

THE HON'BLE SRI JUSTICE P.NAVEEN RAO

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WRIT PETITION No.14811 of 2015

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DATED : 16.12.2015

Between :

Dr Mohd. Shujath Ali
S/o Mohd Rahmath Ali

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Petitioner

and

Maulana Azad National Urdu University
Rep. By its Registrar, Gachibowli,
Hyderabad and 2 others.

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Respondents

This court made the following :

THE HON'BLE SRI JUSTICE P.NAVEEN RAO

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WRIT PETITION No.14811 of 2015

ORDER :

The petitioner was appointed as Reader/Deputy Director in Maulana Azad National Urdu University (for short "the University") on 12.04.2007 while in service, disciplinary action initiated against him resulted in removal from service vide orders dated 11.05.2015. Aggrieved thereby, he filed present writ petition.

2. This Court vide order dated 21.05.2015, granted interim suspension of the order of removal. Aggrieved thereby University seeking to vacate the same, filed WVMP No.1544 of 2015.

3. When the matter is taken up for consideration of WVMP, learned counsel for petitioner as well as learned Senior Counsel appearing for respondent-University agreed for disposal of writ petition.

4. Heard Sri K.S. Murthy, learned counsel for petitioner and the learned Senior Counsel appearing for respondent-University.

5. Learned counsel for the petitioner contends that the order of removal is passed by the incompetent authority. He further contends that after enquiry was conducted, the enquiry officer report was placed before the Executive Council of the University. The Executive Council considered the report of the enquiry officer and has taken unanimous decision to remove the petitioner from service. After the said decision was taken, the Executive Council directed Vice Chancellor to take further course of action. After such decision and directions, show cause notice was issued to the petitioner supplying copy of the enquiry

officer's report and on filing of his explanation, the impugned order is passed. Learned counsel therefore contends that what is done by the Vice Chancellor amounts to post-decisional hearing and after a decision has been taken by higher authority, there was no option for the Vice Chancellor to remove the petitioner from service irrespective of merits in the explanation submitted by petitioner. Such order is *ex facie* illegal and hence, the same is liable to be set aside on that ground alone.

6. Learned counsel for the petitioner submits that though several contentions are raised on various issues, for the present, he is confining to this issue and the matter may be decided on the said ground. He reserves his right to raise other contentions in appropriate proceedings.

7. Learned Senior counsel by referring to the provision under Section 26 (2) of M.A. National Urdu University Act, 1996, submits that the Executive Council is competent to take disciplinary action and to remove the academic staff on the ground of misconduct. He further submits that since the Executive Council is competent to take decision no exception can be made on consideration of the report of the Enquiry officer by the Executive Council. However, learned Senior counsel is fair in submitting that the Executive Council ought not to have taken a decision to remove petitioner from service even before report of enquiry officer was furnished to him and explanation was called from him, and appropriate action ought to have been taken only after such explanation was called and the same is considered.

8. The principle of law is well settled that after report of enquiry officer is submitted, if the findings are against official/employee, a copy thereof should be furnished to such official/employee, calling upon him to submit his explanation and after considering the explanation, if any, filed by the official/employee, order should be passed. In the instant case as fairly stated by learned senior counsel, such procedure was

not followed and straight away decision was taken. Therefore the entire action is not in accordance with law and the order impugned is liable to be set aside on that ground and accordingly it is set aside.

9. Since the order of removal from service is set aside on the ground that due procedure was not followed before removing the petitioner from service, in accordance with the provision contained in Rule 10(4) of Central Civil Services (Classification, Control and Appeal) Rules, 1965, petitioner shall be deemed to be under suspension from the date of removal from service and shall be continued to be under suspension until further orders are passed.

10. Having regard to the fact that petitioner is deemed to be under suspension from the date of removal, the subsistence allowance payable to petitioner from the date of removal shall be released forthwith, at any rate within two (02) weeks from the date of receipt of a copy of this order.

11. Since enquiry report was already furnished to the petitioner, he shall file his explanation within two weeks from the date of receipt of a copy of this order. After receipt of his explanation, the competent authority shall consider the same objectively and uninfluenced by the earlier decision of the Executive Council and resultant order of removal, shall take a decision, as expeditiously as possible, preferably, within three (03) months from the date of receipt of a copy of this order.

12. Accordingly, this Writ Petition is allowed. There shall be no order as to costs. Miscellaneous petitions, if any, pending in this writ petition shall stand dismissed.

P.NAVEEN RAO,J

Date : 16-12-2015

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