



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 04.08.2025

Pronounced on : 31.10.2025

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THE HONOURABLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

W.P.Nos.13125 & 13126 of 2011

and

M.P.Nos.1 & 1 of 2011

and

W.M.P.No.39741 of 2024

W.P.No.13125 of 2011

S.Baskaran

... Petitioner W.P.No.13125 of 2011

Vs.

1. Government of Tamil Nadu,
Rep. by the Director of Collegiate Education,
EVK Sampath Building, 9th Floor,
College Road, Chennai – 600 006.

2. The University of Madras,
Rep. by its Registrar, Rajaji Salai,
Chepauk, Chennai – 600 005.

3. Dhanraj Baid Jain College,
Rep. by its Secretary and Correspondent,
Jothi Nagar, Oggiam Thorappakkam,
Chennai – 600 096.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the concerned records from the third respondent college relating to the order dated 18.05.2011 bearing Ref.No.DBJCA/Admin/2011/71 passed by the third respondent and to quash the same and issue a consequential order directing the third



respondent to reinstate the petitioner in services with full backwages, all service benefits, continuity of service within a time limit fixed by this Hon'ble Court.

W.P.No.13126 of 2011

V.Jayanthi

... Petitioner

Vs.

1. Government of Tamil Nadu,
Rep. by the Director of Collegiate Education,
EVK Sampath Building, 9th Floor,
College Road, Chennai – 600 006.

2. The University of Madras,
Rep. by its Registrar, Rajaji Salai,
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Rep. by its Secretary and Correspondent,
Jothi Nagar, Oggiyam Thorappakkam,
Chennai – 600 096.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the concerned records from the third respondent college relating to the order dated 18.05.2011 bearing Ref.No.DBJC/Admin/2011/70 passed by the third respondent and to quash the same and issue a consequential order directing the third respondent to reinstate the petitioner in services with full backwages, all service benefits, continuity of service within a time limit fixed by this Hon'ble Court.

In Both Petitions

For Petitioner

: Mr.V.Govardhanan



respondent college issued the impugned orders dated 18.05.2011, dismissing the petitioners from service on the ground that their performance was found not satisfactory inspite of extension of probation, and also on the ground that the petitioners refused to furnish certain information and particulars as is required by the second respondent University. It is aggrieved by the said orders dated 18.05.2011, the petitioners filed the present writ petitions mainly contending that the impugned orders were issued in violation of the principles of natural justice.

3. This court, having perused the impugned orders, *prima facie* convinced that the impugned orders have been issued in utter violation of the principles of natural justice. Even assuming that the probation of the petitioners was not declared and the same was extended from time to time and their performance was found unsatisfactory, at the most, the same would enable the third respondent college to discharge the petitioners from service as they continued to be on probation. In such a situation, there is no necessity of conducting any detailed enquiry by framing specific charges etc., But, in the instant case, from the perusal of both the impugned orders, it is evident that the petitioners were dismissed from service, firstly on the ground that their performance was found not satisfactory, and secondly on the ground that



they refused to furnish the details as sought for by the third respondent college, for submitting the same in turn to the second respondent University.

Thus, it is evident that the impugned orders are not the orders of discharge simpliciter, discharging the petitioner from service for want of satisfactory completion of probation, but also on the ground of their refusal to furnish the required details. Admittedly, there is no notice or show cause notice issued to the petitioners affording them an opportunity to explain their stand, nor any enquiry was conducted. Without conducting any enquiry or issuing any notice, dismissing an employee from service would definitely cast stigma on the petitioners, and therefore, any such action is bound to be declared as illegal, arbitrary and violative of Articles 14 & 16 of the Constitution of India.

4. However, Mr.P.Raghunathan, learned counsel appearing for the third respondent college, raised a preliminary objection as to the very maintainability of the writ petitions against the third respondent college, which is a private minority educational institution, under Article 226 of the Constitution of India, by placing reliance on a decision of the Hon'ble Apex Court in the case of ***“St. Mary's Education Society and another -vs- Rajendra Prasad Bhargava and others”*** reported in **(2023) 4 SCC 498**. In the light of the above stand of the third respondent, this court adjourned the



matter time and again to enable the learned counsel for the petitioner to meet the said objection raised on the maintainability of the writ petitions and accordingly the matter was finally heard.

5. In the above said decision, the Hon'ble Apex Court, having reviewed the entire case law on the subject up-to-date has been pleased to hold as under:-

75. We may sum up our final conclusions as under:

75.1. An application under Article 226 of the Constitution is maintainable against a person or a body discharging public duties or public functions. The public duty cast may be either statutory or otherwise and where it is otherwise, the body or the person must be shown to owe that duty or obligation to the public involving the public law element. Similarly, for ascertaining the discharge of public function, it must be established that the body or the person was seeking to achieve the same for the collective benefit of the public or a section of it and the authority to do so must be accepted by the public.

75.2. Even if it be assumed that an educational institution is imparting public duty, the act complained of must have a direct nexus with the discharge of public duty. It is indisputably a public law action which confers a right upon the aggrieved to invoke the



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extraordinary writ jurisdiction under Article 226 for a prerogative writ. Individual wrongs or breach of mutual contracts without having any public element as its integral part cannot be rectified through a writ petition under Article 226. Wherever Courts have intervened in their exercise of jurisdiction under Article 226, either the service conditions were regulated by the statutory provisions or the employer had the status of “State” within the expansive definition under Article 12 or it was found that the action complained of has public law element.

75.3. It must be consequently held that while a body may be discharging a public function or performing a public duty and thus its actions becoming amenable to judicial review by a constitutional court, its employees would not have the right to invoke the powers of the High Court conferred by Article 226 in respect of matter relating to service where they are not governed or controlled by the statutory provisions. An educational institution may perform myriad functions touching various facets of public life and in the societal sphere. While such of those functions as would fall within the domain of a “public function” or “public duty” be undisputedly open to challenge and scrutiny under Article 226 of the Constitution, the actions or decisions taken solely within the confines of an ordinary contract of service, having no statutory force or backing, cannot be recognised as being amenable to challenge under Article 226 of the Constitution. In the absence of the service conditions being controlled or governed by statutory provisions, the matter would remain in the realm of an ordinary contract of service.

75.4. Even if it be perceived that imparting



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education by private unaided school is a public duty within the expanded expression of the term, an employee of a non-teaching staff engaged by the school for the purpose of its administration or internal management is only an agency created by it. It is immaterial whether “A” or “B” is employed by school to discharge that duty. In any case, the terms of employment of contract between a school and non-teaching staff cannot and should not be construed to be an inseparable part of the obligation to impart education. This is particularly in respect to the disciplinary proceedings that may be initiated against a particular employee. It is only where the removal of an employee of non-teaching staff is regulated by some statutory provisions, its violation by the employer in contravention of law may be interfered with by the Court. But such interference will be on the ground of breach of law and not on the basis of interference in discharge of public duty.

75.5. From the pleadings in the original writ petition, it is apparent that no element of any public law is agitated or otherwise made out. In other words, the action challenged has no public element and writ of mandamus cannot be issued as the action was essentially of a private character.”

6. This court also having perused the entire judgment of the Hon'ble Apex Court in the above case, though initially felt that imparting education is a public function, which is otherwise the sovereign function of the State and the same is being discharged by the third respondent college herein and therefore, the same would enable the petitioners herein to maintain the



present writ petitions in the light of the decisions of the Hon'ble Apex Court in the cases of "**Ramesh Ahluwalia -vs- State of Punjab**" reported in (2012) 12 SCC 331 and "**Binny Limited -vs- V.Sadasivan**" reported in (2005) 6 SCC 657 etc. But, having taken note of the final conclusions arrived at by the Hon'ble Apex Court in the above said decision at Paragraph No.75.3 while dealing with the educational institutions, holding that the actions or decisions taken solely within the confines of an ordinary contract of service, having no statutory force or backing cannot be recognized as being amenable to challenge under Article 226 of the Constitution of India. In the instant case also, the service of the petitioners in the third respondent college is governed by a contract of service vide appointment order dated 02.09.2006 issued by the third respondent college in favour of the petitioners herein. Admittedly, the same is not governed by any statutory provision nor the service of the petitioners is safeguarded by any statutory provision.

7. In the absence of the same, this court has no option except to follow the law laid down by the Hon'ble Apex Court in the case of "**St. Mary's Education Society and another -vs- Rajendra Prasad Bhargava and others**" reported in (2023) 4 SCC 498 and to hold that the writ petitions are not maintainable under Article 226 of the Constitution of India against the third



respondent college. Though it is too unreasonable to non-suit the petitioners at this length of time, in the light of the law laid down by the Hon'ble Apex Court, this court has no option except to dismiss the writ petitions as not maintainable.

8. Accordingly, both the writ petitions are dismissed, leaving it open to the petitioners to pursue the remedies, if any, available to them in accordance with law. In case if any such proceedings are initiated, the time that is consumed before this court shall stand excluded for the purpose of limitation, if any, prescribed under law for availing such remedies. No costs. Connected miscellaneous petitions, if any, shall stand closed.

31.10.2025

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Index : Yes / No

Speaking order / Non-speaking order

Neutral Citation : Yes / No

To

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Government of Tamil Nadu, EVK Sampath Building,
9th Floor, College Road, Chennai – 600 006.



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MUMMINENI SUDHEER KUMAR, J.

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Pre-Delivery Order made in
W.P.Nos.13125 & 13126 of 2011

31.10.2025