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W.P. No.20739 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.06.2024

CORAM :

THE HONOURABLE MR. JUSTICE MUMMINENI SUDHEER KUMAR

W.P.No.20739 of 2017
and
W.M.P.Nos.21561 & 21562 of 2017

Y.Suneetha

... Petitioner

Vs.

- 1.The Secretary to Government,
Higher Education Department
Fort St. George, Chennai – 600 009.
 - 2.The Director of Collegiate Education,
College Road, Chennai – 600 006.
 - 3.The Regional Joint Director of Collegiate Education,
Saidapet, Chennai – 600 015.
 - 4.D.G.Vaishnav College (Autonomous),
Represented by its Secretary,
833, EVR Periyar Salai, Arumbakkam,
Chennai – 600 106.
- ...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus, calling for the records culminating in the order / notice dated 31.07.2017 of the fourth respondent and quash the same and direct the fourth respondent to act in



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accordance with law with regard to employment of the petitioner as Accountant in D.G.Vaishnav College, Chennai.

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For Petitioner : Mr.V.Ajoy Khose
For R1 to R3 : Mr.R.Kumaravel
Additional Government Pleader
For R4 : Mr.P.Athiveera Rama Pandian

ORDER

The petitioner herein was appointed as Accountant in 4th respondent College on 15.09.2014 for a salary of Rs.22,000/- per month and she was kept on probation for a period of six months. Even after completion of six months period of probation, the petitioner continued in service for about three years and she was relieved from service on 31.07.2017 with one month notice pay and duly issuing a Cheque for a sum of Rs.34,000/-. Aggrieved by the said order relieving the petitioner from the services of the 4th respondent, the petitioner approached this Court by filing the present writ petition contending that the 4th respondent is not entitled to terminate the services of the petitioner without prior approval of the competent authority as required under Section 19 of Tamil Nadu Private College (Regulation) Act, 1976 (in short “Act, 1976”).

2. In response to the same the 4th respondent filed counter affidavit



contending that the respondent is private autonomous body affiliated to University of Madras and is not a State within the meaning of under Article 12 of the Constitution of India and also contending that the 4th respondent is not performing any public function in order to maintain the writ petition under Article 226 of the Constitution of India.

3. It is also further contended that it is only the probation of the petitioner that was terminated through the impugned order. However, it is further stated in paragraph 5 of the counter affidavit that the petitioner has committed service irregularities and not discharged her duties to the satisfaction of the 4th respondent Management. Paragraph 5 of the counter affidavit reads as under:

“5. I state that during her service she has not reconciled bank pass books from 01.04.2017 to till the time of leaving on 31.07.2017 maintained with Karur Vysya bank and Canara bank. Further she misused the TDS software by submitting TDS return of the other companies and she did not update the digital signature of the current college secretary in Provident Fund website but on the contrary used the previous secretaries digital signature for the



period from 11.01.2017 to 31.07.2017. As such she has not discharged her duties to the satisfaction of the 4th respondent. As such allegations made in the affidavit filed in support of the above writ petition that she discharged her service to the satisfaction of superior and has unblemished service record is totally false. Since the petitioner was indulging in procedural irregularities, she was relieved from the post. It is also submitted that the petitioner was relieved of her duty solely due to her poor and unsatisfactory performance and due to lack of confidence by the respondent.”

4. From the perusal of the above extracted paragraph, it is evident that it is not termination simpliciter but it is because of the alleged procedural irregularities and inefficiency of the petitioner that her services were terminated. Be that as it may, the only question that arise for consideration is whether the 4th respondent Management is entitled to terminate the services of the petitioner without seeking prior approval in terms of Section 19 of Act, 1976. Sub Section 1 of Section 19 of Act, 1976 reads as under:

“19.Dismissal, removal or reduction in rank or suspension of teachers or other persons employed in private colleges. - (1) Subject to any rule that may be



made in this behalf, no teacher or other person employed in any private college shall be dismissed, removed or reduced in rank nor shall his appointment be otherwise terminated except with the prior approval of the competent authority.”

From the above it is evident that it is not only the teacher but the other person employed in private College cannot be removed without prior approval of competent authority.

5. Admittedly, the petitioner was employed by the 4th respondent College, as early as on 15.09.2014 and she was kept on probation only for a period of six months. There is nothing to indicate that the said probation period of six months is extended thereafter. Admittedly, the petitioner was continued in services till 31.01.2017 and she was paid notice pay of Rs.34,000/- as against the initial salary fixed of Rs.22,000/-. This shows that the salary of the petitioner is increased from Rs.22,000/- to Rs.34,000/- as on the date of relieving the petitioner from services. Therefore, the contention of the 4th respondent that it is only the probation of the petitioner was terminated cannot be accepted. However, the impugned order does not speak of termination of probation but it only speaks of relieving the petitioner from



services with one month notice pay. Hence, the contention of the 4th respondent that the probation of petitioner is only terminated and relieving the petitioner is only termination simpliciter cannot be accepted.

6. In the light of the above, it is evident that the action of the 4th respondent in relieving the petitioner from her services from the 4th respondent College is contrary to Section 19 of Act, 1976.

7. Then coming to the contention of the 4th respondent that the writ petition is not maintainable as the 4th respondent is not a 'State' or 'authority' under Article 12 of the Constitution of India and the 4th respondent is not discharging any public function are concerned, the same also cannot be accepted, for the simple reason that the basis on which the present writ petition is filed is violation of statutory provisions. Therefore, in the considered view of this Court, violation of statutory provision by the 4th respondent can certainly be agitated before this Court under Article 226 of the Constitution of India.

8. Further, it is also settled law, as held by the Hon'ble Apex Court that imparting education is a public function and therefore private institutions



imparting education are amenable to jurisdiction under Article 226 of Constitution of India as held in the case of ***Janet Jeyapaul Vs. SRM University and others*** reported in ***(2015) 16 Supreme Court Cases 530*** and the said decision reads as under:

“29.Applying the aforesaid principle of law to the facts of the case in hand, we are of the considered view that the Division Bench of the High Court erred in holding that Respondent 1 is not subjected to the writ jurisdiction of the High Court under Article 226 of the Constitution.

30.This we say for the reasons that firstly, Respondent 1 is engaged in imparting education in higher studies to students at large. Secondly, it is discharging “public function” by the Central Government under Section 3 of the UGC Act. Fourthly, being a “Deemed University”, all the provisions of the UGC Act are made applicable to Respondent 1, which inter alia provides for effective discharge of the public function, namely, education for the benefit of the public. Fifthly, once Respondent 1 is declared as “Deemed University” whose all functions and activities are governed by the UGC Act, alike other universities then it is an “authority” within the meaning of Article 12 of the Constitution. Lastly, once it



is held to be an “authority” as provided in Article 12 then as a necessary consequence, it becomes amenable to writ jurisdiction of the High Court under Article 226 of the Constitution.

31. In the light of the foregoing discussion, we cannot concur with the finding rendered by the Division Bench and accordingly while reversing the finding we hold that the appellant's writ petition under Article 226 of the Constitution against Respondent 1 is maintainable.”

In the light of the above, the objection of the 4th respondent that the writ petition is not maintainable is liable to be rejected and the same is accordingly rejected.

9. In the light of the above, this Court has no other option except to arrive at a conclusion that the impugned order relieving the petitioner from services of the 4th respondent is violative of Section 19 of Act, 1976 and accordingly, the same is set aside and the 4th respondent is directed to reinstate the petitioner into service with all consequential benefits within a period of four (4) weeks from the date of receipt of a copy of this order.

10. Accordingly, the writ petition is allowed and the connected miscellaneous petitions, if any, shall stand closed. No costs.



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Index : Yes/No
Speaking Order : Yes/No
dpa

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MUMMINENI SUDHEER KUMAR,J.

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W.P.No.18853 of 2021

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