

HON'BLE SRI JUSTICE A.V. SESA SAI

WRIT PETITION No.25868 of 2012

%03-06-2016

Between:

L.V. Pradeep

... PETITIONER

a n d

\$Andhra University rep. By its Vice Chancellor, Visakhapatnam
and others

... RESPONDENTS

< GIST:

> HEAD NOTE:

!Counsel for petitioner: Sri Addepalli Suryanarayana

^Counsel for Respondent: Sri K. Jyothi Prasad

? Cases referred

1. 2005 (3) ALT 632 (D.B.)

2. 2008 (5) ALD 427

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THE HON'BLE SRI JUSTICE A.V. SESA SAI

WRIT PETITION No.25868 of 2012

ORDER:

The challenge in the present writ petition is to the order of dismissal of the petitioner from service passed by the respondent—University vide proceedings No.S.III(2)/3344514/ 10, dated 26-06-2012.

The brief and relevant facts: In the present case, the respondent disciplinary authority appointed the Enquiry Officer on 15-04-2011 and the Enquiry Officer so appointed framed the following charge:

“You, while working as B.Ed. Assistant in the Andhra University High School were using abusive language and asked for sexual favours from the girl students and were using double meaning words in your conversation with some female teachers and as such, guilty of gross misconduct.”

On 19-09-2011, the Enquiry Officer submitted his report, holding the charge proved and the last paragraph of the said report reads as under:

“I am, therefore, of the opinion that the proceedings of the Women’s Grievances & Redressal Cell Exhibit C6 read with the report Exhibit C7, which states that there was some truth in the allegations has to be given credence. I, therefore, hold that charge against Mr.Pradeep is established and as such he is guilty of the same.”

Subsequently, the 1st respondent issued proceedings No.S.III(2)/3344514/10, dated 02-01-2012 under Rule 6 (b), Chapter XII of Andhra University Administration Manual framing

the following charge while asking the petitioner to show cause as to why disciplinary action should not be initiated against the petitioner:

“Sri L.V. Pradeep, while working as B.Ed. Assistant in Andhra University High School were using abusive language and asked for sexual favours from the girl students and were using double meaning words in his conversation with some female teachers and as such, guilty of gross misconduct.”

On 13-01-2012, the petitioner submitted explanation denying the allegations and requested the respondents to furnish the report of the Enquiry Officer. In response to the said request, on 06-03-2012 the respondents furnished the Enquiry Officer's report and subsequently after receipt of the said report of the Enquiry Officer, the petitioner submitted another representation, dated 16-03-2012, pointing out various infirmities in the Enquiry Officer's report. On 26-06-2012, the respondent-University passed the order of dismissal, while referring the resolution of the Executive Council, dated 01-03-2012, wherein the Executive Council of University took a decision to dismiss the petitioner basing on the report of the Enquiry Officer who framed the charge and conducted enquiry and submitted a report even before framing the charge by the disciplinary authority. The said order of dismissal passed by the respondent-University is under challenge in the present writ petition.

Submissions/contentions of Sri Addepalli Suryanarayana, learned counsel for the petitioner and Sri K. Jyothi Prasad, learned Standing Counsel for respondent-University:

Learned counsel for the petitioner, attacks the order of dismissal mainly on three (3) grounds namely:

- i) *The Enquiry Officer has no power to frame a charge and enquire into the same and to submit a report basing on the same.*
- ii) *As per Rule 6 (b), Chapter XII of Andhra University Administration Manual for initiation of disciplinary authority, it is incumbent and mandatory on the part of the disciplinary authority to frame charges and thereafter only the regular enquiry needs to be held by giving notice, opportunity to adduce evidence and to cross-examine the witnesses and the respondents in the instant case failed to adhere to the same.*
- iii) *Even before furnishing the Enquiry Officer's report the Executive Council passed a resolution on 01-03-2012, to dismiss the petitioner from service and the same is a clear infraction of Article 14 of the Constitution of India besides being violative of principles of natural justice.*

In support of his submissions and contentions learned counsel for the petitioner places reliance on the following judgments:

1. *2005 (3) ALT 632 (D.B.) [Paragraph Nos.6 to 8]*
2. *2008 (5) ALD 427 [Paragraph No.13]*

On the contrary, the learned Standing Counsel for respondent-University emphatically supports the impugned action by contending that there is no illegality nor there exists any procedural infirmity in the questioned action and in absence of the same the present writ petition is not maintainable and the petitioner is not entitled for any indulgence of this Court under Article 226 of the Constitution of India. It is also the submission of

learned Standing Counsel for respondents that since the respondents afforded complete opportunity during the course of enquiry the complaint of the petitioner on violation of principles of natural justice is completely devoid and bereft of any substance. In support of his submissions and contentions learned Standing Counsel placed reliance on the judgment reported in 2008 (5) ALD 427 (paragraph Nos.12 to 16).

In the above backdrop now the issue that emerges for consideration of this Court is:

Whether the questioned order of dismissal passed by the respondents is sustainable and tenable?

FINDING: In order to consider and determine the above issue it would be highly essential and pertinent to refer to Rule 6 (b), Chapter XII of Andhra University Administration Manual, which reads as under:

“(b) No order of dismissal, removal, compulsory retirement or reduction shall be imposed on an employee of the University (other than an order based on facts which have led to his conviction in a Criminal Court), unless he has been informed writing of the grounds in which it is proposed to take action, and has been afforded an adequate opportunity of defending himself. The grounds on which it is proposed to take action shall be reduced to the form of a definite charge or charges, which shall be communicated to the person charged together with a statement of the allegations on which each charge is based and of any other circumstances which it is proposed to take into consideration in passing orders in the case. He shall be required, within a reasonable time to put in a written statement of his defence and to state whether he desires an oral enquiry or only to be heard in person. If he desires an oral enquiry or if the authority concerned so directs, an oral enquiry shall be held. At that enquiry oral evidence shall

be heard as to such of the allegations as are not admitted, and the person charged shall be entitled to cross examine the witness, to give evidence in person and to examine such witnesses as he may produce. Provided that the authority conducting the enquiry may, for special and sufficient reasons to be recorded in writing refuse to examine a witness. If no oral enquiry is held and if he had desired to be heard in person, a personal hearing shall be given to him. The proceedings shall contain a sufficient record of the evidence and a statement of the findings and the grounds thereof."

In the instant case, as evident from the material available before this Court, the above procedure has completely been given go by and without holding any regular enquiry after framing the charges by the disciplinary authority, the impugned order of dismissal came to be passed. It is further evident from the impugned order that even before furnishing the report of the Enquiry Officer, the Executive Council of the respondent-University took a decision to dismiss the petitioner from service, as such, the impugned action is not only in utter disregard of the above mandatory procedure but also in flagrant violation of principles of natural justice.

Another significant aspect which needs to be noted and cannot be lost sight of is that in the explanations, dated 13-01-2012 and 16-03-2012 the petitioner herein pointed out various infirmities in the report of the Enquiry Officer but there is absolutely no evidence of consideration of the same by the disciplinary authority. This clearly shows the predetermined mind of the respondents towards the issue. This arbitrary action on the part of the respondents cannot be countenanced as the allegation

in the instant case touches the career of an individual and this undoubtedly tantamounts to assassination of character without adhering to the mandatory requirements of the law. The mode or manner in which the respondents conducted proceedings is undoubtedly alien to the service jurisprudence. In this connection it may be appropriate to refer to the judgments cited by the learned counsel.

In case of **CH. APPALA REDDY V. EASTERN POWER DISTRIBUTION COMPANY OF A.P. LTD., VISAKHAPATNAM AND OTHERS**^[1], this Court held at paragraph Nos.6 to 8 as follows:

“6. In any disciplinary proceedings, the necessity to appoint an Enquiry Officer arises only when the appointing authority points out certain acts of indiscipline on the part of the delinquent employee and the explanation offered by the employee is not satisfactory. On the other hand, where the explanation is found to be satisfactory, the necessity to proceed further does not arise or remain. In V.K. Khanna’s case (1 supra), the Supreme Court reinstated this position of law and held that appointment of an Enquiry Officer even before a show-cause notice or charge sheet is served upon an employee is unknown to service jurisprudence. It was further observed that in such an event, an element of bias exists vis-à-vis the Enquiry Officer.

“7. The appointing authority would be in a position to apply his mind to the facts of the case only when he calls upon an employee to explain as to the acts of misconduct, noticed by him. Depending on his satisfaction, on consideration of the explanation, he may have to choose either to proceed further or to drop the proceedings. Even in a case, where he proposes to proceed further, but his inclination is only to impose a minor penalty, the necessity to appoint an Enquiry Officer may not arise. Conversely, the need to appoint an Enquiry Officer would arise if only the appointing

authority is not satisfied with the explanation offered by the employee and that he proposes to inflict a major penalty.

8. *All these steps can emerge only when a show-cause notice or charge sheet is given by the appointing authority. Such a course was, admittedly, not followed in this case. As observed earlier, initiation of disciplinary proceedings against the appellant commenced with the appointment of an Enquiry Officer and the ratio laid down by the Supreme Court gets attracted to the facts of the case. The Regulation 10(2)(a), upon which, reliance is placed by the respondents, does not salvage the situation. On the other hand, the Regulation does not support the course of action, adopted by the respondents. In clear terms, it mandates that the appointing authority shall appoint an Enquiry Officer only when he proposes to impose the penalty indicated in certain clauses. The proposal to impose such a penalty can, invariably, emerge only after ascertaining the views or obtaining the explanation from the employee concerned. Viewed from any angle, the order challenged in the Writ Appeal, cannot be sustained.”*

In case of **PROF.M. VIVEKANANDA MURTHY V. GOVERNMENT OF ANDHRA PRADESH AND OTHERS**^[2], this Court held at paragraph Nos.12 to 16 as follows:

“12. The relevant provision, namely, Regulation 10(2) A of the Employees Disciplinary Regulations, framed by the respondent therein ordained that the Disciplinary Authority shall appoint an Inquiry Officer only when it is proposed to impose major penalty. This obviously must precede of a charge-sheet by the Disciplinary Authority and a reply by the delinquent employee. Similar view was taken by the Full Bench of this Court in Government of A.P. v. M.A. Majeed : (2006) (1) ALD 823 = 2006 (1) ALT 661 (FB), in relation to the proceedings that were governed by the A.P. Civil Services (Classification,

Control and Appeal) Rules, 1991. Rule 20 thereof provides for similar course of action. Where, however, the Regulations themselves empower the Inquiry Officer to issue a charge-sheet, the general principle referred to above, has to give way.

13. Reverting to the facts of this case, the Service Conditions of the employees of the University are governed by the Administration Manual. Chapter 12 thereof deals with 'penalties and appeals'. In Rule 1 of this Chapter, the types of penalties, ranging from censure to dismissal from service, are enlisted. Rule 3 enlists the authorities, that can impose the penalties on various categories of employees. Rule 5 prescribes the procedure to be followed before any minor penalty is imposed. It provides for the imposition of such penalty, by issuing a show-cause notice, obviating the necessity to conduct the departmental inquiry. Rule 6 deals with the cases, in which major penalties are to be imposed. Though it is not succinctly worded and elaborated in its text, the purport thereof is not difficult to understand. It is felt necessary to extract the same for better appreciation of the issue :

Rule (6) :

(a) Enquiry relating to any disciplinary action may be made by the Vice-Chancellor or the Discipline Committee of the Executive Council as circumstances require, or by such other Officer of Special Committee appointed for the purpose, provided that in cases of lapses for which the Registrar or any other Officer of the University or the Head of a Department or Office is directly or indirectly responsible, the Vice-Chancellor shall appoint a committee to hold an enquiry and fix liability.

(b) No order of dismissal, removal, compulsory retirement or reduction shall be imposed on an employee of the University (other than an order based on facts which have led to his conviction in a Criminal Court), unless he has been informed in writing of the grounds in which it is

proposed to take action, and has been afforded an adequate opportunity of defending himself. The grounds on which it is proposed to take action shall be reduced to the form of a definite charge or charges, which shall be communicated to the person charged together with a statement of the allegations on which each charge is based and of any other circumstances which it is proposed to take into consideration in passing orders in the case. He shall be required, within a reasonable time to put in a written statement of his defence and to state whether he desires an oral enquiry or only to be heard in person. If he desires an oral enquiry or if the authority concerned so directs, an oral enquiry shall be held. At that enquiry oral evidence shall be heard as to such of the allegations as are not admitted, and the person charged shall be entitled to cross-examine the witness, to give evidence in person and to examine such witnesses as he may produce. Provided that the authority conducting the enquiry may, for special and sufficient reasons to be recorded in writing refuse to examine a witness. If no oral enquiry is held and if he had desired to be heard in person, a personal hearing shall be given to him. The proceedings shall contain a sufficient record of the evidence and a statement of the findings and the grounds thereof.

(c) The requirements of Sub-rule (b) shall not apply where the person concerned has absconded, or where it is for other reasons impracticable to communicate with him.

(d) All or any of the provisions of Sub-rule (b) may, in exceptional cases, for special and sufficient reasons to be recorded in writing be waived where there is a difficulty in observing exactly the requirements of the sub-rule and those requirements can be waived without injustice to the person charged.

(e) Where the officer of committee holding the enquiry is not competent to award a penalty, his duty ends with the recording of his or its findings on the charges and it is no

part of his or its function to make any suggestion regarding the penalty to be awarded or the further disposal of the case.

(f) Any member of the University service may be placed under suspension from service by the Vice-Chancellor pending enquiry into grave charges, where such suspension is deemed by him to be necessary in the interests of the University. The period of suspension from office and the emoluments thereof either in whole or in part shall not in the case of teachers exceed one year where suspension is imposed as a punishment under Rule 1(vi).

14. Clause (a) of Rule 6 is general in nature. Clause (b) deals with the actual procedure. From a perusal thereof, it becomes clear that the occasion to appoint an inquiry officer arises only when the employee concerned desires an oral inquiry, or the disciplinary authority himself directs such an inquiry. The procedure to be followed in the course of the departmental inquiry is also indicated. The dichotomy maintained between the disciplinary authority, on the one hand, and the inquiring authority on the other, is clearly evident from Clause (e).

15. A combined reading of the above provisions indicates that an inquiry officer can be appointed only after an explanation is received from an employee to the charge-sheet. The grounds on which the action is proposed are required to be 'reduced to the form of a definite charges by the disciplinary authority and the function of the inquiry officer is only to record findings as to the proof or otherwise of the charges.

16. In this case, the Executive Council of the University had straightaway appointed the Inquiry Officer and it was not preceded by issuance of charge memo, as contemplated under Rule 6(b), much less, an explanation from the petitioner. In addition to that, the charge memo was issued by the inquiry officer himself. Therefore, the course of action adopted by the University is contrary to Rule 6 of Andhra University Administration

Manual. Consequently, the first question needs to be answered in favour of the petitioner.”

The above narration and the law laid down in the above-referred judgments drive this Court towards an irresistible conclusion that the impugned action is highly preposterous, iniquitous and is totally alien to the service jurisprudence, as such, the same is liable to be deprecated.

RESULT: For the aforesaid reasons, the writ petition is allowed, setting aside the impugned proceedings of the 2nd respondent vide proceedings No.S.III(2)/3344514/10, dated 26-06-2012 and consequently respondents are directed to reinstate the petitioner into service with all consequential benefits including the payment of full salary from the date of suspension and to restore his seniority.

Miscellaneous Petitions pending, if any, shall stand closed.
There shall be no order as to costs.

A.V. SESA SAI, J

June 03, 2016

Note: L.R. Copy to be
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THE HON'BLE SRI JUSTICE A.V. SESA SAI

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