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G.Srinivasan Vs. the Additional Director of Technical Education

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Court : Chennai

Decided On : Oct-13-2011

Judge : K.Chandru, J.

Acts : Tamil Nadu Payment of Subsistence Allowance Act, 1981; Constitution of India - Article 226

Appeal No. : Writ Petition (MD)No.6116 of 2011 and Writ Petition (MD)No.2580 of 2011

Appellant : G.Srinivasan

Respondent : The Additional Director of Technical Education

Judgement :

1. The petitioner is working as Assistant in the third respondent Polytechnic which is a private polytechnic governed by the Grant in aid Code given by the State Government and it is under the grant in aid, the authority is the Director of Technical Education.

2.In W.P.(MD)No.2580 of 2011, the petitioner challenges an order of suspension, dated 22.09.2010. The suspension was issued by the third respondent Principal for alleged disobedience of the instructions given by the superiors and also behaving in a dishonoured manner in spite of advice being tendered, the suspension was made pending enquiry.

3.Challenging the suspension, the petitioner filed the above writ petition. Notice of motion was ordered in the writ petition on 04.03.2011 and in the applications for interim stay and interim direction, no orders were passed by this Court. On notice from this Court, the third respondent has filed a counter affidavit, dated 30.03.2011. Even during the pendency of the said writ petition, it transpires that the enquiry against the petitioner was conducted by appointment of Enquiry Officer. The Enquiry Officer found the petitioner guilty and on the basis of the enquiry report, a notice was given to the petitioner as to why he should not be dismissed from service by a show cause notice dated 08.06.2011. It is at this stage, the petitioner filed W.P.(MD)No.6116 of 2011 and this Court while ordering notice regarding admission granted interim stay for a limited period. The interim stay was further extended by an order, dated 21.06.2011.

4.On notice being served in the above writ petition, the third respondent has filed a counter affidavit, dated 27.06.2011. Since there was a direction to hear both the writ petitions, they were heard together and a common order is passed.

5.Heard Mr.S.Muthukrishnan, learned counsel for the petitioner, Mr.R.Sivamanogaran, learned counsel for the respondents 2 and 3 and Mr.T.S.Mohammed Mohideen, learned Additional Government Pleader takes notice for the first respondent.

6.The ground of attack against the order of suspension was that the third respondent has failed to apply his mind before passing the order of suspension and the matter was not placed before the College Committee (ie., Committee of Management); that the disciplinary proceedings were not completed even after the suspension made for a period beyond three months and the subsistence allowance was not fully paid to the petitioner during the period of suspension and the suspension was not approved by the first respondent, Director of Technical Education.

7.In the counter affidavit, it was stated that the misconduct committed by the petitioner was serious warranting the suspension and the principal is the competent authority to deal with the non teaching staff of the institution since the petitioner has already moved this Court with a writ petition challenging the

suspension in order to seek legal opinion, the enquiry could not be completed. But there is no room that the enquiry should be completed within three months from the date of suspension. With reference to the payment of subsistence allowance, it is stated that on 27.10.2010, Rs.10306/-, on 26.11.2010, Rs.7,472/-, on 28.12.2010 Rs.7,486, on 27.01.2011 Rs.7,500 and on 23.02.2011 Rs.6,804/- was paid to the petitioner. Therefore, it was not correct to state that the subsistence allowance was not paid. It was also prayed that in the absence of statutory provision in intervening on the question of suspension, the petitioner was not entitled for questioning the impugned suspension order.

8.Learned counsel for the petitioner heavily relied upon the guidelines issued by the Director of Technical Education to all the Government aided polytechnics in Tamil Nadu, dated 25.01.2006. In the said guideline, at paragraph 5(a), it was stated that an employee should not be ordinarily suspended without any strong ground and in case, he suspended he should be paid 50% of the salary and if the suspension is extended beyond six months and even the management is directly responsible, it should be increased to 75% and if the reason for delay is attributable through employee, it could be reduced to 25%. As far as possible, the suspension should be brought to an end at an earlier date and if any circumstance warrants an extension of suspension beyond six months, then appropriate approval should be obtained from the Directorate.

9.The legal basis of the said circular is not set out. At the maximum, can be only taken as a guideline. No doubt in respect of aided polytechnic, the State Government is being grant in aid authority can regulate the grand in aid. But merely because grants are issued, they cannot stipulate conditions which are not based upon any law and which also goes against the norms relating to suspension. In the present case, the respondents have stated that the suspension is warranted because of the charges levelled against the petitioner and enquiry could not be completed because the petitioner has rushed to this Court challenging the suspension and they require legal advices. In any event, so far as the question of suspension is concerned, even for non teaching staff working in an educational institution is covered by the provisions of the Tamil Nadu Payment of Subsistence Allowance Act, 1981 (Tamil Nadu Act 43/1981) under Section 3 of the

said Act. It provides for rate of suspension and unlike guideline issued by the Directorate, the Act provides for subsistence allowance at the rate of 50% for the first 90 days and from 90 days to 180 days at the rate of 75 % and beyond 180 days, the Act provides for 100% wages. The Act also provides for Controlling Authority as well as the Appellate Authority and since the petitioner is only suspended covered by the provisions of the Act, it is always open to him to claim full wages before the appropriate authority and the petitioner is not satisfied the rate of subsistence allowance paid as stated in the counter affidavit, nothing preventing him from move the authority to claim full wages. But on that ground and in the absence of any law to the contrary, the suspension cannot be revoked. Hence, there is no case made out to interfere with the order of suspension and in turn, the writ petition is liable to be rejected.

10.The writ petition in W.P.(MD)No.6116 of 2011 is on a show cause notice issued to the petitioner after completion of the enquiry conducted by an Enquiry Officer. In normal circumstances, the Court do not interfere with the show cause notice. But in the present case, the contention of the petitioner was that the enquiry was not completed within six months and no explanation was sought for from the competent authority and therefore, the question of conducting hurriedly the ex-parte enquiry and trying to dismiss the petitioner cannot be allowed. It was further stated in the counter affidavit filed in W.P.(MD)No.2580 of 2011, the management had stated that they are seeking permission for completing the enquiry and sought time extension. In the absence of time extension being granted by the first respondent, no proceedings can be proceeded.

11.In the counter affidavit filed in W.P.(MD)No.6116 of 2011, by the third respondent, dated 27.06.2001. It was stated that there is no rule or law that disciplinary action cannot be continued beyond six months and if so, can be done only after getting prior approval of the authority concerned. In the absence of any statutory provision, the disciplinary action initiated by the management cannot be interdicted. It is also stated that one Advocate by name Sathyam was appointed as Enquiry Officer and despite enquiry notice issued by him, the petitioner did not attend the enquiry and it necessitated the Enquiry Officer to complete the enquiry ex-parte. The petitioner is expected to give his explanation on the enquiry report

as well as the proposed penalty. The writ petition is not maintainable. The only ground under which the petitioner placed his case was that the guideline issued by the Director of Technical Education and a copy of which produced by the management in the typed set. In that guideline, it is merely stated that the suspension should not be unreasonably extended and any suspension beyond six months, prior permission should be obtained, such arguments as already noted above, is not based upon law on this subject and also merely guideline issued pursuant to the grant issued by the State Government unless and until, such guideline is as statutory flavour even the question of entertainment of the writ petition is a doubtful proposition because admittedly, the third respondent is a private polytechnic. As correctly contended in the counter, in the absence of law, this Court cannot interdict an order passed by the management and even assuming that there was a law on the field, the Court on the basis of a self imposed restriction do not entertain the writ petition at the stage of show cause notice. It is always open to the petitioner to submit his explanation and even thereafter any adverse order is passed, the very same guideline provided an appeal to the Directorate of Technical Education against the order passed by the said private polytechnic and it is only thereafter, the question of invoking the jurisdiction of this Court under Article 226 of the Constitution of India for judicially reviewing the order passed by the statutory authority will arise. Hence, the writ petition is not maintainable. Since the time limit stipulated in the show cause notice is expired, the petitioner is directed to give his explanation, within two weeks from the date of receipt of a copy of this order.

12.In view of the above, both the writ petitions stand dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

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