
(2011) 10 MAD CK 0068
In the Madras High Court
Case No : Writ Petition No. 18517 of 2011

Dr. Ordetta Mendoza

APPELLANT

Vs

The Principal Stella Maris College (Autonomous), 17,
Cathedral Road, Chennai-600 086

RESPONDENT

Date of Decision : 18-10-2011

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 21, 30(1)

Citation : (2011) 10 MAD CK 0068

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : S. Elambharathi for M/s. D.P. Associates, for the Appellant; P. Godson Swaminath for Mr. Issac Mohanlal, for the Respondent

Final Decision : Dismissed

Judgement

Honourable Mr. Justice K. Chandru

1. The petitioner has filed the present writ petition seeking to challenge an order dated 29.7.2011 passed by the respondent and seeks to set aside the same and consequently to direct the respondent college to grant leave on loss of pay for the period of Fellowship in case the petitioner is selected for "Fullbright - Nehru Senior Fellowship" for the year 2012-2013.

2. This is the second round of litigation by the petitioner. When earlier the petitioner filed a writ petition being W.P.No. 16353 of 2011, this court by an order dated 12.7.2011 had directed the respondent to make an endorsement in the petitioner's application so as to forward the same. It was stated that at that stage, it is unnecessary to withhold the application and that as and when any Fellowship was ordered, the relief if any to be granted can be gone into and this order was passed without prejudice to the right of both sides. Subsequently, the main writ petition was disposed of by an order dated 28.7.2011 and the court held in paragraphs 12 and 13 as follows:

12. The contention of the respondent-College that to maintain the academic excellence of the College the presence of the petitioner is very much required, gives an implied meaning that the petitioner is a best Professor. Since, the petitioner is applying for study leave on loss of pay, the respondent should be more practical in considering the fact about the last chance available to the petitioner.

13. In the result, this writ petition is disposed of, directing the respondent to reconsider the decision dated 12.7.2011 and also considering all the aspects of the matter, shall pass fresh orders forthwith....

3. After the direction was issued by this court, the College management had refused to accept any long leave on the part of the petitioner. Though it was contended that research fellowship has no connection with the subject taught by the petitioner, I.e., Botony. In any event, it was stated that the department is functioning with minimum number of faculty in view of the non sanction of adequate number of teaching staff by the Government. Therefore, even releasing one faculty will cause prejudice in handling the work load. It was also stated that leave on loss of pay is not a matter of course and permitting a teacher to go on leave for a long period of eight months, almost the whole academic year, will jeopardize the educational interest of students. Therefore, the College has expressed its inability to record in the application regarding leave in column No. 16 that she will be given leave. Hence the petitioner is once again before this court.

4. It was contended that the order passed by the college was illegal and that she has right under Articles 19 and 21 of the Constitution. The Fellowship is related to the subject taught by her and that the reason that there were minimum number of staff cannot be a ground. The respondent had also permitted some other staff in some other department. Hence a direction should be issued.

5. On behalf of the respondent, Mr. P. Godson Swaminath, learned counsel for Mr. Issac Mohanlal appeared. 6.The short question that arises for consideration is whether the order passed by the respondent is liable for interference?

7. The learned counsel for the petitioner placed reliance upon a judgment of the Supreme Court in V.C., Banaras Hindu University and Others Vs. Shrikant, and referred to the following passages found in paragraphs 41 and 51 which reads as follows:

41. Although, laying down a provision providing for deemed abandonment from service may be permissible in law, it is not disputed that an action taken thereunder must be fair and reasonable so as to satisfy the requirements of Article 14 of the Constitution of India. If the action taken by the authority is found to be illogical in nature and, therefore, violative of Article 14 of the Constitution, the same cannot be sustained. Statutory authority may pass an order which may otherwise be bona fide, but the same cannot be exercised in an unfair or unreasonable manner. The respondent has shown before us that his

leave had been sanctioned by the Director being the Head of the Department in terms of the Leave Rules. It was the Director/Head of the Department who could sanction the leave. Even the matter relating to grant of permission for his going abroad had been recommended by the Director. The respondent states, and it had not been controverted, that some other doctor was given the charge of his duties. We have indicated sufficiently that the Vice-Chancellor posed unto himself a wrong question. A wrong question leads to a wrong answer. When the statutory authority exercises its statutory powers either in ignorance of the procedure prescribed in law or while deciding the matter takes into consideration irrelevant or extraneous matters not germane therefor, he misdirects himself in law. In such an event, an order of the statutory authority must be held to be vitiated in law. It suffers from an error of law.

51. An order passed by a statutory authority, particularly when by reason whereof a citizen of India would be visited with civil or evil consequences must meet the test of reasonableness. Such a test of reasonableness vis-à-vis the principle of natural justice may now be considered in the light of the decisions of this Court.

8. On the basis of the same, the learned counsel emphasized his client's right under Article 14 of the Constitution. But, however the said judgment has no relevance as it had dealt with the case of termination and not sanction of leave as a matter of right as such. In this context, it is necessary to refer to a subsequent judgment of the Supreme Court in *National Institute of Technology, Jamshedpur and Others Vs. Chandra Shekhar Chaudhary*, . The Supreme Court in the said judgment had rejected the contentions merely because in some other case norms were not followed, that should not be a ground to grant leave as a matter of right. Therefore, the allegation that some other person in the department of Social work was granted leave, will not help the case of the petitioner.

9. It must be noted that the respondent college has given valid reasons which cannot be said to be either irrational or arbitrary. Further, the respondent college is a minority institution having protection under Article 30(1) of the Constitution and the right to administer the institution largely vest on them. Only in case of clear violation of any statutory rules, the court can interfere with such order of minority institutions.

10. In view of the above, there is no case made out to entertain the writ petition. Accordingly, the writ petition will stand dismissed. No costs.