



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.12.2016

Coram

THE HON'BLE MR.JUSTICE S.VAIDYANATHAN

W.P.(MD).No.23970 of 2016 and

W.M.P.(MD) No.17290 of 2016

K.Jayaraman

...Petitioner

-vs-

1. The Registrar,
Bharathidasan University,
Trichy-22.

2. C.Arumugam

...Respondents

Prayer: Petition is filed under Article 226 of the Constitution of India for the issue of a Writ of Mandamus, directing the 2nd respondent to provide the petitioner an opportunity to defend himself through an advocate of his choice in the department proceedings before the 2nd respondent which is conducted in pursuant to the proceedings of the 1st respondent in Ref.No.03774/H4/2014 dated 16.11.2016.

For Petitioner : Mr.RM.Sivakumar

O R D E R

This petition has been filed, seeking to direct the 2nd respondent to provide the petitioner an opportunity to defend himself through an advocate of his choice in the department proceedings before the 2nd respondent, which is conducted, pursuant of the proceedings of the 1st respondent in Ref.No.03774/H4/2014 dated 16.11.2016.

2. Heard the learned counsel for the petitioner and on consent, this writ petition is taken up for final disposal at the stage of admission itself.

3. The facts leading to filing of this writ petition are as under:

i) the petitioner joined as a Lecturer in Department of Educational Technology in the year 2001 and he was given appointment order on 18.04.2002; that he was issued with a charge memo dated 23.05.2016, on the ground of serious misconducts, for which, he has given a detailed explanation on 09.06.2016 and not satisfied with the same, an enquiry officer was appointed to



4. Learned counsel for the petitioner would submit that since the charges levelled against the petitioner are serious in nature, assistance of an Advocate is required and that as the enquiry officer happens to be a Lawyer, the petitioner must be given an opportunity to defend himself effectively before the enquiry officer with the assistance of an Advocate in the domestic enquiry.

4.1. In support of his submission, learned counsel for the petitioner relied upon the following two judgments of the Hon'ble Apex Court;

i) Ramesh Chandra vs University Of Delhi & Ors., reported in 2015 (5) SCC 549, wherein the Apex Court has held that the Departmental inquiries conducted against the appellant therein were in violation of rules of natural justice, because the Inquiry Officer appointed therein, being a retired Judge of the High Court was a person of vast legal acumen and experience and the Presenting Officer therein also had sufficient experience in presenting case before Inquiry Officer.

ii) In yet another case in Board of Trustees of the Port of Bombay vs. Dilipkumar Raghvendranath Nandkarni and others, reported in (1983) 1 SCC 124, the Apex Court has held that if the rules prescribed for such an enquiry did not place an embargo on the right of the delinquent employee to be represented by a legal practitioner, the matter would be in the discretion of the Enquiry Officer whether looking to the nature of charges, the type of evidence and complex [pic]or simple issues that may arise in the course of enquiry, the delinquent employee in order to afford a reasonable opportunity to defend himself should be permitted to appear through a legal practitioner.

5. A reading of the judgments, refereed to above, would disclose that the Hon'ble Apex Court, while considering the facts of the case therein, came to the conclusion that a Lawyer should be permitted to assist the delinquent employee, who had to face enquiry before a retired High Court Judge as well as before a legally trained person.

6. In the present case on hand, it is admitted on both sides that the Presiding Officer is not a legally trained man and the ground raised that the witness and the enquiry officer are Law Graduates cannot be the valid ground for seeking the assistance of a Lawyer to defend him in the enquiry.

7. The Hon'ble Supreme Court in the case of Padmasundara Rao (Dead) & others vs. State of Tamil Nadu and others, reported in 2006 2 Courts 301 (SCS) observed that if it is found that the facts of the cited judgment of the Higher Forum totally differs with the one on hand, then there is no compulsion for the subordinate



courts to blindly rely on the same to arrive at a conclusion. It is appropriate to extract the relevant paragraph of the said judgment, which reads as follows:

"Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. There is always peril in treating the words of speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case, said Lord Morris in *Herrington vs. British Railways Board* (1972) 2 WLR 537. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases."

8. In view of the above, this Court is of the view that the judgments relied on by the learned counsel for the petitioner has no relevancy to the facts of the present case of the petitioner. Therefore, finding no merits in the writ petition, the same is liable to be dismissed.

9. Accordingly, the Writ Petition is dismissed as devoid of merits. No costs. Consequently, connected miscellaneous petitions is closed.

Sd/-

Assistant Registrar(CS-I)

/True Copy/

Sub Assistant Registrar(CS)
Madurai Bench of Madras High Court,
Madurai-23.

To:

The Registrar, Bharathidasan University, Trichy-22.

+1cc to M/s.R.M.Sivakumar, Advocate in SR.80729

W.P.(MD)No.23970 of 2016
14.12.2016

ar.

PBK/EM/SAR-I 16/12/2016 ::3P-3C:(IT)