



W.A.(MD)No.457 of 2017 & batch

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 13.11.2024

CORAM

**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
and
THE HONOURABLE MS.JUSTICE R.POORNIMA**

**W.A.(MD)Nos.457, 458 and 459 of 2017
and
W.A.(MD)Nos.1303 and 1304 of 2018
and
C.M.P.(MD)Nos.9289 and 9291 of 2018**

W.A.(MD)No.457 of 2017:-

A.Ponnappan

... Appellant / 5th Respondent

Vs.

- 1.N.Paramarthalingom ... 1st Respondent / Writ Petitioner
- 2.The Principal Accountant – General (A & E),
Tamilnadu, No.361, Anna Salai,
Teynampet, Chennai – 600 018.
- 3.The Commissioner of Technical Education,
Chennai – 600 025.
- 4.Chairman,
The Governing Council,
Nadar Mahajana Sangam Kamarajar
Polytechnic College,



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Pazhavilai – 629 501,
Kanyakumari District.

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5.The Correspondent / Secretary,
Nadar Mahajana Sangam Kamarajar
Polytechnic College,
Pazhavilai – 629 501,
Kanyakumari District.

... Respondents 2 to 5/
Respondents 1 to 4

Prayer : Writ Appeal filed under Clause XV of Letters Patent, to set aside the order dated 21.02.2017 made in W.P.(MD)No.22720 of 2015 on the file of this Court and dismiss the writ petition.

For Appellant : Mr.S.Xavier Rajni

For Respondents : Mr.M.Mohanasundaram for R1
Mr.P.Gunasekaran,
Government Advocate for R2
Mr.N.Dilipkumar for R4 & R5

W.A.(MD)No.458 of 2017:-

A.Ponnappan

... Appellant / 3rd Respondent

Vs.

1.N.Paramarthalingom

... 1st Respondent / Writ Petitioner

2.The Commissioner,
Directorate of Technical Education,
Chennai – 600 025.

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3.The Correspondent cum Secretary,
NMS Kamarajar Polytechnic College,
Pazhavilai Post – 629 501,
Kanyakumari District.

... Respondents 2 & 3/
Respondents 1 & 2

Prayer : Writ Appeal filed under Clause XV of Letters Patent, to set aside the order dated 21.02.2017 made in W.P.(MD)No.8154 of 2013 on the file of this Court and dismiss the writ petition.

For Appellant : Mr.S.Xavier Rajni

For Respondents : Mr.M.Mohanasundaram for R1
Mr.N.Dilipkumar for R3

W.A.(MD)No.459 of 2017:-

A.Ponnappan

... Appellant / Writ Petitioner

Vs.

1.The Accountant General,
Office of the Accountant General,
Chennai, Tamilnadu,
Chennai – 600 018.

2.The Commissioner,
Directorate of Technical Education,
Guindy, Chennai – 600 025.



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3.The Correspondent,
NMS Kamarajar Polytechnic College,
Pazhavilai Post – 629 501,
Kanyakumari District.

4.N.Paramarthalingom ... Respondents / Respondents

Prayer : Writ Appeal filed under Clause XV of Letters Patent, to set aside the order dated 21.02.2017 made in W.P.(MD)No.18704 of 2013 on the file of this Court and dismiss the writ petition.

For Appellant : Mr.S.Xavier Rajni

For Respondents : Mr.P.Gunasekaran,
Government Advocate for R1
Mr.N.Dilipkumar for R3
Mr.M.Mohanasundaram for R4

W.A.(MD)No.1303 of 2018:-

The Correspondent – Cum - Secretary,
NMS Kamarajar Polytechnic College,
Pazhavilai Post – 629 501,
Kanyakumari District.

... Appellant / 2nd Respondent

Vs.

1.N.Paramarthalingam ... 1st Respondent / Writ Petitioner

2.The Commissioner,
Directorate of Technical Education,
Guindy, Chennai – 600 025.



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3.A.Ponnappan

... Respondents 2 & 3 /
Respondents 1 & 3

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Prayer : Writ Appeal filed under Clause XV of Letters Patent, to set aside the order passed by this Court in W.P.(MD)No.8154 of 2013 dated 21.02.2017 and thereby allow this appeal.

For Appellant : Mr.N.Dilipkumar

For Respondents : Mr.M.Mohanasundaram for R1
Mr.M.Siddharthan,
Addl. Government Pleader for R2
Mr.S.Xavier Rajni for R3

W.A.(MD)No.1304 of 2018:-

1.Chairman,
The Governing Council,
Nadar Mahajana Sangam Kamarajar Polytechnic College,
Pazhavilai Post - 629 501,
Kanyakumari District.

2.The Correspondent / Secretary,
Nadar Mahajana Sangam Kamarajar Polytechnic College,
Pazhavilai - 629 501,
Kanyakumari District.

... Appellants / Respondents 3 & 4

Vs.

1.N.Paramarthalingam

... 1st Respondent / Writ Petitioner

2.The Principal Accountant-General (A & E),
Tamil Nadu, No. 361, Anna Salai,
Teynampet, Chennai – 600 018.



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3.The Commissioner of Technical Education,
Chennai – 600 025.

4.A.Ponnappan

... Respondents 2 to 4 /
Respondents 1, 2 & 5

Prayer : Writ Appeal filed under Clause XV of Letters Patent, to set aside the order passed by this Court in W.P.(MD)No.22720 of 2015 dated 21.02.2017 and thereby allow this appeal.

For Appellants : Mr.N.Dilipkumar

For Respondents : Mr.M.Mohanasundaram for R1
Mr.M.Siddharthan,
Addl. Government Pleader for R2
Mr.S.Xavier Rajni for R4

COMMON JUDGMENT

(Judgment of the court was delivered by G.R.Swaminathan, J.)

Heard both sides.

2.Thiru.Paramarthalingam who is figuring as respondent in all these writ appeals was appointed as Junior Assistant on 22.09.1982 in



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Nadar Mahajana Sangam Kamarajar Polytechnic College, Pazhavilai.

Thiru.Ponnappan, the appellant in three of the writ appeals, was appointed as Office Superintendent in the same polytechnic college on 20.03.1985. It is not in dispute that all the posts in the polytechnic college are selection posts. They have to be filled up only through selection process and not through promotion based on seniority. Paramarthalingam became Assistant on 27.08.1999. Whileso, Ponnappan was suspended from service on 18.12.2006. He was also removed from service vide order dated 17.11.2008. Questioning the same, Ponnappan preferred appeal before the Governing Council of the College. The punishment of removal from service was modified to one of withholding of one increment with cumulative effect vide order dated 23.01.2009.

3.Since Ponnappan accepted the said punishment meted out by the Governing Council, he withdraw W.P.(MD)No.1830 of 2007 earlier filed questioning the charge memo dated 18.12.2006. This was on 01.11.2010.

4.The order dismissing W.P.(MD)No.1830 of 2007 as infructuous was misconstrued by the College Correspondent / Secretary. Vide order



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16.12.2010, he dismissed Ponnappan from service by citing the dismissal of W.P.(MD)No.1830 of 2007. The Correspondent did not stop with that.

He also appointed Thiru.Paramarthalingam as Office Superintendent on the very same day ie., 16.12.2010. Since the post has to be fulfilled by adopting selection process, the Director of Technical Education declined to approve the appointment of Paramarthalingam as Office Superintendent. In fact, the Director of Technical Education vide proceedings dated 24.03.2011 and 14.06.2011 directed the college to set aside order dismissing Ponnappan from service and ordered his reinstatement. On 07.04.2011, the Director of Technical Education also rejected the proposal dated 16.12.2010 appointing Paramarthalingam to the post of Office Superintendent.

5.In this background, as many as three writ petitions came to be filed. Paramarthalingam filed W.P.(MD)No.4259 of 2011 seeking issuance of Writ of Mandamus for appointing him as Office Superintendent with effect from 19.12.2006. He also filed W.P.(MD)No.5052 of 2011 questioning the proceedings dated 24.03.2011 passed by the Director of Technical Education in favour Ponnappan. He



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also filed W.P.(MD)No.5053 of 2011 questioning the proceedings dated 07.04.2011 rejecting the proposal for approving his appointment to the post of Office Superintendent.

6.The College Correspondent by name Sadhasivam filed W.P.(MD)No.5416 of 2011 questioning the order dated 23.01.2009 whereby the punishment imposed on Ponnappan was modified.

7.The College Management to comply with the direction given by the Director of Technical Education issued proceedings dated 19.01.2012 cancelled the promotion order dated 16.12.2010 passed in favour of Paramarthalingam. Paramarthalingam filed W.P.(MD)No.1708 of 2012 challenging the same. Paramarthalingam reached the age of superannuation and retired from service on 31.05.2012. Since in his writ petition, Paramarthalingam had obtained an interim order in his favour, Ponnappan could not formally occupy the post of Office Superintendent. Following the retirement of Paramarthalingam, the said interim order ceased to operate. Therefore, the Governing Council of the College passed proceedings dated 29.12.2012 for implementing the order of the



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Director of Technical Education and for reinstatement of Ponnappan in the post of Office Superintendent. The College Correspondent / Secretary issued proceedings dated 02.01.2013 in favour of Ponnappan. This was challenged by Paramarthalingam by filing W.P.(MD)No.8154 of 2013. Ponnappan retired from service on 31.05.2013. Since his retirement benefits were not settled, Ponnappan filed W.P.(MD)No.18704 of 2013. Since Paramarthalingam had not been treated as Office Superintendent and his retirement benefits were not settled on that basis, he filed W.P.(MD)No.22720 of 2015.

8.All these writ petitions were taken up for final disposal and a common order was passed on 21.02.2017. W.P.(MD)No.5416 of 2011 was closed as abated. W.P.(MD)No.8154 of 2013 and W.P.(MD)No.22720 of 2015 filed by Paramarthalingam were allowed. W.P.(MD)No.18704 of 2013 filed by Ponnappan was dismissed. The other writ petitions were closed. Challenging the said common order, Ponnappan had filed W.A.(MD)Nos.457, 458 and 459 of 2017 and the College Management had filed W.A.(MD)Nos.1303 and 1304 of 2018.



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9. After hearing the learned counsel on either side, we are more than satisfied that the order impugned in these writ appeals will have to be set aside. It is for more than one reason. Appointments to various posts in an aided polytechnic college are governed by the provisions of Grant-In-Aid Code. Article 11 of the said Code states that staff should be selected by a selection committee constituted in accordance with the general orders of the Government / Director from time to time. In this case, Ponnappan was holding the post of Office Superintendent whereas Paramarthalingam was holding the post of Assistant. It is true that Ponnappan was issued with charge memo on 18.12.2006. Questioning the same, he filed W.P.(MD)No.1830 of 2007. Since no interim order was obtained by Ponnappan, the disciplinary proceedings were continued and an order of dismissal was handed out on 17.11.2008. Questioning the same, Ponnappan filed an appeal before the Governing Council of the college. The Governing Council of the college modified the punishment of dismissal to one of withholding of one increment with cumulative effect vide order dated 23.01.2009. It is true that this order was put to challenge by one Sadhasivam who was holding the post of Secretary / Correspondent of the College by filing W.P.(MD)No.5416 of 2011. The



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fact remains that the said writ petition ultimately was closed as abated.

This order has become final. Therefore, one has to necessarily conclude that Ponnappan continued to hold the post of Office Superintendent.

10. Since the punishment of dismissal had been modified and he was allowed to continue to be in the post of Office Superintendent, Ponnappan rightly withdrew WP(MD)No.1830 of 2007 filed by him questioning the charge memo. We fail to understand as to how the dismissal of W.P.(MD)No.1830 of 2007 could have led to dismissal of Ponnappan from the post of Office Superintendent itself. There is neither logic nor any reason in adopting such a course of action by the College Correspondent / Secretary. We have therefore no hesitation to hold that the order dated 16.12.2010 passed by the Correspondent / Secretary dismissing Ponnappan from service was blatantly illegal. In fact, this was recognized by the Director of Technical Education himself who rightly ordered the college by proceedings dated 24.03.2011 and 14.06.2011 to reinstate Ponnappan in service.



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11. Even if we assume that the post of Office Superintendent was vacant, Paramarthalingam could not have been straightaway appointed in the said post by the College Correspondent / Secretary. The provisions of Grant-In-Aid Code envisage adopting selection process. Such a selection process was not followed. This is beside the fact that the post itself could not be said to be vacant when Parmarthalingam was appointed to the post of Office Superintendent on 16.12.2010. We have no hesitation to conclude that the proceedings dated 16.12.2010 is also vitiated by clear illegality. That is why, the Director of Technical Education declined to approve the appointment of Paramarthalingam to the post of Office Superintendent.

12. When the statutory provisions are so clear, we fail to understand as to how the learned Single Judge could have given a direction for processing the pension papers of Paramarthalingam by treating him as Office Superintendent. As already noted, the post of Office Superintendent was not vacant. Secondly, Paramarthalingam could not have been unilaterally appointed as Office Superintendent disregarding the selection procedure. Thirdly, the Director of Technical Education had



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declined to approve the appointment of Paramarthalingam to the post of Office Superintendent. For all these reasons, we are of the view that all these writ appeals deserve to succeed. The impugned order is set aside and the writ appeals are allowed. The pension papers of Ponnappan shall be speedily processed and his retirement benefits settled at the earliest. No costs. Consequently, connected miscellaneous petitions are closed.

**(G.R.S. J.) & (R.P. J.)
13.11.2024**

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
ias

To:-

The Principal Accountant – General (A & E),
Tamilnadu, No.361, Anna Salai,
Teynampet, Chennai – 600 018.



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G.R.SWAMINATHAN, J.
and
R.POORNIMA, J.

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W.A.(MD)Nos.457, 458 & 459 of 2017
and
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