



W.A.(MD) No.96 of 2017

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.04.2024

CORAM

**JUSTICE N. SESHASAYEE
and
JUSTICE P.VADAMALAI**

W.A.(MD) No.96 of 2017
and
C.M.P.(MD) No.918 of 2017

1.The Secretary,
Sri Kumaragurubara Swamigal Arts College,
Arulnanthi Nagar,
Padmanabamangalam Post,
Srivaikundam,
Tuticorin District-628 619.

2.The Principal,
Sri Kumaragurubara Swamigal Arts College,
Arulnanthi Nagar,
Padmanabamangalam Post,
Srivaikundam, Tuticorin District-628 619.

3.S.Sankaranarayanan,
The Principal,
Sri Kumaragurubara Swamigal Arts College,
Arulnanthi Nagar,
Padmanabamangalam Post,
Srivaikundam,
Tuticorin District-628 619.

.. Appellants/
Respondents No.2, 4 & 5



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Vs.

- | | |
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| 1.R.Viswanathan | .. 1 st Respondent/Petitioner |
| 2.The Joint Director,
Directorate of Collegiate Education,
Tirunelveli Region,
Tirunelveli-627 007. | .. 2 nd Respondent/1 st Respondent |
| 3.R.Subbarayalu,
The Secretary,
Sri Kumaragurubara Swamigal Arts College,
Arulnanthi Nagar,
Padmanabamangalam Post,
Srivaikundam,
Tuticorin District-628 619. | .. 3 rd Respondent/3 rd Respondent |
| 4.The Enquiry Officer,
Plot No.70, K.K.Nagar,
Madurai-625 020. | .. 4 th Respondent/6 th Respondent |
| 5.The Director of Collegiate Education,
College Road,
Chennai. | .. 5 th Respondent/7 th Respondent |

Prayer: Appeal filed under Clause 15 of the Letters Patent against the order dated 06.01.2017 passed in W.P.(MD) No.8728 of 2013.

For Appellants	:	Mr.M.Ajmal Khan Senior Counsel assisted by Mr.T.Antony Arulraj
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For R1 : Mr.Niranjana S. Kumar
For RR2 & 5 : Mr.D.Sadiq Raja
Additional Government Pleader
RR3 & 4 : Dismissed for default
(*vide* Court order dated 26.06.2018)

JUDGMENT

(Judgment of the Court was delivered by N.SESHASAYEE. J.)

This appeal is preferred challenging an order dated 06.01.2017 passed by a learned Single Judge of this Court in W.P.(MD) No.8728 of 2013.

2. Mr.M.Ajmal Khan, learned Senior Counsel, assisted by Mr.T.Antony Arulraj, learned counsel for the appellants made the following submissions:

(a) The 1st respondent herein was an Associate Professor (Physics) in the appellant-College. According to him, the appellant-College is run by a denominational Institution and this was recognised by a decree in O.S.No.18 of 1985 on the file of the Sub Court, Kumbakonam and this has attained finality in A.S.No.62 of 1986 on the file of the District



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Court, Thanjavur. While so, on 24.10.2012, disciplinary action was initiated against the writ petitioner by the Management in which three pointed charges were framed. An Enquiry Officer was also appointed. The 1st respondent, however did not participate in the domestic enquiry, but filed some application and required the Management to produce certain documents. Due to his non-participation, the Enquiry Officer went ahead with his enquiry *ex-parte* and held that all the charges were proved. But before any punishment could be imposed, the 1st respondent challenged the same in W.P.(MD) No.1636 of 2013.

(b) This Court, *vide* its order dated 13.03.2013, allowed the petition and set aside the order of the Enquiry Officer and directed him to give an opportunity to the 1st respondent to present his case.

(c) The Enquiry Officer again proceeded to hold the enquiry. And the 1st respondent did not participate in it yet again. The Enquiry Officer, therefore again proceeded *ex-parte* and found that all the three charges levelled against the 1st respondent were established for the second time, following which the Management/appellant herein imposed a punishment of compulsory retirement on the 1st respondent. This was



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challenged by the 1st respondent in W.P.(MD) No.8728 of 2013.

3. This Court, *vide* its order dated 06.01.2017, allowed the same on two scores:

- i. That the appellant/Institution does not have a denominational character; and
- ii. That since the appellant/Institution was held not to be a minority Institution within the meaning of Tamil Nadu Private Colleges (Regulation) Act, 1976 prior approval of the competent authority must have been obtained before imposing major penalty, which was not obtained in the instant case.

This is now under challenge in this appeal.

4. Heard both sides. In the course of the argument, learned counsel for the first respondent submitted that at this distant point of time he does not seek reinstatement and the respondent will be happy if he is allowed to retire voluntarily since the punishment of compulsory retirement imposed on the 1st respondent cast a stigma in his career. The respondent was present in the



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court, and this Court clarified the same with him and he conveyed his intent to submit his application for voluntary retirement. The appellant/the employer of the first respondent agreed to this proposal.

5. In view of this development, this Court sets aside the order of termination imposed on the 1st respondent and directs the 1st respondent to file an application for voluntary retirement with effect from 15.05.2013. As and when the 1st respondent files the application for voluntary retirement, the appellant is required to forward the same to respondents 2 and 5 within two weeks thereafter and upon receiving the said proposal from the appellant, respondents 2 and 5 are required to accept it as expeditiously as possible, at any rate, not later than two months from the date on which these authorities receive the proposal from the appellant. It is also underscored, pursuant to the acceptance of the voluntary retirement, the 1st respondent shall be paid all the monetary benefits that he is entitled to. All other ancillary issues which formed the line of reasoning of the learned Single Judge for arriving at his decision are now left open. No costs. Consequently, connected miscellaneous petition is closed.



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7. Post the matter 'for reporting compliance' on 08.07.2024.

(N.S.S., J.)

(P.V.M., J.)

22.04.2024

Note : Issue order copy on 23.04.2024

NCC : Yes/No

Index : Yes/No

Internet : Yes

ABR

To

1. The Joint Director,
Directorate of Collegiate Education,
Tirunelveli Region,
Tirunelveli-627 007.
2. The Director of Collegiate Education,
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