Baskaran Vs. the Commissioner of College Education and ors.

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Court : Chennai

Decided On : Aug-30-1995

Reported in : (1996)1MLJ32

Appellant : Baskaran

Respondent : The Commissioner of College Education and ors.

Judgement :
ORDER

Srinivasan, J.

1. A introduction: This application is to review the order in W.A. No. 1256 of 1992 dated 17.12.1993 and for setting aside the judgment as illegal, incompetent and without jurisdiction. The petitioner herein (hereinafter referred to as 'the applicant') was not a party to the appeal. He obtained permission to file the present review application in C.M.P. No. 6622 of 1995. The Bench which granted permission on 27.4.1995, made it clear in the order that the same was subject to the rights of the respondents to object to the same, if so advised.

2. The third respondent in the application is the contesting respondent and he will be referred to herein as 'the third respondent'. He was the petitioner in W.P. No. 18609 of 1991, which has generated the writ appeal and the present application. The first respondent herein is the Commissioner of Collegiate Education, while the second respondent is the Management of S.B.K. College, Aruppukkottai. The

second respondent is a private aided college.

3. B. History: The third respondent joined the second respondent college in the year 1971 as Assistant Professor, Physical Education. He applied for leave on loss of pay for two years from 6.3.1981 to 5.3.1983 which was sanctioned by the then Secretary to the College. The Director of Collegiate Education came to know that the third respondent was working abroad without getting prior permission. Hence, he instructed the Management to take action against the third respondent for going abroad without getting prior permission from the Director - Vide his letter dated 6.8.1982 - and also instructed the Management not to permit the third respondent to rejoin duty without getting prior permission from the Director. An explanation was called for from the third respondent by the Secretary to the College by his letter dated 4.9.1982. The third respondent sent a reply on 19.10.1982 which was forwarded to the Director of Collegiate Education. He referred to his registration with the Foreign Assignment Section of Government of India through the College in 1977 and obtaining NOC from the college for his passport. There was, however, no explanation for working in a foreign country without getting the prior permission of the Director of Collegiate Education.

4. The third respondent applied for extension of leave by letter dated 9.2.1983 for the period 6.3.1983 to 5.7.1983. The Secretary to the College sought for a clarification from the Director of Collegiate Education whether the extension could be sanctioned. The reply was in the negative. In the meanwhile, the Secretary wrote a letter on 16.2.1983 to the third respondent informing him that he was not in a position to sanction the extension of leave until he received a reply from the Director of Collegiate Education, Madras. The third respondent applied for further extension of leave on loss of pay from 6.7.1983 to 5.7.1984. That was also not sanctioned. Inspite of the fact that leave on loss of pay was not sanctioned beyond 5.3.4983, the third respondent continued to be absent from duty. The Director of Collegiate Education in his Proceedings Rc. No. 19386/E1/84, dated 26.4.1984 informed the Management of the College that extension of leave on loss of pay could not be granted to the third respondent. The third respondent requested the Management by his letter dated 15.5.1984 to permit him to join duty on 6.7.1984. The Secretary to the College sent a reply on 14.6.1984 informing him that he could

not join duty as the permission of the Director of Collegiate Education had not been given therefor.

5. The Director of Collegiate Education by his letter dated 8.8.1984 in L. Dis. No. 12802/F2/84 instructed the Management to take disciplinary action against the third respondent for working abroad without getting prior permission from the competent authority. Pursuant thereto, the Management served a charge memo dated 7.1.1985 on the third respondent calling upon him to show cause why disciplinary action should not be taken against him. Five charges were framed against him regarding his leaving the country and accepting a job outside the country without prior permission or sanction therefor from the competent authority. The third respondent sent a reply on 27.1.1985. There was no explanation in the said reply for not getting prior permission of the authorities to go abroad. There was a reference therein to the third respondent meeting the Secretary to the College on 5.7.1983 and the latter's refusal to permit him to join duty on 6.7.1983. But, in the affidavit filed in support of the writ petition, reference is made to a letter dated 5.7.1983 alleged to have been written by the third respondent to the Secretary expressing his intention to rejoin duty. There is no reference in the said affidavit to a personal meeting on 5.7.1983. The allegation is that there was no reply to his letter dated 5.7.1983. It is further alleged in the said reply that on 5.7.1983 itself the third respondent personally handed over an application for extension of leave period to the Principal in his office under the guidance of the Secretary to the College.

6. In the meanwhile, the post of Physical Director/Assistant Professor, Physical Education was filled up in the first instance by deputation of one G. Inbarajan from another college under re-deployment scheme between 22.12.1982 and 28.2.1984. Thereafter, the Management of the College obtained permission of the Director of Collegiate Education to fill up the vacancy by appointing a permanent incumbent. Accordingly, the applicant herein was appointed on 12.7.1985 with effect from 15.7.1985 as Assistant Professor, Physical Education. He was confirmed on 14.11.1985 with the approval of the Educational authorities. He was functioning as such continuously since then.

7. After the receipt of the explanation dated 27.1.1985 sent by the third respondent, the Management of the College was making appropriate enquiries and gathering information in order to take proceedings against the third respondent by way of disciplinary action. The Secretary to the College sent a communication dated 3.1.1989 to the Director of Collegiate Education detailing the steps taken by the College for initiating proceedings against the third respondent. The third respondent sent a communication on 27.3.1989 to the Management requesting for necessary action to facilitate his joining duty at the earliest. He also sent a representation to the Consul (Labour), Consulate General of India, Dubai (U.A.E.) on 15.4.1989 which was forwarded to the Secretary to the College along with a covering letter dated 19.4.1989. Even in the said representation the third respondent had not chosen to given any explanation as to why he did not get the prior permission of the concerned authority for working abroad, after taking leave on loss of pay for personal reasons. On 17.5.1989 the third respondent wrote to the Secretary to the College informing him that he would meet the addressee in the first week of July, 1989 to enlighten the matter. It should be mentioned that till that date, the third respondent had not given his address at Dubai in any of his communications, but on the other hand had given only some address or other in India, as if he was staying in India during that period. In the said letter, for the first time, the third respondent alleged that he availed extraordinary leave on loss of pay for personal affairs from the Managing Board of the College, that he explained his desire to go to Dubai on an assignment to the members of the Managing Committee on 3.3.1981 in the college premises and that the Managing Board had sanctioned his leave after being convinced. Such an averment was not found in any of the earlier communications sent by the third respondent including his reply dated 27.1.1985 to the charge memo dated 7.1.1985.

8. On 10.7.1989 the third respondent wrote to the Secretary to the College another letter in which he took a different and inconsistent stand. He alleged therein that as the period of leave was long, the then Secretary asked him to meet him in person prior to the sanctioning of the leave and he explained the reason for his leave that he was leaving for Dubai to accept an engagement in an Indian School and that on account of the generosity and helping attitude of the then Secretary, his leave was sanctioned. According to him, he worked in the Indian School at Dubai purely as a

teacher. What follows thereafter in the said letter is quite significant and proves that his version that he informed the Secretary or the Managing Board of his intention to take an assignment in Dubai before proceeding on leave is false. It is stated as follows:

As I did not seek any different employment other than the teaching profession in which I was engaged here, I felt it was not so necessary to mention this in detail, because the same profession I continued with an intention to come back. Gaining more experience outside India in the academic field which will be of immense help in my work here as an Assistant Professor. Hence, I considered this as a personal affairs of mine, and accordingly I applied for leave on personal affairs. I applied for the extension of leave which was neither refused nor I was recalled to rejoin duty. Hence, I was forced to believe that there was nothing wrong in availing the leave further and hence I stayed at Dubai worked as a Teacher in the Indian School for some more time. Before the expiry of two years leave, I was informed that the College has to obtain permission from the Director of Collegiate Education prior to my rejoining duty in the SBK College. Even though restriction was imposed regarding my rejoining duty, there was no direction to the effect that the leave should not be extended, and as a matter of fact, the extension of leave was neither rejected nor I was recalled to rejoin duty. It was under these circumstances, I continued my stay at Dubai.

9. It is evident from the above passage that the third respondent did not inform the Management of the College or the Secretary about his intention to work abroad in Dubai. It is also evident from the said passage that he continued to work in the school at Dubai even on the date of the said letter. In the same letter he has made a reference to the appointment of the applicant as Assistant Professor, Physical Education and observed that the said appointment must be only a temporary appointment and he can only be a substitute having the liability to leave the post as and when he rejoined duty and that the appointment of the applicant can never be a hindrance in any manner from any point of view against his rejoining duty. The letter discloses that the third respondent was taking legal advice and was laying a foundation for putting forward technical contentions. There were subsequent letters from the third respondent to the Secretary to the College on

21.9.1989, 15.1.1990, 13.3.1990, 31.5.1990 and 9.3.1991 requesting the latter to permit him to rejoin duty. But, it is seen from these letters that the third respondent continued to be in Dubai throughout and even on the date of last of the said letters. He would appear to have returned to the country only thereafter as is evident from his letter dated 22.7.1991 in which he has requested for permission to rejoin duty. As he was not permitted to do so, he filed the present writ petition on 1.11.1991.

10. C. Proceedings in writ petition and writ appeal: The present applicant was not made a party to the writ petition in spite of the third respondent being aware of his appointment as stated earlier. In the affidavit filed in support of the writ petition, after referring to his employment in the Indian School, Dubai, as a Teacher, the third respondent has stated that he felt that it was not necessary to mention the same in detail to the authorities as he did not seek any different employment other than teaching profession and that gaining more experience outside India in the academic field would be of immense help in his work in the College as Assistant Professor. Therefore, according to him, he considered it as a personal affair of his and accordingly, he applied for leave. He added that he was forced to believe that there was nothing wrong in availing the leave further and he, therefore, stayed at Dubai, and worked as a teacher for some more time. It is also stated that even though restriction was imposed regarding his rejoining duty, there was no direction to the effect that the leave should not be extended and as a matter of fact, the extension of leave was neither rejected nor was he recalled to join duty and in those circumstances, he continued to stay at Dubai. With regard to his reply dated 27.1.1985 to the Charge Memo dated 7.1.1985, it is stated in the affidavit that the management is deemed to have accepted his reply and dropped the disciplinary proceedings. Stating that the action of the College in preventing him from joining duty is in contravention of the provisions of the Tamil Nadu Private Colleges (Regulation) Act, 1976 (Act 19 of 1976), he prayed for issue of writ of mandamus directing the respondents to allow him to join duty in the College as Physical Director with all attendant benefits.

11. The writ petition was dismissed in limine by a learned single Judge of this Court on three grounds, (1) the writ petitioner was guilty of laches, (2) his conduct

and attitude did not entitle him to get the relief and (3) there was no failure on the part of the respondents in performing any of their statutory duties.

12. The third respondent filed an appeal in W.A. No. 1256 of 1992. Notice of motion was ordered in the appeal to the respondents therein. The Director of Collegiate Education filed a detailed counter affidavit as well as a typed sets of relevant records. The Secretary to the College remained absent. The appeal was heard by a Division Bench and disposed of by order dated 17.12.1993. The Bench has taken the view that the third respondent herein continued to be in service in the College and there was no impediment for the management to take him back in service. The Bench held that the third respondent was not guilty of laches in approaching the court under Article 226 of the Constitution of India. The Bench also observed that the third respondent herein had gone abroad on foreign assignment only with the knowledge of the Secretary to the College. The Bench has also observed that the inaction on the part of the College in not taking back the third respondent in service would be depriving him of his right to join back in service and earn his livelihood and as such any action on the part of the college would involve civil consequence depriving his right to livelihood, which is implicit under Article 21 of the Constitution of India. On the above reasoning, the Bench allowed the appeal.

13. Pursuant to the judgment in the appeal, the Secretary to the College sent a communication to the third respondent herein on 4.3.1995 directing him to rejoin duty on or before 10.3.1995 as Physical Education Director. A copy of it has been forwarded to the applicant herein with a request to him to relieve from duty on the date when the third respondent joins duty. Thus, the applicant herein was ousted from service as a direct consequence to the judgment of this Court in the writ appeal. According to the third respondent, he joined duty on 8.3.1995, but was suspended by an order dated 17.3.1995 by the management. It is also brought to our notice that a charge memo has been issued to the third respondent on 29.3.1995 and that he has filed two writ petitions challenging the said proceedings of the management.

14. D. Contentions: After the applicant herein was relieved from duty, he presented his Review Application on 9.3.1995 along with C.M.P. No. 6622 of 1995 for leave to file the application, as he was not a party to the writ petition or writ appeal. As stated earlier, leave was granted on 27.4.1995 and notice was directed to the respondents herein in the Review Application by order dated 11.7.1995. In this application all the three respondents have entered appearance and placed their submissions before the court.

15. At the outset, the third respondent herein has filed a memo of written objections questioning the locus standi of the applicant and the maintainability of the petition for review. Arguments have also been advanced before us on the merits of the writ appeal and the third respondent's attempt has been to sustain the judgment.

16. E. Locus standi: The first question that arises for consideration is whether the applicant has locus standi to maintain this application for review. Learned Counsel for the third respondent has submitted that the applicant was appointed only as a substitute in the place of his client and once his client has opted to rejoin duty, the applicant has no right to oppose the same as the dispute is entirely between the third respondent and the management of the College. According to learned Counsel, the third respondent has never ceased to be an employee of the College as his services were not terminated in the manner prescribed by law and when he seeks to enforce his right to join duty, there is no necessity for him to take cognizance of any person who has been working as a substitute in his post during the leave vacancy, with the result that the applicant has no locus standi whatever to challenge the mandamus obtained by the third respondent. According to learned Counsel, in Service Jurisprudence, subsequent appointments will not be a defence to the enforcement of an employee's rights. Reliance is placed on certain observations found in Punjab National Bank v. Their Workmen : (1959)IILLJ666SC . The Supreme Court has, in that case, held that the Bank did not choose to prove the factum of employment of additional hands during the relevant period and after pointing out that it did not appear that the said plan was urged as a separate plea against the order of reinstatement before the Appellate Tribunal, observed:

In any case, in the absence of satisfactory materials it would be difficult to deal with this plea on the merits. Besides, if the Bank has failed to establish its specific case against any of the 136 employees, there is no reason why the normal rule should not prevail and the employees should not got the relief of reinstatement. The mere fact that the bank may have employed some other persons in the meanwhile would not necessarily defeat such a claim for reinstatement.

The said observation of the court must be understood in the context of the facts and the finding given by the court in the earlier part of the passage.

17. Learned Counsel has drawn our attention to a judgment of a learned single Judge of this Court in T.K. Sudhindran v. P. Jothi, Secretary, College Committee (1984) 2 S.L.J. 651, in which the right of the management to recall an earlier resolution passed by it and reinstate the Principal of the College, who was previously dismissed, was upheld. From the facts of the case, it is seen that the management of the College recalled its resolution during the pendency of a proceeding initiated by the dismissed Principal, whose claim was upheld therein, by a Division Bench of this Court in Dr. Madan Mohan Rao v. State of Tamil Nadu : (1983)2MLJ491 . The ruling in that case does not in any manner help the third respondent herein, as it turned on the facts of that case.

18. Reliance is placed on the judgment of the Supreme Court in Ganpat Roy v. Additional District Magistrate : [1985]3SCR384 , wherein it was held that a party who has no right to appear at the original hearing of an application, cannot have a right of review on an appeal against an order passed on that application. The ruling has no relevance in this case as, in our opinion, the applicant herein was a necessary party in the writ petition as well as the writ appeal in these proceedings and he ought to have been impleaded as a party and given an opportunity to contest the same. It is rightly pointed out by learned Counsel for the applicant that the ruling in Prabodh Varma v. State of U.P. : [1985]1SCR216 , would apply and the applicant herein should have been made a party in the writ petition as any order in favour of the writ petitioner would directly affect the rights of the applicant and as a matter of fact, the order passed in the writ appeal in favour of the third respondent herein has led to the ousting of the applicant from service. It is,

therefore, futile to contend that, the applicant has no locus standi to maintain the application for review. Our attention is drawn to the judgment of the Supreme Court in Ram Janam Singh v. State of U.P. : (1994)ILLJ901SC , by learned Counsel for the applicant. The Court held that though the appellant in that case was not impleaded as a party to the writ application, he was directly affected by the order in the writ application and he was, therefore, entitled to file the Special Leave Petition. The court referred to the judgment in Prabodh Varma v. State of U.P. : [1985]1SCR216 , and held that the appellant ought to have been impleaded as a party to the writ petition. The court proceeded to hold that even if the stand taken by the respondent therein that no relief was sought against the appellant in that case and there was no necessity to implead him as a party was accepted, the appellant before court had a locus standi to challenge the judgment of the High Court, although he was not a party to the writ petition. The ratio of the said judgment will apply on all fours in the present case. We hold that the applicant has locus standi to maintain the review application.

19. F. Maintainability of Review Application: The objection raised by the third respondent is that the Division Bench has disposed of the matter on the facts of the case holding that he was not guilty of any laches and that he was entitled to be reinstated in service. It is argued that another Division Bench of this Court which has co-ordinate jurisdiction, cannot sit in judgment over the correctness of the judgment in the appeal, as it is entirely a decision on the facts. The contention is that the remedy of the applicant, if at all, is only to approach a higher forum in order to challenge the correctness of the judgment in the appeal and not to approach this Court. It is submitted that the judgment does not suffer from any error apparent on the face of the record.

20. The general principles prescribing the parameters of a review application are well settled. The question has also considered with reference to proceedings under Article 226 of the Constitution of India. In A.T. Sharma v. A.P. Sharma : 1979 CriLJ908 , the court after referring to an earlier judgment, said:

It is true as observed by this Court in Shivdeo Singh v. State of Punjab A.I.R. 1963 S.C. 1909, there is nothing in Article 226 of the Constitution to preclude a High

Court from exercising the power of review which inheres in every court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. But, there are definitive limits to the exercise of the power of review. The power of review may be exercised on the discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made; it may be exercised where some mistake or error apparent on the face of the record is found; it may also be exercised on any analogous ground. But, it may not be exercised on the ground that the decision was erroneous on merits. That would be the province of a court of appeal. A power of review is not to be confused with appellate power which may enable an Appellate Court to correct all manner of errors committed by the Subordinate Court.

21. In Devaraju Pillai v. Sellayya Pillai : AIR 1987 SC1160 , the Supreme Court held that a single Judge of this Court had no jurisdiction to upset the judgment of another single Judge in a Review Application, merely because he took a different view on a construction of the document involved in that case. In the earlier judgment of the court, the document was held to be a deed of settlement. In the review application, which came before another Judge as the Judge who decided the second appeal earlier was not available, held that it was a will. The Supreme Court held that the application for review was entirely misconceived and the learned Judge who entertained the application totally exceeded his jurisdiction.

22. In A.R. Antulay v. R.S. Nayak : 1988 CriLJ1661 , the court referred to the decision of a Privy Council in Issac v. Robertson (1984) 3 All E.R. 140 and pointed out that orders made by a Court of unlimited jurisdiction in the course of contentious litigation were regular or irregular and if an order was regular, it could be set aside only by an appellate court and if it was irregular, it could be set aside by the same court on an application being made to it either under the rules of that court or ex debito justitiae, if the circumstances warranted. On the facts of that case, the court said that it was correcting an irregularity committed by the court earlier, not on construction or misconstruction of a statute, but on non-perception of certain provisions and certain authorities which would amount to derogation of

constitutional rights of the citizen. The ruling is a very significant one and if there is a case of non-perception of certain provisions of law and certain authorities which would amount to derogation of the constitutional right of a citizen, an application for review is entertainable and in cases where principles, of natural justice have been violated, the court can act suo motu ex debito justitiae.

23. In S. Nagaraj v. State of Karnataka (1993) 4 S.C.C. 595, the court emphasised the paramount consideration of justice in each case according to the facts and circumstances and said:

18. Justice is a virtue which transcends all barriers. Neither the rules of procedure nor technicalities of law can stand in its way. The order of the court should not be prejudicial to anyone. Rule of stare decisis is adhered for consistency but it is not as inflexible in Administrative Law as in Public Law. Even the law bonds before justice. Entire concept of writ jurisdiction exercised by the higher courts is found on equity and fairness. If the court finds that the order was passed under a mistake and it would not have exercised the jurisdiction, but for the erroneous assumption which in fact did not exist and its perpetration shall result in miscarriage of justice then it cannot on any principle be precluded from rectifying the error. Mistake is accepted as valid reason to recall an order. Difference lies in the nature of mistake and scope of rectification depending on if it is of fact or law. But the root from which the power flows is the anxiety to avoid injustice. It is either statutory or inherent. The latter is available where the mistake is of the court. In Administrative Law the scope is still wider. Technicalities apart if the court is satisfied of the injustice then it is its constitutional and legal obligation to set it right by recalling its order...

19. Review literally and even judicially means reexamination or reconsideration. Basic philosophy inherent in it is the universal acceptance of human fallibility. Yet in the realm of law the courts and even the statutes lean strongly in favour of finality of decision legally and properly made. Exceptions both statutorily and judicially have been carved out to correct accidental mistakes or miscarriage of justice. Even when there was no statutory provision and no rules were framed by the highest court indicating the circumstances in which it could rectify its order the

courts culled out such power to avoid abuse of process of miscarriage of justice...

Rectification of an order thus stems from the fundamental principle that justice is above all. It is exercised to remove the error and not for disturbing finality.

24. In Commissioner of Sales Tax v. Pine Chemicals Limited : (1995)1SCC58 , the court held that if interpretation of law adopted by a Bench is inconsistent with earlier decisions delivered by a co-ordinate Bench and a larger Bench, it would amount to an error apparent on the face of record. It is needless to say that if a decision of a higher Court is inconsistent with the decisions of the highest court, it is an error apparent on the face of the record.

25. In Meera Bhanja v. Nirmala Kumari Choudhury : AIR 1995 SC455 , the Supreme Court said that an error apparent on the face of record must be such an error which must strike one or more looking at the record and would not require any long drawn process of reasoning on points where there may conceivably be two opinions.

26. The following principles can be culled out from the above rulings:

(1) If the judgment is vitiated by an error apparent on the face of the record in the sense that it is evident on a mere looking at the record without any long-drawn process of reasoning, a review application is maintainable.

(2) If there is a serious irregularity in the proceeding such an violation of principles of natural justice, a review application can be entertained.

(3) If a mistake is committed by an erroneous assumption of a fact which if allowed to stand, would cause miscarriage of justice, then also an application for review can be entertained.

It is not necessary to point out that the above principles are applicable de hors the provisions of Order 47, Rule 1 of the Code of Civil Procedure.

27. The requirements of the principles set out above are fully satisfied in this case.

28. G. Violation of Natural Justice: The applicant herein is a party who is directly affected by the judgment in the writ appeal. The third respondent was fully aware of the appointment of the applicant. The fact was also brought to the notice of the court by the Director of Collegiate Education in the counter-affidavit filed in the writ petition at the appellate stage. The court ought to have taken note of the fact that any decision in favour of the writ petitioner would result in ousting the applicant herein from service and he was a necessary party to the said proceeding. We have already referred to the judgment of the Supreme Court in Prabodh Varma's case : [1985]1SCR216 . It is categorically held in that case that the High Court should not proceed with a writ petition without insisting on persons who would be vitally affected, being made respondents. If such persons are large in number and it is difficult to implead them individually, at least some of them could be joined as respondents in a representative capacity. The Court has clearly directed that if the writ petitioner refuses to so join them, the High Court ought to dismiss the petition for non-joinder of parties. Unfortunately, in this case, the Division Bench did not take notice of the law laid down by the Supreme Court in Prabodh Varma's case : [1985]1SCR216 and insist upon the applicant herein being impleaded as a party to the proceedings. The Court ought to have dismissed the appeal for nonjoinder of the applicant herein. The failure on the part of the Court to give an opportunity to the applicant herein to appear in the proceedings and be heard, is undoubtedly violation of principles of natural justice. There is no merit in the contention of the third respondent that the applicant cannot put forward any defence independent of the Management. The remedy under Article 226 of the Constitution of India is equitable and discretionary and the applicant could have put forward some contentions which might not have been available to the Management and requested the Court to consider the same.

29. H. Error apparent on the face of the record: We have no hesitation in this case to hold that the judgment of the Division Bench is vitiated by an error apparent on the face of the record. The opinion of the Division Bench that there are no laches on the part of the third respondent herein in seeking to approach the Court under Article 226 of the Constitution of India, is on the face of it erroneous. There is no substance in the contention of the third respondent that the said opinion would amount to a finding of fact arrived at after considering the relevant facts of the

case. The judgment of the Division Bench under review does not indicate anywhere whether the Bench took note of the various facts set out earlier by us and which were all available to it on record. Suffice it to point out that the Division Bench has not given any reason for holding that there are no laches on the part of the third respondent herein. The fact that the third respondent approached the Court more than nine years after he was informed by the Secretary to the College in his letter 18/82-83/411 that the Director of Collegiate Education had informed the Management of the College that the third respondent should not be allowed to join duty without the prior permission of the Director, more than seven years after the letter dated 14.6.1984 from the Secretary to the College to the third respondent that he could not be allowed to join duty on 6.7.1984 and more than six years after the applicant herein was appointed as Assistant Professor, Physical Education. The only explanation given by the third respondent in his affidavit filed in support of the writ petition for the inordinate delay in filing the same is that he had been repeatedly writing to the College and the educational authorities that he wanted to rejoin duty. It has been held in a catena of decisions of the Supreme Court that the making of representations again and again to the same authority would not absolve a party from the consequence of undue delay and save him from the doctrine of laches.

Vide:

1. Rajalakshmiah v. State of Mysore A.I.R. 1967 S.C. 993 : (1967) 1 S.C.W.R. 272 : (1962) II L.L.J. 434 : (1967) 2 S.L.R. 70 : (1967) 2 S.C.J. 4164.

2. Rabindranath v. Union of India : [1970]2SCR697 .

3. J. Najaltiar v. State of Bihar : (1973)ILLJ474SC .

4. Amrit Lal v. Collector, C.E.C. Revenue : (1975)ILLJ144SC .

5. State of Orissa v. Arun Kumar : AIR 1976 SC1639 .

6. State of Orissa v. P. Samantrav : AIR 1976 SC2617 .

7. Gian Singh v. The High Court of Punjab and Haryana : (1981)ILLJ153SC .

8. G.C. Gupta v. N.K. Pandey : [1988]2SCR185 and

9. High Court of M.P. v. Mahesh Prakash : (1995)IILLJ48SC .

It is not necessary for us to quote from any of the above judgments as the principles are too well settled.

30. In a recent judgment in State of Maharashtra v. Digambar : AIR 1995 SC1991 , the Supreme Court has reiterated the principle and laid down the law in very clear terms as follows:

18. Coming to the exercise of power conferred upon the High Court under Article 226 of the Constitution for issuing orders, directions or writs for 'any purpose', such power is discretionary being a matter well-settled, cannot be disputed.

19. Power of the High Court to be exercised under Article 226 of the Constitution, if is discretionary, its exercise must be judicious and reasonable, admits of no controversy. It is for that reason, a person's entitlement for relief from a High Court under Article 226 of the Constitution, be it against the State or anybody else, even if is founded on the allegation of infringement of his legal right, has to necessarily depend upon unblameworthy conduct of the person seeking relief, and the court refuses to grant the discretionary relief to such person in exercise of such power, when he approaches it with unclean hands or blame-worthy conduct.

20. Laches or undue delay, the blame-worthy conduct of a person in approaching a Court of Equity in England for obtaining discretionary relief which disentitled him for grant of such relief was explained succinctly by Sir Darnes Peacook, long ago, in Lindsay Petroleum Co. v. Prosper Armstrong (1874) 5 P.C. 221, thus: 'Now the doctrine of laches in Courts of Equity is not an arbitrary or a technical doctrine. Where it would be practically unjust to give a remedy, either because the party has, by his conduct, done that which might fairly be regarded as equivalent to a waiver of it, or where by his conduct and neglect he has though perhaps not waiving that remedy, yet put the other party in a situation, in which it would not be reasonable to place him if the remedy were afterwards to be asserted, in either of these cases, lapse of time and delay are most material. But, in every case, if an

argument against relief, which otherwise would be just, is founded upon mere delay, that delay of course not amounting to a bar by any statute or limitations, the validity of that defence must be tried upon principles substantially equitable. Two circumstances, always important in such cases, the length of the delay and the nature of the acts done during the interval, which might affect either party and cause a balance of justice or injustice in taking the one course or the other, so far as it relates to the remedy.'

21. Whether the above doctrine of laches which disentitled grant of relief to a party by Equity Court of England, could disentitle the grant of relief to a person by the High Court in exercise of its power under Article 226 of our Constitution, when came up for consideration before a Constitution Bench of this Court in The Moon Mills Limited v. M.R. Meher, President, Industrial Court, Bombay and Ors. A.I.R. 1967 S.C. 1450, it was regarded as a principle that disentitled a party for grant of relief from a High Court in exercise of its discretionary power under Article 226 of the Constitution.

22. A three Judge Bench of this Court in Maharashtra State Road Transport Corporation v. Shri Balwant Regular Motor Service, Amravati and Ors. : [1969]1SCR808 , reiterated the said principle of laches or undue delay as that which applied in exercise of power of the High Court under Article 226 of the Constitution.

23. Therefore, where a High Court in exercise of its power vested under Article 226 of the Constitution issues a direction, order or writ for granting relief to a person including a citizen without considering his dis-entitlement for such relief due to his blame-worthy conduct of undue delay or laches in claiming the name, such a direction, order or writ becomes unsustainable as that not made judiciously and reasonably in exercise of its sound judicial discretion, but as that made arbitrarily.

31. Unfortunately, in this case the Division Bench which decided the writ appeal has completely ignored the principles laid down by the Supreme Court on the doctrine of laches and wrongly held that the third respondent is not guilty of any laches. Thus, this is a clear case of non-perception of the law laid down by the

Supreme Court and totally ignoring the pronouncements of that Court. The judgment of the Division Bench under review is wholly inconsistent with the decisions of the Supreme Court.

32. Blame Worthy Conduct: We have already referred to the fact that one of the reasons given by the learned single Judge for dismissal of the writ petition in limine was the conduct and attitude of the writ petitioner in getting the extraordinary leave and leaving the country for foreign assignment without proper intimation to the concerned authorities. The Division Bench has not chosen to advert to this matter at all. On the other hand, the Division Bench has made an erroneous assumption that the third respondent herein had gone abroad on foreign assignment only with the knowledge of the Secretary to the College. We have referred to the fact that such an allegation is put forward by the third respondent for the first time in his letter dated 17.5.1989 addressed to the Secretary to the College. Before that, they even when he was called upon to explain by the Secretary' s letter dated 4.9.1982 as to why he did not take the prior permission of the concerned authorities to go abroad, he did not state in his reply that he had taken the permission of the Secretary or the Management. We have also adverted to the inconsistency in the stand taken by him. It is not necessary for us to dilate much on that aspect of the matter. Even in the affidavit filed in support of the writ petition he has given two different versions. While in one place he has stated that he met the Board of Management, in another place he has alleged that he met the Secretary to the College and informed him of his foreign visit. In any event, the admitted fact remains that he did not have prior sanction for the extension of leave on loss of pay after 5.3.1983. The mere fact that he had applied for extension of leave again and again would not entitle him to stay away from duty when there was no specific sanction therefor. Even assuming that there was no express rejection of his application for leave, it cannot amount to prior sanction of such leave. Admittedly, according to the Code of Conduct prescribed for teachers and other persons employed in a College, as set out in Annexure I to the Tamil Nadu Private Colleges (Regulation) Rules, 1976, he is not entitled to absent himself from his duties without prior permission. Even if he states that he was never informed by the authorities concerned that his application for exemption of leave was not sanctioned, it cannot be contended by him by any stretch of

imagination that he absented himself from duty with prior permission of the authorities. That conduct of his is sufficiently blame-worthy to throw out his writ petition. The Division Bench has not adverted to that aspect of the matter at all and thus, the judgment is vitiated on the face of the record. We have already extracted the relevant passage in the judgment of the Supreme Court in Digambar's case : AIR 1995 SC1991 , wherein it has been categorically stated that the entitlement of relief under Article 226 of the Constitution has to necessarily depend upon the blameworthy conduct of the person seeking relief.

33. J. Article 21 of the Constitution: Learned Counsel for the third respondent repeatedly contended that his client's fundamental right under Article 21 of the Constitution has been affected considerably by the failure of the Management of the College to take him back in duty. There is a reference in the Division Bench judgment under review to Article 21 of the Constitution of India and the likelihood of the third respondent being deprived of his fundamental right under the said article in the event of his not being allowed to rejoin duty. In that connection, learned Counsel for the third respondent has placed reliance on the judgment of the Supreme Court in D.K. Yadav v. J.H.A. Industries Limited : (1993)IILLJ696SC . It is observed in that case that an order of termination of service of an employee visits the civil consequences of jeopardising not only his livelihood but also career and livelihood of dependents and therefore before taking any action putting an end to the tenure of an employee fair play requires that a reasonable opportunity to put forth his case is given and domestic enquiry conducted complying with the principles of natural justice. The principle has no application whatever in this case in view of the facts set out earlier. The third respondent, who has approached this Court invoking the extraordinary jurisdiction under Article 226 of the Constitution of India, has to satisfy this Court that he has come with clean hands. When, as pointed out earlier, his conduct is blameworthy, he cannot claim that he is entitled to get relief because of the provisions of Article 21 of the Constitution of India. If anybody is to be blamed for the third respondent's not being able to rejoin duty, it is only himself. He has brought it on his own head by his own conduct. Having enjoyed an employment outside India, without the prior permission of the educational authorities for more than a period of nine years, it still lies in the mouth of the third respondent that he will be deprived of the benefit under Article 21 of

the Constitution of India if he is not allowed to rejoin the College. For the purpose of this contention it should be remembered that the applicant's right under Article 21 of the Constitution of India is of equal importance, if not more. The applicant joined service in 1985 and if he is ousted in 1995, when he is aged about 35, he may not be in a position to get another employment. Himself and his dependents will lose their livelihood and Article 21 of the Constitution of India would stand violated insofar as they are concerned. Hence there is no merit whatever in the contention of the third respondent that his claim will fall under Article 21 of the Constitution of India.

34. It should also be noted in this connection that the Director of Collegiate Education has been vested with the power to sanction leave to staff of aided colleges to go abroad as seen from the proceedings of the Director of Collegiate Education, Madras in D. Dis. No. 123843/81/80 dated 4.10.1980. It is clear that the Director is advised not to delegate the powers to sanction leave to his subordinate unit officers and that he should retain the powers with himself. It is not the case of the third respondent that his leave for going abroad was sanctioned by the Director. The Proceedings of the Director dated 4.10.1980 and referred to above are referred to in detail in the counter-affidavit filed by the Director of Collegiate Education in the writ petition at the appellate stage. In the proceedings issued by the Secretary to the College sanctioning the leave of the third respondent on loss of pay from 6.3.1981 to 5.3.1983, there is no reference whatever to his going abroad. Admittedly, the third respondent sought for long leave only for personal affairs. In the circumstances, the Division Bench ought to have considered whether a mandamus could be issued in the writ petition directing the respondents therein to allow the writ petitioner to join duty in the College, particularly when there was no challenge whatever of the Director's proceedings referred to in the counter-affidavit filed by the Director whereby he passed an order that the third respondent should not be allowed to rejoin duty without the permission of the Director. Unless the Court had found that the said order of the Director was not valid, the Court should not have issued mandamus as has been done in this case.

35. K. Conclusion: In our opinion, on the facts and circumstances of this case, this Court could even exercise its suo motu power in order to render justice and set

aside the order passed by the Division Bench in the writ appeal. It is the duty of this Court to rectify the error committed by it and set right the record as has been held by the Supreme Court in Devidayal Rolling Mills v. Prakash Chiman Lal Parikh : [1993]2SCR611 .

We have no hesitation in rejecting the sanctions urged on behalf of the third respondent and allowing the application for review. As pointed out earlier, we have heard arguments on the merits of the writ appeal also as no purpose would be served in having the hearing in two different stages. We are convinced that the judgment of the learned single Judge dismissing the writ petition in limine is correct and there is no merit whatever in the writ appeal. The third respondent is not entitled to any relief under Article 226 of the Constitution of India. The writ appeal is, therefore, dismissed and the judgment of the learned single judge in W.P. No. 10609 of 1991 is confirmed. The review application is allowed. The third respondent shall pay the costs of the applicant herein in this proceeding. Counsel's fee Rs. 2,000.