
(2012) 09 MAD CK 0150

In the Madras High Court

Case No : Writ Petition (MD) No. 13607 of 2011

D. John Paul Louis

APPELLANT

Vs

The State of Tamil Nadu and Others

RESPONDENT

Date of Decision : 13-09-2012

Acts Referred:

Penal Code, 1860 (IPC) — Section 379(NP), 406, 408, 465

Citation : (2012) 09 MAD CK 0150

Hon'ble Judges : S. Manikumar, J

Bench : Single Bench

Advocate : E.V.N. Siva, for the Appellant; V. Pandi, Government Advocate for RR-1 to 3, Mr. P. Gunasekaran for R-4 and No Appearance for R-5, for the Respondent

Final Decision : Allowed

Judgement

S. Manikumar

1. Notice of motion has been ordered as early as on 29.11.2011. Though the Secretary, St. Jude's College, Thoothoor, Kanyakumari District has received notice from this Court and entered appearance on 20.01.2012 and represented by Mr. S. Murugaiyan and Mr. Gopalakrishnan, Advocates and that their names have also been shown in the cause-list, there is no appearance on behalf of the fifth respondent. The respondents 1 to 3 are represented by the State counsel. Mr. Gunasekarn has entered appearance for the Accountant General of Tamil Nadu, Chennai. Considering the prayer made in the writ petition that the fifth respondent has failed to submit proposals to the Joint Director of Collegiate Education, Tirunelveli District, for disbursement of earned leave benefits, leave on private affairs benefits, arrears of salary from 28.03.2007 to 30.06.2007 in the revised pay scale, arrears of revised pension and other reliefs sought for and also the fact that the petitioner had already been relieved on voluntary retirement from 30.06.2007 from St. Jude's College, Thoothoor, Kanyakumari District and in view of the earlier directions of this Court, made in W.P. No. 1967

of 2008 dated 04.03.2008 and in Crl. O.P. No. 2847/2012 dated 14.03.2012, this Court is constrained to dispose of the writ petition on the available materials.

2. As stated supra, there is no appearance for the 5th respondent, no counter has been filed.

3. According to the petitioner, he was appointed as an Assistant Professor in St. Jude's College, Thoothoor, Kanyakumari District on 28.07.1980. In 2005, the petitioner applied for permission to go abroad to Tanzania for two years as Project Development Officer at Lake Victoria Traders Limited, Tanzania under leave on loss of pay. The Government, issued G.O.(ID). No. 202 (Higher Education (E2) Department) dated 04.08.2005 and granted permission. The petitioner was relieved from the college on 02.09.2005 and he rejoined the college on 28.03.2007. Thereafter, the petitioner took voluntary retirement on 30.06.2007 and accordingly, he was relieved from the college.

4. After retirement, the petitioner has been receiving pension vide pension payment Order No. C 618385/EDA from 01.07.2007. Provident fund, commuted value of pension, gratuity, special provident fund and UGC and 3rd installment arrears of Vth Pay commission were also paid. However Earned leave salary, leave on private affairs salary were not paid to the petitioner. Repeated representation were also made to the college management as well as to the Director of collegiate Education, Chennai and the Joint Director of Collegiate Education, Tirunelveli District/respondents 2 and 3. In response to the same, the Joint Director of Collegiate Education, Tirunelveli Region, Tirunelveli District has also directed the Secretary of the College/5th respondent to submit the proposals with necessary documents.

5. The petitioner has further contended that after his retirement, the Government of India have directed the University Grants Commission to revise the scale of pay with effect from 01.01.2006 for the teachers with equivalent cadres in universities and colleges. Pursuant to the above, the State Government have also extended the benefits to the lecturers and other employees vide G.O. Ms. No. 234 (Finance (Pay Cell)) Department dated 01.06.2009. As the petitioner took voluntary retirement on 30.06.2007, he is entitled to get the revised scale of pay from 01.01.2006 and also the arrears of pay from 28.03.2007 to 30.06.2007. On that basis, he is also entitled to get revised pension, gratuity and commutation of pension etc.,

6. It is the case of the petitioner that though several representations have been made to the 5th respondent college and the educational authorities/respondents 2 and 3, requesting to sanction earned leave benefits, Leave on private affairs, arrears of salary from 28.03.2007 to 30.06.2007 in the revised pay scale, revised pension and other benefits on the basis of the revised pay scale, change in gratuity and commutation etc., there is no response from the 5th respondent college. He also submitted that though the Joint Director of Collegiate Education, Tirunelveli Region, Tirunelveli District/third respondent herein vide proceedings

dated 15.10.2008, 29.12.2008, 25.02.2009, 03.04.2009, 29.05.2009, 24.07.2009, 28.04.2011, 15.07.2011, 28.07.2011 and 03.10.2011, has instructed the fifth respondent college to submit a proposal for sanction of the above said benefits along with the Service Register, making frivolous allegations and raising a doubt about the educational qualifications of the petitioner at the time of joining in the college, the fifth respondent has unnecessarily delayed submitting the proposals to the Joint Director of Collegiate Education, Tirunelveli Region, Tirunelveli for sanction and disbursement of the above said benefits.

7. The petitioner has further contended that on the allegations of producing false and bogus educational and other certificates, a detailed enquiry was conducted by the Joint Director of collegiate Education, Tirunelveli Region, Tirunelveli District/ third respondent herein. The fifth respondent, Secretary also attended the enquiry. After verification of the documents, certificates, the Joint Director of Collegiate Education, Tirunelveli has submitted a detailed report to the Director of Collegiate Education, Chennai stating that the certificates submitted by the petitioner are genuine and the allegations are false. Despite the same, the fifth respondent has been defying in not submitting the service particulars and that he has also detained the same. The petitioner has further submitted that his appointment as Assistant Professor in St. Jude's College, St. Jude's College, Thoothoor, Kanyakumari District has been approved by the Director of Collegiate Education, Chennai and also by the concerned University. In such circumstances, the Secretary of St. Jude's College, Thoothoor, Kanyakumari District, has no authority to retain the Service Register and protract disbursement of the revised pension and other benefits. In these circumstances, the petitioner has come forward with the present writ petition for a mandamus as stated supra.

8. When the matter came up for hearing, Mr. E.V.N. Siva, learned counsel appearing for the petitioner has filed an additional typed set of papers and on the basis of the same, he contended that one Mr. J. Pabianouse had filed a writ petition in W.P.(md). No. 1967 of 2008 for a mandamus directing the respondents therein to consider the representation dated 23.07.2007 and hold an enquiry regarding the malpractices alleged to have been committed by the third respondent therein (the petitioner in this writ petition). This Court, after going through the materials on record and the averments, had categorically held that Mr. J. Pabianouse, the complainant herein had not substantiated that the certificates produced by the petitioner for securing a job was bogus. Learned counsel for the petitioner has further submitted that the request of the complainant therein for conducting a roving enquiry was already rejected holding that the writ petition cannot be maintained.

9. Inviting the attention of this Court to the order passed in Crl. O.P. No. 2847 of 2012 dated 14th March 2012, learned counsel further submitted that when Reverent Father Mr. Francis Vincent, the then Secretary of St. Jude's College, Thoothoor, Kanyakumari District filed an application for anticipatory bail application apprehending arrest for the alleged offences punishable under

Sections 379(NP), 406, 408, 465 of I.P.C in Cr. No. 40 of 2012 on the file of the Inspector of Police, Nithiravilai Police Station, Kanyakumari District, the writ petitioner was permitted to intervene, as regards retention of the Service Register of the petitioner by the then Secretary, Reverent Father Mr. Francis M. Vincent, the first accused in the criminal case and the petitioner in Crl. M.P. No. 599 of 2012.

10. After considering the submissions, a specific direction was issued to the 5th respondent to hand over the service register to the appropriate authorities and that, liberty was also given to the Investigating Officer to search and seize the records pertaining to the writ petitioner and one Sports Marker by name Susai Adimai, from the fifth respondent.

11. Learned counsel for the writ petitioner further submitted that pursuant to the directions of this Court in Crl. O.P. No. 2847 of 2012, the Joint Director of the Collegiate Education, Tirunelveli Region filed R.C. No. No. 12445/E2/2011 dated 08.05.2012 addressed a letter to the Superintendent of Police, Kanyakumari District, to take steps for securing the service register and other records of the writ petitioner and that of Mr. Susai Adimai, so as to enable the educational authorities, to sanction the revised pension and other retiral benefits.

12. Learned counsel for the petitioner, also invited the attention of this Court that the Inspector of Police, Nithiravilai Police Station, Kanyakumari District, has sent a letter dated 06.06.2012 to Rev. Father Mr. Francis M. Vincent to furnish the details as to whom the service register of Susai Adimai has been sent. The Inspector of Police, has also directed the above said individual, that action has to be taken as per the directions of this Court and therefore, directed him to inform all the details within three days.

13. In response to the said letter dated 06.06.2012, Rev. Father Mr. Francis M. Vincent claiming himself to be continuing, as the Secretary of St. Jude's College, Tuthoor, Kanyakumari District has sent a letter to the Inspector of Police, Nithiravilai Police station, accepting that as per the statement given to the police on 15.05.2012, the service register of Susai Adimai, Sports Marker has already been sent to the Director of Collegiate Education, Chennai. Though the Directorate of Collegiate Education has stated that the service register has not been received from the fifth respondent, he has categorically admitted, that it is his duty to send the service register.

14. In his reply dated 13.06.2012, sent to the Inspector of Police, Nithiravilai Police Station, the Secretary of St. Jude's College, Thoothoor, Kanyakumari District, has stated that a complaint has been made to the Superintendent of Police, Kanyakumari District regarding the genuineness of the educational certificates produced by the petitioner for securing a job in the fifth respondent college and that the service register is a vital document to prove the alleged crime, said to have been committed by the writ petitioner. However, he has stated that he would abide by the directions to be made in this writ petition No.

13607/2011.

15. Material on record shows that the Joint Director of Collegiate Education, Tirunelveli Region, Tirunelveli District/third respondent herein, has sent letters dated 15.10.2008, 29.12.2008, 25.02.2009, 03.04.2009, 29.05.2009, 24.07.2009, 28.04.2011, 15.07.2011, 28.07.2011 and 03.10.2011 to the Secretary, St. Jude's College, Thoothoor, Kanyakumari District to submit the proposals for disbursement of payment of earned leave benefits, Leave on private affairs, arrears of salary from 28.03.2007 to 30.06.2007 in the revised pay scale, revised pension and other benefits on the basis of the revised pay scale, revised pension and other benefits due and payable to the writ petitioner.

16. It is not in dispute that after induction into the college as Assistant Professor, on 28.07.1980, certificates pertaining to the educational qualifications and other details have been verified by the Joint Director of Collegiate Education, Tirunelveli Region/third respondent and also by the concerned University and accordingly, the appointment of the petitioner as Assistant Professor has been approved. It is also not in dispute that the petitioner had worked in the college for nearly 27 years, except the short break when he was permitted to go abroad, as a Project Development Officer at Lake Victoria Traders Limited, Tanzania, on loss of pay and that the Government of Tamil Nadu had also granted permission in G.O.(ID). No. 202 (Higher Education (E2) Department) dated 04.08.2005.

17. It is also not in dispute that after relieving the petitioner on voluntary retirement from 30.06.2007 from the 5th respondent college, the petitioner has been receiving pension under Pension Payment Order No. C 618385/EDA, from 01.07.2007 and that he has also received provident fund, commuted value of pension, gratuity, special provident fund and UGC 3rd installment arrears of Vth Pay Commission. However, earned leave salary, leave on private affairs salary, arrears of salary from 28.03.2007 to 30.06.2007 consequent to the revision of scale of pay with effect from 01.01.2006 as per the University Grants Commission and also the change in gratuity and commutation etc., have not been paid due to the delay in not submitting the proposals by the Secretary, St. Jude's College, Thoothoor, Kanyakumari District.

18. The Joint Director of Collegiate Education, Tirunelveli Region, Tirunelveli District/3rd respondent herein has sent a letter dated 15.10.2008 to the Secretary, St. Jude's College, Thoothoor, Kanyakumari District directing the latter to submit the proposals before 22.10.2008 and in that letter, it is also indicated that for the delay, the Secretary of the college would be held responsible. Even though the third respondent, the Joint Director of Collegiate Education, Tirunelveli Region, Tirunelveli District has been continuously reminding the fifth respondent college to send the service register and other documents so as to enable the educational authorities to process the proposal and accordingly, sanction the amounts due and payable to the petitioner. The Joint Director of Collegiate Education, Tirunelveli has failed to take action against the fifth respondent college for not adhering to the directions issued from time to

time. Mere sending of repeated letters to the fifth respondent college, reminding him to forward the proposals for payment of unearned leave salary, revision of salary and other retiral benefits, stated supra is not proper exercise of protecting the conditions of service of a teacher and that the Educational Authorities/respondents 2 and 3 ought to have taken appropriate action against the college as per the Tamil Nadu Private Colleges (Regulation) Act, 1976 and the rules framed thereunder.

19. Material on record and the enclosures filed in the form of typed set of papers further disclose that when the complaint was made by one Mr. Clarette, alleging submission of bogus certificates by the writ petitioner, for securing the appointment, the Director of Collegiate Education, Chennai in R.C. No. 19065/F2/2011, dated 07.07.2011 has directed the Regional Joint Director of Collegiate Education, Tirunelveli Region, Tirunelveli District to conduct an enquiry and submit a report. Pursuant to the same, the Joint Director of Collegiate Education, Tirunelveli Region, has issued a proceeding in R.C. No. 05176/E2/2011 dated 28.04.2011 and directed the Secretary of St. Jude's College to produce the service register and also to send the proposals within three days from the date of receipt of the above said letter. Yet another letter in R.C. No. 8799/E2/2011 dated 22.08.2011 has been sent to the petitioner to appear before the said authority on 23.08.2011.

20. In enquiry, the complainant Mr. Clarette, had not appeared. The Secretary of the College, Rev. Father Francis Mr. M. Vincent, Mrs. Mary Phelominal Villavarayal, the Principal In-charge, and teachers and staff had participated in the enquiry. The Joint Director of Collegiate Education, Tirunelveli Region, after considering the complaint and the documents has categorically found that the complaint was only due to some internal dispute in the college, between the teaching staff and non-teaching staff. He has also categorically found that the complaint is false. In his report in R.C. No. 8799/E2/2011, dated 24.08.2011, addressed to the Director of Collegiate Education, Chennai, the Joint Director of Collegiate Education, Tirunelveli District has categorically stated that the qualifications obtained by the petitioner has been approved by the University. For better appreciation, relevant paragraphs in the above said letter is extracted hereunder:

21. From the consequence of events stated supra, it is evident that alleging that the petitioner had produced bogus educational certificates and secured employment, the fifth respondent, has withheld the proposals for the sanction and disbursement of Earned Leave benefits, Leave on private affairs and arrears of salary from 28.03.2007 to 30.08.2007 in the revised scale of pay, arrears of revised pension on the revised gratuity, commutation of pension etc., The report of the Joint Director of Collegiate Education, Tirunelveli Region dated 24.08.2011, stated supra, is clear that, after due enquiry in the presence of the Rev. Father Mr. Francis M. Vincent, the Secretary of the fifth respondent college, Mrs. Mary Phelomina, In-charge Principal, teachers and the staff, the said

authority has categorically found that the complaint was only due to some internal dispute and in all the documents, the Principal as well as the Secretary have countersigned and that Staff Grant has been raised for all these years. The Director of Collegiate Education, Chennai and the concerned University have also granted approval, which were also duly recorded in the service register pertaining to the writ petitioner. After participating in the enquiry before the Joint Director of Collegiate Education, Tirunvelveli Region, the Secretary of St. Jude's College, Thoothoor, Kanyakumari District/5th respondent seem to have once again made a complaint to the Superintendent of Police, Kanyakumari District to investigate as to whether the certificates are genuine or not.

22. It is to be noted that for approval of appointment, the Educational Authorities, were enjoined with a duty to verify the genuineness of the documents pertaining to the educational qualifications and other certificates. Moreover, when a complaint for submission of bogus certificates by the petitioner was made to the Vigilance and Anti-Corruption Department, by one Mr. Clarette, the said department has sent a letter to the Director of collegiate Education, Chennai in letter No. 34415/EDN/2011/KK dated 18.05.2011 and also other letter No. 34533/EDN/2011/KK/25.05.2011. That apart, the complainant Mr. Clarette has also sent a letter to the Special Cell, Honourable Chief Minister and that the Cell, has forwarded the said complaint along with the letter No. F/108440/KK/CO9/2011 dated 24.05.2011. Taking cognizance of all the above said letters including the letter from Vigilance and Anti-Corruption Department, the Director of Collegiate Education, Chennai has ordered for an enquiry. The enquiry revealed that there are no prima facie materials to substantiate that the certificates produced by the writ petitioner were bogus.

23. At this juncture, it is also worthwhile to extract the findings of the Joint Director of Collegiate Education, Tirunelveli Region, Tirunelveli, in his letter dated 24.08.2011, addressed to the Director of Collegiate Education, Chennai-6.

24. The fifth respondent has participated in the enquiry and in that there is a clear finding by the Joint Director of Collegiate Education, Tirunelveli Region, that the allegations against the petitioner were not substantiated. The retention of the service register and other records and without submitting the proposals for disbursement of the above said benefits by the fifth respondent, by stating that he had preferred a complaint to the Superintendent of Police, Kanyakumari District is a clear dereliction of duty on the part of the fifth respondent. Repeated enquiries and investigation into the allegations, cannot be made again and again. The veracity or genuineness of the certificates had already been verified by the educational authorities. In such view of the matter, this Court is of the view that the Secretary, St. Jude's College, Thoothoor has been unnecessarily retaining the service register and other records, despite a specific direction given by this Court in Crl. O.P. No. 2847 of 2012 dated 14.03.2012.

25. At this juncture, at the risk of repetition, this Court deems it fit to reproduce the directions made in Crl. O.P. No. 2847 of 2012.

Though according to the Professor John Paul Louis, the service registers are available in the custody of the petitioner, it would be better if the petitioner himself (Rev. Father Mr. Francis M. Vincent) to hand over those registers to the appropriate authorities.

In spite of the same, the fifth respondent has not handed over the service register and other certificates to the educational authorities or the police, but in his letter dated 13.06.2012 addressed to the Inspector of Police, Nithiravilai Police Station, Kanyakumari District, he has stated that the above said document is vital and the service register is required to prove the alleged crime. The fifth respondent has impliedly admitted that he is retaining the service register, despite the directions of this Court in Crl. O.P. No. 2847 of 2012, as it is evident that the fifth respondent has defied the directions issued by this Court. Nevertheless, the fifth respondent has stated that he would abide by any directions to be issued in the present writ petition. In the above circumstances, this Court is of the view that he has not only failed to act as per the directions of this Court, but has protracted sending proposals, raising the same objections again and again. On the facts and circumstances of this case, this Court is of the view, that there is a failure on the part of the 5th respondent college in not adhering to the provisions of the Tamil Nadu Recognized Private Colleges (Regulation) Act, 1976 and the rules framed thereunder, in not forwarding the proposals to the educational authorities, for disbursement of the amounts due and payable to the petitioner and hence, the petitioner has made a case for issuance of mandamus.

26. Accordingly, a direction is issued to the Secretary, St. Jude's College, Thoothoor to submit necessary proposals within ten days from the date of receipt of a copy of this order to the Joint Director of Collegiate Education, Tirunelveli Region, Tirunelveli for payment of earned leave benefits, leave on private affairs benefits, arrears of salary from 28.03.2007 to 30.06.2007 in the revised pay scale, arrears of revised pension and other benefits on the basis of the revised pay scale viz., change in gratuity and commutation etc.,. As there is a considerable delay from 2007 onwards for nearly five years, on receipt of the proposals from the fifth respondent college, the Joint Director of Collegiate Education, Tirunelveli Region, Tirunelveli District is directed to process the proposals in accordance with law and sanction the amounts due and payable to the petitioner and forward the sanction orders to the Accountant General of Tamil Nadu, Chennai/fourth respondent herein, who shall issue necessary authorisation for disbursement of revised pension, gratuity and commutation of pension etc., within one month from the date of receipt of the proposals. For the failure to act as per the directions of this Court, this Court deems it fit to award cost to the fifth respondent, which is quantified at Rs. 10,000/-. The writ petition is allowed with costs of Rs. 10,000/- to be paid forthwith.