

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 11.12.2015

DATE OF DECISION: 15.12.2015

CORAM:

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH

W.P.Nos.29351 and 29352 of 2015

Dr.Chandra Krishnamurthy

... Petitioner

Vs.

1. The Joint Secretary to Government,  
Government of India,  
Ministry of Human Resources Development,  
Department of Higher Education,  
Shastri Bhavan,  
New Delhi - 110 001,

2. Pondicherry University  
Non Teaching Staff Welfare Association,  
represented by its President,  
K.Kaliaperumal,  
Regn.No.237 of 1989  
R.Venkataraman Nagar, Kalapet,  
Puducherry - 605 014.

.. Respondents

Respondent No.2 is impleaded as a party  
in W.P.Nos.29351 and 29352 of 2015 today  
as per Orders in M.P.Nos.3 of 2015.

PRAYER: Writ Petition in W.P.No.29351 of 2015 is filed  
under Article 226 of the Constitution of India seeking for the  
relief of issuance of a Writ of Certiorari to call for the  
records of the respondent passed in No.39-2/2015-Desk (U) dated  
21.8.2015 and quash the same.

Writ Petition in W.P.No.29352 of 2015 is filed under  
Article 226 of the Constitution of India for the issuance of a  
Writ of Certiorarified Mandamus to call for the records  
relating to the respondent herein in F.No.39-2/2015 Desk U dated  
21.8.2015 and quash the same and consequently direct the  
respondent to furnish all the documents relied on in the show  
cause notice dated 21.8.2015.

For Petitioner : Mr.R.Muthukumaraswamy,  
Sr.Counsel in both W.Ps  
for Mr.P.Krishnan

For Respondents:Mr.G.Rajagopal, Addl.Solicitor General  
in both W.Ps for Mr.B.Rabu Manohar for R.1

Mr.Balan Haridas for R.2

#### COMMON ORDER

The petitioner, who was appointed as a Vice Chancellor of the Pondicherry University and took charge on 1.2.2013 for a term of five years of tenure posting, has come forward to file these writ petitions, by which, she was placed on "compulsory" wait followed by the issuance of a show cause notice dated 21.8.2015 calling her to show cause as to why she should not be dismissed.

#### Background facts and Provisions:-

2. Before analysing the issues on fact and law, as canvassed by the learned counsel for the parties, the background facts are to be placed on record for better appreciation.

3. The Pondicherry University was established as a Central University by the Government of India in the year 1985 through an Act of Parliament called "'The Pondicherry University Act, 1985 (No.53 of 1985)''". His Excellency The President of India is the Visitor for the University and the Vice Chancellor is appointed by the Visitor. The Ministry of Human Resources Development is the Nodal Ministry and controlling authority for all Central Universities including Pondicherry University. The University Grants Commission has in record (data base) the materials pertaining to the qualification of an aspirant to the post of Vice Chancellor. The Regulations of the University Grants Commission also satisfies the requisite qualifications of the Vice Chancellor.

4. Regulation 7.3.0 of the University Grants Commission speaks about the qualification of the Vice Chancellor in the following manner:

#### 7.3.0. VICE CHANCELLOR:

i. Persons of the highest level of competence, integrity, morals and institutional commitment are to be appointed as Vice-Chancellors. The Vice-Chancellor to be appointed should be a distinguished academician with a minimum of ten years of experience as Professor in a University system or ten years of experience in an equivalent position in a

reputed research and/ of academic administrative organization.

ii. The selection of Vice-Chancellor should be through proper identification of a Panel of 3-5 names by a Search Committee through a public Notification or nomination or a talent search process or in continuation. The members of the above Search Committee shall be persons of eminence in the sphere of higher education and shall not be connected in any manner with the University concerned or its colleges. While preparing the panel, the search committee must give proper weightage to academic excellence, exposure to the higher education system in the country and abroad, and adequate experience in academic and administrative governance to be given in writing along with the panel to be submitted to the Visitor/Chancellor. In respect of State and Central Universities, the following shall be the Search Committee.

- a) a nominee of the Visitor/Chancellor, who should be the Chairperson of the Committee.
- b) a nominee of the Chairman, University Grants Commission.
- c) a nominee of the Syndicate/Executive Council/Board of Management of the University.

iii. The Visitor/Chancellor shall appoint the Vice Chancellor out of the panel of names recommended by the Search Committee.

iv. The conditions of service of the Vice Chancellor shall be prescribed in the Statutes of the universities concerned in conformity with these Regulations.

v. The term of office of the Vice Chancellor shall form part of the service period of the incumbent concerned making him/her eligible for all service related benefits.''

Thus, a Vice Chancellor has to be a person of 'highest level of competence' apart from a 'distinguished academician'. These qualifications have been fixed keeping in view of the importance of the post of Vice Chancellor, being an authority wholly in-charge of the administration of the University. Perhaps, that is the reason why he or she is appointed by none other than the President of India in his capacity as the Visitor. Suffice it is to state that the prescription of qualifications is something, which has to be followed without any deviation. Thus, the post of the Vice Chancellor has been placed on a very high pedestal.

5. There is no procedure contemplated for an action against the Vice Chancellor. However, under Section 35 of the Pondicherry University Act, 1985 (No.53 of 1985), if any question arises over the election or appointment of any person working in the University, it shall be referred to the Visitor, whose decision shall be final.

6. Complaints were received against the petitioner. The respondent, instead of going into the said complaints, constituted a two member Committee of which one recused himself. The Committee examined the allegations against the petitioner and filed its report. The petitioner was also examined.

7. Complaints continued to pour including from the petitioner in M.P.Nos.3 of 2015 in both the cases against the writ petitioner. The major allegations were that the petitioner indulged in plagiarism and furnished a fraudulent CV while applying for the post of Vice Chancellor. On a reference made by the respondent, the University Grants Commission (UGC) constituted a Fact Finding Committee consisting of academicians and retired officials, who held high position. This Committee also put the petitioner on notice. The Committee gave its report on 10.8.2015, which inter alia states that the petitioner is guilty of plagiarism and misrepresentation made to the respondent.

8. Thereafter, allegations have been once again made over the improper administration of the University at the hands of the petitioner, signed by 1200 students. A team of two officials was constituted by the respondent to inquire into the grievances of the Student Committee. The Chief Secretary, Government of Pondicherry also submitted a report to the Ministry of Home Affairs about the situation on ground.

9. Based upon the report of the Pondicherry Administration and the team constituted by the respondent, the petitioner was requested to proceed on leave till normalcy returns. Accordingly, she proceeded on leave from 14.8.2015 to 21.8.2015,

purportedly on account of some personal work. Thereafter, the strike was withdrawn by the students. The petitioner expressed her intention to take back the charge, though she was asked to wait, but it was not agreed to. Thus, an order was passed on 21.8.2015 placing the petitioner on compulsory wait in view of the volatile situation prevailing in the campus.

10. Thereafter, the impugned show cause notice was issued to the petitioner on 21.8.2015. It is apposite to re-produce the same for better appreciation:

'Whereas certain irregularities committed by Prof.Chandra Krishnamurthy, Vice-Chancellor (VC), Pondicherry University, at the time of applying for the post of VC of the University and subsequent to her appointment as Vice-Chancellor of the University, have been brought to the notice of the Government. The following irregularities, considered to be serious in nature, are specifically brought on record.

(i) In her application for the post of Vice-Chancellor of Pondicherry University, she had claimed to have authored three books whereas it has been established that only one book titled "Legal Education in India" was authored by her and that too is about 98% plagiarized, according to the experts. (A copy of report of the Fact Finding Committee constituted by the UGC is enclosed as Annexure-I).

(ii) She had also claimed that she has 25 articles/publications to her credit whereas only one is traceable (in open repository) and that too is about 75% plagiarized. (A copy of report of the Fact Finding Committee constituted by the UGC is enclosed as Annexure-I).

(iii) No evidence is available of her guiding 9 Ph.D. Students as claimed by VC. (A copy of report of the Fact Finding Committee constituted by the UGC is enclosed as Annexure-I).

(iv) No evidence is on record to authenticate that VC had the title of a 'Professor' before her appointment as Vice-Chancellor of Pondicherry

University. (A copy of report of the Fact Finding Committee constituted by the UGC is enclosed as Annexure-I).

(v) VC had extended the tenure of Prof. S.Hariharan as Director, Academic Staff College whereas as per UGC guidelines for Academic Staff Colleges, appointment to the post of Director should be through constitution of a Selection Committee. (A copy of Report of the Committee constituted by MHRD is enclosed as Annexure II).

(vi) Students of the University are on strike from 25.7.2015 and the VC failed to handle the situation properly which was expected from a person holding the high post of VC of the University. (A copy each of the letter from Chief Secretary, Government of Puducherry and report of the two member team deputed by the MHRD to enquire into the grievances of the student community in the Pondicherry University are enclosed as Annexures III and IV).

2. The aforesaid misdeeds/ lapses constitute misrepresentation, gross misconduct, dereliction of duties and lack of commitment on the part of VC keeping in view the sensitive nature of the post of VC held by her.

3. Now, therefore, the President of India, in his capacity as the Visitor of the Pondicherry University, in exercise of powers vested in him under Section 16 of the General Clauses Act, 1897, is pleased to direct that a Show Cause Notice be issued to you as to why you should not be dismissed from the post of Vice-Chancellor of Pondicherry University.

4. Your reply to this notice shall be submitted to the undersigned within a period of 21 days of the receipt of this notice for consideration of the visitor.''

11. The petitioner sent her interim reply on 10.9.2015. She also made a request for the production of the relevant documents. By letter dated 11.9.2015 the petitioner was intimated that the papers relevant to the charges have already been furnished. In response to the petitioner's letter dated 14.9.2015, remaining six volumes of Annexure -II were sent to petitioner by the respondent vide letter dated 16.9.2015. Challenging the orders by which the petitioner was kept on a compulsory wait, followed by the show cause notice issued, the present writ petitions have been filed.

These are the background facts and the provisions governing these cases.

12. Heard Mr.R.Muthukumaraswamy, learned Senior Counsel appearing for the petitioner, Mr.G.Rajagopal, learned Additional Solicitor General appearing for the 1<sup>st</sup> respondent and Mr.Balan Haridas, learned counsel appearing for the 2<sup>nd</sup> respondent.

13. Before going into the merits of the case, it would be appropriate to decide the miscellaneous petitions in M.P.Nos.3 of 2015 filed by the Pondicherry University Non Teaching Staff Welfare Association. It is seen that the petitioner in these miscellaneous petitions has already filed writ petitions against the writ petitioner herein, though for different reliefs. It is also making certain complaints against the writ petitioner. It is also the case of the writ petitioner herein that the members of the petitioner are involved in instigating others. The status of the members of the petitioner is not disputed. What the petitioner in these miscellaneous petitions wants is to support the orders impugned. Thus, considering the above, this Court is inclined to allow these miscellaneous petitions. Accordingly, Pondicherry University Non Teaching Staff Welfare Association is impleaded as respondent No.2 in both these writ petitions.

14. Though at the time of filing the writ petitions, it has been contended on behalf of the petitioner that there is violation of principles of natural justice since relevant documents have not been furnished to the petitioner, as those documents having been furnished, the said premise is no longer available. Learned Senior Counsel appearing for the petitioner has also not urged this point. Therefore, this Court is not inclined to go into the same.

Submissions of petitioner:

15. Learned Senior Counsel appearing for the petitioner submitted that the impugned show cause notice is one without

jurisdiction. Section 16 of the General Clauses Act, 1897 cannot be pressed into service for a case of this nature. Thus, in the absence of any statutory prescription, such a power cannot be exercised. The materials collected behind the back of the petitioner cannot be the basis for issuance of the show cause notice. There is no provision for constituting Fact Finding Committees. A preliminary enquiry cannot be a replacement for a general enquiry. There is a serious violation of principles of natural justice. Neither a charge memo is issued nor there is any Enquiry Officer. The entire proceedings have been initiated at the instigation of some of the members of the 2<sup>nd</sup> respondent. Therefore, they will have to be set aside on the ground of malafides. The petitioner was not given sufficient opportunity before one of the Committee. Learned Senior Counsel has also submitted that there is no power to keep the petitioner on 'compulsory wait'. Thus, in the absence of the same, it is unsustainable in the eye of law. As long as the petitioner is the Vice Chancellor, she cannot be prevented from doing her lawful activities. In support of his submissions, he has relied on the following decisions:

'(1) Dharampal Satyapal Limited Vs. Deputy Commissioner of Central Excise, Gauhati and others, ((2015) 8 SCC 519);

(2) Nirmala J. Jhala Vs. State of Gujarat and another, ((2013) 4 SCC 301); and

(3) Sebastian K. Antony Vs. Manager, St. Albert's College, Ernakulam (unreported decision of a Division Bench of Kerala High Court in C.R.P.No.682 of 2009 dated 27.4.2012)''

Submissions of respondents:

16. Learned Additional Solicitor General appearing for the 1<sup>st</sup> respondent and the learned counsel appearing for the 2<sup>nd</sup> respondent submitted that the post of Vice Chancellor is not an ordinary one. Certain sanctity is fixed on it. It cannot be treated like a normal post. As per section 16 of the General Clauses Act, the appointing authority is competent to take action for dismissal of an employee on proved charges. The petitioner was also examined by the Committees. They are Fact Finding Committees. In spite of replying to the show cause notice, the petitioner has rushed to this Court. There is no malafide alleged against the 1<sup>st</sup> respondent. Of the six charges, 4 of them are pertaining to the qualification of the petitioner. Thus, as per Section 35 of the Pondicherry University Act, 1985, the power is available to initiate action. Though the petitioner was served with all the documents, the writ petitions have been filed as if they have not been given. The order keeping the

petitioner on ''compulsory wait'' is passed based upon relevant materials including the report of the Pondicherry Administration. The petitioner initially complied with the oral direction by going on leave. Thus, she cannot change her stand and challenge the order impugned. She is not an aggrieved person. The order has been passed only after considering the ground realities. No right of the petitioner has been violated. When there is a power of dismissal, the 1<sup>st</sup> respondent can certainly exercise the incidental power. The order passed by the 1st respondent is valid in law. In support of their submissions, learned counsel appearing for the respondents relied on the following decisions:

''(1) Ashok Kumar Sankar Vs. Union of India and others, ((2007) 4 SCC 54); and

(2) State of Madhya Pradesh and others Vs. Shyama Pardhi and others, ((1996) 7 SCC 118).''

Discussion:-

17. The post of the Vice Chancellor, as seen from Regulation 7.3.0 carries lot of responsibilities. A Vice Chancellor is a person in-charge of the University. The functions and duties of the Vice Chancellor are wide and varied and it is a serious job. Not only the academic qualification, but also a high level of competence, integrity and morals are pre-requisite for a person holding such post. The qualifications prescribed are indispensable. As per Section 35 of the Pondicherry University Act, any dispute over an appointment of any authority of the University can be decided by the Visitor. Thus, the power given therein is rather wide. Furthermore, under Section 16 of the General Clauses Act, the power to appoint includes power to suspend or dismiss. Thus, the contention of the petitioner that there is no power or authority to the 1<sup>st</sup> respondent to pass the impugned order cannot be sustained, especially when it is admitted that the petitioner was appointed by the 1<sup>st</sup> respondent. Even assuming that the argument of the petitioner is accepted by placing the ''compulsory wait'' to the level of ''suspension'', such power is very much available to the 1<sup>st</sup> respondent. Thus, the contention regarding lack of jurisdiction does not merit acceptance.

18. Learned Senior counsel appearing for the petitioner contended that there is a serious violation of principles of natural justice in the manner in which the show cause notice was issued, The argument made in this regard cannot be accepted, since what is challenged is only a show cause notice. When the power to dismiss is available to the 1<sup>st</sup> respondent, then there

is no necessity to conduct a separate enquiry, especially when a statute does not prescribe such a methodology. Perhaps, keeping in view the status and importance of the post, it was thought fit not to treat the Vice Chancellor like an ordinary Officer of University. This Court cannot legislate and create a procedure. There is no difficulty in holding that even in the absence of any provision for affording an opportunity, the Court can read the same into a statute but it cannot be extended warranting mandatory enquiry, especially when an opportunity of being heard having been given.

19. Two fact finding Committees have been appointed to come to a prima facie conclusion of which one was constituted by the 1<sup>st</sup> respondent itself and another at the instance of the 1<sup>st</sup> respondent. Admittedly, the 1<sup>st</sup> respondent is a Nodal Ministry and the Controlling Authority for all the Universities including the Pondicherry University. It is a fair procedure adopted by the 1<sup>st</sup> respondent before issuing a show cause notice. It cannot be termed as an enquiry as in the manner sought to be construed by the petitioner. The University Grants Commission was asked to get involved as it was in possession of certain records qua the petitioner. In other words, it is a competent authority to go into those factual aspects, as furnished by the petitioner. Thus, there is absolutely nothing wrong in the procedure adopted. It is not as if the 1<sup>st</sup> respondent has acted based upon an anonymous complaint, but on the contrary, satisfied itself about the prima facie case on going through the reports of the two Committees. Charges No.1 to 4 are with reference to the qualification of the petitioner, as projected by herself while getting the appointment. If the qualification is not available, then the very basis of appointment itself would go, making herself ineligible for being considered. The Fact Finding Committees verified the allegations made against the petitioner qua her qualification and filed the reports. If the 1<sup>st</sup> respondent is the authority to take appropriate action against the petitioner, then the power is certainly available to issue show cause notice as against the appointment of Enquiry Officer after framing charges. Even assuming the contention of the petitioner is accepted, there is no necessity to appoint Enquiry Officer in all cases. Therefore, even the Disciplinary Authority himself can take up the said role. Furthermore, charges 1 to 4 are based upon records of the petitioner. There is no question of examining or cross-examining all the persons, who gave statements before the Fact Finding Committees. The reports of the Fact Finding Committees are nothing but mere materials for the 1<sup>st</sup> respondent to form a prima facie view. In other words, the proceedings culminated into the impugned show cause notice is purely a matter between the 1<sup>st</sup> respondent and the petitioner. Thus, looking from any angle, this Court does not find violation of principles of natural justice.

20. This Court is satisfied that the procedural fairness is certainly adopted in the case of the petitioner. She has been given all the requisite documents as sought for. The petitioner instead of giving a reply has rushed to this Court. This Court does not find any malafides in passing the order impugned. There is neither any malice in law nor facts. The petitioner has not demonstrated the same before this Court. The persons against whom allegations have been made are also not before this Court. One has to also understand that the post of the petitioner is also a tenure post. Thus, she cannot be treated like a regular Officer of the University. The decisions relied upon by the learned Senior Counsel appearing for the petitioner are not applicable to the case on hand. It is not a case of a preliminary enquiry replacing a full fledged one after framing of charges. The entire scope and ambit of the Act and Regulations qua the post of Vice Chancellor is distinct and different from other posts. The petitioner has rushed to this Court without cooperating with the proceedings initiated by the 1<sup>st</sup> respondent.

21. The challenge made to the order keeping the petitioner on "compulsory wait" is also rejected as the same is not punitive in nature. It has been passed by taking into consideration of the report of the Pondicherry Administration. Apparently, there is a law and order problem. The strike was withdrawn only after the petitioner left the campus on leave. The petitioner cannot be said to be a person aggrieved. There is no contra material produced by the petitioner to the satisfaction of the Court that the situation is not volatile. Further, it is only an interim measure. Therefore, apart from the availability of jurisdiction to pass the said orders, even on merits, the petitioner is not entitled to succeed.

22. For the reasons aforesaid, this Court does not find any merits in these writ petitions. Accordingly, the writ petitions are dismissed. No costs. However, it is made clear that the observations made by this Court are only prima facie in nature for the purpose of deciding the writ petitions and therefore they will not have any bearing on the final orders to be passed by the 1<sup>st</sup> respondent. Consequently, the other connected miscellaneous petitions are closed.

15.12.2015

After pronouncement of orders, the learned counsel for the petitioner submitted that in view of the impugned order, the petitioner has been kept under compulsory wait and the amenities due to her have been stopped. As the said measure is for a specific reason, which has been dealt with in the order passed, the respondents are directed to make sure that the amenities provided to the petitioner hitherto are continued till appropriate orders are passed by the 1<sup>st</sup> respondent.

2. A further submission has been made that four weeks time may be granted to give a suitable and comprehensive reply to the impugned show cause notice. The petitioner is granted a further time of four weeks from the date of receipt of a copy of this order to give suitable reply to the show cause notice.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1. The Joint Secretary to Government,  
Government of India,  
Ministry of Human Resources Development,  
Department of Higher Education,  
Shastri Bhavan,  
New Delhi - 110 001,

+2 ccs to M/s.Balan Haridass Advocate sr.67781

+1 cc to Mr.P.Krishnan Advocate sr.67575

+1 cc to M/s.R.Babu Manohar Advocate sr.67141

W.P.Nos.29351 and 29352  
of 2015

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