

**IN THE HIGH COURT OF JUDICATURE, AT HYDERABAD
FOR THE STATE OF TELANGANA & THE STATE OF ANDHRA
PRADESH**

HON'BLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION NO. 5183 OF 2010

Between:

Dr I.S. Dagar S/o Sri Lakshmachand Dagar

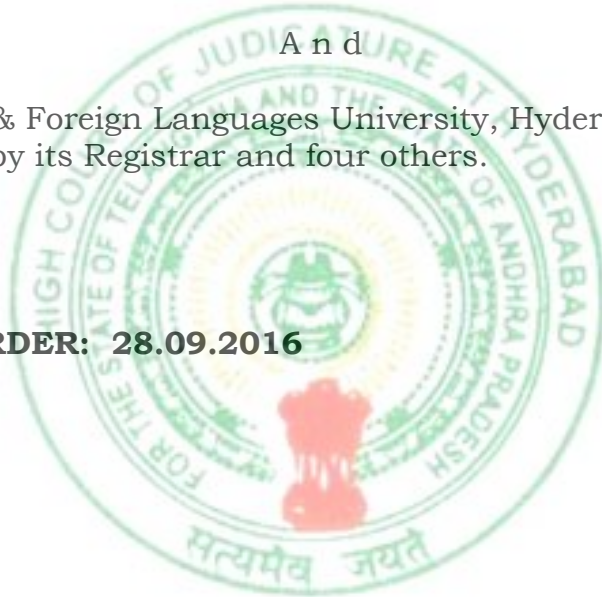
....Petitioner

A n d

The English & Foreign Languages University, Hyderabad,
represented by its Registrar and four others.

....Respondents

DATE OF ORDER: 28.09.2016



HON'BLE SRI JUSTICE P. NAVEEN RAO**WRIT PETITION NO. 5183 OF 2010****ORDER:**

Petitioner challenges the order of punishment of compulsory retirement vide Order No. EFLU/Admn/F.1266/2009/868 dated 6.6.2009.

2 Heard learned counsel appearing for petitioner and also the learned Standing Counsel for Universities.

3. In the array of parties, the petitioner impleaded even the authorities of University as respondents 3 & 4 in their personal capacity. However, when the matter is taken up for consideration, counsel for the petitioner clearly states that the petitioner is not intending to pursue the matter in so far as respondents 3 & 4 are concerned.

4. At the relevant point of time, the petitioner was working as Reader in the department. The petitioner was offered an assignment as a Professor and Director, Academic, Planning and Consideration at B.P.S. Mahila Vishwavidyalaya, Khanpur Kalan (Sonipat) in the State of Haryana. Petitioner was eager to take the said assignment and, therefore, requested his employer, Centre for English & Foreign Languages University, Hyderabad, to permit him to take up the said assignment by granting two years of EOL, (Extraordinary Leave) with Lien. The said request of the petitioner was accepted by orders dated 25.7.2007. The petitioner was relieved from duty from 31.7.2007. However, in the Office Order, the Officer requested the petitioner to obtain 'no due certificate'

before he is relieved and to arrange for payment of Leave Salary and Pension Contribution (LS+PC) regularly during the period of Lien. On 26.7.2007, petitioner submitted a representation to the Registrar to permit him to defer submission of 'no due certificate' and also to occupy the residential accommodation for some more time. The request of the petitioner with regard to occupation of residential accommodation was accepted by the Vice Chancellor but the Vice Chancellor asked the petitioner to produce 'no due certificate'. The petitioner did not produce 'no due certificate' before 31.7.2007. The petitioner, thereafter, went and joined in the assignment given to him. On 9.1.2008 charge sheet was issued to the petitioner, which contains about seven allegations and domestic enquiry was ordered. In domestic enquiry, the Enquiry Officer held charges (a) and (b) proved and that the other charges were not proved. Based on the findings recorded by the Enquiry Officer to the extent of charges proved, the disciplinary authority imposed punishment of compulsory retirement by the order impugned in this Writ Petition.

5.1 Learned counsel appearing for the petitioner would submit that, soon after relieving orders were issued in favour of the petitioner, he went to Visakhapatnam where his daughter lives, to spend two days before he could be relieved and joined in the new assignment. However, while he was in Visakhapatnam, he suffered with massive cardiac problem and he was immediately moved to New Delhi and was admitted in New Delhi and by-pass surgery was undertaken to cure the problem. After recovery, the petitioner joined in the new assignment on 3.8.2007. Since the petitioner

could not come back to Hyderabad because of these unexpected developments, he could not handover the books lying with him and as per his earlier undertaking, he has vacated quarter during October 2007. The petitioner could not immediately return the books as they were not in his possession. According to the petitioner, the books which were in his custody were not in good condition and are of no use to University and, in fact, the University is not having sufficient space to stock the books and the University was in the habit of gifting the books. Therefore, *bonafidely* the petitioner also gifted the books to third parties. Since on this allegation disciplinary action was initiated and one of the charges levelled against the petitioner was not handing over the books, the petitioner returned the books taken from the University. Learned counsel, submits that there was no intention of misusing the books lying with him. There was delay in handing over the books but there was no ill-motive nor bad intention to gain undue advantage by gifting books.

5.2. He would further submit that as per the order, dated 25.7.2007 he was relieved from 31.7.2007 and according to the endorsement made by the Vice Chancellor in his representation dated 26.7.2007, the petitioner was under the *bona fide* impression that there was no requirement of permission of 'no due certificate' immediately and was deemed to have been relieved on 31.7.2007 and only under that *bona fide* impression he has joined in the new assignment. There was no ill- motive on his part.

5.3. Learned counsel, therefore, submits that the punishment of compulsory retirement is too harsh. He would further submit that

during this period several charges were leveled against him, as a result of vindictive attitude. He was harassed and humiliated by the persons inimical to him and all the allegations including the allegation of not returning the books and the petitioner was not properly relieved, were made with malafide intention to harass the petitioner. Since the major allegations were not proved and what are proved are only procedural lapses on the part of the petitioner, imposing of such harsh punishment is wholly unwarranted. In support of the said contention, he placed reliance on the decisions of the Supreme Court in **Pritam Singh vs. Union of India & others**¹ and **State of U.P. vs. Jaikaran Singh**².

5.4. Learned counsel, in support of his contention that the punishment is disproportionate to the charges leveled against him, would also submit that the University was not subjected to any financial loss and all the books, which were in his custody, were returned.

6. Smt K. Lalitha, Standing Counsel for English & Foreign Languages University, submits that the order dated 25.7.2007 is clear that the petitioner has to furnish 'no due certificate' before he was to be relieved. Thus unless the 'no due certificate' was furnished, the question of relieving the petitioner did not arise. Admittedly, the petitioner did not furnish 'no due certificate' before 31.7.2007 or even subsequently. Therefore, without properly relieving the petitioner by the employer, he could not have joined in the new assignment; the same is ex-facie illegal. She would further submit that the petitioner has no competency or authority to retain

¹ (SLP (CIVL) NO. 24665 OF 2003) DATE: 22.9.2004

² (2003) 9 SCC 228

huge quantity of books and gifting those books to third parties. As a head of the department, he has no authority to give books to third party. Before relieving, the petitioner ought to have handed over the books. Even by the time, the disciplinary action was initiated, the petitioner did not handover the books. Only after the charge memo was drawn, the petitioner realized and then he handed over the books on 11.2.2007. She would further submit that it was not necessary that the University ought to be subjected to financial loss in order to fix the responsibility. The fact remains that the petitioner did not handover the books until the disciplinary action was initiated. Without authority and competency, he gifted the books belonging to the University and the same itself amounts to grave misconduct. She would therefore submit that the punishment was validly imposed and it cannot be said that the punishment imposed is disproportionate to the charges leveled against the petitioner warranting interference by this Court.

7. Though seven charges were leveled against the petitioner, two charges are proved in which punishment was imposed against the petitioner. The sum and substance of the allegation in the first charge is that the petitioner was not validly relieved and even before he was validly relieved by the employer he could not have joined in the new employment. The allegation in the second charge is that the petitioner did not handover huge quantity of books nor has given account of the books. It appears that books were gifted by petitioner. It is not in dispute that the petitioner did not submit 'no due certificate' before 31.7.2007. Therefore, it cannot

be said that the petitioner has complied with condition imposed in the order dated 25.7.2007. In the order, the condition clearly stipulated that the petitioner would submit 'no due certificate' before he is relieved. The events which are alleged to have occurred in his personal life after 25.7.2007 may give some kind of benefit of doubt in favour of the petitioner, if at all he was diligent and took the University into confidence by informing the University about the subsequent developments. It appears that the petitioner did not take the said precaution.

8.1. Admittedly, 'no due certificate' was not filed before 31.7.2007 and without further intimation to the University, the petitioner joined in the new assignment. Therefore, it cannot be said that the charge leveled against the petitioner is not established.

8.2. Furthermore, admittedly the petitioner was in custody of 550 books belonging to the University and submission of 'no due certificate' would mean handing over of these books to the University. 'No due certificate' could not be given without handing over these books. Petitioner in his representation ought to have informed the Vice Chancellor about the books in his custody were actually gifted, would be taken back and handed over to the University in due course and ought to have sought some time. It appears from the representation dated 26.7.2007, this fact was not informed to the University but he sought some more time for obtaining 'no due certificate'. The endorsement made by the Vice Chancellor is only dealing with the occupation of the residential

quarter provided to him for some more time. But the Vice Chancellor directed the petitioner to obtain 'no due certificate'.

8.3. In paragraph 20 of the affidavit filed in support of the petition, petitioner admits that he has gifted books belonging to the University. It is not in dispute that the petitioner did not obtain any authorization from the University to gift books to third party. The quality of the books or useful condition of the books cannot be the concern of the petitioner as the books are property of the University. This act of the petitioner in gifting the books, which do not belong to him and belonging to the University is a serious misconduct. Whether ultimately books are returned or whether no loss was caused to the University is of no consequence. What is relevant is the conduct of the petitioner in not apprising the University about the status of the books and gifting the books to third party without the consent or authorization from the University. This fact is proved and it is not in dispute that only after the charge sheet was drawn, the books were returned by the petitioner. Thus the allegations leveled against the petitioner were substantiated.

8.4. As noticed above, the allegation of not handing over books and in fact gifting the books to third parties cannot be said as a minor lapse on the part of the petitioner. Moreso, the petitioner has not apprised the University about the status of the books. In view of the same, when this allegation is proved, it cannot be said that the punishment imposed on the petitioner is not commensurate.

9. The principle of law is well settled that ordinarily the Writ Court does not interfere in disciplinary matters unless the disciplinary action is held as not taken in accordance with law; that principles of natural justice and fair play are not complied; and procedural formalities are not observed. In the given case, Court can interfere with the quantum of punishment if punishment imposed is highly disproportionate to the nature of allegations imposed and shocks the conscience of the Court. The case on hand does not fit into these parameters. Punishment imposed cannot be said as highly disproportionate to the charges leveled against the petitioner. Though in compilation of charges, the allegation in the first charge can be classified as procedural, but on a cumulative reading of first and second charges, it cannot be said that the punishment is disproportionate to the charges leveled against the petitioner. In the above analysis the decisions relied by learned counsel for petitioner do not come to his aid.

10. I do not see any merit in the Writ Petition and the writ petition deserves to be dismissed.

11. Accordingly, the Writ Petition is dismissed. There shall be no order as to costs. Miscellaneous petitions, pending if any, shall stand closed.

P. NAVEEN RAO, J

Date: 28.09.2016
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