

RESERVED ON : 04..01..2017

PRONOUNCED ON : 11..01..2017

IN THE HIGH COURT OF JUDICIATURE AT MADRAS

DATED : 11 ..01..2017

CORAM:

THE HON'BLE MR.SANJAY KISHAN KAUL, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE M.SUNDAR

W.A.Nos.1251, 1252 & 1332 of 2006

W.A.No.1251 of 2006 :

Dr.M.D.Raju Kumar

.. Appellant

- Vs -

1. The Registrar
Bharathiar University,
Coimbatore 641 046.

2.The Vice-Chancellor,
Bharathiar University,
Coimbatore 641 046.

3.The Syndicate of the Bharathiar
University, rep. By its Registrar,
Coimbatore 641 046.

.. Respondents

W.A.No.1252 of 2006 :

Dr.M.D.Raju Kumar

.. Appellant

- Vs -

1.Bharathiar University,
Coimbatore 641 046,
rep. By its Registrar

2.M.Muthusamy
Registrar
Bharathiar University,
Coimbatore 641 046.
(R2 given up)

.....Respondents

W.A.No.1332 of 2006 :

The Bharathiar University,
Coimbatore 641 046,
rep. By its Registrar,

.. Appellant

- Vs -

1. Dr.M.D.Raju Kumar
No.13, Jayanthi Colony,
1 st Street, Royapettah,
Chennai 600 014.

2.Mr.M.Muthusamy
Registrar
Bharathiar University,
Coimbatore 641 046.
(not necessary party only formal party
and he is not the Registrar of Bharathiar
University, Coimbatore, hence given up)

.... Respondents

PRAYER in W.A.No.1251 of 2006: Appeal under Clause 15 of the Letters Patent against the order made in W.P.No.18919 of 1996 by His Lordship Mr.Justice M.E.N.Patrudu, dated 22.08.2006.

PRAYER in W.A.No.1252 of 2006 : Appeal under Clause 15 of the Letters Patent against the order made in W.P.No.12038 of 1997 by His Lordship Mr.Justice M.E.N.Patrudu, dated 22.08.2006.

PRAYER in W.A.No.1332 of 2006: Appeal under Clause 15 of the Letters

Patent against the order made in W.P.No.12038 of 1997 by His Lordship Mr.Justice M.E.N.Patrudu, dated 22.08.2006.

For Appellant in
W.A.No.1251/06 : Mr.M.D.Rajukumar
Party-in-person

For Appellant in
W.A.No.1252/06 : Mr.E.J.Ayyappan

For Appellant in
W.A.No.1332/06 : Mr.C.Amilthan

For Respondent-1 in
W.A.No.1251 & 1252/06 : Mr.C.Amilthan

For Respondent-1 in
W.A.No.1332 of 2006 : Mr.M.D.Rajukumar
Party-in-person

COMMON JUDGMENT

(Delivered by M.Sundar,J.)

1. Facts in a nutshell :

(i) Issue is one between Dr.M.D.Rajukumar and Bharathiar University, Dr.M.D.Rajukumar having served as Deputy Director of the School of distance education in Bharathiar University for little over four years and seven months. The post of Deputy Director itself is temporary and obviously so is the appointment. In the course of service, Bharathiar University served a charge memo on Dr.M.D.Rajukumar which was challenged by him in this

Court by way of a writ petition wherein an interim order of stay of proceedings pursuant to charge memo was granted in favour of Dr.M.D.Rajukumar. Whilst the interim order was operating, Bharathiar University, abolished the post of Deputy Director and as a consequence terminated Dr.M.D.Rajukumar which was also called in question by Dr.M.D.Rajukumar by way of another writ petition in this Court, wherein it was urged that the abolition is malafide and illegal. Both the writ petitions came to be disposed off by a common order by a learned Single Judge of this Court. Dr.M.D.Rajukumar filed two Writ Appeals assailing the common order in the two writ petitions. Bharathiar University also filed a Writ Appeal, assailing those portions of the common order in so far as they had gone against the University. All the three writ appeals are before us.

2. Having set out the facts in a nutshell, we deem it necessary to set out the facts with details of dates and other particulars which may be necessary for better appreciation of our order. Therefore, we set out the facts with details of dates and other particulars necessary for appreciation of this order under the caption factual matrix infra.

3.FACTUAL MATRIX:

- (i) Bharathiar University [hereinafter referred to as the 'said

University' for brevity] commenced distance education in 1991.

(ii) On 05.08.1992, said University, in its Syndicate meeting approved posts that are necessary for distance education. This was for a initial period of two years.

(iii) On 07.09.1992, said University issued a notification being notification No.10331/E1/92 inviting applications from eligible candidates for the posts of Director and Deputy Director (Academic).

(iv) A perusal of the above said notification of the said University dated 07.09.1992 reveals that it was made clear that the posts are temporary with a rider that they are likely to be continued.

(v) Dr.M.D.Rajukumar [hereinafter referred to as 'writ petitioner' for the sake of convenience and clarity] applied for the post of Deputy Director and was appointed on 04.12.1992.

(vi) While serving as Deputy Director, on 03.11.1995 in a Syndicate meeting of the said University, vide a resolution No.242, the Syndicate of the said University resolved to initiate departmental action against the writ

petitioner, with regard to all complaints, allegations and lapses relating to him.

(vii) Pursuant to the above said resolution of the Syndicate of the said University, a charge memo dated 30.07.1996 was issued to the writ petitioner. In this charge memo 10 charges namely, (a) habitual late attendance, (b) unauthorised absence from duty (c) flouting the authority of the said University (d) non-signing of attendance register, (e) proceeding on leave without prior permission, (f) disobedience of order of superiors (g) dereliction of duty thereby causing financial loss to the University (h) misbehaviour with subordinates (i) lack of official decorum and etiquette in his communication to his superior officers and (j) dereliction of duty were framed.

(viii) On 06.12.1996, in the Syndicate meeting of the said University, it was resolved that an enquiry officer shall be appointed to enquire into the charges levelled/framed against the writ petitioner.

(ix) On 15.12.1996, the writ petitioner filed, a writ petition in this Court being W.P.No.18919 of 1996 assailing the above said resolution of the said University dated 03.11.1990 and the above said charge memo dated 30.07.1996. It is seen that one of the primary grounds of challenge was that

the Registrar has no power to issue charge memo to the writ petitioner, as he was serving as Deputy Director.

(x) In the above writ petition, on 15.12.1996 an order of interim stay was granted.

(xi) The said University entered appearance and filed a petition to vacate the stay.

(xii) After hearing both sides a learned Single Judge of this Court vide order dated 31.07.1990 made the order of interim stay absolute in favour of the writ petitioner.

(xiii) It would be relevant to mention that it is the case of the writ petitioner that the above charges are either false or trumped up, it is the further case of the writ petitioner that the entire exercise of issue of charge memo is impelled by ill motives as the writ petitioner claims that he brought to the notice of higher officials certain alleged misdeeds of his immediate superior namely, Director of Distance Education. Resisting and contending such plea of the writ petitioner, said University would say that the charges do not stem from any ill motive that the writ petitioner is delinquent and deserves to be proceeded against.

(xiv) Be that as it may, interim stay (made absolute) as stated supra was operating in favour of the writ petitioner.

(xv) When things stood as above, said University, on the ground that enrolment of students came down in the academic year 1996-1997 drastically rendering certain post in distance education surplus, abolished the post of Deputy Director and Accounts Officer. This was on 01.08.1997.

(xvi) Pursuant to the post of Deputy Director being abolished, the writ petitioner was terminated from his temporary post of Deputy Director on 04.08.1997.

(xvii) The writ petitioner again approached this Court by way of a second writ petition being W.P.No.12038 of 1997 assailing the abolition of the post and consequent termination.

(xviii) There were no interim orders in the second writ petition.

(xix) Both the above said writ petitions were tagged together, heard and finally disposed off by a learned Single Judge of this Court on 22.08.2006.

(xx) Vide a common order dated 22.08.2006, a learned Single Judge of

this Court dismissed the first writ petition W.P.No.18919 of 1996 wherein, the resolution of the Syndicate and the charge memo were challenged. With regard to the second writ petition, in and by the same common order, the learned Single Judge held that the abolition of the post of Deputy Director when an interim order was operating in favour of the writ petitioner with regard to the charge memo casts a shadow on the bonafide of such abolition and awarded a sum of Rs.1 Lakh as compensation to the writ petitioner.

(xxi) Aggrieved by the dismissal of the first writ petition and not satisfied with the order in the second writ petition, the writ petitioner filed two independent writ appeals which are W.A.No.1251 of 2006 [against W.P.No.18919 of 1996] and 1252 of 2006 [against W.P.No.12038 of 1997] respectively.

(xxii) Aggrieved by only that limb of the order of the learned Single Judge wherein and whereby the said University was directed to pay compensation, the said University also filed a writ appeal with a limited prayer against the common order. That writ appeal of the University is W.A.No.1332 of 2006.

(xxiii) In the writ appeal filed by the said University namely W.A.No.1332 of 2006 an interim order (interim stay) was granted on

18.10.2006 with regard to/in so far as that portion of the order which went against the University. In other words, the interim order enured to the benefit of the said University to the limited extent of the University being directed to pay Rs.1 Lakh as compensation.

(xxiv) All the above said three writ appeals against one common order (in two writ petitions) were tagged together and were before us.

4. DISCUSSION:

(i) The main line of attack of the writ petitioner [in assailing the order of the learned Single Judge] is that the learned Single Judge after returning a finding that the very abolition of the post of Deputy Director is malafide has not given any substantial relief to the writ petitioner. This line of attack is furthered by the writ petitioner by advancing an argument that the moment the abolition of the post of Deputy Director was held to be malafide, status quo ante should have been restored by the learned Single Judge.

(ii) The writ petitioner would carry his argument further by saying that the awarding of compensation of Rs.1 lakh is very meagre after returning a finding that the abolition of the post of Deputy Director by the said University is malafide.

(iii) The writ petitioner would also say that on the date of the judgement of the learned Single Judge namely, 22.08.2006 he would not have superannuated [as his date of birth is 15.09.1948] and therefore, there was no impediment whatsoever in resorting status quo ante.

(iv) With regard to the writ petitioner's attack to dismissal of his first writ petition in the common order, the writ petitioner would reiterate that he has flawless/blemishless record and that false charges have been framed against him as he made a sincere and serious attempt to activate action against certain alleged misdeeds of his immediate superior namely Director of Distance Education.

(v) The technical plea that the Registrar of the said University cannot issue a charge memo to a Deputy Director which is a higher post was reiterated.

(vi) With regard to the writ appeal filed by the said University, primary argument advanced by the said University is that the abolition of the post of Deputy Director is not malafide. Said University attempted to justify its stand by taking us through statistics to show that enrolment of

students in distance education dwindled drastically in the academic year 1996-1997 leaving the said University with no option other than abolishing the post. Said University also reiterated its plea that the issue of the charge memo does not emanate from any ill motive as alleged.

(vii) The issue of charge memo and the resolution of the Syndicate preceding the same stemming from ill motive owing to the writ petitioner attempting to expose his immediate superior as contended by the writ petitioner and the denial of the same by the said University is in the realm of factual dispute that has to be or that could have been resolved one way or the other by proceeding with the enquiry, but unfortunately that has not happened in the instant case.

(viii) With regard to the allegation that the abolition of the post of Deputy Director by the said University is malafide, learned Single Judge agreed with the plea of the writ petitioner and sustained the same on the sole ground that the University had chosen to abolish the post on 01.08.1997 and terminated the writ petitioner on 04.08.1997 when the interim order in favour of the writ petitioner in the first writ petition was operating. The learned Judge has also held that the said University should have contested the first writ petition on merits and obtained a verdict. The learned Single Judge also was of the view that the act of the said University in abolishing

the post without taking steps to vacate the interim order and contesting the writ petition on merits establishes the malafides on the part of the said University qua abolition of the post of Deputy Director.

(ix) Learned counsel for the said University took us through a table to demonstrate the decline in enrolment of students for distance education. This table is also part of the sworn counter affidavit filed by the said University before the learned Single Judge in the second writ petition namely W.P.No.12038 of 1997. The table gives details of the courses offered by the school of distance education and the number of students who enrolled in each of the course commencing from the academic year 1991-1992 to 1996-1997 [7 academic years]. A perusal of the table shows that totally 8086 students enrolled across the Board in all disciplines put together in 1991-1992. The figure was 10038 in 1992-1993, 9480 in 1993-1994 and 7498 in 1994-1995. Thereafter, there is a steep drop and it is only 2808 in the academic year 1995-1996. The steep drop became a drastic decline and it is a mere 892 in the academic year 1996-1997. Therefore, it is clear that it is not only a sharp/steep drop but the enrolment has virtually dwindled. It dwindled to the extent that it is barely 10% of what it was in the academic year 1991-1992 when the distance education courses were started by the said University. Reacting to this table and in response to this table the writ petitioner drew our attention to a table captioned 'Staff

Position in the School of Distance Education' which is part of the additional typed set of papers filed by the writ petitioner. This table is at P.55 of the said paper book [additional typed set of papers]. This table shows that the staff strength [teaching and non-teaching] in the school of distance education which was 32 in all in 1992 had gone down to 12 in 2007 and has again gone up to 56 owing to approval of new post on 08.11.2006.

(x) The tables are not disputed, therefore, we examined the tables. On a closer scrutiny of the two tables relied on by the rival contenders, there is no doubt that students enrolment in the distance education had dwindled drastically in the academic year 1996-1997 and become 10% of what it used to be in 1991-1992 when distance education was started. This is relevant as the post was abolished on 01.08.1997. This dwindling aspect is noticed in the tables shown to us by the writ petitioner himself, wherein the staff strength also has been drastically reduced from 32 to 5 at the same point of time. Thereafter, admittedly even according to the table of the writ petitioner, posts were approved only on 18.11.2006 and the staff strength went up to 56 only in 2007. From the tables which remain undisputed by the rival contenders, it is clear that there was a drastic dwindling of number of students enrolling in distance education when the post was abolished on 01.08.1997. It was also a decade later in 2006 that new posts were created and the staff strength was increased. This takes us

to the inevitable and indisputable inference that the abolition of the post on 01.08.1997 and termination of the writ petitioner on 04.08.1997 cannot be held to be malafide and that this is owing to the drastic drop and decline in the enrolment of students. As stated supra, the learned Single Judge has returned a finding of malafide against the said University with regard to abolition of the post solely on the basis that the post was abolished when the interim order was operating in favour of the writ petitioner. Such a finding was returned by the learned Single Judge primarily on the ground that the University ought to have contested the first writ petition on merits and taken steps to vacate the interim order. We see from the records that the interim order in favour of the writ petitioner was granted by the learned Single Judge at the time of admission of the writ petition i.e., on 15.12.1996, thereafter, the said University has filed a petition to vacate the interim order and after hearing both sides, the interim order has been made absolute only on 31.03.1997. Therefore, it would not be factually correct to say that the said University did not take steps to vacate the interim order.

(xi) In the light of what have been set out supra in the preceding paragraphs, we have no hesitation in coming to the conclusion that the finding of the learned Single Judge that the abolition of the post by the said University is malafide deserves to be set aside. We do so and hold that the abolition of the post by the said University is not driven by malafides.

(xii) With regard to the challenge to the charge memo, as stated supra, the rival submission and factual dispute could have resolved only in an inquiry. With regard to the technical plea that the charge memo could not have been issued by the Registrar to the writ petitioner who was Deputy Director, the learned Single Judge after perusing the relevant Rules and Regulations of the said University had concluded that there is no bar or impediment in the Registrar issuing the charge memo. Nothing is said or shown before us to say that this finding is erroneous. We therefore, agree with the learned Single Judge and sustain the said finding.

(xiii) Now that we have held that the abolition of the post of Deputy Director by the said University is not malafide, the exercise of examining whether the learned Single Judge ought to have restored status quo ante on rendering a finding of malafide has become Otiose.

(xiv) This takes the drift of the discussion to compensation that has been awarded by the learned Single Judge. As we have reversed the finding of the learned Single Judge regarding malafides qua abolition of post and sustained the finding of the learned Single Judge qua dismissal of the first writ petition challenging the charge memo, under the normal circumstances, compensation also should go, but we make a departure.

(xv) As set out supra, in the factual matrix and also in the discussion above, the common order in the two writ petitions was passed by the learned Single Judge on 22.08.2006 and on that day, the interim order that was operating in favour of the writ petitioner qua the charge memo also got terminated. Thereafter, in the writ petition filed by the said University, the said University on 18.10.2006 had obtained an interim order from the Division Bench only to the effect that, that portion of the judgement which went against the University alone would be stayed. This makes it clear that there was no impediment whatsoever for the said University to proceed with the inquiry against the writ petitioner and conclude the same, but the University has not done that and has slumbered for over a decade now. We do not appreciate this approach of the said University. We are unable to countenance the same.

(xvi) If only the University had proceeded with the inquiry, some conclusion one way or the other on the factual disagreement between the parties could have been arrived at.

(xvii) The writ petitioner is now 69 years old and it would serve no purpose in conducting an inquiry now. Therefore, owing to the slumber and inaction on the part of the said University we find it just and equitable to sustain the compensation of Rs.1 Lakh that has been awarded to the writ

petitioner by the Learned Single Judge. The date of birth of the writ petitioner is 15.09.1948. Therefore, the writ petitioner was 44 years old when he joined as Deputy Director in a temporary post [obviously a temporary appointment] on 07.12.1992. The post was abolished on 01.08.1997 and consequent upon such abolition writ petitioner was terminated on 04.08.1997. Therefore, the writ petitioner has served for only a period of 4 years 7 months and few days. As is evident from the termination order dated 04.08.1997, the monthly salary of the writ petitioner at that point of time was Rs.11,140/-. The writ petitioner is now 69 years old. We have taken all these facts into consideration in sustaining the compensation of Rs.1 Lakh and directed the same to be paid with interest at the rate of 6% per annum.

(xviii) We also make it clear that no useful purpose would be served by proceeding with the enquiry at this distant point of time in the distance education school of the said University. The inquiry will be treated as closed.

(xix) We deem it appropriate to hold that the University will be liable to pay compensation of Rs.1 Lakh together with interest at the rate of 6% per annum from the date of order of the learned Single Judge i.e., 22.08.2006 to the actual date of payment.

(xx) We find it appropriate to say that the said University shall make this payment of Rs.1 Lakh together with interest as aforesaid within a period of three months from the date of receipt of this order.

5. CASE LAWS :

(i) Though it is noticed that certain case laws have been cited before the learned Single Judge as seen from the impugned common order, the only case law that was placed before us in the hearing of the instant appeals was State of Haryana and Others vs. Navneet Verma [2008 (2) SC 65]. This case law was cited by the learned counsel for the said University.

(ii) In Navneet Verma's case supra Hon'ble Supreme Court addressed itself to a question whether abolition of a particular post in the Haryana Bureau of Public Enterprises (post of Accounts Executive) was in good faith or was a camouflage to cover up and conceal the real intention of weeding out a person. While the learned Single Judge and a Division Bench of the Punjab and Haryana High Court at Chandigarh had held that the abolition was not bonafide, the Hon'ble Supreme Court on assessment of material placed before it reversed the findings and held that the abolition is in good faith as the Government of Haryana was making earnest efforts to control its non planned expenditure and that abolition was part of such efforts of the

Government of Harayana. We have taken a similar approach in the instant case. We have examined the material [tables] placed before us and have come to a conclusion that abolition of post in the instant case is only owing to a sharp drop [virtual dwindling] of enrolment of students in distance education and not because of any malafides. We leave it at that.

6. CONCLUSION:

(i) W.A.No.1251 of 2006 is dismissed. Consequently the order of the learned Single Judge dated 22.08.2006 in W.P.No.18919 of 2006 dismissing the writ petitioner's challenge to the resolution of the Syndicate of the said University and the consequent charge memo is wholly upheld.

(ii) W.A.No.1252 of 2006 is also dismissed. However, the order of the learned Single Judge dated 22.08.2006 awarding compensation of Rs.1 Lakh to the writ petitioner is sustained albeit for different reasons as set out supra in this judgement.

(iii) W.A.No.1332 of 2006 filed by the University is partly allowed. Consequently, the abolition of the post of Deputy Director of the University is held to be not malafide is not a mere camouflage to cover up termination of the writ petitioner. However, compensation of Rs.1 Lakh awarded by the learned Single Judge is sustained and is directed to be paid with interest at

the rate of 6% from the date of the order of the learned Single Judge i.e., 22.08.2006 to the date of actual payment. Compensation is sustained not for the reason given by the learned Single Judge but for the reasons set out by us supra in this order regarding slumber of the University.

(iv) The above said compensation of Rs.1 Lakh together with interest at the rate of 6% per annum from 22.08.2006 to the date of actual payment shall be made by the University to the appellant herein within three months from the date of this order.

(v) Considering the nature and scope of the respective pleas raised by the parties in conflict, the parties are left to bear their respective costs.

(vi) All miscellaneous petitions are closed.

(S.K.K., C.J.) (M.S., J.)
11.. 01.. 2017

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smi

THE HON'BLE CHIEF JUSTICE
AND
M.SUNDAR,J.

(smi)

Pre-delivery Common Judgement
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