
(2007) 04 MAD CK 0080

In the Madras High Court

Case No : W.A. No's. 402 and 403 of 2007 and M.P. No's. 1 and 2 of 2007

Vallivalam Desikar Polytechnic College

APPELLANT

Vs

S. Poonguzhali, B. Sivakumar, The Commissioner, Formerly
Director of Technical Education and V. Paul Das, Inquiry
Officer

RESPONDENT

Date of Decision : 13-04-2007

Acts Referred:

Director of Technical Education Rules — Rule 12, 14, 2, 3

Citation : (2007) 04 MAD CK 0080

Hon'ble Judges : V. Dhanapalan, J; S.J. Mukhopadhaya, J

Bench : Division Bench

Advocate : G. Thilakavathi, for the Appellant; G. Rm. Palaniappan, AGP for R-1
and A. Arumugam, for R-2, for the Respondent

Final Decision : Allowed

Judgement

S.J. Mukhopadhaya, J.—In both these appeals as common question of law involved and preferred by common appellant, they were heard together and are being disposed of by this common judgment.

2. In both the appeals the appellant has challenged the common order dated 28th Feb., 2007, passed in W.P. Nos. 7245 and 7246/07 whereby and whereunder the learned single Judge directed the appellant to dispose of the bias application preferred by the concerned respondent/writ petitioner on merit after due opportunity of hearing to them and keep the departmental enquiry in abeyance till such decision.

3. The respondent, B. Shivakumar is a senior lecturer in Vallivalam Desikar Polytechnic College (hereinafter referred to as "Polytechnic"), Nagapattinam. The other respondent, S. Poonkuzhali, is a junior drafting officer in the said polytechnic. Both of them were placed under suspension on 20th July, 2006. B. Shivakumar, challenged the order of suspension in W.P. No. 29392/06 and S. Poonkuzhali, preferred another writ petition against her order of suspension,

W.P. No. 29373/06. Learned single Judge, by two different similar orders, both dated 28th Nov., 2006, while noticed that charges have already been framed and the order of suspension had been stayed, directed those respondent (s)/writ petitioner (s) to co-operate with the management of the polytechnic in the departmental proceeding and also directed the management of the polytechnic to conclude the respective disciplinary proceeding and pass final order, one of which is quoted hereunder:

This writ petition is filed against the order of the fourth respondent dated 20.07.2006 by placing the petitioner under suspension. The petitioner is working as Junior Drafting Officer under the 4th respondent college.

2. The respondents 2 to 4 have filed the counter affidavit. In the counter affidavit, it is specifically stated that in respect of certain charges framed against the petitioner, the disciplinary proceeding is pending.

3. The learned Counsel for the petitioner also would submit that the petitioner in fact filed his explanations. However, the learned Counsel for the petitioner would submit that the petitioner is working from 1983 with an unblemished record of service. It is also further stated in the affidavit filed by the petitioner in support of the writ petition that the arrears in respect of up gradation of post as Senior Lecturer has to be paid to the petitioner, since the same was not been paid.

4. It is specifically stated by the respondents 2 to 4 in the counter affidavit that immediately after the Commissioner of Technical Education gives approval the amounts will be dispatched.

5. I have heard the learned Counsel for the petitioner as also the learned Counsel Ms.G.Thilagavathi on behalf of the respondents 2 to 4 and also the learned Additional Government Pleader who has taken notice on behalf of the respondent.

6. Considering the above said circumstances especially that the charges have been framed against the petitioner and the petitioner has in fact submitted their explanation, I am of the considered view that a direction may be given the second respondent to complete the disciplinary proceeding and pass final orders.

7. In view of the same the fourth respondent is directed to complete the disciplinary proceeding initiated against the petitioner, by giving adequate opportunity to the petitioner and pass appropriate orders in accordance with law, within a period of 8 weeks from the date of receipt of a copy of this order.

8. It is also made clear that as soon as the Commissioner of Technical Education gives approval for the payment of arrears as stated above, it is for the fourth respondent to disburse the same to the petitioner.

9. It is stated that the order of suspension has been stayed and the stay is in force and in view of the direction given to the respective respondents to pass final orders, I direct the petitioner to give adequate co-operation to the

respondents for passing orders and at the same time the respondent shall maintain status quo.

10. With the above directions the writ petition is disposed of. No Costs. Consequently, connected W.P.M.Ps. are closed.

4. The polytechnic in question is a Government aided private polytechnic and is governed by "Grant-In Aid Code" (hereinafter referred to as "Code"). The Management of the Polytechnic appointed a retired judicial officer as enquiry officer to conduct enquiry against the charged employee(s). There being some dispute amongst members of the management, both the respondent (s)/writ petitioner (s) alleged bias against an individual member of the management and again preferred writ petitions. While B.Shivakumar preferred W.P. No. 7245/07, S.Poonkuzhali preferred the other writ petition, i.e., W.P. No. 7246/07. In both the writ petitions, common prayer was made to direct the Commissioner, Directorate of Technical Education to dispose of their respective bias application(s) before the enquiry. Learned single Judge, having noticed the prayer, passed the impugned order on 28th Feb., 2007, and kept the proceeding in abeyance, relevant portion of which is quoted hereunder:

Having regard to the facts, the first respondent is directed to consider and dispose of the bias applications dated 19.1.2007 and 22.1.2007 and pass orders on merits and in accordance with law within a period of eight weeks from the date of receipt of a copy of this order, after due opportunity to the petitioners to be heard. Till the bias applications are disposed of, the enquiry shall be kept in abeyance. No costs. Consequently, connected miscellaneous petitions are closed.

5. Counsel for the appellant submitted that the impugned order was uncalled for and the proceeding should not have been kept in abeyance in view of earlier order passed by this Court in respect to the same employees.

6. Learned Counsel for the contesting respondent (s)/writ petitioner(s), while alleged bias against some members of the management, submitted that the respondent (s)/writ petitioner (s) are victim of difference of opinion between the father and son, who are managing the institute and without deciding the bias application it was not desirable to conduct the enquiry. Further, according to counsel for the respondent (s)/writ petitioner (s), the appointment of a retired judicial officer i.e., District Judge, as enquiry officer is not permissible as the rule do not permit appointment of an outsider as enquiry officer.

7. Counsel for the respondent relied on Rule 2(b) of the Act, which deals with power of Director of Technical Education (now "Commissioner"), Chennai, Rule 12 read with Appendix-I, which relates to conditions of service, Rule 14 read with Appendix-III, wherein procedure has been laid down to punish an employee and Rule 3 of Appendix-III, which relates to suspension and payment and subsistence allowance. Though much stress was given to suggest that no outsider could be appointed as an enquiry officer except a departmental personnel, but we find no such prohibition imposed by any statute or executive instruction to appoint a

retired judicial officer as enquiry officer. Learned Counsel referred to some commentary published by a publisher to suggest that only departmental personnel should be appointed as enquiry officer, but such commentary is mere opinion of one or other author and has no statutory force. Also it cannot be treated to be a guideline issued by any competent authority. Further, such plea having not been taken by the respondent (s)/petitioner (s) in their writ petition nor any objection having been raised by them in regard to appointment of enquiry officer, such oral plea cannot be taken at this stage.

8. In the present case, no bias has been alleged against the enquiry officer. The appointment of enquiry officer was not under challenge, and in their earlier writ petition, this Court directed the respondent (s)/writ petitioner (s) to co-operate in the departmental enquiry and directed the authorities to conclude the proceeding on an early date; the said order having reached finality, not having been challenged by any of the party to the writ petition, including the respondents, no conflicting order could have been passed keeping such proceeding in abeyance.

9. We, accordingly, set aside the impugned judgment dated 28th Feb., 2007, passed in W.P. Nos. 7245 & 7246 of 2007 and remit the case with direction to the respondents to conclude the enquiry at an early date, as ordered earlier, though it will be open to the Commissioner, Directorate of Technical Education, Chennai, to consider the bias application independently without being prejudiced by one or other order passed by this Court including the present one. Both the writ appeals are allowed with the aforesaid observations and directions. Consequently, connected miscellaneous petitions are closed. However, there shall be no order as to costs.