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W.A.No.87 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.07.2024

CORAM :

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

and

THE HONOURABLE MR.JUSTICE K. KUMARESH BABU

W.A.No.87 of 2023

Dr.R.Karthikeyan

... Appellant

Vs.

Anjalai Ammal Mahalingam Engineering College,
rep. by its Administrator/Managing Trustee,
Kovilvenni, Thiruvarur District 614 403.

... Respondent

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent Act to set aside the order dated 12.10.2022 in W.P.No.9923/2018, as illegal, arbitrary and contrary to law in so far as denying back wages is concerned and consequently direct the respondents to pay the back wages to the appellant for the period from 25.09.2015 to 22.04.2017.

For Appellant : Mr.Balan Haridas

For Respondent : Mr.A.P.Surya Prakasam



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JUDGMENT

(Order of the Court was delivered by D.KRISHNAKUMAR, J.)

This Intra Court appeal has been filed, as against the order passed by the learned Single Judge in W.P.No.9923/2018, dated 12.10.2022, in so far as the denial of backwages is concerned.

2. A perusal of the records shows that the appellant was holding the post of Principal in the respondent College and he was terminated from service on 25.09.2015. Hence he filed W.P.No.31671/2015 before this court, against the termination and the writ court, found that the termination order was issued, without following the procedures, as contemplated in the disciplinary proceedings. Hence, without going into the merits and demerits of the allegations set out in the termination order, the writ court has quashed the termination order on 18.09.2017. Further, liberty was also granted to the respondent to reopen the case and proceed with the disciplinary proceedings in accordance with law and by affording opportunity to the petitioner. In the meantime, the appellant had attained the age of 65 years and attained superannuation on 22.04.2017. Subsequently, the respondent had issued the charge memo dated 24.02.2018 against the appellant. As against charge



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memo, the appellant filed W.P.No.9923/2018 seeking direction to the respondent to grant salary for the period from 25.09.2015 to 22.04.2017.

The learned Single Judge has quashed the above charge memo, observing that the appellant was allowed to retire from service and there was no suspension or retained the services of the appellant for the purpose of conducting departmental disciplinary proceedings. Further, since there is no employer-employee relationship between the appellant and the respondent at that time, charge memo cannot be issued, after his retirement. However, the learned Single Judge directed respondent to settle the terminal and pensionary benefits, as applicable to the appellant, without any backwages. Aggrieved by the denial of back wages, the present writ appeal has been filed.

3. According to the appellant, denial of back wages is contrary to the dictum laid down by the Hon'ble Supreme Court in Civil Appeal No.6188/2019 dated 21.08.2019 and also the order passed by this Court in W.A.No.932/2013, dated 14.07.2017. Therefore, the rule of no work no pay will not apply to the facts of the present case and accordingly, the



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appellant is entitled to the back wages also.

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4. The learned counsel appearing for the respondents fairly submitted before this court that they would not prefer any appeal as against the order passed by the learned Single Judge. It is also contended by him that, as rightly decided by the writ court, the appellant is not entitled for back wages, applying the principles of no work no pay. Hence, he seeks for dismissal of the writ appeal.

5. The short point to be decided is that, whether the appellant is entitled for back wages for the period from 25.09.2015 to 22.04.2017.

6. Admittedly, the termination order, issued against the appellant was set aside by this court, by order dated 18.09.2017 in W.P.No.31671/2015. However, before the date of order, the appellant had attained the age of superannuation on 22.04.2017 and after the date of retirement, charge memo was issued on 24.02.2018. Therefore, we are in agreement with the learned Single Judge that since there was no order of suspension as against



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the appellant or retaining him for conducting the disciplinary proceedings, charge memo cannot be issued, after the date of superannuation, as it is illegal. Hence, the appellant is entitled for salary to the period from 25.09.2015 to 22.04.2017.

7. As far as the back wages for the said period is concerned, it is argued by the learned counsel for the appellant that as per the ratio laid down by the Hon'ble Supreme Court in Civil Appeal No.6188/2019 dated 21.08.2019 and also the order passed by this Court in W.A.No.932/2013, dated 14.07.2017 the appellant is entitled for back wages also. Even though the learned counsel appearing for the respondents made objection that the appellant is not entitled for back wages, to substantiate his contention, he has not placed any legal material before this court.

8. A perusal of the appointment order dated 12.04.2012 issued by the respondents shows that the appellant was appointed as Principal in Anjalai Ammal Mahalingam Engineering College, on consolidated pay at Rs.1,00,000/- per month. Therefore, it is clear that the appellant was not



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appointed in regular service, whereas he was appointed on contract basis. In

such circumstances, there is no dispute that the appellant is not entitled for pensionary and other benefits, such as provident fund, encashment of earned leave and un-earned leave. However, considering the nature of the work done by the appellant, we are of the view that the appellant is entitled to 50% of the arrears of salary for the period from 25.09.2015 to 22.04.2017 and also the Gratuity applicable to him, as per the provisions of the Gratuity Act. To that extent, the order of writ court is liable to be interfered with.

9. Accordingly, the appellant is entitled for 50% of the arrears of salary for the period from 25.09.2015 to 22.04.2017 and also the Gratuity, applicable to him, as per the provisions of the Gratuity Act. The respondents are directed to settle the above amounts, within a period of twelve weeks from the date of receipt of a copy of this order.



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WEB COPY 10. With the above direction, this writ appeal is disposed of. No costs.

(D.K.K.J.) (K.B.J.)

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Internet: Yes/No

Index : Yes/No

mst

To

The Administrator/Managing Trustee,
Anjalai Ammal Mahalingam Engineering College,
Kovilvenni, Thiruvarur District 614 403.



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and
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