

THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

WRIT PETITION NOS.14092, 15938 AND 16048 OF 2002

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COMMON ORDER:

These three writ petitions can be dealt with together as they arise under the same set of facts and also seek identical relief.

The relevant facts in brief are, the petitioner in W.P.No.14092 of 2002 was working at the relevant point of time as Senior Assistant in the Examination Branch of the Osmania University, while the petitioner in W.P.No.15938 of 2002 was working as Store Keeper-III in the same examination branch. The petitioner in W.P.No.16048 of 2002 was working as a Senior Assistant in the Administrative Branch of the Osmania University. All three of them have been dismissed from service for a proven misconduct committed by them. The appeals preferred by them against the orders of dismissal have since been rejected and hence these writ petitions have been instituted challenging the correctness and validity of their dismissal from service.

The first respondent/Osmania University, a leading University in the Country, started an examination pattern called as 'External Examinations System' in the year 1973. The students who got trained in private educational institutions are permitted to take the final examinations to be conducted by the University to such of the students who are pursuing the course by regular mode. However, when the University Grants Commission suggested to discontinue such an External Examination System for B.A. and B.Com Courses, the respondent/University discontinued the same in the year 1996. However, the benefit to sit at the examinations has been extended for the very last time in April/May 1997, for such of those candidates who were enrolled prior to 1995 or during 1995. When the University invited applications for April/May 1997 External Examinations, nearly 12,000 applications were received. As and when such applications

were received, they were scrutinized in the examination branch of the University. The verification was to be carried out essentially with regard to the similarity of the photographs appearing on the application to that of those that are affixed on the hall ticket, the correctness of the names of the candidates as was appearing in the application and the hall ticket are one and the same. Apart from this, the registration number of each of the candidates desirous of appearing for the external examination 1997 was to be verified from the number mentioned on the registration card. After such scrutiny, the candidates were issued a hall ticket by the examination centre duly affixing the facsimile signature of the Controller of Examinations on the said hall ticket.

When two or three students reported at the examination branch, trying to inquire as to the reasons why they could not receive the hall tickets, it is alleged that, Sri G. Viswanadham, Store Keeper-III of the Examination Branch had assured that, he will look into and sort out the problem of the students. However, after the examinations were over and the results were about to be published, the Controller of Examinations has scrutinized the records. He found that some of the registration numbers of the students appeared to be dubious as the names of certain candidates were found missing in the corresponding entry of the tabulation register. The curious Controller of Examinations dug deep into the matter and found to his horror that, there was no supporting record available in the office of the Examination Branch of the University with regard to the missing names of the candidates of the tabulation register, whereas, the supporting record of the rest of the students was very much available and is in fact matching. The resultant investigation carried out helped in detecting, nearly 500 doubtful cases. The investigation further revealed that the registration numbers are made to appear as if they were assigned in the years 1994/1995, using a numbers franking machine. Suspecting foul play on the part of the employees working in the Examination Branch, a

report was lodged by the Controller first with the Vice-Chancellor of the University and later also with the local police. The investigation taken up by the police has revealed a network of operations behind the entire exercise which incidentally disclosed involvement of atleast three of the employees of the Osmania University, two of them working in the Examinations Branch and one working in the Administrative Branch. They appear to have acted in tandem with several other private educational agencies. As a consequence of this detection, all the three writ petitioners were initially placed under suspension and were later on subjected to disciplinary action. They were also arrested by the local police and were later on prosecuted for the offences said to have been committed by them. In accordance with the Classification, Control and Appeal Rules, a disciplinary enquiry has emanated and before the Enquiry Officer the three petitioners have appeared and denied their involvement in the allegations forming part of the charges framed against them. Broadly speaking, the gist of the charges framed against the petitioners run as under:

- (i) Cheating and dishonestly making bogus registration cards for one sitting B.A./ B.Com External Examination for April/May 1997;
- (ii) Forgery for the purpose of cheating the University;
- (iii) Using the forged documents as genuine.

At the domestic enquiry, six witnesses have been examined. Sri M. Bhujang Rao, the Controller of Examinations was examined as the first witness, while Smt. K.Vijaya Laxmi , Junior Assistant in the Examination Branch and Sri A. Venugopal, Senior Assistant in the Administrative Branch and Sri P. Harikrishna Reddy, Senior Assistant in the Legal Section (Cell) were examined as 2,3 & 5 witnesses. Dr. G. Ramadass, Assistant Professor, Department of Geo-Physics was examined as the fourth witness as he worked earlier as the Assistant Controller of Examinations at the relevant point of time. Sri B.

Venkatarathnam, Inspector of Police who carried out the investigation into the crime, lodged against the petitioners was examined as the sixth witness. Some of these witnesses have been cross-examined by the petitioners while some others have not been, the details of which will be dealt with a little later. The Enquiry Officer has drawn his findings and submitted a detailed report to the respondent/University on 19.01.2002, holding the petitioners guilty of the charges framed against them. The respondent/University while furnishing each of the petitioners a copy of the said report, invited their comments/representations thereon through their communication dated 05.02.2002. The petitioners have filed their detailed explanations or comments as the case may be with regard to the findings of the Enquiry Officer sometime during the year 2002. Thereafter, the matter has been placed for consideration before the Vice-Chancellor of the University, who upon considering the material gathered during the course of enquiry, found the three petitioners as guilty of the charges framed against them and ordered for their dismissal and to treat the period of their suspension as leave to which they are entitled to. The decision of the Vice-Chancellor has been conveyed by the Registrar of the Osmania University through his orders dated 28.03.2002 to the petitioners. Thereafter, in accordance with Rule 11 of the Osmania University Service (Discipline and Appeal) Rules, 1990, the petitioners have preferred an appeal to the Executive Council of the Osmania University, which considered the appeal submitted by the petitioners at their 60th meeting held on 28.06.2002 and decided to reject the appeal. The Resolution No.22 passed at the said meeting has been conveyed to the petitioners.

Heard Smt. D. Padmavati, learned counsel for the petitioners who has presented her case with admirable clarity and Sri Deepak Bhattacharjee, learned standing counsel for the Osmania University.

Smt. D. Padmavati would contend that the University has authorized prosecution of several of its employees including the writ petitioners herein and the prosecution relied upon the same material facts and the Investigating Officer has placed the entire material before the competent Criminal Court, which after taking into account the deposition of P.Ws 1&2 and the documentary evidence, had come to the conclusion that the accused are not guilty of the offences under Sections 420, 468 and 467 read with Section 120-B of Indian Penal Code and accordingly acquitted them. The learned XXI Metropolitan Magistrate, Hyderabad, has held in support of the accused persons that in the absence of categorical evidence of independent witnesses and in the absence of corroborating evidence of punch witnesses with regard to the alleged confessions made by the accused and the subsequent seizures made, the prosecution could not prove the guilt of the accused. Hence, the decision of the University to hold that the charges against the petitioners are held established cannot be sustained.

Smt. D. Padmavathi would further point out that Sri Pannalal, Registrar of the University, who was the defacto complainant has been examined as P.W.1 before the Criminal Court by the prosecution. But nonetheless, the evidence was not found enough to handout a conviction to the petitioners. In the instant case, the Enquiry Officer considered the very same material and arrived at a different conclusion holding the petitioners guilty of the charges. The Disciplinary Authority as well as the Appellate Authority have not applied their mind to the facts and circumstances narrated by the petitioners herein. In fact, it has been consistently pleaded by the petitioners that Sri Pannalal was cited as a witness to be examined during the course of enquiry, as he functioned as the Controller of Examinations at the relevant point of time. But however, he was not examined and hence the very objective of proceeding against the

petitioners is completely frustrated. The non-examination of the defacto complainant is fatal even for the disciplinary enquiry. It was further contended by the learned counsel for the petitioners that the Appellate Authority should have assigned the reasons as to why the appeal preferred by the petitioners has been rejected.

It would be appropriate to notice the principle underlying the competence to maintain disciplinary proceedings even after acquittal by a Criminal Court. In ***R.P. Kapur vs. Union of India***^[1], the Constitution Bench of the Supreme Court has set out the legal principle that in case of acquittal by a Criminal Court other than on merits and honourably, disciplinary procedures are bound to follow. Once again, a similar issue cropped up for consideration of the Supreme Court in Corporation of the ***City of Nagpur, Civil Lines, Nagpur & Anr. Vs. Ramchandra G. Modak & Ors***^[2], wherein, it was held that the question whether the disciplinary enquiry initiated against a delinquent employee should be continued or not after the Criminal Court has acquitted the same person has got to be examined based upon the nature of findings recorded by the Criminal Court. Where the accused has been acquitted honorably and was exonerated of the charge laid against him on merits by the Criminal Court, in such circumstances, it would not be expedient to carry forward the disciplinary proceedings any further. But, where the accused has been acquitted for other reasons the power of the disciplinary authority to carry forward the departmental action initiated is not taken away. Supreme Court had occasion to set out the principle in clear terms in paragraph 8, in ***Depot Manager, A.P. State Road Transport Corporation vs. Mohd. Yousuf Miya & Ors***^[3], in the following words:

“The purpose of departmental enquiry and of prosecution are two different and distinct aspects. The criminal prosecution is launched for an offence for violation of a duty, the offender owes to the society or for breach of which law has provided that the offender shall make satisfaction to the public. So crime is an act of commission in violation of law or of omission of public duty. The departmental enquiry is to maintain discipline in the

service and efficiency of public service. It would, therefore, be expedient that the disciplinary proceedings are conducted and completed as expeditiously as possible. It is not, therefore, desirable to lay down any guidelines as inflexible rules in which the departmental proceedings may or may not be stayed pending trial in criminal case against the delinquent officer. Each case requires to be considered in the backdrop of its own facts and circumstances. There would be no bar to proceed simultaneously with departmental enquiry and trial of a criminal case unless the charge in the criminal trial is of grave nature involving complicated questions of fact and law. Offence generally implies infringement of public, as distinguished from mere private rights punishable under criminal law. When trial for criminal offence is conducted it should be in accordance with proof of the offence as per the evidence defined under the provisions of the Evidence Act. Converse is the case of departmental enquiry. The enquiry in a departmental proceedings relates to conduct or breach of duty of the delinquent officer to punish him for his misconduct defined under the relevant statutory rules or law. That the strict standard of proof or applicability of the Evidence Act stands excluded is a settled legal position. The enquiry in the departmental proceedings relates to the conduct of the delinquent officer and proof in that behalf is not as high as in an offence in criminal charge. It is seen that invariably the departmental enquiry has to be conducted expeditiously so as to effectuate efficiency in public administration and the criminal trial will take its own course. The nature of evidence in criminal trial is entirely different from the departmental proceedings. In the former, prosecution is to prove its case beyond reasonable doubt on the touchstone of human conduct. The standard of proof in the departmental proceedings is not the same as of the criminal trial. The evidence also is different from the standard point of Evidence Act. The evidence required in the departmental enquiry is not regulated by Evidence Act. Under these circumstances, what is required to be seen is whether the departmental enquiry would seriously prejudice the delinquent in his defence at the trial in a criminal case. It is always a question of fact to be considered in each case depending on its own facts and circumstances. In this case, we have seen that the charge is failure to anticipate the accident and prevention thereof. It has nothing to do with the culpability of the offence under Sections [304A](#) and [338](#) IPC. Under these Circumstances the High Court was not right in staying the proceedings.”

Supreme Court in **Ajit Kumar Nag vs. General Manager (PJ), Indian Oil Corporation Limited, Haldia & Ors.** ^[4], in paragraph 11 has brought out the philosophy behind the concept in the following words:

“As far as acquittal of the appellant by a criminal court is concerned, in our opinion, the said order does not preclude the Corporation from taking an action if it is otherwise permissible. In our judgment, the law is fairly well settled. Acquittal by a criminal court would not debar an employer from exercising power in accordance with Rules and Regulations in force. The two proceedings - criminal and departmental - are entirely different. They operate in different fields and have different objectives. Whereas the object of criminal trial is to inflict appropriate punishment on offender, the purpose

of enquiry proceedings is to deal with the delinquent departmentally and to impose penalty in accordance with service Rules. In a criminal trial, incriminating statement made by the accused in certain circumstances or before certain officers is totally inadmissible in evidence. Such strict rules of evidence and procedure would not apply to departmental proceedings. The degree of proof which is necessary to order a conviction is different from the degree of proof necessary to record the commission of delinquency. The rule relating to appreciation of evidence in the two proceedings is also not similar. In criminal law, burden of proof is on the prosecution and unless the prosecution is able to prove the guilt of the accused 'beyond reasonable doubt', he cannot be convicted by a court of law. In departmental enquiry, on the other hand, penalty can be imposed on the delinquent officer on a finding recorded on the basis of 'preponderance of probability'. Acquittal of the appellant by a Judicial Magistrate, therefore, does not *ipso facto* absolve him from the liability under the disciplinary jurisdiction of the Corporation. We are, therefore, unable to uphold the contention of the appellant that since he was acquitted by a criminal court, the impugned order dismissing him from service deserves to be quashed and set aside.

Bearing in mind the aforesaid principles, I would now examine the established facts on record.

The Enquiry Officer's report has been made available to the petitioners on 05.02.2002 by the University, by providing them an opportunity to file a statement of objections there against. During the course of enquiry, Sri M. Bhujanga Rao, who worked at the relevant point of time as Additional Controller in the Examinations Branch between 1996-1999 was examined as the first witness. It is he who found the discrepancy with regard to the registration numbers in the tabulation register after the examinations were over. His verification of the records could not secure any supporting record in the office with regard to the registration numbers of some of the candidates which is conspicuously missing in the tabulation register. When he found that hall-tickets have been generated without the supporting record of registration of the students, he zeroed down upon the verification carried out prior to generating the hall-tickets. Therefore, the results of such doubtful candidates were withheld. Thereafter, notices were issued to such candidates concerned calling upon them to produce the particulars of their initial registration. Then, some of the candidates appeared before him and stated that they paid money in 1996 to some

institutions and those institutions took the responsibility of making registration and supply to the candidates the registration cards. As a part of this scheme, the registration numbers were made to appear as if the original registration took place in the years 1994 or 1995. Otherwise, such candidates are not eligible to take the examinations in 1997. This aspect of the matter has confirmed the suspicion about the foul play in the examination branch in issuing hall-tickets to non genuine candidates.

Smt. K. Vijaya Laxmi, a Junior Assistant in the Examination Branch who was examined as P.W.2, has deposed that some serial numbers in the register have been left blank and she was under an impression that the particulars in the registers have been left blank, possibly due to the rush of submission of applications at the last hour. However, when two or three candidates had come to the examination branch and reported that they have not received the hall-tickets and requested for issuance of duplicate hall-tickets, she has noticed that the original office copies of the registration cards of such candidates were not available in the registers. When she conveyed the matter to Sri V. Viswanatham, petitioner in W.P.No. 15938 of 2002 the said Viswanatham appears to have replied that he would attend to those cases and sort out.

Dr. G. Ramdass, Assistant Professor, Department of Geo-Physics who was examined as fourth witness before the Enquiry Officer, as he worked previously as Additional Controller of Examinations had categorically deposed that the registration cards of non genuine candidates bearing his signatures are forged ones, as the signature thereon was not his signature. He also deposed that he gave four specimen signatures to the police. The Investigating Officer has been examined as the sixth witness and he has brought out clearly as to how the accused persons in the crime have furnished the details of the crime committed by them and as to how the numbers franking machine, which has been used for creating the false record has been recovered. Interestingly, the petitioners have not chosen to cross-examine P.W.6. Therefore, going

by the preponderance of probabilities and not by strict rules of evidence, the Enquiry Officer has recorded his findings.

It is hardly in doubt that, in disciplinary enquiries, strict rules of evidence, normally applied in a Criminal Court are not adopted. Material which is relevant for purpose of bringing home the charges in an enquiry by following a fair procedure has to be brought on record and a reasonable opportunity should be accorded to the delinquent employee to meet squarely the case set up against them. The petitioners have been provided a fair opportunity to cross-examine the witnesses and they were also provided an opportunity to lead evidence available with them in their defence. That has not been availed by the petitioners.

Therefore, going by the preponderance of probability, the petitioners can reasonably be held to have acted in the manner in which they allegedly acted for securing an undue benefit to a set of students who are otherwise not entitled for any such benefit, i.e. appearing for the examinations during 1997. The petitioners have attended to the work relating to verification of the applications submitted by the students and they were also involved in one function or the other associated with generating the hall-tickets. When once, there is no record correspondingly available reflecting the original registration of the students during the years 1994 or 1995, then, the needle of suspicion of their involvement has pointed towards them. The petitioners have not discharged the burden of bringing out any material in support of their plea that they have not been involved in the matter at all. They only harp upon the fact that the Criminal Court has held that the prosecution has failed to establish the guilt of the petitioners beyond all reasonable doubt. That conclusion drawn by the Criminal Court is no way helpful to the case of the petitioners.

It is one thing to say that, upon considering the same material, if a Criminal Court has acquitted a person cleanly, then based upon the

same material in a domestic enquiry, disciplinary proceeding, the same individual cannot be held guilty of substantial misdemeanour. That perhaps, might amount to drawing a different conclusion upon consideration of the same material drawn by a Competent Court. The Court being an impartial body and which is very well trained in carefully assessing, analysis and drawing inferences/conclusions, the findings drawn by such a body with regard to and reference to the same material, perhaps, represents the most reasonable one that can be construed as nearer to a standard one as is possible. That was not the case here. The Criminal Court has held that the prosecution has failed to establish the guilt of the petitioners beyond all reasonable doubt. In other words, Criminal Court is not too sure about the involvement in the Crime of the accused persons. If there is a doubt persisting in the mind of the Court, about the Commission of offence by the charged person, the benefit of doubt has to necessarily be extended to the accused. A Criminal Court normally hands out a conviction when it is fairly sure about the involvement of the accused in the commission of the offence with which they are charged. I am, therefore, not in a position to accept the plea raised by the petitioners, that the disciplinary proceedings, either could not have been initiated against the petitioners or that they could not have been held guilty of the charges laid against them.

Sri Pannalal was the Controller of Examinations at the relevant point of time, but subsequently, he became the Registrar of the University. He will have to process the files relating to the petitioners in his capacity as the Registrar and that explains the reason why he was not examined before the Enquiry Officer. In Criminal Law, the process is begun with a complaint. That is the reason why non-examination of a complainant by the prosecution is viewed with disfavour and suspicion. In the matter of domestic enquiry, the complainant is not a vital individual and the significance is only attached to the contents of the complaint. Hence, I am of the opinion that non-examination of the

complainant Sri Pannalal is not fatal.

Learned counsel for the petitioner Smt. Padmavathi pressed into service the judgment rendered by the Supreme Court in ***Hardwari Lal vs. State of U.P and others***^[5] and contended that if the complainant is not examined before the Disciplinary Tribunal, the entire proceedings get vitiated. In Hardwari Lal's case, a police constable under the influence of liquor was alleged to have hurled abuses in the police station at another constable. In that case, the complainant Virender Singh and another witness Jagadish Ram were not examined. The Supreme Court considered the effect of non-examination of these two individuals and concluded the issue as under:

“.....Examination of these two witnesses would have revealed as to whether the complaint made by Virender Singh was correct or not and to establish that he was the best person to speak to its veracity. So also, Jagdish Ram, who had accompanied the appellant to the hospital for medical examination, would have been an important witness to prove the state or the condition of the appellant. We do not think the Tribunal and the High Court were justified in thinking that non-examination of these two persons could not be material, In these circumstances, we are of the view that the High Court and the Tribunal erred in not attaching importance to this contention of the appellant.”

In the instant case, the complaint lodged by the Registrar of the University is with the local police, whereas, in the instant case, it is Sri M. Bhujanga Rao who worked at the relevant point of time as Additional Controller in the Examinations Branch of the University, who found out the discrepancy with regard to the registration numbers of some of the candidates and it is he who found out that the registration numbers were found missing in the records of the University and thus, it is he who had set the ball rolling. Further, Dr. G. Ramdas who worked as Additional Controller of Examinations at the relevant point of time, who brought out the fact that the signature found upon some of the suspicious registration cards was not that of his. Thus these two persons who filed adverse reports initially against the

petitioners. These two persons have been examined before the enquiry authority. Therefore, the present case stands entirely on a different footing from that of Hardwari Lal's case.

Smt. Padmavathi had laid great emphasis upon the Appellate Authority in not assigning reasons for rejecting the appeal preferred by the petitioners. The Executive Council of the University is a multi-member body. It took up for deliberation the appeals filed by the petitioners. It has studied those appeals and deliberated upon them. when a multi-member body like that of the Executive Council meets and deliberates upon the contents of the appeal, recording of the reasons that weighed with the Executive Council, though desirable, may not be feasible always. Therefore, the conclusions/resolutions recorded by the Executive Council are based upon the reasons deliberated upon by them. Not repeating those reasons in the impugned order, need not necessarily lead to an inference that no reasons prevailed with the Executive Council for rejecting the appeals of the petitioners. Though, it would have been ideal to record, atleast briefly, the reasons for rejecting the Appeal. Thus, looked at it from this perspective also, I do not find any merit in these writ petitions.

Accordingly, all these writ petitions are dismissed. Miscellaneous applications pending shall also stand dismissed. No costs.

JUSTICE NOOTY RAMAMOHANA RAO

20th March, 2015
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[\[1\]](#) AIR 1964 SC 787

[\[2\]](#) 1984 SC 626

[\[3\]](#) 2005 (7) SCC 764

[\[4\]](#) 2005 (7) SCC 764

[\[5\]](#) (1999) 8 Supreme Court Cases 582