



W.P.No.5671 of 2007

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 05.09.2024

CORAM

THE HONOURABLE MR.JUSTICE **MUMMINENI SUDHEER KUMAR**

W.P.(MD) No.5671 of 2007 &
M.P.(MD) Nos.1 of 2007 and 1 of 2012

Dr.S.Girija

...Petitioner

Vs.

1. The Registrar,
Sri Chandrasekarendra
Saraswati Viswa Maha Vidyalaya,
Enathur, Kancheepuram – 631 561

2. University Grants Commission,
Bahadur Shah Zafar Marg,
New Delhi – 110 0032
by its Chairman

..Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus calling for the records relating to the impugned order dated 31.05.2005 issued by the 1st respondent and quash the same and direct the respondents to reinstate the petitioner in service together with back wages and all attended benefits and to pay the petitioner the compensation as fixed by this Court and grant such other and further relief.



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For Petitioner : Mr.R.Subramaniam

For Respondents : Mr.N.L.Rajah
Senior Counsel for
Mr.E.Jayasankar for R1
Mr.P.R.Gopinathan for R2

ORDER

This Writ Petition has been filed seeking for an issuance of a Writ of Certiorarified Mandamus calling for the records relating to the impugned order dated 31.05.2005 issued by the 1st respondent and quash the same and to direct the respondents to reinstate the petitioner in service together with back wages and all attended benefits and to pay the petitioner the compensation.

2. The brief facts that are relevant for disposal of this Writ Petition are as under:-

The petitioner herein was appointed as Registrar in the Respondent No.1, Deemed to be University, on a consolidated pay of Rs.20,000/- per month through appointment order dated 29.06.2004 issued by Respondent No.1. Accordingly, the petitioner entered in to service. Thereafter, the Respondent No.1 issued the impugned order dated 31.05.2005 terminating / withdrawing the service of the petitioner, as



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Registrar, with effect from 31.05.2005 on the ground that the petitioner was placed on probation from 18.08.2004 for a period of one year while enclosed a Cheque bearing No.415840 for an amount of Rs.26,404/- dated 31.05.2005 towards one month's notice pay. Aggrieved by the said order dated 31.05.2005, the petitioner approached this Court by filing the present Writ Petition, on 23.04.2007.

3. In response to the notice issued by this Court, the Respondent No.1 filed counter affidavit contending that the petitioner was originally appointed temporarily on a consolidated pay on 29.06.2004 and thereafter by an order dated 29.12.2004, the petitioner was placed to recover scale of pay with effect from 01.11.2004 by duly superseding order dated 29.06.2004 and the petitioner was put on probation for a period of one year. Thus according to the Respondent No.1, the petitioner was put on probation through proceedings dated 29.12.2004 and while she was in probation, she was discharged from service by paying one month pay in lieu of one month notice, without any stigma on the petitioner through the impugned order dated 31.05.2005. It is also further stated in the counter affidavit that the petitioner has already encashed the said Cheque dated 31.05.2005, as early



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as on 02.06.2005 and thereby accepted the termination of probation without protest and therefore, the petitioner is estopped from challenging the said discharge from service through order dated 31.05.2005.

4. Heard Mr.R.Subramaniam, learned counsel for the petitioner and Mr.N.L.Rajah, learned Senior Counsel representing Mr.E.Jayasankar for 1st respondent and Mr.P.R.Gopinathan, learned counsel for the 2nd respondent.

5. The learned counsel for the petitioner contended that the respondents have fabricated the records and created Office Order dated 29.12.2004 and no such order was ever served on the petitioner, while she was in service and it is only to sustain their illegal action in terminating service of the petitioner such an order was filed before this Court. He further contended that the appointment of the petitioner in the post of Registrar is permanent in nature and there is no scope for placing the Registrar under probation like any other employees. The learned counsel also submits that the order dated 29.04.2004 was never served on the petitioner and the second reference in the impugned order dated



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31.05.2005 was referred to as 22.12.2004 and whereas the so called order of placing the petitioner under the probation is 29.12.2004. Thus he contended that the entire attempt of the respondents is fabrication of record without there being any truth. He also represented that the petitioner having received impugned order, made a complaint to the Respondent No.2, herein against illegal termination of the service of the petitioner and in view of the same, the petitioner waited for the response from the Respondent No.2 and thereafter, approached this Court by filing the Writ Petition and thus, there was no delay in approaching this Court. He further contended that in the very same Writ Petition, when matter was considered by the Madurai Bench of this Court, the learned Judge has considered all the aspects and allowed the Writ Petition, but the said order was appealed only on the ground of jurisdiction, but not on merits and therefore, the same order passed by the Madurai Bench of this Court, on merits, needs to be passed in this Writ Petition once again.

6. On the other hand, the learned counsel appearing for the Respondent No.1 raised a primary issue on the maintainability of the Writ Petition on the ground that the nature of relationship between the petitioner



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and the Respondent No.1 is purely contractual, as such, in case of breach of said contract, the only remedy available to the petitioner is before competent Civil Court, but not under Article 226 Constitution of India. The learned counsel for the respondents also drawn the attention of this Court to a specific averment in Paragraph No.5 of the affidavit filed in support of the Writ Petition, wherein it is contended that the termination of service of the petitioner is against public policy within the meaning of Section 23 of the Contract Act and contended that the petitioner's complaint is only against breach of contract and therefore, remedy is only before competent Civil Court. He also submitted that there is no allegation of violation of any of the statutory provision warranting interference by this Court in the present Writ Petition. He further contended that the petitioner having accepted the termination order dated 31.05.2005, encashed the enclosed cheque immediately on 02.06.2005, is not entitled to challenge the order dated 31.05.2005 that too after a lapse of two years.

7. This Court has carefully considered the submissions on either side and also perused the entire materials on record.



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8. The original order of appointment of the petitioner dated 29.06.2004 clearly shows that the said appointment was on consolidated pay of Rs.20,000/- . The said order by itself indicates that the appointment of the petitioner is of temporary in nature. The basis for the Respondent No.1 to issue impugned order is the Office Order, dated 29.12.2004, under which, the petitioner is shown to have been extended benefit of regular scale of pay of Rs.16,400-450-22400/- with basic pay of Rs.16,400/- with effect from 01.11.2004, which supersedes the earlier order dated 29.06.2004. The said order, dated 29.12.2004 also placed the petitioner on probation for a period of one year and further increment of the petitioner was subjected to performance appraisal by the competent authority. If once the petitioner is placed on probation and while the said probation was in operation, the service of the petitioner can be terminated with notice of prescribed period or with notice pay in lieu of notice period.

9. Though the learned counsel for the petitioner seriously disputed about the service of the said order dated 29.12.2004 upon the petitioner at the relevant point of time, it is an admitted fact that the petitioner was extended the benefit of regular scale of pay with effect from 01.11.2004 and



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the same pay was withdrawn by her till the date of termination of her service. If the contention of the petitioner that the office order dated 29.12.2004 is not served upon her at the relevant point of time, then, it is for the petitioner to show as to how she was paid regular scale of pay with effect from 01.11.2004. The petitioner having admitted about extending regular scale of pay with effect from 01.11.2004 and in the absence of any other source for extending regular scale of pay to the petitioner, the petitioner cannot be permitted to deny the receipt or knowledge of the office order dated 29.12.2004. The petitioner being the Registrar of the 1st respondent / University cannot be permitted to escape by simply saying that the order dated 29.12.2004 was not served on the petitioner. If the petitioner wants to stick to such stand, then, it is for the petitioner to explain on what basis, she was extended the benefit of regular scale of pay. In the absence of any other basis for extending regular scale of pay, she can't deny knowledge or service of the office order dated 29.12.2004.

10. Even assuming that the order dated 29.12.2004 is not served upon the petitioner and dehorse said order dated 29.12.2004, the status of the petitioner shall be in terms of the order dated 29.06.2004, and the



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petitioner's appointment as Registrar was on consolidated salary of Rs.20,000/-. Once it is an order of appointment on consolidated pay that itself indicates that the same is of temporary in nature. Except office order dated 29.12.2004, there is no other order under which the service of the petitioner are made permanent or regularised. If order dated 29.06.2004 is to be treated as the order of appointment of the petitioner, the petitioner can claim all the rights that may flow from the said order. As already observed above the said order is only providing appointment on the consolidated pay, therefore, the petitioner was not made as permanent staff and she was only appointed on temporary basis. Therefore, appointment of the petitioner on temporary post can be terminated by Respondent No.1 at any point of time and there is no necessity of following any procedure in terminating any temporary appointment.

11. Further, from the perusal of the affidavit filed in support of the Writ Petition also, there is no claim by the petitioner that the petitioner was assured that her appointment was permanent in nature and her pay also will be fixed appropriately and continued till date she attains the age of superannuation. There is no other basis for claiming appointment of the



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petitioner, as the one of permanent in nature. Though there is a discrepancy in the order dated 31.05.2005, wherein the 2nd reference was mentioned as 22.12.2005 instead of 29.12.2005, the said discrepancy was well explained by the respondent and copy of the letter dated 22.12.2004, which is draft letter as well as order dated 29.12.2005 are placed before this Court and hence, the petitioner cannot be given any advantage on the said mistake in referring to the date of draft letter instead of final letter dated 29.12.2004 in the impugned proceedings dated 31.05.2005.

12. Then coming to the contention of the learned counsel for the petitioner that the very same writ petition was allowed by the learned Judge of Madurai Bench of this Court is concerned, admittedly, the said order was set aside by the Division Bench of this Court on its entirety, may be on the ground of jurisdiction and therefore, the said order is no more subsisting. Therefore, any reference to the contents of the said order is not permissible.

13. Coming to the next contention of the learned Senior Counsel appearing for the Respondent No.1 on the ground of maintainability of the Writ Petition is concerned, admittedly, there is no allegation of violation of



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any of the statutory procedure or failure of the Respondent No.1 / University in complying any statutory order / legal obligation while issuing the impugned order dated 31.05.2005. There is no doubt that the Respondent No.1, being a Authority, deemed to be University governed under University Grants Commission Act would definitely come within the meaning of the State, insofar as discharging the public functions or public duty are concerned. The dispute with regard to the service of the petitioner in Respondent No.1 / University, is admittedly contractual in nature. In the absence of any violation of statutory provisions, in the considered view of this Court, remedy under Article 226 Constitution of India is not available to the petitioner in the facts and circumstances of the case. Further, the petitioner, who was served with the impugned order on 31.05.2005 has immediately encashed the cheque issued to her towards one month notice pay on 22.06.2005 itself, thereby she accepted the termination of her probation and therefore for these reasons also, the petitioner is estopped from challenging order dated 31.05.2005.

In the light of the above, this Court does not find any error or



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illegality in the impugned order passed by the Respondent No.1.

Accordingly, the Writ Petition is dismissed. Consequently, connected miscellaneous petitions are closed. No costs.

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Index: Yes/No;
Internet: Yes/No
Speaking order / non speaking order
ssd

To

1. The Registrar,
Sri Chandrasekarendra
Saraswati Viswa Maha Vidyalaya
Enathur, Kancheepuram – 631 561
2. University Grants Commission,
Bahadur Shah Zafar Marg,
New Delhi – 110 0032
by its Chairman



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MUMMINENI SUDHEER KUMAR J.,

ssd

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