

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 31.08.2017

Pronounced on: 22.09.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

W.P.Nos.30701 and 30783 of 2013 and
M.P.Nos.1 and 1 of 2013

and

W.P.Nos.975 to 980 of 2014 and
MP.Nos.1,1,1,1,1,1,2,2,2,2 and 2 of 2014

WP.Nos.30701 and 30783 of 2013

K.Megaraju .. Petitioner in WP.No.30701/2013

G.Vijayakumar .. Petitioner in WP.No.30783/2013

vs.

1.The Chairman,
Syndicate of the University of Madras,
Chepauk, Chennai - 600 005.

2.The Registrar,
University of Madras,
Chepauk, Chennai - 600 005. ... Respondents in WP.No.30701 &
WP.No.30783 of 2013

WP.Nos.975 to 980 of 2014

T.Kripasankar .. Petitioner in WP.No.975 of 2014

T.A.Chandrasekar .. Petitioner in WP.No.976 of 2014

G.EzhilArasu .. Petitioner in WP.No.977 of 2014

K.Kumaravel .. Petitioner in WP.No.978 of 2014

S.Nagarajan .. Petitioner in WP.No.979 of 2014

N.Chinnaya .. Petitioner in WP.No.980 of 2014

vs.

1.The Registrar,
University of Madras,
Centenary Building, Chepauk,
Chennai - 600 005.

2.The Vice-Chancellor,
University of Madras,
Chennai - 600 005.

.. Respondents in
WP.Nos.975 to 980 of 2014

Prayer in WP.Nos.30701 & 30783/2013: Writ Petitions filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorari, calling for the records relating to impugned order passed by the 2nd respondent in his Proceedings Nos.F.1(A)/Estt./Discip/2013/ 2360 and No.F.1(A)/Estt./Discip/2013/2363 respectively, dated 07.11.2013 and quash the same.

Prayer in WP.Nos.975 to 980/2014: Writ Petitions filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorari, calling for the records relating to the Order of the 1st respondent in Proceedings Nos.F.1(A)/Estt./Discip/2013/2361 dated 07.11.2013, F.1(A)/Estt./Discip/2013/2404 dated 12.11.2013, F.1(A)/Estt./Discip/2013/2362 dated 07.11.2013, F.1(A)/Estt./Discip/2013/2405 dated 12.11.2013, F.1(A)/Estt./Discip/2013/2356, dated 07.11.2013, F.1(A)/Estt./Discip/2013/2366, dated 07.11.2013 respectively, quash the same.

For Petitioners : Mr.K.Raja
(in WP.Nos.30701 & 30783/13)Mr.S.Gajendraraj

: Mr.Vijaynarayan, Senior counsel
(in WP.Nos.975 to 980 of 2014)

For Respondents : Mr.Mani Sundargopal
(in all the writ petitions)

COMMON ORDER

The present batch of writ petitions have been preferred by the writ petitioners challenging the punishments that have been issued by the respondents for the alleged misconduct committed

by the petitioners who are employees of University of Madras.

2.I have heard the arguments of Mr.Vijaynarayan, learned senior counsel for Mr.K.Parthiban, Mr.K.Raja, Mr.S.Gajendraraj, learned counsels appearing on behalf of the petitioners and that of Mr.Mani Sundaragopal, learned counsel appearing on behalf of the respondents.

3.Before dealing with the rival contention of the parties, it would be relevant to ascertain the factual background of the matter. The petitioners are all employees of the respondent University and have been working in the University for the last several years.

4.The Institute of Distance Education which is responsible for conduction examinations for courses offered through Distance Education had conducted the examination in May 2011 and the marks in foil card (containing marks for 20 answer scripts entered and signed by the examiners) are entered in the computer, it was found that the marks entered in the foil cards are altered with over writing without the counter signature of the examiners. The same was brought to the notice of controller of Examinations on 28.11.2011. Immediately the 'Central Result Processing Section' (for short CRPS), the section was directed to verify all the 9400 foil cards and to separate the foil cards with alteration of marks, without the counter signature of the examiner. Accordingly, the same were separated and the matter was brought to the notice of the Vice-Chancellor and the syndicate. However, in the meantime, the University does not want the publication on the results of thousands of students for the fault of few students and employees. Therefore, the results were directed to be published. An office note was submitted on 09.09.2011 by the Controller of Examination's Secretariat to the Vice-Chancellor stating that the CRPS had reported on 02.09.2011 about the enormous number of suspicious over writings of marks on the foil sheets that are supplied to the examiners who evaluated the answer scripts of Under Graduate Examinations of IDE (Institute of Distance Education), May 2011 and the Controller of Examinations had instructed the CRPS to hand over all the foil sheets in which over writings were found. The note further added that the Controller of Examinations had personally gone through the foil sheets and ascertained that there are suspicious over writings of mark in as many as 451 cases. It was further submitted that in the said note the marks entered in "words" and "numbers" differ from each other and in many cases the marks awarded were altered with correcting fluid.

5. Thereafter, the Controller of Examination had directed the Additional Controller of Examination of the Institute of Distance Education to submit the answer scripts pertaining to the alterations made in the foil sheets for his verification and thereafter the Registrar in charge had recommended for constitution of a committee to examine and report so as to proceed further. The same was approved by the Vice-Chancellor and the enquiry committee was constituted with four members of the University and submitted a report to the syndicate.

6. The syndicate in the meeting held on 18.11.2011 considered the report submitted by the above said committee and resolved to constitute another committee comprising of syndicate members to identify the staff members who are mainly involved against whom disciplinary proceedings could be initiated. Pursuant to the recommendations of the syndicate committee another committee comprising of four persons to prepare charge sheets against the staff members who are involved and the syndicate after the report of the said committee has decided to give charge memo to 28 employees in its meeting held on 31.05.2012.

7. In pursuance of the syndicate meeting, charge memos were issued to all the delinquents on 01.06.2012 and an enquiry committee was also constituted comprising of three persons and the authority commenced the enquiry on 17.12.2012 and submitted the report on 08.02.2013. At this juncture, it is also relevant to point out that in pursuance of the issuance of the charge memo opportunity was also afforded to the delinquents and also to peruse documents. The syndicate held its meeting on 18.02.2013 and in the said meeting it was resolved that the copy of the relevant portion of the inquiry authority be sent to the delinquent employees against whom the charges have been held as proved calling for further representation. As per the said orders, a copy of the relevant portion had been sent to the 16 delinquent employees on 07.03.2013 and 10 members out of the 16 have requested to provide certain documents to give further representation in this regard and the rest of the delinquents have submitted their further representation.

8. After considering the representation the syndicate in its meeting held on 13.09.2013 has found that the explanation offered by the employees was not satisfactory and has decided to impose punishments to the said persons. Accordingly, different punishments were imposed on these persons for the alleged misconduct committed. For the sake of convenience the details are tabulated as below:

S.No.	Writ Petition No.	Designation	Punishment	Punishment
1.	30701 of 2013	K.Megaraju	Assistant Section Officer	Reduction to lower post for five years and pay fixed at minimum of pay band and Grade pay applicable
2.	30783 of 2013	G.Vijayakumar	Assistant Section Officer (SG)	Reduction to lower post for three years and pay fixed at minimum of pay band and Grade pay applicable
3.	975 of 2014	T.Kripasankar	Assistant Section Officer	Reduction to lower post for two years and pay fixed at minimum of pay band and Grade pay applicable
4.	976 of 2014	T.A.Chandrasekar	Section Officer (Retd.)	Withhold one- third pension for five years
5.	977 of 2014	G.Ezhilarasu	Assistant Section Officer	Reduction to lower post for five years and pay fixed at minimum of pay band and Grade pay applicable
6.	978 of 2014	K.Kumaravel	Section Officer	Withhold one- third pension for five years
7.	979 of 2014	S.Nagarajan	To Section Officer	Reduction to lower post for one year and pay fixed at minimum of pay band Grade pay applicable

S.No.	Writ Petition No.	Designation	Punishment	Punishment
8.	980 of 2014	N.Chinnaiya	Assistant Section Officer	Reduction to lower post for five years and pay fixed minimum of pay band and Grade pay applicable

The punishments have been imposed from the date of the Syndicate Meeting and this has been taken in pursuance of the meeting of the syndicate on 13.09.2013.

9.Challenging the said order of punishments the petitioners have preferred the instant Writ Petitions. Mr.Vijaynarayan, learned senior counsel appearing for the petitioners in W.P.Nos.975 to 980 of 2014 would submit that the sum and substance of the charges issued against the petitioners was regarding the work done by them in the base camp relating to dummy numbering for the IDE UG examination answer papers for May 2011 and for failing to maintain secrecy of dummy numbers assigned and also for failure to handover the dummy number slips to the Controller of Examination.

10.It has been contended that though different charge memos were issued to the petitioners, the main grievance of the respondents is regarding the failure of the petitioners to discharge the duties and responsibilities of a valuation camp official and not having maintained the integrity and devotion to duty required under Rule 2 of Madras University Employee's Conduct Rules.

11.It is the contention of the learned senior counsel that no reasonable opportunity was given to the petitioners to defend their case by producing documents or bringing in witness in their support, further when the petitioners has requested for cross examination of particular witness, the same was denied. It was further submitted that the enquiry committee has exonerated other 15 members who were charge sheeted along with the petitioners for same misconduct without giving any valid reasons for exonerating them who are also working along with the petitioners in the same camp. Further, he would also submit that there is no parity in the punishments imposed and the fact that there is no reason for exonerating the similarly situated persons would bring to light the callous attitude of the respondents. Further, when there is no oral or documentary

evidence to prove that the petitioners has passed on the dummy numbers to the valuation camp for alteration, the enquiry committee ought not to have held that the petitioner had knowledge of tampering. It could be seen that the petitioners have not been served with all relevant documents and principals of natural justice have also be violated since real and effective opportunity to defend the case have not been granted. He would also rely upon a case rendered by the Hon'ble Supreme Court in Rajendra Yadav v. State of Madhya Pradesh and others reported in 2013 (3) SCC 73 and contend that parity among co-delinquents needs to be maintained while imposing punishments and the punishment ought not to be disproportionate to the charges levelled against the delinquents. The above judgment it is stated as follows:

9. The doctrine of equality applies to all who are equally placed; even among persons who are found guilty. The persons who have been found guilty can also claim equality of treatment, if they can establish discrimination while imposing punishment when all of them are involved in the same incident. Parity among co-delinquents has also to be maintained when punishment is being imposed. Punishment should not be disproportionate while comparing the involvement of co-delinquents who are parties to the same transaction or incident. The disciplinary authority cannot impose punishment which is disproportionate i.e. lesser punishment for serious offences and stringent punishment for lesser offences.

11. In Shaileshkumar Harshadbhai Shah case the workman was dismissed from service for proved misconduct. However, few other workmen, against whom there were identical allegations, were allowed to avail of the benefit of voluntary retirement scheme. In such circumstances, this Court directed that the workman also be treated on the same footing and be given the benefit of voluntary retirement from service from the month on which the others were given the benefit.

12. We are of the view that the principle laid down in the abovementioned judgments would also apply to the facts of the present case. We have already indicated that the action of the disciplinary authority imposing a comparatively lighter punishment on the co-delinquent Arjun Pathak and at the same time, harsher punishment on the appellant cannot be permitted in law, since they were all involved in the same incident. Consequently, we are inclined to allow the appeal by setting aside the punishment of dismissal from service imposed on the appellant and order that he be reinstated in service forthwith. The appellant is, therefore, to be

reinstated from the date on which Arjun Pathak was reinstated and be given all consequential benefits as were given to Arjun Pathak. Ordered accordingly. However, there will be no order as to costs."

12. Accordingly, the learned senior counsel would pray to set aside the impugned orders of punishments and submit the writ petitions ought to be allowed.

13. Sailing along with the learned senior counsel, Mr. Raja, the learned counsel appearing for the petitioners in W.P.Nos.30701 and 30783 of 2013, the connected writ petition numbers would rely upon two cases rendered by the Hon'ble Supreme Court in State of Uttar Pradesh and others v. Rajpal Singh reported in (2010) 5 SCC 783, it is stated as follows:

"A. Service Law - Penalty/Punishment - Discrimination - Different punishment for identical charges, delinquency and incident on the same day - Unsustainability of - When charges are same and identical in relation to one and the same incident, to deal with the delinquents differently in the award of punishment, held, would be discriminatory.

6. It is undoubtedly open for the disciplinary authority to deal with the delinquency and once charges are established to award appropriate punishment. But when the charges are same and identical in relation to one and the same incident, then to deal with the delinquents differently in the award of punishment, would be discriminatory. In this view of the matter, we see no infirmity with the impugned order requiring our interference under Article 136 of the Constitution."

and in the yet another case in State of Punjab v. V.K.Khanna and others reported in AIR 2001 SC 343, it is stated as follows:

"It is well settled in Service Jurisprudence that the authority has to apply its mind upon receipt of reply to the charge-sheet or show cause as the case may be, as to whether a further inquiry is called for. In the event upon deliberations and due considerations it is in the affirmative - the inquiry follows but not otherwise. Thus where even before reply was filed by the delinquent chief secretary to the charge-sheet

issued against him, the Chief Minister made an announcement appointing an enquiry officer to go into the charges, thus indicating its mindset that the inquiry shall proceed irrespective of the reply it cannot be said that the attitude of the authorities towards the delinquent was free and fair."

and contend that when charges are same and identical, in relation to one and the same incident, to deal with the delinquents differently in the award of punishments would be clearly discriminatory. It is also been contended by the learned counsel that under the Laws of University no provision enables the 1st respondent or the Senate to appoint the Registrar as in-charge. When there is no provision to appoint the Registrar as in-charge the initiation of disciplinary proceedings by the Registrar in-charge is illegal.

14.Further, it has been contended that curiously in the instant case the syndicate itself has framed the charges and directed the 2nd respondent to frame such charges and appointed the enquiry committee by usurping the power of the 2nd respondent i.e. Registrar and finally, the syndicate itself has imposed a punishment which is unknown to the service jurisprudence. It would also be contended that as per the conjoined reading of Section 19(h) and 19(y) of Madras University Act an outsider could not be appointed as an enquiry officer.

15.But in the instant case three outsiders have been appointed in the enquiry committee. The enquiry officers are as follows:-

- "1.Prof. K.AludiaPillai, IAS (Retd.) - Chairman,
- 2.Tmt.S.Rajalakshmi, M.A.M.L., - Member
- 3.Thiru.P.Perumalappan, B.A.B.L., - Member"

Further, in the disciplinary proceeding the framing of charge memo cannot be done by the outsiders and on the contrary the same has been done by the outsiders only. It has also been contended that no fair opportunity was given for proper examination of documents and witnesses and thus the whole process of the enquiry is vitiated and liable to be declared as illegal.

16.It is also the contention of the learned counsel that the punishments have been imposed whimsically and does not have any reasonable basis. Further, the findings of guilt against the petitioners have been arrived at based on mere conjectures and surmises without any proper evidentiary basis. Thus, the learned

counsel prayed that the writ petitions shall be allowed with directions to the respondents to compensate the monetary loss suffered by the petitioners during the currency of punishment.

17. Per contra, Mr. Manisundargopal, the learned counsel appearing for the respondents would submit that the petitioners were involved in an issue that has rocked the entire University and they have been actively involved in tweaking the marks of the candidates who have written the examination. It has also been submitted that three members committees have been constituted in different stages to go into the matter in detail and only after the Committees have given Green Signal, has the University proceeded ahead against the petitioners.

18. The learned counsel appearing for the respondents would also submit that the entire process of the inquiry held against the petitioners was fair and proper and the petitioners were given sufficient opportunities. Since, the petitioners have failed to prove that they are not involved in the commissions of the acts alleged, they had been penalised. The learned counsel has stated that the petitioners were provided with all documents and records and in fact were provided with all opportunities to defend their case. He further submits that the punishments imposed are proportionate to the charges levelled against the petitioners and the claim of disproportional imposition has no basis to survive.

19. The learned counsel appearing for the respondents relied upon the following cases:

(1) State of U.P. v. Harendra Arora and another reported in (2001) 6 SCC 392.

(2) P. Ramesh Babu v. Pondicherry University UT, Puducherry reported in (2011) SCC OnLine Mad 1140, it is stated as follows:

"9. In respect of the first contention made by the learned Senior Counsel that the competent authority's order is cryptic and not reasoned one, it must be noted that the disciplinary authority is required to give reasons only when he disagrees with the findings of the enquiry officer and not when he is in agreement and therefore, the contention raised by the learned Senior Counsel cannot be accepted in the light of the judgment of the Supreme Court in National Fertilizers Limited v. P.K. Khanna, [2005] 7 SCC 597."

(3) Ram Kumar v. State of Haryana reported in 1987 (Supp) SCC 582, it is stated as follows:

"7.It has been pointed out by the High Court that the punishing authority has passed a lengthy order running into seven pages mentioning therein the contents of the charge-sheet, the detailed deposition of the witnesses, as recorded by the Enquiry Officer, and the findings of the Enquiry Officer. The explanation submitted by the appellant has also been reproduced in the impugned order. Thereafter, the punishing authority stated as follows:

I have considered the charge-sheet, the reply filed to the charge-sheet, the statements made during enquiry, the report of the Enquiry Officer, the show cause notice, the reply filed by the delinquent and other papers and that no reason is available to me on the basis of which reliance may not be placed on the report of the Enquiry Officer. Therefore, keeping these circumstances in view, I terminate his service with effect from the date of issue of this order.

8.In view of the contents of the impugned order, it is difficult to say that the punishing authority had not applied his mind to the case before terminating the services of the appellant. The punishing authority has placed reliance upon the report of the Enquiry Officer which means that he has not only agreed with the findings of the Enquiry Officer, but also has accepted the reasons given by him for the findings. In our opinion, when the punishing authority agrees with the findings of the Enquiry Officer and accepts the reasons given by him in support of such findings, it is not necessary for the punishing authority to again discuss evidence and come to the same findings as that of the Enquiry Officer and give the same reasons for the findings. We are unable to accept the contention made on behalf of the appellant that the impugned order of termination is vitiated as it is a non-speaking order and does not contain any reason. When by the impugned order the punishing authority has accepted the findings of the Enquiry Officer and the reasons given by him, the question of non-compliance with the principles of natural justice does not arise. It is also incorrect to say that the impugned order is not a speaking order."

(4) National Fertilizers Ltd. and another v. P.K.Khanna reported in (2005) 7 SCC 597, it is stated as follows:

"7.The respondent challenged the order of removal under Article 226 before the High Court of Punjab and Haryana. The Division Bench was of the view that after supply of the enquiry officer's report a delinquent employee, if he opts to submit his reply/objections against the finding of the enquiry officer, it is imperative for the disciplinary authority to deal with the objections giving his own reasons in support of his conclusion. It was also noted that the enquiry officer had not given a firm finding and in relation to Charge 1, concluded that the respondent alone was not responsible for the lapse. According to the High Court, failure to give reasons dealing with the respondent's objections to the enquiry officer's report amounted to violation of principles of natural justice. This defect in the disciplinary authority's order was also true of the Appellate Authority's order. The orders of the disciplinary authority and the Appellate Authority were accordingly set aside with liberty granted to the disciplinary authority to pass fresh orders keeping in view the observations made by the High Court.

8.We are unable to agree with the reasoning or with the conclusion reached by the High Court. We have quoted the conclusions of the enquiry officer. It could not be said that the enquiry officer had not reached a firm conclusion with regard to both the charges as far as the respondent was concerned. It is true that the enquiry officer said that there was no procedure laid down in writing relating to the defacement of rejected bags. But he did not say that there were no instructions given to the respondent to ensure the defacement of rejected bags. In fact the enquiry officer had listed his conclusions and findings at the end of his report from which it is abundantly clear that he was convinced that instructions had been issued to the respondent to deface the bags before dispatching them to the supplier. The enquiry officer held that the respondent alone was not responsible for the lapse. This did not mean that he had not come to a firm conclusion that the respondent was responsible. As far as Charge 2 is concerned the conclusion was categorical that it had been proved against the respondent.

9.Apart from misreading the enquiry officer's report, the High Court also misapplied the law. The various decisions referred to in the impugned judgment make it clear that the disciplinary authority is required to give reasons only when the disciplinary

authority does not agree with finding of the enquiry officer. In this case the disciplinary authority had concurred with the findings of the enquiry officer wholly. In Ram Kumar v. State of Haryana the disciplinary authority after quoting the content of the charge-sheet, the deposition of witnesses as recorded by the enquiry officer, the finding of the enquiry officer and the explanation submitted by the employee passed an order which, in all material respects, is similar to the order passed by the disciplinary authority in this case. Learned counsel appearing on behalf of the respondent sought to draw a distinction on the basis that the disciplinary authority had, in Ram Kumar case itself quoted the details of the material. The mere quoting of what transpired would not amount to the giving of any reasons. The reasons were in the penultimate paragraph which we have said virtually used the same language as the impugned order in the present case. This Court dismissed the challenge to the order of punishment in the following words: (SCC p. 584, para 8)

"8. In view of the contents of the impugned order, it is difficult to say that the punishing authority had not applied his mind to the case before terminating the services of the appellant. The punishing authority has placed reliance upon the report of the enquiry officer which means that he has not only agreed with the findings of the enquiry officer, but also has accepted the reasons given by him for the findings. In our opinion, when the punishing authority agrees with the findings of the enquiry officer and accepts the reasons given by him in support of such findings, it is not necessary for the punishing authority to again discuss evidence and come to the same findings as that of the enquiry officer and give the same reasons for the findings. We are unable to accept the contention made on behalf of the appellant that the impugned order of termination is vitiated as it is a non-speaking order and does not contain any reason. When by the impugned order the punishing authority has accepted the findings of the enquiry officer and the reasons given by him, the question of non-compliance with the principles of natural justice does not arise. It is also incorrect to say that the impugned order is not a speaking order."

We respectfully adopt the view. The position is further clarified by Rule 33 of the Employees (Conduct, Discipline and Appeal) Rules. It reads as follows:

"1.The disciplinary authority, if it is not itself the enquiring authority may, for reasons to be recorded by it in writing remit the case to the enquiring authority for fresh or further enquiry and report and the enquiring authority shall thereupon proceed to hold further enquiry according to the provisions of Rule 32 as far as may be.

2.The disciplinary authority shall, if it disagrees with the findings of the enquiring authority on any article of charge, record its reasons for such disagreement and record its own findings on such charge, if the evidence on record is sufficient for the purpose.

3.If the disciplinary authority having regard to its findings on all or any of the articles of charge is of the opinion that any of the penalties specified in Rule 29 should be imposed on the employee shall, notwithstanding anything contained in Rule 31, make an order imposing such penalty.

4.If the disciplinary authority having regard to its findings on all or any of the articles of charge, is of the opinion that no penalty is called for, it may pass an order exonerating the employee concerned."

11.The respondent's reliance on the decision in M.D., ECIL v. B.Karunakar is misplaced. That decision relates to the right of a delinquent officer to a copy of the enquiry officer's report. In the course of the judgment, the Court had no doubt said that the report of the enquiry officer is required to be furnished to the employee to make proper representation to the disciplinary authority before such authority arrives at its own finding with regard to the guilt or otherwise of the employee and the punishment, if any, to be awarded to him. By using the phrase "its own finding" what is meant is an independent decision of the disciplinary authority. It does not require the disciplinary authority to record separate reasons from those given by the enquiry officer. The concurrence of the disciplinary authority with the reasoning and conclusion of the enquiry officer means that the disciplinary authority has adopted the conclusion and the basis of the conclusion as its own. It is not necessary for the disciplinary authority to restate the reasoning.

12.As far as the second question is concerned, neither the decision in Karunakar nor Rule 33 quoted

earlier postulate that the delinquent employee should be given an opportunity to show cause after the finding of guilt as to the quantum of the punishment. The Rules envisage the passing of an order by the disciplinary authority not only finding the delinquent guilty, but also imposing punishment after the delinquent has been given a copy of the enquiry report and had an opportunity of challenging the same."

submitting all the above judgments, the learned counsel appearing for the respondents submitted that the impugned punishment order is well considered order and there is no necessity for the interference of this Court and he prayed for dismissal of all the writ petitions.

20. This Court exercising its jurisdiction under Article 226 of the Constitution of India is not to sit over as an Appellate authority over the findings of the Enquiry Officer or the authority which has imposed the punishment. What has to be seen is that in the process of imposing the punishment whether the authority has violated the principles of natural justice and reasonability thereby impairing on the fundamental right of an employee.

21. Undoubtedly in the instant case, the allegations levelled against the delinquents are serious in nature. The Authority has appointed different committees at different stages and ultimately, the Syndicate has concluded that the delinquent is guilty of the charges.

22. Now, what has to be seen is whether the petitioners have made out a case for this Court to exercise its jurisdiction under Article 226 to interfere with the punishments that have been imposed.

23. This Court on an earlier occasion had an opportunity to deal with the contentions raised by the parties on a similar set of facts in *Dr. Maa. Selvarasan v. The University of Madras* (W.P.No.35181 of 2002 dated 14.11.2002). This Court concluded that:

"15.14. I am, therefore, convinced with the arguments of Mr. P. Chidambaram, learned senior counsel that once the Syndicate proposes to delegate the powers to the Vice-Chancellor, it has to be done only in the manner prescribed under Section 19(y) of the Act, according to which, the powers can be delegated to the Vice-Chancellor and if the Vice-Chancellor

still proposes to delegate the powers, it can be delegated only to the Committee among the members of the Syndicate or alternatively to a Committee appointed in accordance with the statutes, as there is no provision under the statute to constitute a committee for the disciplinary action at all, and therefore the last limb of Section 19(y) of the Act is inoperative.

15.15. I am unable to appreciate the attempt made by Mr.Ezhilmani, learned counsel for the respondent to justify the impugned disciplinary proceedings based on the resolution dated 22.8.1997 under the provisions of the Tamil Nadu Civil Services (Discipline & Appeal) Rules, as it is well settled in law that, when a statute prescribes the manner in which a particular act should be done, it should be done in the same manner, but not otherwise vide Taylor v. Taylor reported in (1 876) 1 Ch D 426: 45 LJCh 373; Lord Roche in Nazir Ahmad v. King Emperor reported in 1936 (63) IA, Rao Shiv Bahadur Singh v. State of Rajasthan reported in AIR 1961 SC 1527; State of U.P. v. Singahara Singh reported in AIR 1964 SC 358; and Babu Verghese v. Bar Council of Kerala reported in 1999 (II) CTC 722.

15.16. In any event, even as per the memorandum dated 19.10.2000 issued by the Vigilance Commissioner and Commissioner for Administrative Reforms, Vigilance Commission III Secretariat, Government of Tamil Nadu, an outsider must not be appointed as an Enquiry Officer for Departmental enquiries, as rightly pointed out by Mr.P.Chidambaram, learned senior counsel, and the above stand taken by the Government of Tamil Nadu under the provisions of the Tamil Nadu Civil Services (Discipline & Appeal) Rules is not disputed by Mr.Ezhilmani, learned counsel for the respondent. Even on that account, I am satisfied that the appointment of an outsider as an Enquiry Officer to go into the charges framed against the petitioner is not sustainable.

15.17. Issue (iii) is answered accordingly.

16.1. Issue (iv) - Whether or not the Senate is empowered to review the impugned act of the Syndicate exercising the powers conferred under Section 15 of the Act?

16.2. Section 14 of the Act deals with the constitution of the Senate, which is supreme governing body of the University.

16.3. Section 15 of the Act reads as follows:

Section:15 - The Senate to be the Supreme Governing body:

The senate shall be supreme governing body of the University and shall have power to review the action of the Syndicate and of the Academic Council save where the Syndicate and the Academic Council have acted in accordance with powers conferred on them under this Act, the Statutes, the Ordinances or the Regulations and shall exercise all the powers of the University not otherwise provided for and all powers requisite to give effect to the provisions of this Act;

Provided that if any question arises whether the Syndicate or the Academic Council has acted in accordance with such powers as aforesaid or not, the question shall be decided by a resolution passed by two-thirds of the number of the members present and voting at a meeting of the Senate and the decision shall be final.

(emphasis supplied) 16.4. Section 16 of the Act prescribes the powers of the Senate. As per Section 16 (1) of the Act the Senate is empowered to make Statutes and amend or repeal the same.

16.5. Section 29 of the Act prescribes the provisions for which the Statutes could be made by the Senate, of which it is relevant to refer Sections 29 (e) and 29(i) of the Act, which read as follows: Section 29: Subject to the provisions of this Act, the Statutes may provide for all or any of the following matters, namely:-

(a) to (d) ...

(e) the powers, duties and conditions of service of the officers of the University other than the Chancellor and the Pro-Chancellor;

(f) to (h) ...

(i) the classification and the mode of appointment of the teachers of the University.

16.6. From the above provisions of the Act, it is clear that the Senate is the supreme governing body of the University. It is empowered to review the action of the Syndicate, save where the Syndicate have acted in accordance with the powers conferred on them under

the Act, Statutes, Ordinances or the Regulations. In other words, if the action of the Syndicate is contrary to the powers conferred on the Syndicate under the Act, Statutes, Ordinances or Regulations, the Senate is empowered to review such action of the Syndicate.

16.7. I am, therefore, of the considered opinion, that the Senate being a Supreme Governing Body is empowered to review the action of the Syndicate, if such action of the Syndicate is contrary to the powers conferred under the Act.

16.8. Issue (iv) is answered in positive.

17.1. Issue (v): To what relief the petitioner is entitled to?

17.2. Having held that the appointment of Thiru.B.Vijayaraghavan, a Retired I.A.S. Officer, an outsider, who is not a member of the Syndicate, as an Enquiry Officer, by the former Vice-Chancellor is contrary to Section 19(y) of the Act, I am obliged to quash the appointment of the Enquiry Officer as well his consequential finding holding the petitioner guilty of the charges, and consequently the decision of the Syndicate in its proceedings dated 15.7.2001 retiring the petitioner compulsorily is liable to be set aside, and accordingly the same is quashed.

17.3. Issue (v) is answered accordingly.

In the result, this writ petition is allowed as prayed for. No costs."

24. Even in the instant case, the persons who have been appointed as the committee members to conduct the enquiry are three persons one of whom is an retired I.A.S. Officers and two others who are law graduates who are outsiders to the University. Hence, it is clear that an outsider has been appointed which is not recognised as per the University statute which is already been decided by this Court in the decision cited above. Even otherwise, the fact remains no explanation has been given by the respondents as to how similarly placed persons have been exonerated from the charges.

25. It is also curious to point out that though the petitioners have been found to be guilty there is no conclusive factual finding to find them guilty of the charges. It would not be out of place to point out that once when an outsider has been appointed for conducting the proceedings which is not recognised by the University statute then the whole proceedings would be

hit since it is against the University statute itself.

26.Thus, I have no hesitation in holding that the entire proceedings are liable to be set aside and accordingly all the impugned orders assailed in the writ petitions are set aside.

27.In the result:

(a) all the writ petitions are allowed;

(b) all the impugned orders are set aside;

(c) the respondent University is directed to reinstate the petitioners in their original position and in case of the persons, who are retired ensure that they are restored their original pay and pay all service benefits with promotions, if any due to the petitioners;

(d) the respondent University is directed to complete the said exercise within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

-s/d-

Assistant Registrar (CS-II)

True Copy

Sub-Assistant Registrar

To

1.The Chairman,
Syndicate of the University of Madras,
Chepauk, Chennai - 600 005.

2.The Registrar,
University of Madras,
Chepauk, Chennai - 600 005.

3.The Vice-Chancellor,
University of Madras,
Chennai - 600 005.

+2 Ccs to Mr.K. Raja, Advocate sr 69778, 70759

+6 Ccs to Mr.R. Parthiban, Advocate sr 70390.

+8 Ccs to Mr.Mani Sundaragopal, Advocate sr 70043 to 70050.

W.P.Nos.30701 and 30783 of 2013 and

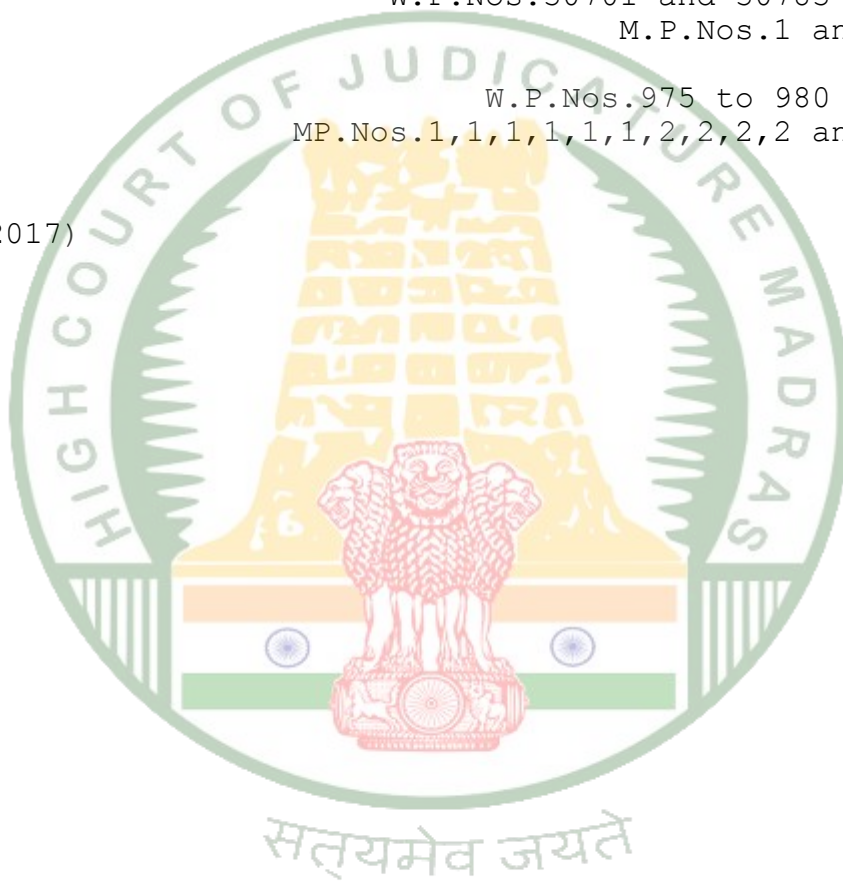
M.P.Nos.1 and 1 of 2013

and

W.P.Nos.975 to 980 of 2014 and

MP.Nos.1,1,1,1,1,1,2,2,2,2 and 2 of 2014

NMI (CO)
sp(26/09/2017)



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