

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.03.2012

CORAM

THE HONOURABLE MR.JUSTICE K.CHANDRU

W.P.No.5486 of 2012

and

M.P.No.1 of 2012

Dr.G.Muthusamy .. Petitioner

Vs.

- 1.The Correspondent,
Kongu Engineering College,
Perundurai, Erode-638 052.
- 2.The Registrar,
Anna University of Technology,
Coimbatore Academic Campus,
Jothipuram,
Coimbatore-641 047. .. Respondents

This writ petition is preferred under Article 226 of the Constitution of India praying for the issue of a writ of certiorarified mandamus to call for the records on the file of the first respondent in proceedings Ref.KEC/OFF-ORD/Transfer/2010-11/06, dated 30.10.2010 and the consequential proceedings of the first respondent in Ref.No.KEC / Est / Chemistry /2 / 2010-11, dated 20.1.2012 and Ref.No.KEC/EST/Chemistry / 3/2010-11, dated 23.2.2012 and quash the same as illegal, incompetent and unconstitutional and further direct the respondent No.1 to permit the petitioner to continue to discharge his duty as the Dean and the Head of the Department of Chemistry.

For Petitioner : Mr.V.Raghavachari

ORDER

This writ petition is filed by the petitioner challenging an order passed by the first respondent, a self financing Engineering College at Perundurai, dated 30.10.2010 as well as the show cause notice, dated 20.1.2012 and a further notice dated 23.2.2012. By the first order, the petitioner was relieved from the additional charge of being the Personal Assistant to the Correspondent of the College, Dean Administration and Registrar in-charge of the College. However, he was directed to work as a Professor in the Department of Chemistry, School of Science and Humanities, for which post he was appointed. Subsequently, a show cause notice was given as to why an action should not be initiated against him for his conduct of extending leave eternally. In the show cause notice,

dated 20.1.2012, the petitioner was shown to have been making false propaganda.

2. When the writ petition came up for admission, this court asked the learned counsel appearing for the petitioner as to how the writ petition is maintainable as against the self financing private college. For that, Mr. V. Raghavachari, learned counsel appearing for the petitioner relied upon the following decisions :

1) Miss Kumkum Khanna and others Vs. The Mother Aquinas and another (ILR (1976) I Delhi 31).

2) N. Sivarama Chandrasekhara Rao Vs. State of A.P. and others (AIR 1996 Andhra Pradesh 394).

3) K. Krishnamacharyulu and others Vs. Sri Venkateswara Hindu College of Engineering and another [(1997) 3 SCC 571]

4) M. Magudapathi Vs. The Manager and Correspondent Savariyappa Udayar Memorial Higher Secondary School, Rayappanpatti Madurai District and another [1997 (II) CTC 719].

5) Miss. Ravneet Kaur Vs. The Christian Medical College, Ludhiana and another [AIR 1998 Punjab and Haryana 1].

6) G. Bassi Reddy Vs. International Crops Research Institute and another [(2003) 4 SCC 225].

7) Suter Paul Vs. Sobhana English Medium High School [2003 (3) KLT 1019]

8) Supriyo Basu and others Vs. W.B. Housing Board and others [(2005) 6 SCC 289].

9) Binny Ltd. and another Vs. V. Sadasivan and others [(2005) 6 SCC 657]

10) Mar Athanasius College Vs. Director of Collegiate Education [2008 (1) KLT 769].

11) S. U. M. Prasad Vs. Andhra Pradesh State Federation of Cooperative Spinning Mills Limited and others [(2009) 16 SCC 320].

3. But, however a perusal of those decisions will clearly show that either the institutions referred to therein were aided bodies covered by grant-in-aid code or covered by statutes governing such private institutions or the orders challenged emanated from the orders of educational authorities either approving or disapproving actions of the managements. In none of the cases cited by him, a show cause notice issued by a private management was considered.

4. In this context, it is necessary to refer to a judgment of the Supreme Court in Vidya Ram Misra v. Managing Committee, Shri Jai Narain College reported in (1972) 1 SCC 623 and in paragraphs 7 and 8, it was observed as follows:

"7. Whether the decision in Vidyodaya University Council v. Silva is correct or not, in this case, we think there was no element of public employment, nothing in the nature of an office or status which is capable of protection.

8. In *S.R. Tewari v. District Board, Agra*⁶ this Court formulated the exceptions to the general rule that when there is a termination of a contract of service, a declaration that the contract of service still subsisted would not be made, by saying:

"But this rule is subject to certain well recognised exceptions. It is open to the courts, in an appropriate case, to declare that a public servant who is dismissed from service in contravention of Article 311 continues to remain in service, even though by so doing the State is in effect forced to continue to employ the servant whom it does not desire to employ. Similarly, under the industrial law, jurisdiction of the labour and Industrial Tribunals to compel the employer to employ a worker, whom he does not desire to employ, is recognised. The courts are also invested with the power to declare invalid the act of a statutory body, if by doing the act, the body has acted in breach of a mandatory obligation imposed by the statute, even if by making the declaration the body is compelled to do something which it does not desire to do."

5. Further, the Supreme Court in *Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust v. V.R. Rudani* reported in (1989) 2 SCC 691 in paragraph 15 had observed as follows :

"15. If the rights are purely of a private character no mandamus can issue. If the management of the college is purely a private body with no public duty mandamus will not lie. These are two exceptions to mandamus. But once these are absent and when the party has no other equally convenient remedy, mandamus cannot be denied. It has to be appreciated that the appellants trust was managing the affiliated college to which public money is paid as government aid. Public money paid as government aid plays a major role in the control, maintenance and working of educational institutions. The aided institutions like government institutions discharge public function by way of imparting education to students. They are subject to the rules and regulations of the affiliating University. Their activities are closely supervised by the University authorities. Employment in such institutions, therefore, is not devoid of any public character.³ So are the service conditions of the academic staff. When the University takes a decision regarding their pay scales, it will be binding on the management. The service conditions of the academic staff are, therefore, not purely of a private character. It has super-added protection by University decisions creating a legal right-duty relationship

between the staff and the management. When there is existence of this relationship, mandamus cannot be refused to the aggrieved party."

6.The Supreme Court in Satimbla Sharma v. St Paul's Senior Secondary School reported in (2011) 13 SCC 760 in paragraphs 23 and 25 had observed as follows:

"23.We also do not think that the Court could issue a mandamus to a private unaided school to pay the salary and allowances equal to the salary and allowances payable to teachers of government schools or government-aided schools. This is because the salary and allowances of teachers of a private unaided school is a matter of contract between the school and the teacher and is not within the domain of public law.

25.Where a statutory provision casts a duty on a private unaided school to pay the same salary and allowances to its teachers as are being paid to teachers of government-aided schools, then a writ of mandamus to the school could be issued to enforce such statutory duty. But in the present case, there was no statutory provision requiring a private unaided school to pay to its teachers the same salary and allowances as were payable to teachers of government schools and therefore a mandamus could not be issued to pay to the teachers of private recognised unaided schools the same salary and allowances as were payable to teachers of government institutions."

7.In view of the above, there is no case made out. Hence the writ petition will stand dismissed. No costs. Consequently connected miscellaneous petition stands closed.

Sd/-

Asst. Registrar

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Sub Asst. Registrar.

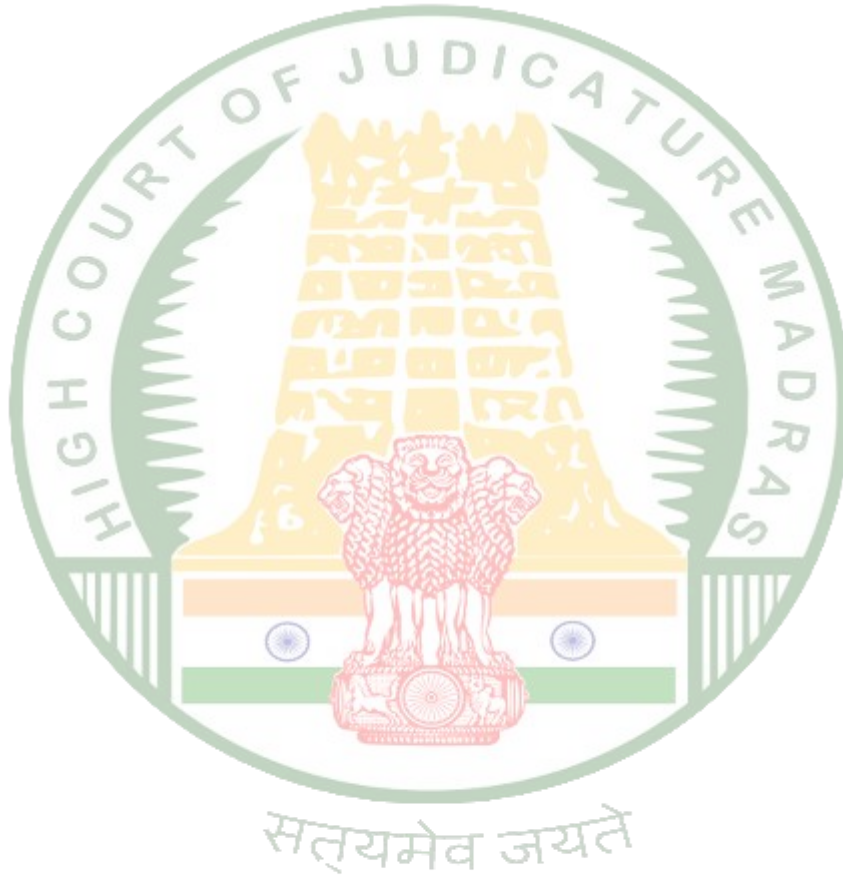
vvk

To
The Registrar,
Anna University of Technology,
Coimbatore Academic Campus,
Jothipuram,
Coimbatore-641 047.

1 cc To Mr.V.Raghavachari, Advocate Sr 21510

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