



W.A.No.3808 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 20.01.2025

CORAM

**THE HONOURABLE MR.JUSTICE R.SURESH KUMAR
and
THE HONOURABLE MR.JUSTICE C.SARAVANAN**

**W.A.No.3808 of 2024
and
C.M.P.No.29967 of 2024**

M.Mercina

... Appellant

-Vs-

1. The Secretary and Correspondent,
Loyala College,
Nungambakkam,
Chennai - 600 034.

2. Rev.Fr.Provincial,
Madurai Jesuit Province,
Governing Body Chairman of Loyala College,
St.Mary's Residence,
P.Box No.6, Dindigul - 624 001.

3. The University of Madras,
Represented by its Registrar,
University Centenary Building,
Chepauk,
Chennai - 600 005.

... Respondents

PRAYER : Appeal filed under Clause 15 of Letters Patent, to set aside the order in W.P.No.5597 of 2020 dated 06.12.2023 and allow the above writ appeal.



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For Appellant : Mr.T.Sri Krishna Bhagavat
For Respondents : Ms.H.Mary Sowmi Rani
for M/s.Isaac Chambers for R1

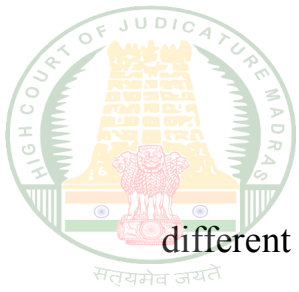
J U D G M E N T

(Judgment of the Court was delivered by **R.SURESH KUMAR, J.**)

This intra Court appeal has been directed against the order passed by the writ Court dated 06.12.2023 in W.P.No.5597 of 2020.

2. That the appellant was the writ petitioner who was a Teaching Faculty of the first respondent College, against whom, a disciplinary proceedings has been initiated along with three others sometime in the year 2017. Pursuant to the disciplinary proceedings, a retired Judge has been appointed as an Enquiry Officer to enquire the matter, he after having full-fledged enquiry by giving full opportunity to the delinquent and other delinquents had given a report, where the charges framed against the delinquents have not been proved according to the Enquiry Officer.

3. Though such a report has been filed in the year 2018, not accepting the said report of the Enquiry Officer, the College Management decided to take a



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different view than what has been concluded by the Enquiry Officer, therefore,

in the year 2020, they have issued a second show cause notice not only against the writ petitioner / delinquent but also the other delinquents.

4. In respect of the first show cause notice, one of the delinquent, Dr.I.Amalraj had approached this Court by filing writ petition in W.P.No.16679 of 2018 challenging the show cause notice issued by the College Management to take a different view than the report of the Enquiry Officer.

5. The said writ petition in fact was allowed by the writ Court on 08.03.2019 on the reason that, the show cause to take a different view was issued bereft of any reasons, therefore that was quashed and a liberty was given to the College Management to give a fresh show cause notice of course with reasons.

6. Though this order was passed by the writ Court sometime in March 2019, immediately such a show cause notice was not issued by the College Management and in the meanwhile, the said Professor, namely, Dr.V.Joseph since had to go for abroad for some personal reasons, he had applied to the College Management to seek a 'No Objection Certificate', such 'No Objection



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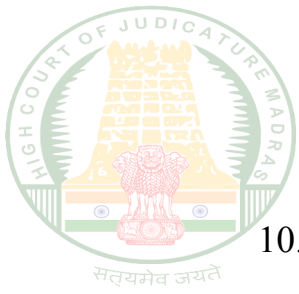
Certificate' also was given on 17.08.2019 by the College Management where

the Secretary to College has given a clean chit stating that, since there has been no disciplinary proceedings pending against him, such certificate was issued, based on which, he had gone abroad and came back.

7. Subsequently on 08.02.2020 a show cause notice with reasons had been issued to the said Dr.V.Joseph as well as the present appellant / writ petitioner as they were co-delinquents.

8. Insofar as the said Dr.V.Joseph is concerned, he had approached the writ Court by filing the writ petition in W.P.No.4561 of 2020 which was disposed on 17.11.2023 not in favour of the delinquent, but in favour of the College Management, as against which, he filed an intra Court appeal in W.A.No.840 of 2024 which was allowed by a Co-ordinate Bench of this Court by order dated 29.10.2024.

9. It is in the similar circumstances the present appellant / writ petitioner had approached the writ Court by filing W.P.No.5597 of 2020 challenging the show cause notice dated 08.02.2020 with detailed reasons running about fifty plus pages.

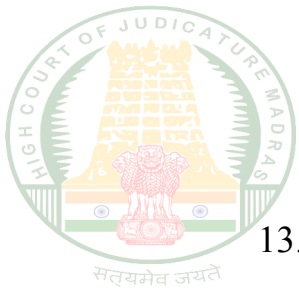


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10. The said W.P.No.5597 of 2020 has been disposed by the writ Court by order dated 06.12.2023, where the learned Judge directed the writ petitioner by giving a liberty to the writ petitioner to submit an explanation to the respondent College and on receipt of the same, the respondent College was directed to consider such explanation and pass orders on merits and in accordance with law. That was the crux of the order passed by the writ Court dated 06.12.2023 which is impugned in this intra Court appeal.

11. Heard Mr.T.Sri Krishna Bhagavat, learned counsel appearing for the appellant and Ms.H.Mary Sowmi Rani, learned counsel appearing for the first respondent / College Management.

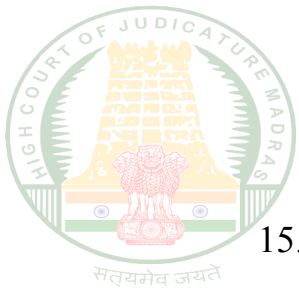
12. Though it was argued by Mr.T.Sri Krishna Bhagavat, learned counsel appearing for the appellant that, the appellant also is similarly placed as that of Dr.V.Joseph who is the co-delinquent, in whose case since had been decided by a Co-ordinate Bench of this Court in favour of the delinquent, such a treatment for which also the appellant / writ petitioner is entitled to, therefore, the view taken by the learned Judge through the impugned order is erroneous according to him and hence, he seeks indulgence of this Court to allow this intra Court appeal.



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13. We have also heard Ms.H.Mary Sowmi Rani, learned counsel appearing for the first respondent College who would submit that, though they are co-delinquents the facts are different and three reasons are there, the first reason is that, against the show cause notice which was originally issued in the year 2018 without any reasons the said Amalraj had already approached the writ Court and got a favourable order to issue a fresh show cause notice with reasons, whereas the present appellant / writ petitioner had not approached this Court by filing any such writ petition and got an order.

14. The second reason according to the learned counsel for the first respondent College was that, the appellant / writ petitioner had not been given any such certification as in the case of Dr.V.Joseph, where such a view had been taken by the College Management that there has been no disciplinary proceedings pending against him. Thirdly, the said Dr.V.Joseph wanted to go for a voluntary retirement, therefore he had made a request to go for a voluntary retirement that was also permitted, therefore the facts of the case of Dr.V.Joseph cannot be compared with the facts of the present case projected by the writ petitioner / appellant, the learned counsel for the first respondent College submitted.

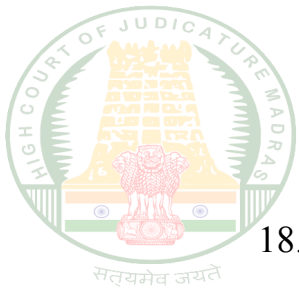


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15. We have considered the said rival submissions made by the learned counsel appearing for the parties and have perused the materials placed before this Court.

16. As has been rightly pointed out by the learned counsel appearing for the first respondent in view of the facts which are different from the said Dr.V.Joseph as well the present appellant / writ petitioner, the judgment delivered by the Co-ordinate Bench in W.A.No.840 of 2024 dated 29.10.2024 cannot be taken as a precedent for the purpose of seeking any relief in the present appeal by the appellant.

17. Insofar as the appellant case is concerned, in fact after the order impugned passed by the writ Court before filing this writ appeal or pending the writ appeal, in the instant writ appeal, already disciplinary proceedings have been concluded by virtue of the show cause notice already been given which was impugned before the writ Court and ultimately the appellant / writ petitioner has been removed from service by order dated 06.04.2024 which was also challenged by the appellant / writ petitioner in W.P.No.11122 of 2024 and the said writ petition also having been entertained and is pending before the writ Court.



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18. When that being the position, already the disciplinary proceedings since had been concluded with the punishment of removal from service by order dated 06.04.2024 and that is the order which is under challenge in the writ petition filed by the very same writ petitioner / appellant, therefore, we feel that, let the appellant / writ petitioner pursue her writ petition, i.e., W.P.No.11122 of 2024 on merits and in accordance with law and whatever the points she wants to take on merits with regard to the reasoning given by the College Management to take a different view than the one submitted by the Enquiry Officer who was as a Former Judge in his enquiry report can all to be persuaded and canvassed before the writ Court in pending W.P.No.11122 of 2024.

19. In that view of the matter, we are not inclined to entertain this writ appeal and the order passed by the learned Judge cannot be found to be erroneous and moreover pursuant to the said order much water has been flown, as the disciplinary action had been concluded, where the appellant / writ petitioner has been removed from service by order dated 06.04.2024 which is the subject matter in W.P.No.11122 of 2024, hence, this writ appeal is dismissed with the following observations:



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(i) that it is open to the appellant / writ petitioner to pursue W.P.No.11122 of 2024 on its own merits and in accordance with law.

(ii) In that case, it is further open to the appellant / writ petitioner to canvass all the points on merits and in accordance with law before the writ Court where the challenge against the order dated 06.04.2024 has already been made.

20. With these observations, this Writ Appeal is dismissed accordingly.

However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

(R.S.K., J.) (C.S.N., J.)

20.01.2025

NCC : Yes / No

Index : Yes / No

Speaking Order : Yes / No

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