

(2014) 10 MAD CK 0155
In the Madras High Court
Case No : Writ Appeal No. 228 of 2012

Palanisamy

APPELLANT

Vs

Kongunadu Arts and Science College

RESPONDENT

Date of Decision : 13-10-2014

Acts Referred:

Citation : (2015) LabIC 4 : (2014) WritLR 1008

Hon'ble Judges : P.R. Shivakumar, J;N. Paul Vasantha Kumar, J

Bench : Division Bench

Judgement

N. Paul Vasantha Kumar, J.—Heard the learned counsel for the appellant as well as the respondents. This writ appeal is filed against the order made in W.P. No. 15382 of 2012, dated 14.8.2012, wherein the appellant has challenged the rejection of request seeking re employment in service from 1.7.2012 to 31.5.2013.

2. It is seen from the records that the appellant has submitted an application seeking re-employment and on the date of submitting the application, charge memo was pending, which has resulted in imposing the punishment of censure, by order dated 23.6.2012. Considering the said imposition of censure on 23.6.2012, the order rejecting the request of re-employment was passed on 25.06.2012.

3. The contention of the learned counsel appearing for the appellant is that the censure order was put under challenge and therefore the same has not become final.

4. The above said contention cannot be accepted, since the condition for getting re-employment after attaining the age of superannuation in the middle of the academic year is that the conduct and character of a person seeking re-employment should be good and physically fit. The said issue was already considered by the Division Bench of this Court in W.A. No. 1226 of 2003, dated 5.1.2007 in which one of us (NPVJ) is a member, wherein in paragraphs 8 to 10 it

is held thus.

"8. The learned counsel for the 1st respondent, in this regard, would rely on the judgment of a Division Bench of Madurai Bench of this Court in *The Secretary Devangar Higher Secondary School, Chinnalapatti, Dindigul District v. S. Ayyathurai and others* (W.A. No. 106 of 2009 dated 31.01.2011) wherein having considered the Government Order in question viz., G.O.Ms. No. 1643 Education Department, dated 27.10.1988 which relates to teachers in schools has held in para 6 to 10 as follows:-

"6. It is well settled position that the re-employment is not an automatic one but on the other hand, it is only subject to the following conditions:

- i) That the conduct and character of the teachers should be satisfactory;
- ii) They should be physically fit to continue in service and
- iii) The pension papers should be submitted at least one year before the date of retirement.

In the instant case, it is the contention of the learned counsel for the appellant school that the conduct and character of the first respondent are not satisfactory for re-employment.

7. The contention of the first respondent that only with a mala fide intention certain allegations were made against the first respondent to deprive him from getting the benefits of re-employment is unsustainable. We find that except making a bald statement that the impugned order has been passed with the mala fide, the first respondent is unable to point out any valid reason as to why the appellant school has to pass an impugned order with the mala fide intention against him. Moreover, we find that the appellant school on enquiry imposed a minor punishment on the first respondent. In this background, we are of view that there is no infirmity in the order passed by the appellant school rejecting the claim of the first respondent for re-employment especially when the reemployment is not a right nor it is automatic. In W.A. No. 1226/2003, dated 5.01.2007 and W.A. No. 2693/2007, dated 16.03.2007 a Division Bench of the Principal Seat [in which one of us (NPVJ) was party] considered similar issue and declined the relief of reinstatement sought by the appellant therein the relevant portion of the order is extracted hereunder:-

"8. The point in issue is whether the rejection of re-employment to the appellant by the first respondent management is justified or not.

9. There is no dispute that even after reinstatement after his termination was set aside, the appellant was issued with charge memo, for which the appellant also submitted his explanation. The appellant also took leave on various spells during his employment after reinstatement. The school committee of the first respondent which is the competent authority considering the service records of the petitioner and his conduct found that the appellant is not entitled to get re-

employment and his continuance in service will not be beneficial to the interest of the students as well as the institution. The said decision taken by the first respondent was confirmed by the Director of School Education while considering the appeal filed by the appellant. The learned single Judge also gave a finding that the appellant's performance was not satisfactory even after his retirement and therefore the management has got a right to consider the conduct of the appellant and rejected the request for reemployment. We see no ground to interfere in the said findings given by the school committee, director of school education who is the appellate authority and the learned single Judge.

10. In W.A. No. 1226 of 2003, dated 05.01.2007 (G. Annamalai v. The Joint Director (Higher Secondary), Madras and others], we have rejected similar plea made by the appellant therein considering the Government orders issued in G.O.Ms. No. 452., dated 24.3.1970, G.O.Ms. No. 1712, dated 05.08.1976 and G.O.Ms. No. 1653, dated 21.10.1986. In paragraph 10 of the said judgment, we have held as follows:-

"10. In the light of the decision arrived at by the management, taking note on the conduct of the appellant, we are unable to sustain the contention of the appellant that he is entitled to get re-employment from 2.9.1995 to 31.5.1996 Only when the teacher satisfies that his/her conduct and character are good and that he/she is physically fit to be re-employed, reemployment can be sought for. In this case, the appellant's request was already considered by the School Committee and rejected."

8. Applying the above said judgment to the facts of this case, we are not in agreement with the order passed by the learned single Judge in allowing the writ petition on a reasoning that the appellant school has initiated action only after receiving the request from the first respondent for re-employment, Hence, for the foregoing reasons, the order passed by the learned single judge to liable to be set aside and accordingly the same is set aside. The writ petition is allowed.?

9. G.O.Ms. No. 281 is similar that of G.O.Ms. No. 1643 Applying the principles stated in the judgment of the Division Bench of this Court cited supra, I have to necessarily hold that the petitioner is not entitled for re-employment since the management who is the appointing authority has decided not to give him re-employment based on his conduct and character. The very fact of punishment for the misconduct in my considered opinion, is a ground to reject the request of the petitioner for re-employment.

10. Though it is submitted by the learned counsel for the petitioner that the charge memorandum itself was issued only with a view to deny him re-employment, I do not find any material to substantiate the said contention. The fact remains that in culmination of the disciplinary proceeding, punishment was imposed on the petitioner and the same has become final."

5. Again a similar claim of School Teacher was considered in W.A. No. 106 of 2009, by order dated 31.1.2011 and by a Division Bench of this Court in P.

Ravichandran Vs. State of Tamil Nadu, (of which one of us (NPVJ) is a member), wherein it was held as follows:-

"The Aided College teachers as well as the Government College teachers, who are attaining the age of superannuation during the middle of the academic year are allowed to continue up to the end of the academic year, i.e. upto the end of May if their conduct is good and they are physically fit. The same is made clear, insofar as colleges are concerned, in G.O.Ms. No. 281 Education Department, dated 13.2.1981. The underlying idea behind the said Government Order, which is still in force is, to ensure continuity of the benefit of teaching to students by the teachers, who attain the age of superannuation during middle of the year, for rest of the academic year."

In this case, charge memo was pending when the application for re-employment was submitted and ultimately punishment of censure was issued, which has not been set aside as on date. Hence, the learned Single Judge was perfectly right in dismissing the writ petition, taking note of the conduct of the appellant. There is no merit in the writ appeal and hence the writ appeal is dismissed. No costs.