

(2015) 02 MAD CK 0159
In the Madras High Court
Case No : Writ Petition No. 16954 of 2013

S. Hema

APPELLANT

Vs

The Vice Chancellor Bharathir University and Others

RESPONDENT

Date of Decision : 13-02-2015

Acts Referred:

Contract Act, 1872 — Section 171

Citation : (2015) 02 MAD CK 0159

Hon'ble Judges : T.S. Sivagnanam, J.

Bench : Single Bench

Advocate : A.S. Baalaji, for the Appellant

Final Decision : Disposed off

Judgement

T.S. Sivagnanam, J.—Heard Mr.A.S. Baalaji, learned counsel for the petitioner and Mr.N.Manokaran, learned counsel for the second respondent and with the consent of the learned counsel on either side, the Writ Petition itself is taken up for disposal.

2. The petitioner seeks for a Writ of Mandamus to direct the 1st respondent to issue suitable instructions to the second respondent to return her original certificates.

3. The petitioner worked as a part-time Teacher in the second respondent College from June 2008 to April 2010. It is stated that while she was working in the said Institution, she was given an opportunity to undergo the post-graduation course in M.A. English Literature under the scheme of ""Earn While you learn" programme and the petitioner was directed to submit Original Certificates to the second respondent. Accordingly, the petitioner has submitted the following Certificates to the respondent management:

- i. SSLC Mark Sheet
 - ii. HSC Mark Sheet
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- iii. UG Consolidated Mark Sheet
- iv. UG Provisional
- v. UG Degree Certificate
- vi. PG Consolidated mark sheet
- vii. PG Provisional
- viii. PG Degree Certificate
- ix. Transfer Certificate
- x. Community Certificate

4. The petitioner would state that due to family circumstances, the petitioner could not continue her employment, as she had to move out of Dindigul. The petitioner is said to have submitted a resignation by giving three months' notice and after completion of the notice period, the petitioner was not relieved. Therefore, the petitioner had to leave the job on her own volition and the Certificates continue to remain with the respondents. Subsequently, the petitioner approached the second respondent during 2011 for return of the said certificates, but the management insisted that the petitioner should pay a sum of Rs.18,000/- as notice pay to enable her to get back the Original Certificates. The petitioner would state that once again on 14.11.2011, the petitioner went to the second respondent College with the money, which was directed to be paid. However, the second respondent College has refused to receive the money and the certificates were not returned.

5. The second respondent College has filed a counter affidavit inter alia admitting that the petitioner was a part-time Lecturer and she was permitted to pursue her M.A. English Literature course. It is stated that the petitioner stopped attending the College without prior notice and apart from that the petitioner has not submitted "No Due Certificate" from her Department, Library, Hostel and Office and since she has not given the required three months notice, the petitioner has to pay the salary for those three months. The management would state that the aforesaid facts have been intimated to the petitioner and also directed her to tender due apology, since she made frivolous complaints to the various authorities. Therefore, the respondent management is ready and willing to return the Certificates subject to payment of the amount and subject to giving a letter of apology.

6. Heard the learned counsel on either side and perused the materials available on record.

7. The issue involved in the Writ Petition is as to whether the respondent management is justified in retaining the Certificates. Assuming that the petitioner is liable to pay the three months' salary for the notice period, whether the second respondent management has jurisdiction to retain the petitioner's

original certificates.

8. In fact, an identical question came up for consideration in *S. Muthukamatchi Vs. The Director of Technical Education, Anna University, The Vice Chancellor, Anna University, The District Collector and The Principal, Mount Zion College of Engineering, ,* wherein the College refused to return the Original Certificates of the student on the ground that the fee has not been paid. This Court held that the certificates of the students are not like Fixed Deposit receipt on which, banks claim a general lien in terms of Section 171 of the Contract Act and the Certificates cannot be retained at any time. Accordingly, the Writ Petition was allowed and direction was issued to return the Original Certificates.

9. The ratio laid down in the said decision would apply to the case on hand. Even assuming that the petitioner is liable to pay three months' salary, that will not enable the management to retain the certificates.

10. It is seen that the petitioner was ready and willing to pay the amount demanded though she took a stand that she has given a three months notice.

11. Under such circumstances, this Court is of the view that to give a quietus to the entire issue and taking note of the decision in the case of *S.Muthukamatchi vs. the Director of Technical Education, Anna University* (cited supra), the following direction will meet the ends of justice:

i) The petitioner is directed to pay a sum of Rs.10,000/- (Rupees Ten thousand only) by way of Demand Draft drawn in favour of the second respondent institution, which will include all financial claims of the respondent management including the amounts which may be due towards the Library, Department or any other dues.

ii) On payment of Rs.10,000/- the respondents shall forthwith return all the original certificates, which have been given by the petitioner.

iii) The third respondent management is not entitled to insist upon any letter of apology from the petitioner.

12. The Writ Petition is disposed of with the above direction. No costs.