



W.A(MD)Nos.1932 and 1977 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.10.2024

CORAM:

**THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN
and
THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI**

W.A(MD)Nos.1932 and 1977 of 2023

and

C.M.P.(MD)Nos.15019 &15478 of 2023, 160 & 182 of 2024

W.A.(MD)No.1932 of 2023

1.The District Collector /
Secretary and Correspondent,
M.S.S.Wakf Board College,
Madurai-625 020.

2.The Secretary,
M.S.S.Wakf Board College,
K.K.Nagar,
Madurai-625 020.

... Appellants / Respondents 2 & 3

-VS-

1.T.Mohammed Jalaludeen

2.M.Mohamed Rashin

3.N.Syed Ajmal Khan

4.S.Mohamed Ali Raja

5.A.Mohamed Thanis Mohaideen

6.S.Syed Shameer Hussain

7.A.Umar Farook Ali

8.M.S.S.Vahith Ali

9.S.Syed Hasan Shazuli

... Respondents 1 to 9 / Writ Petitioners



W.A(MD)Nos.1932 and 1977 of 2023

10.The Joint Director of Collegiate
Education, Madurai Region,
Madurai.

... 10th Respondent / 1st Respondent

PRAYER: Appeal filed under Clause 15 of Letters Patent, to set aside the
order dated 14.06.2023 in W.P.(MD)No.6768 of 2023.

For Appellants : Mr.P.Veera Kathiravan,
Additional Advocate General,
Assited by,
Mr.S.R.A.Ramachandran,
Additional Government Pleader

For R-1 to R-9 : Mr.M.Ajmal Khan,
For M/s.Ajmal Associates

For R-10 : Mr.S.P.Maharajan,
Special Government Pleader

W.A.(MD)No.1977 of 2023

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Secretary and Correspondent,
M.S.S.Wakf Board College,
Madurai-625 020.

2.The Secretary,
M.S.S.Wakf Board College,
K.K.Nagar,
Madurai-625 020.

... Appellants / Respondents 2 & 3

-vs-

1.Dr.S.Syed Ali

2.Dr.T.M.S.Maideen

3.Dr.S.Fathima Syeda

4.M.Syed Javid Naseem

5.M.Mohammed Minna

6.M.Gurusath Begam



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7.Dr.A.Shafina Banu

8.Dr.R.Vimala

9.A.Sheik Abdullah

10.Dr.B.Vijay Amirtharaj

11.Dr.D.Devaki

12.Z.Meer Ismail Ali

13.Dr.K.Aameena Beevi

14.Dr.R.Mohamed Nasrudeen

15.Dr.J.Khaja Nizamudeen

16.Dr.S.Tajul Aarifeen

17.Dr.S.Shamiul Shabariya

18.Dr.A.Natherusain

19.M.Mohamed Riyazdeen

20.J.Mohamed Minna

21.Dr.M.Kavitha

22.Dr.S.Puvaneswari

23.Dr.S.Shahida Parveen

24.Dr.M.S.Sameem

25.Dr.M.M.Abdul Kader Mohideen

26.Dr.P.Rajapriya ... Respondents 1 to 26 / Writ Petitioners

27.The Joint Director of Collegiate

Education, Madurai Region,

Madurai.

... 27th Respondent / 1st Respondent



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PRAYER: Appeal filed under Clause 15 of Letters Patent, to set aside the order dated 14.06.2023 in W.P.(MD)No.8260 of 2023.

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For Appellants : Mr.P.Veera Kathiravan,
Additional Advocate General,
Assited by,
Mr.S.R.A.Ramachandran,
Additional Government Pleader

For R-1,
R-10 to R-13 : Mr.E.V.N.Siva

For R-2 to R-9,
R-14 to R-20,
R-21 to R-26 : Mr.M.Ajmal Khan,
For M/s.Ajmal Associates

For R-27 : No appearance

COMMON JUDGMENT

[Judgment of the Court was made by R.SUBRAMANIAN, J.]

The appeals are by the District Collector in his capacity as the Administrator of M.S.S.Wakf Board College, Madurai-625 020.

2. On the basis of a complaint made by one Sarthar Basha, an investigation was launched into the appointment of nearly 26 teaching staff in the said institutions by the erstwhile management. The said Sarthar Basha moved this Court by way of a writ petition, and this Court, finding total inaction on the part of the State Government, directed the investigation to be handed over to the Central Bureau of Investigation by its order dated 23.01.2019. It is stated that the appeal as well as the attempted Special Leave Petition against the said judgment have been



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dismissed.

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3. Thereafter, the Central Bureau of Investigation has, on the basis of the information received, registered an FIR on 07.03.2019. It is also learned that the Central Bureau of Investigation has filed a charge sheet against four persons, and the charge sheet is yet to be taken on file by the Magistrate for absence of sanction because one of the accused is a member of parliament. In the interregnum, the petitioners, namely the persons who were appointed filed a writ petition in W.P.(MD)No.8260 of 2023 seeking a Mandamus directing the 2nd respondent to treat the petitioners as having successfully completed their probation in terms of Sub Section 2(1) of Rule 11 of the Tamil Nadu Private College (Regulations) Rules, 1976, read with clause 2 of Form 7-A (an agreement entered into between the appointed teachers and the management form 7-A) and consequently sanctioned the yearly increments and other consequential monetary benefits.

4. The Writ Court accepted the contention of the petitioners that the completion of probation is automatic upon completion of one year unless it is shown that it has been either extended by another period of one year within six months of the completion of one year or some action is taken against the employee either to terminate or to suspend. On the above conclusion, the Writ Court allowed the writ petition without prejudice to the disciplinary proceeding that may be taken by the management.



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5. We have heard, Mr.P.Veera Kathiravan, learned Additional Advocate General appearing for the appellants and Mr.M.Ajmal Khan, learned senior counsel appearing for the private respondents /writ petitioners.

6. Mr.P.Veera Kathiravan, learned Additional Advocate General appearing for the appellants, would vehemently contend that in view of the pending investigation, the very appointment of the petitioners becomes doubtful and therefore they shall not be extended the benefits. He would also point out the letter by the Central Bureau of Investigation stating that the charge sheet has been filed against four persons, including a member of parliament. The Central Bureau of Investigation has not chosen to divulge any information about the contents of the said charge sheet. According to the learned Additional Advocate General, once the charge sheet has been filed the appointment of the petitioners becomes fraudulent, and therefore, the same cannot be regularized or no financial benefits could be given to such appointees.

7. Reliance is also placed by the learned Additional Advocate General on the judgment of the Hon'ble Supreme Court in **Jainendra Singh .vs.**



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State of Uttar Pradesh through Principal Secretary, Home and

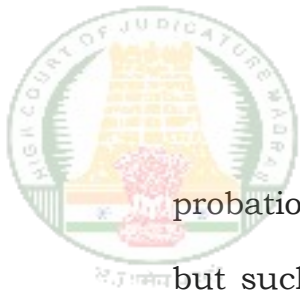
others. Reported in (2012) 8 SCC 748 in support of his contention that a person whose appointment is invalid, wrong or illegal cannot claim financial benefits.

8. Mr.M.Ajmal Khan, learned senior counsel appearing for the contesting respondents would submit that as per the Rules framed under the Tamil Nadu Private College (Regulations) Rules, 1976, a staff member is obliged to enter into an agreement with a employer college in Form 7-A under Sub Rule (2) (i) of Rule 11 of the Tamil Nadu Private Colleges Rules (Regulations) Act, 1976. Clause 2 of Form 7-A which is a mandatory statutory agreement that has to be entered into by every teacher who is appointed in a private college, reads as follows:

“2.That the said teacher shall be on probation for a period of not less than one year from the date of taking charge of his / her appointment. The college committee may, for reasons to be recorded in writing, extend the period of probation to a further period not exceeding one year.

If so, orders extending the period of probation are passed in writing within six months after the period of probation, the said teacher shall be deemed to have completed his / her probation.”

9. According to Mr.M.Ajmal Khan the effect of the Rule is on completion of one year from appointment, a teacher completes his or her



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probation. The management has got the power to extend it by another year but such an extension must be made within six months from the date of completion of one year. Therefore, if a teacher completes 1 ½ years of service without an order being passed for extension of probation, the teacher is deemed to have completed probation. No further orders are necessary.

10. We have considered the rival submissions. Even though the submissions of the learned Additional Advocate General are very attractive, we are unable to uphold the same in view of the fact that the provisions of the Rules, particularly the provisions of the Tamil Nadu Private College (Regulations) Rules, 1976, militate against the submissions of the learned Additional Advocate General. According to the learned Additional Advocate General, if the appointment is found to be fraudulent, then the appointee does not have a right to seek monetary benefits. We have no quarrel with the proposition. The problem in the case on hand is that there is no finding that the appointment is fraudulent. Only a criminal investigation has been launched and a charge sheet has been filed.

11. We do not know the contents of the charge sheet. It is settled law that filing of a charge sheet or launching of a criminal investigation does not conclude on the nature of the appointment. There is no finding by a competent authority that the appointment is irregular or illegal or



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fraudulent. As seen from the tabular column listed out by the learned Single Judge, the appointments were made between 13.11.2017 and 28.02.2018 and the last of the appointees, namely, Dr.K.Aameena Beevi completed one year of service on 28.02.2018. Admittedly, no order extending probation for any of these 26 teachers has been passed by the management.

12. Therefore, all of them had completed their probation on completion of one year of service which varies from 13.11.2017 to 28.02.2018. It is admitted that the management has not taken any action against any of these appointees till date, and they are continuing to serve the institution. If that be so, their probation having been declared already in terms of clause 2 of the agreement entered into with them, no further order declaring his or her probation is required. There is a deeming provision and it has to be given effect to. Once probation is deemed to be declared, it is needless to state that the appointees will be entitled to all monetary benefits that flow from such completion of probation. We find that the contesting respondents / petitioners in the writ petitions have also been paid an increment. The pendency of a criminal case against the four persons named by the Central Bureau of Investigation will not and cannot have the effect of suspending the employment of the private respondents. Therefore, they would be entitled to all monetary benefits. The Writ Court has taken care to clarify that the fact that the writ petition is allowed will



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not tie the hands of the authority from taking action as per law.

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13. We do not see any ground to interfere with the order of the Writ Court, in view of the clear legal position that emerges on the contents of the statutory agreement that a teacher is forced to enter into with his or her employer in terms of the provisions of the Tamil Nadu Private College (Regulations) Rules, 1976.

14. Hence, the writ appeals fail and they are accordingly dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

[R.S.M., J.]

[L.V.G., J.]

28.10.2024

NCC :Yes/No

Index :Yes/No

Internet: Yes

Sml

To

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