petitioner/appellant, the 1st respondent had passed an order rejecting the plea of the writ petitioner/appellant to permit him to continue the work till 31.05.2016, on the very same date the petitioner/appellant was able to get an interim order from this Court in the said writ petition i.e. in W.P.No.23498 of 2015.

(iv) Though some attempt subsequently had been made on behalf of the Institution by filing a vacate stay petition, the fact remains that till 31.05.2016 the interim order granted by this Court enabling the petitioner/appellant to continue his job till 31.05.2016 neither has been vacated nor has been modified.

(v) Therefore, the petitioner/appellant had continued in the job at the 3rd respondent Institute till 31.05.2016, this has been confirmed by



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the Institution by their communication dated 31.08.2015, where, they have stated that, he is permitted to continue the service as per the interim order of the Hon'ble High Court of Madras dated 31.07.2015 passed in W.P.No.23498 of 2015.

(vi) Therefore the fact remains that, the petitioner/appellant had been working for the rest of the period i.e. from 01.08.2015 till 31.05.2016, i.e., end of the academic year, during this period work had been extracted by the 3rd respondent Institute from the petitioner/appellant. Since the 3rd respondent Institute is an aided institution and the post which was held by the petitioner/appellant is a sanctioned post for which the teaching grant also had been given upto 31.05.2016 the same cannot be stopped by the official respondents by virtue of the interim order dated 31.07.2015 where they rejected the re-employment or continuation of employment of the petitioner. The reason being that, by virtue of the interim order granted by this Court dated 31.07.2015, the petitioner/ appellant had been continuously working in the 3rd respondent Institute till 31.05.2016, therefore during the said period of 10 months, the petitioner/appellant would be entitled to get the salary.



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(vii) To that extent the order passed by the learned Judge in the second writ petition through the impugned order, in our considered view, is erroneous, therefore we are inclined to set aside the same made by the learned Judge in W.P.No.23498 of 2015.

18. Resultantly, the following orders are passed in these writ appeals.

(a) That the order passed by the learned Judge insofar as the writ petition in W.P.No.24136 of 2007 is to be accepted. Moreover, the learned counsel appearing for the respondent Institute has also made clear before this Court that, no further proceedings would be taken pursuant to the impugned charge memo, recording the same, we feel that the writ appeal in W.A.No.1112 of 2020 can be disposed of with the aforesaid observation and confirming the order passed by the learned Judge.

(b) However, insofar as the writ appeal in W.A.No.1111 of 2020 is concerned, the order passed by the learned Judge in W.P.No.23498 of 2015 is hereby set aside. As a sequel, there shall be a direction to the respondents especially the 1st respondent to sanction the salary payable to the appellant/writ petitioner for the period from 01.08.2015 till 31.05.2016, i.e. 10 months period by calculating the last drawn pay, drawn by the petitioner/appellant as on



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31.07.2015 and such arrears of pay shall be calculated and be released by the 1st respondent enabling the respondents 2 and 3 in turn to make the payment to the writ petitioner/appellant within a period of two months from the date of receipt of a copy of this judgment.

(c) To that extent, W.A.No.1111 of 2020 is allowed and W.A.No.1112 of 2020 is disposed of. However, there shall be no order as to costs.

[R.S.K., J.] [K.B., J.]
07.03.2024

Index : Yes/No
Speaking Order : Yes/No
Neutral Citation : Yes/No

Sgl

To

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