

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.11.2016

CORAM

THE HONOURABLE MR. JUSTICE R.SURESH KUMAR

Writ Petition No.7111 of 2010

and

M.P.No.1 of 2010 and M.P.No.1 of 2015

P.K.Selvaraj

.... Petitioner

Versus

The Registrar
Tamil Nadu Agricultural University,
Coimbatore.

.... Respondent

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of certiorari, calling for the records of the respondent herein in his proceedings No.R3/4365/BSR/SEEDS/ VC/2008 dated 09.03.2010 and quash the said order.

For Petitioner : Mrs.Dakshayani Reddy
for M/s.Indumathi
For Respondent : Mr.Abdul Saleem

ORDER

The prayer in the writ petition is for a writ of certiorari, calling for the records of the respondent herein in his proceedings No.R3/4365/BSR/SEEDS/ VC/2008 dated 09.03.2010 and quash the same.

2. The case of the petitioner is that he was appointed as Assistant Professor in the College of Agricultural Engineering of the respondent University on 20.12.1978. He was then promoted as Assistant Professor on 30.01.1989. The petitioner was further promoted as Professor on 10.02.2003 and posted at Water Technology Centre of the respondent University. On 19.04.2001, he was transferred to Agricultural Research Station,

Bhavanisagar. While he was working there as professor, he was directed to work as professor and Head In-charge, ARS, Bhavanisagar from 10.02.2007 to 13.05.2007 i.e., for a period of three months only. Thereafter, the petitioner was transferred to some other destination on 31.07.2009. Thus he was working as professor continuously.

3. While so, on 04.12.2008, a show cause notice was issued by the respondent calling upon the petitioner to submit his explanation as to why the alleged loss caused to the respondent university in disposing of paddy seeds as grains during the period of his service from 01.04.2006 to 31.05.2007 be not recovered from him. In the said show cause notice, the alleged loss was fixed at Rs. 5,78,099/-. The petitioner submitted a reply to the said show cause notice and he had explained that the procedure which was hitherto followed by his predecessor was strictly followed by him without any deviation. It was further explained that grain which has germination capacity of more than 80% is considered as seed. He had only sold grain which contained less than 80% germination capacity as per the germination test results and after consultation with the team of scientists, staff at the ARS Station.

4. Thereafter, the second show cause notice was issued to the petitioner and this time the loss was fixed as Rs.11,56,198/-. Even for this also petitioner had given a reply putting forth the entire facts. Thereafter, on 09.03.2010, an order of recovery for a sum of Rs.10,91,031/- was passed against the petitioner, which is impugned in this writ petition.

5. Heard both sides. The learned counsel appearing for the petitioner would contend that the entire proceedings which culminated in the impugned order of recovery is vitiated by error of law as there was no enquiry conducted against the alleged charges or there was no charge framed against the petitioner. Moreover, for the first show cause notice, the petitioner had given a detailed reply. Thereafter, the second show cause notice was issued and even for that the petitioner had given a suitable reply. Thereafter, if at all the respondent decides to proceed against the petitioner, appropriate proceedings ought to have been initiated departmentally by framing a definite charge. In this case, neither departmental proceedings initiated nor charge sheet served on the petitioner and therefore, the order of recovery is illegal.

6. The learned counsel for the petitioner would further contend that even in the said show cause notice dated 04.12.2008, it has been stated that a detailed enquiry was conducted by the committee constituted by the respondent on

05.11.2007, ARS, Bhavanisagar. According to the counsel for the petitioner, no such enquiry was ever conducted. Assuming that some enquiry was conducted the enquiry report has never been served on the petitioner. Thereafter, the second show cause notice was issued and this time the alleged loss was assessed at Rs.11,56,198/- by constituting one more committee to assess the loss. Even for this notice, the petitioner given a reply putting forth the entire facts. However, without conducting any enquiry and without even framing any charges against the petitioner, the impugned order dated 09.03.2010 was passed by the respondent, whereby, the petitioner was directed to pay a sum of Rs.10,90,031/-. There is no basis whatsoever absolutely for arriving at such conclusion by the respondent as to the loss caused to the respondent university. In the transaction of sale of grains at the ARS Centre, Bhavanisagar, there were some findings given in the impugned order that as per the records of germination test, paddy seeds with more than 80% germination were sold as grain and the paddy seeds were sold as grains in bulk quantity to rice mill owners and in the name of Farm labourers as per the written statement of ARS staff members. This kind of allegation have been made in the very impugned order itself, whereas based on this allegation no charges were framed and admittedly no enquiry was conducted. Therefore, there is absolutely no basis for passing the impugned order fixing the liability on the petitioner for the alleged loss to the extent of Rs.10,90,031/-. Therefore, the learned counsel for the petitioner would submit that the impugned order is legally unsustainable one and therefore interference of this Court is very much essential.

7. Per contra, the learned counsel appearing for the respondent would contend that the procedure adopted by ARS, Bhavanisagar in the case of disposal of paddy/seed has not been followed by the petitioner. The petitioner as a Head Incharge of ARS, Bhavanisagar has not brought to the notice of the Director of Research and Special Officer before disposing large quantity of seed as grains. The petitioner has also not taken any steps to improve the germination percentage of seeds, which recorded lower germination. According to the petitioner, there was shortage of space for storing the seeds which prompted him to sell the same. However, he cannot sell the seeds as grain without getting permission from the University and such permission is mandatory. Therefore, before arriving at the quantum of loss, two committees have been constituted by the respondent and their report received. On the basis of such reports, the loss has been computed. Further, as per the records of germination test, paddy seed lots with more than 80% germination was sold as grain in bulk quantity to rice mill owners and billed in the name of Farm Labourers. According to the learned counsel for the respondent, a total quantity of

107.365 tonnes of paddy grains were sold from 10.02.2007 to 13.05.2007 knowing fully well that there will be demand for paddy seeds by the farmers during this period. However, even before that period, the entire seeds were sold as grain and the farmers were not made available with seeds for the season. In any event, only upon considering the report of the committee, the loss has been computed and order was passed for recovering it from the petitioner.

8. The learned counsel appearing for the respondent further contend that the petitioner cannot simply sell the seeds because of non availability of space for storage. There is no need to sell such huge quantity of seeds as grain in a hurried manner within a short period that too during the incharge period, causing heavy loss to the University and also the farmers who were left without quality seeds. Therefore, a second committee was constituted by the University to go into the details of the irregularities committed by the petitioner and a report has been obtained thereof. Therefore, according to the learned counsel for the respondent, principles of natural justice were followed before passing the impugned order. The allegation made by the petitioner that due procedure has not been followed by conducting an enquiry and framing a definite charge is therefore not tenable and he prayed for dismissal of the writ petition.

9. This court has considered the rival submissions of the counsel for both sides. The first and prime submission of the learned counsel for the petitioner is that there was no definite charge framed or served on the petitioner nor there was an enquiry conducted as contemplated under Regulations of the University. In the absence of definite charge and enquiry, the impugned order of recovery cannot be passed by the respondent as it is in violation of principle of natural justice. In this case, admittedly, there is no specific charges framed against the petitioner. There was no enquiry conducted. Assuming some enquiry has been conducted by a committee constituted by the respondent and a report has been obtained therefrom, it is evident that a primary lacuna has been committed by the respondent in not initiating a disciplinary action against the petitioner. This would go to show that the respondent has not even followed the procedures established under law. The law is well settled in this regard that whatsoever may be the imputation of charges or allegations, the procedure contemplated under the relevant regulation has to be followed by initiating disciplinary proceedings. This is in compliance with the principle of natural justice. Thus, without conducting proper enquiry or affording reasonable opportunity, no conclusion can be arrived either based on the records or other wise and therefore, this Court is of the view that the impugned order is

totally unsustainable in law and it is liable to be quashed.

10. Insofar as the further contention made by the petitioner that the procedure for selling the seeds/grains had been followed by him which was hitherto followed by his predecessors and therefore fault can not be found against him is concerned, this Court is of the view that this issue need not be gone in to at this stage, because the very enquiry itself was not conducted properly and no definite charges framed against the petitioner. Therefore, the allegation and counter allegation made by the petitioner and respondent need not be gone into by this Court.

11. The learned counsel appearing for the petitioner also further contended that the petitioner attained the age of superannuation and he was allowed to retire from service on 31.05.2005 and the proceeding issued by the respondent dated 11.05.2015 discloses the following facts:

"Consequent to the retirement of Dr.P.K.Selvaraj, Professor(SWC) of this station on superannuation on 31st May 2015, he is relieved from his duties on the afternoon of 31.05.2015 as per the reference cited above."

12. Since the petitioner has been permitted to retire and has been relieved from duty in the afternoon of 31.05.2005 without extending his service either under Rule 9 of the TamilNadu Pension Rules or under the Rule 56(1)(c) of Fundamental Rules, the respondent cannot have any clutch over the petitioner as he is no more an employee working in the respondent university as his lean with the respondent University has been detached in the afternoon of 31.05.2005 itself. Therefore, there is no further scope for the respondent to conduct any enquiry afresh against the petitioner.

13. In that view of the matter, this Court hold that the impugned order passed against the petitioner is totally against the principles of natural justice. Accordingly, it is liable to be quashed and is quashed. Since the petitioner has already been permitted to retire from duty on his attaining the superannuation, there is no further scope for enquiry.

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14. With the above observation, the writ petition is allowed. No costs. Consequently, connected M.Ps. are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

rrg

To

The Registrar
Tamil Nadu Agricultural University,
Coimbatore.

+1cc to Mr.S.Kasirajan, Advocate, S.R.No.68128

+1cc to Mr.Abdul Saleem, Advocate, S.R.No.68203

rv(CO)
md(21/12/2016)

W.P.No.7111 of 2010

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