

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.06.2017

CORAM:

THE HON'BLE MR. JUSTICE T.RAJA

W.P.No.8026 of 2017
and
WMP.8777 of 2017
and
WMP.10219 of 2017

Dr.A.Amuldoss

.. Petitioner

Vs

1.The Vice Chancellor,
Thiruvalluvar University,
Serkadu 632 115.
Vellore District.

2.The Thiruvalluvar University,
Rep. By its Registrar,
Serkadu - 632 115.
Vellore District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorari to call for the records pertaining to the impugned order in Ref.No.TVU/VC/DPE-Suspension/2017-7349, dated 30.03.2017, issued by the second respondent and quash the same.

For petitioner : Mr.S.Sathia Chandran

For Respondents : Mr.Muthukumaraswamy, AG
for Mr.M.C.Swamy

ORDER

Challenging the impugned suspension order dated 30.03.2017 passed by the second respondent / the Thiruvalluvar University, Vellore, the petitioner has filed this writ petition.

2. It is submitted by the learned counsel for the petitioner that the petitioner was directly recruited to the post of Director of Physical Education on 19.07.2007 by the second respondent University and even now, he is holding the

said post for about 10 years. It is further stated that prior to his appointment, he worked as the Director of Physical Education between 16.07.1990 and 18.07.2007 at Sacred Heart College, Tirupattur, Vellore, which is affiliated to the second respondent University.

3. While narrating the above said facts, it is further argued that the second respondent University is a State University established under the State Act No.32 of 2002 - the Thiruvalluvar University Act, 2002 (in short "Act"). Since the second respondent University so far has not framed its Statutes, Ordinances and Regulations, the Statutes of the University of Madras Act, 1923, are being followed in accordance with sub-section (3) of Section 61 of the Act. It is further stated that since the petitioner was senior most staff, he was given full additional charge as the Registrar-in-charge from 24.07.2008 to 05.10.2010 and from 21.09.2015 to 26.07.2016 and again, he worked as Controller of Examination-in-charge from 23.10.2008 to 26.01.2010. Thereafter, on noticing that the University has issued application to fill up the post of Registrar on 25.11.2016, when he sought for issuance of No Objection Certificate to apply for the said post, the same was not granted to him.

4. While the matter stood as above, the impugned order of suspension dated 30.03.2017 has been issued by the second respondent University placing the petitioner under suspension with immediate effect pending enquiry into the alleged misappropriation of huge amount of funds.

5. Terming the impugned suspension order passed by the second respondent under sub-rule (e) of Rule 17 of the Tamil Nadu Civil Services (Discipline & Appeal) Rules (in short "TNCS Rules") as without jurisdiction, learned counsel for the petitioner contended that the second respondent University is an Autonomous body created by the Tamil Nadu Legislative Assembly and that the second respondent University has not framed its Statutes and therefore, the Statutes of the University of Madras that was in force at the time of passing of the Thiruvalluvar University Act, 2002, are being followed by the University till this date, therefore, such an impugned order of suspension passed by the second respondent University under Rule 17(e) of the TNCS Rules is completely without jurisdiction and bad in law.

6. By taking support of sub-section 28 of Section 24 of the Thiruvalluvar University Act, 2002, learned counsel for the petitioner submitted that when the power is available with the Syndicate of the University to suspend and dismiss the

University Lecturers, University Readers, University Professors and the teachers and other employees of the University, it is not open to them to resort to the Rule 17(e) of the TNCS Rules to suspend the petitioner, therefore, the impugned order passed by placing the petitioner under suspension by invoking such Rule is liable to be quashed.

7. Per contra, learned Advocate General appearing for the respondents, by filing a detailed counter affidavit, submitted that the issue of want of jurisdiction for placing the petitioner under suspension under Rule 17(e) of the TNCS Rules does not arise as the second respondent University has not framed any separate statute till date. Therefore, the Statutes as adumbrated in the University of Madras Act, are being followed as on today and that the Madras University has been following the TNCS Rules regarding the disciplinary actions against its staff members.

8. Again, referring to paragraph No.4 of the affidavit filed by the petitioner in support of the writ petition, it is submitted that the petitioner himself in the said paragraph admitted that the second respondent University has not framed its own Statute till date, therefore, it is not open to him to say that the University cannot resort to place the petitioner under suspension by exercising the power given under Rule 17(e) of the TNCS Rules. It is further submitted by the learned Advocate General that when the petitioner himself has categorically stated that the provisions of the University of Madras are applicable, he cannot now take a different stand during the course of the arguments. Besides, since the appointment of the petitioner itself stated that he is governed by the Rules of the State Government in regard to disciplinary proceedings, he cannot now say that the impugned suspension order passed under Rule 17(e) of the TNCS Rules by the second respondent University is without jurisdiction, hence, the impugned suspension order passed by the second respondent University invoking such Rule is valid in law.

9. Controverting the argument of the learned counsel for the petitioner that the Syndicate of the University has power to suspend or dismiss both the teaching and non-teaching of the University and therefore, the suspension order passed by the second respondent by resorting to Rule 17(e) of the TNCS Rules is without jurisdiction, learned Advocate General contended that the said argument cannot be sustained, for, the Syndicate of the University by exercising the power conferred under Section 24(28) of the Thiruvalluvar University Act, has passed a resolution on 30.03.2017, wherein it was resolved to suspend the petitioner with immediate effect in view of the huge

amount involved in the Audit Objection of the Local Fund Department. Therefore, when the meeting of the Special Syndicate held on 30.03.2017 has taken a decision by exercising its power conferred under Section 24(28) of the Thiruvalluvar University Act, the petitioner is not legally permitted to say that the respondent University has wrongly followed the provisions of the TNCS Rules. Therefore, the present writ petition filed by the petitioner questioning the impugned suspension order passed by the second respondent University is wholly misconceived and hence, the same is liable to be dismissed.

10. Heard the learned counsel appearing on either side and perused the materials available on record.

11. Given the facts and circumstances of the case, the only question that arises for consideration is whether the second respondent University is right in passing the impugned suspension order by invoking Rule 17(e) of the TNCS Rules?

12. The contention of the learned counsel for the petitioner is that as per Section 24(28) of the Thiruvalluvar University Act, 2002, only the Syndicate of the University has power to suspend and dismiss the University Lecturers, University Readers, University Professors and the teachers and other employees of the University, therefore, the impugned order of suspension passed by the second respondent University invoking Rule 17(e) of the TNCS Rules cannot be sustained. On the other hand, it is submitted by the learned Advocate General for the respondent University that till date no separate statute has been framed for the respondent University and they are governed by the University of Madras Act by virtue of the Transitory provision under Section 61(3) of the Thiruvalluvar University Act, 2002, and that the Madras University has been ultimately following the TNCS Rules regarding disciplinary actions against its staffs. Therefore, the question of want of jurisdiction by the second respondent University in passing the impugned suspension order does not arise.

13. It is not in dispute that the petitioner was originally appointed as the Director of Physical Education in the second respondent University. From his appointment order, it is seen that he is governed by the Madras University Employee's Conduct Rules and Tamil Nadu Civil Services (Discipline and Appeal) Rules and Thiruvalluvar University Act, 2002, whileso, in respect of matters relating to service conditions and disciplinary proceedings, he is governed by the Rules of the State Government. A mere perusal of the appointment order will also prove the point that he is governed by the provisions of the Tamil Nadu Civil Services (Discipline

and Appeal) Rules. For better appreciation, relevant portion of his appointment order is extracted below:

"7. You will be governed as regards leave and provident fund in so far as they apply besides Madras University Employee's Conduct Rules and Tamil Nadu Civil Services (Discipline and Appeal) Rules and Thiruvalluvar University Act, 2002, as amended from time to time. In all matters relating to service conditions and disciplinary proceedings, not expressly covered, you shall be governed by the rules of the State Government in those matters."

From a mere reading of the appointment order, it is explicitly clear that he is governed by the TNCS Rules. Therefore, when he accepted his appointment subject to the terms and conditions stipulated in his appointment order which clearly spells out that he will be governed by the Tamil Nadu Civil Services (Discipline & Appeal) Rules, as stated by the learned Advocate General of the respondent University, he is estopped from contending that the impugned suspension order passed by the second respondent by invoking Rule 17(e) of the TNCS Rules is without jurisdiction and bad in law.

14. Even if the contention of the learned counsel for the petitioner that the respondent University, by making a reference to a wrong provision, has passed the order of suspension under sub-rule (e) of Rule 17 of the TNCS Rules is accepted for the sake of argument, in the present case, only the Syndicate of the University, in its meeting held on 30.03.2017, by exercising its power conferred under Section 24(28) of the Act, has resolved to place the petitioner under suspension, therefore, such contention of the petitioner cannot be a ground to assail the impugned order. This issue has been settled by the Hon'ble Apex Court in the case of N.Mani v. Sangeetha Theatre and others [(2004) 12 SCC 728], wherein it is held that if an authority has power under the law, merely because while exercising that power, the source of power is not specifically referred to or a reference is made to a wrong provision of law, that by itself does not vitiate the exercise of power so long as the power does exist and can be traced to a source available in law. For the same proposition, learned Advocate General for the respondent University has also placed reliance on two more judgments, namely, State of Sikkim v. Dorjee Tshering Bhutia and others [(1991) 4 SCC 243] and Cantonment Board, Jammu and others v. Jagat Pal Singh Cheema [(2012) 8 SCC 189].

15. Moreover, as highlighted above, when the

appointment order itself further makes it clear that in all matters relating to service conditions and disciplinary proceedings, not expressly covered, the Rules of the State Government will be followed, I do not find any merit on the contention of the learned counsel for the petitioner that the action of the respondent in suspending the petitioner under sub-rule (e) of Rule 17 of the TNCS Rules suffers authority. Therefore, this Court need not deal with the contention of the learned Advocate General that if an authority has a power under the law, merely because while exercising that power, the source of power is not specifically referred to or a reference is made to a wrong provision of law, that by itself does not vitiate the exercise of such power.

16. Besides, it is seen from paragraph No.2 of the affidavit filed in support of the writ petition by the petitioner that the petitioner himself has categorically admitted that the provisions of the Madras University, ordinance and regulations are applicable to the Thiruvalluvar University till they are replaced by the separate Statute, Ordinance and Regulations of its own. Therefore, when he himself admitted that he is governed by the TNCS Rules, the contention of the petitioner that the respondent University has wrongly passed impugned suspension order invoking Rule 17(e) of the TNCS Rules is totally misconceived.

17. Further, when the petitioner has given a room for initiation of departmental proceedings, the Syndicate of the University, in its meeting held on 30.03.2017, has resolved to suspend the petitioner from the University Services with immediate effect in view of the huge amount involved in the Audit Objection of the Local Fund Department and non-settlement of the same for the last five years under Section 24(28) of the Thiruvalluvar University Act. On receiving the said Minutes of the Meeting of the Syndicate of the University, the second respondent University, by its impugned order dated 30.03.2017, placed the petitioner under suspension under Rule 17(e) of the TNCS Rules. Therefore, when the Syndicate of the University by invoking the powers conferred under Section 24(28) of the Act has resolved to suspend the petitioner, the contention of the petitioner that under the Act, only the Syndicate has power to suspend the petitioner also cannot be sustained, as they have rightly exercised the power by invoking Section 24(28) of the Act.

18. Thus, as the second respondent University has been following the Statutes, Ordinances and Regulations of the University of Madras Act and that till date, no separate Statute has been framed yet for the second respondent University, the writ petition filed by the petitioner challenging the impugned suspension order passed under Rule 17(e) of the TNCS Rules on the ground of want of jurisdiction fails and the same is dismissed as devoid of any merit. No Costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

rkm

To

- 1.The Vice Chancellor,
Thiruvalluvar University,
Serkadu 632 115.
Vellore District.
- 2.The Registrar,
The Thiruvalluvar University,
Serkadu - 632 115.
Vellore District.

+1cc to Mr.S.Sathia Chandran, Advocate, S.R.No.40071
+1cc to Mr.Senthil Swamy, Advocate, S.R.No.40506

W.P.No.8026 of 2017

NRJK (CO)
RS (28/06/2017)

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