

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 21.08.2017

PRONOUNCED ON : 23.11.2017

CORAM:

THE HON'BLE MR.JUSTICE HULUVADI G.RAMESH
and
THE HON'BLE MR.JUSTICE RMT.TEEKAA RAMAN

W.A.No.2784 of 2012

The Registrar,
University of Madras,
Chepauk, Chennai - 600 005. Appellant/Respondent

... Vs ...
H.Aminur Rahman Respondent/Petitioner

Prayer: Writ Appeal filed under Clause 15 of Letters Patent,
against the order dated 19.04.2012 made in W.P.No.29413 of 2008.

Prayer in W.P. No 29413/2008:

Writ petition filed Under Article 226 of the constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records of the syndicate of the respondent proceedings in No. F.1 (A) /ESTT/DISCIP/2008/22909 dated 07.03.2008 and quash the same and also direct the respondent to re-instate the petitioner in service with back wages and continuity of service.

For Appellant : Mr.Mani Sundar Gopal

For Respondent : Mr.A.Jeenasenan
for Mr.C.Kasirajan

JUDGMENT
(Judgment of the Court was delivered by
RMT. TEEKAA RAMAN,J.,)

The unsuccessful respondent in W.P.No.29413 of 2008 viz.,
The Registrar, University of Madras, has preferred this writ
appeal against the order dated 19.04.2012 passed by the learned
Single Judge in W.P.No.29413 of 2008.

2. The respondent herein/writ petitioner has filed the above writ petition seeking to quash proceedings/impugned order passed by the appellant-University of Madras [In short the appellant Institution] in No.F.1 (A)/ESTT/DISCIP/2008/2290 dated 07.03.2008 and to reinstate the writ petitioner in service with back wages and continuity of service.

3. The brief facts, which are necessary for determination of the appeal, are as follows:-

[i] The respondent herein is an employee of the appellant Institution and working as an Assistant Section Officer (SG), PG Admissions III Section at the Institute of Distance Education. A Journalist by name Ms.Dhanya Rajendran and camera man Mr.Manish Dhanani from "Times Now" News Channel have conducted a sting operation on 18.04.2006 so as to expose the alleged paper chasing scam in the appellant institution. The alleged conversation between the respondent herein and the said Media persons were said to be recorded through a hidden camera during the sting operation and the same was edited and the video clippings were telecasted in the "Times Now" News Channel on 25.04.2006. In this regard, various News Papers have published the news items.

[ii] The appellant institution has desired to initiate Disciplinary Proceedings against the respondent herein based on the telecast made by "Times Now" News Channel and the reports published in various News Papers. Accordingly, the appellant institution vide Official Communication No.VC/REGR/2006/391, dated 26.04.2006, placed the respondent herein under suspension in view of Rule 17 (e) of Tamil Nadu Civil Services (Discipline & Appeal) Rules as an enquiry into the grave charges under Rule 17 (b) is contemplated. The respondent has submitted his representation dated 29.06.2006 to the appellant institution whereby he has requested to revoke the order of suspension. As the appellant institution did not consider his representation, the respondent herein has approached this Court in W.P. No.25586 of 2006 with a prayer to direct the appellant institution to consider the representation dated 29.06.2006. This Court, by an order dated 18.08.2006, has directed the appellant institution to consider the representation in respect of revoking the order of suspension within the period of four weeks and further directed to frame necessary charges and pass final orders in accordance with law within a period of twelve weeks.

[iii] The appellant institution has failed to comply the directions issued by this Court in W.P.No.25586 of 2006 and

hence, the respondent herein had once again approached this Court by filing a writ petition in W.P.No.24995 of 2007 with a prayer to quash the proceedings of the appellant institution in Official Communication No.VC/REGR/2006/391, dated 26.04.2006. This Court, by an order dated 24.08.2007, has appointed one Mr.Deena Dayalan, Law Secretary (In-charge) Government of Tamil Nadu, as enquiry officer and directed him to complete the enquiry within a period of four months from the date on which he takes up the enquiry. The enquiry officer has commenced the enquiry on 18.10.2007 by issuing notice of enquiry. The enquiry report was communicated to the respondent herein through an Official Communication No. F1(A)/ESTT/2008/1965 dated 22.01.2008. The respondent has submitted his further representation dated 07.02.2008 on the enquiry report which was acknowledged by the appellant institution on 08.02.2008. Thereafter, the appellant institution has passed final orders vide Official Communication No.F.1(A)ESTT/DISCIP/2008/2290, dated 07.03.2008, in and by which, the respondent herein was imposed with a major punishment of compulsory retirement under Rule 17 (b) of the Tamil Nadu Civil Services (Discipline & Appeal) Rules. As against the said order, the writ petition in W.P. No.29413 of 2008 came to be filed. The learned single Judge, by an order dated 19.04.2012, has set aside the impugned order passed by the appellant institution and directed for reinstatement with continuity of service and 50% of back wages, which is under challenge before us.

4. We have heard the learned counsel appearing for the petitioner as well as the learned counsel appearing for the respondent and also gone through the written submissions produced by the learned counsel on either side as well as the materials placed before us.

5. Assailing the order passed by the learned Single Judge, Mr.Manisundargopal, learned counsel appearing for the appellant institution would contend that the learned Single Judge has failed to see the report of the enquiry officer which reveals that the charges levelled against the respondent herein were supported by two witnesses apart from Ex.C.1-CD. It is well settled principles of law that the principle of Evidence Act has no application in the domestic enquiry and hence, the learned Single Judge has erred in setting aside the impugned order passed by the appellant institution on the sole ground that the original version of the C.D. was not produced and the genuineness and the authenticity was not tested by an Expert Opinion and without finding of the expert opinion is bad in law. It is further contended that though the enquiry officer is also an ex-officio member of the syndicate, he remained absent during the syndicate meeting held on 11.02.2008 and on that date, the major punishment of compulsory retirement was imposed upon the

respondent herein. The learned counsel appearing for the appellant defend the impugned order passed by the appellant institution by stating that there is no flaw on the decision making process of imposing punishment to the respondent and hence, prayed for allowing of the writ appeal.

6. Per contra, Mr.A.Jeenasen, learned counsel appearing for the respondent would contend that the enquiry officer was appointed only when the respondent herein had approached this Court in W.P. No.24995/2007 with a prayer to quash the proceedings of the appellant institution dated 26.04.2006 and hence, the respondent herein was not in a position to challenge the appointment of enquiry officer. The respondent herein right from the beginning has specifically denied that the voice found in the CD is not absolutely belongs to him and the same was conveniently edited and dubbed. It is further contended that an independent witness viz., D.W.1 has categorically supported the version of the respondent herein which was not taken care of by the enquiry officer and he willfully omitted to consider the same. It is contended that the learned single Judge has rightly allowed the writ petition thereby set aside the proceedings of the appellant institution and ordered to re-instate the respondent herein with continuity of service and 50% of back wages and hence, he prayed for dismissal of the writ appeal.

7. Learned counsel appearing for the respondent has further defended the finding of the learned Single Judge that the Enquiry Officer has not played dual role as the enquiry officer as well as the presenting officer. Further, the enquiry officer is an ex-officio member of the syndicate which is the authority has resolved to impose major penalty to the respondent.

8. After hearing the rival contentions of both the parties and also after going through the entire records of the Domestic enquiry officer which is the subject matter of the appeal, we find that the respondent herein is working as an Assistant Section Officer (Selection Grade PG Admission III section in the institute of Distance Education run by the appellant institution and based upon the telecast made by the news channel as well as the reports published in the newspapers, he was suspended from service and the said suspension order was challenged before this Court by way of writ petition and after two rounds of litigation, the then law Secretary (In-charge) was appointed as an enquiry officer.

9. Admittedly, there is no written complaint lodged against the respondent herein either by the "Times Now" News Channel or by any of the students alleged to have involved in the paper chasing. A mere reading of the charges would makes it clear that the appellant institution has placed the respondent herein under suspension and initiated departmental proceedings without any

substantial materials except the telecast made by the "Times Now" News Channel as well as the reports published in the News Papers.

10. The fact remains that the Journalist by name Ms.Dhanya Rajendran and camera man Mr.Manish Dhanani claims to have conducted the sting operation and offered their statements at the first instance as M.W.1 and M.W.2 only before the enquiry officer. It is undisputed fact that the managements witnesses M.Ws.1 and 2 have not produced the original version of the CD which was recorded during the sting operation before the enquiry officer, and the CD produced before the enquiry officer is only an edited version.

11. It remains to be stated that both the management witnesses M.W.1 and M.W.2 have categorically stated that after the alleged recording, they have done the editing of the audio and forwarded the same to the head office at Bombay where video was also edited and further stated that they have dubbed the episode. During the cross-examination of the domestic enquiry conducted by the advocate on behalf of the delinquent staff, M.W.1 has categorically admitted that what was handed over to the enquiry officer during the domestic enquiry is an edited version and original version is with the head office at Bombay. It is to be stated that it is the consistent suggestive case of the delinquent staff that the management witness M.W.1 belonged to a private channel which was new to the State of Tamil Nadu at the relevant point of time. In order to make a sensational news for gaining the TRP rating, they are converted to corridor rumours as an episode and they have specifically denied the voice of the delinquent staff herein and further, the same was specifically confronted with M.W.1 that the voice as in the electronic evidence C.D. is not that of the delinquent staff. However, M.W.1 has categorically admitted that as stated above, she has carried out an audio editing and video editing was done at the Bombay head office and she has done the dubbing. The management witness M.W.1, who had produced the Ex.X1-CD, an electronic evidence, has admitted that what was produced before the domestic enquiry officer is only a edited and dubbed CD in other words, it is the version contained in the CD is doctored. When that being the case, when the delinquent staff specifically denied the voice, the enquiry officer ought to have forwarded the CD for voice testing which facility is very much available at the relevant point of time.

12. The learned counsel appearing for the respondent has submitted that there is no doubt that the enquiry officer has miserably failed to testify the authenticity of the edited version of CD, especially when the respondent herein has specifically denied the voice and conversations contained therein except the image, which was also supported by

independent witness viz., D.W.1.

13. It is relevant to state that on behalf of the delinquent staff, D.W.1, a staff of the same section in the very same institute was examined. D.W.1 deposed in support of the delinquent staff and specifically stated that on that date, no outsider has entered the section and on playing the CD, she had categorically denied the voice of the respondent in the said audio and stated that the voice recorded is not that of staff and the place of recording is not our office.

14. It appears that the learned Single Judge, after taking note of the specific stand taken by the respondent herein that the voice was not his voice and some one has dubbed his voice to create an effect as if the writ petitioner spoke about the paper chasing, on 31.10.2007. When he was examined by the enquiry officer, he clearly stated that what was recorded as his speech in the video was not at all his speech and the said version offered by the delinquent staff was duly corroborated by D.W.1, Selvi A.Priya while deposing before the enquiry officer, who also denied the voice as contained in the CD as that of the delinquent staff.

15. In the absence of the presenting officer, it appears that the enquiry officer, who is none other than the Law Secretary of the State Government, has chosen to cross-examine the D.W.1 which the learned Single Judge was pleased to observe as very strange and further rendered a finding that when the independent oral evidence led in by the delinquent staff, who is denying the voice and also the oral evidence of the D.W.1 as to the voice contained in the CD is not that of the delinquent staff, the enquiry officer ought to have insist for original CD or at least obtain an opinion from an expert in the said field for deciphering the video audio. On the corollary, the learned Single Judge has further found fault with the enquiry officer for rendering a finding that the burden is upon the delinquent to discharge that the voice contained in the edited and altered CD and the learned Single Judge further observed that the action of the enquiry in not calling for the original CD or getting an opinion of the expert in the field which goes to the root of the matter and based on video CD, which is admittedly edited and dubbed.

16. Learned counsel appearing for the appellant would strongly assailed the above said finding of the learned Single Judge on the ground that the burden of proof that the voice contained in the video CD is only upon the delinquent staff and

not by the management as observed by the enquiry officer, we are unable to comprehend ourselves with the above said contention of the appellant's counsel. Had there been original CD filed before the enquiry officer then entire picture could have been a different one. However, a CD has been produced only at the time of an enquiry to project as if a sting operation alleged to have been conducted by the times news channel wherein, the respondent is said to have spoken about the alleged facts that are contained in the articles of charge. It is needless to say that during the cross-examination of M.W.1, she has categorically admitted that she has done the audio editing and audio dubbing and forwarded to the Bombay for video editing.

17. In view of the admission by M.W.1 (who had produced the CD before the enquiry officer) having accept that the CD is an edited and dubbed one, the said finding of the learned Single Judge is found to be in accordance with law and not as contended by the learned counsel appearing for the appellant institution. It remains to be stated that while M.W.1 stated that the voice contained in Ex.X.1-CD is that of the delinquent staff, on the contrary, D.W.1, who is the staff in the very same section, had stated that the voice contained in that CD is not that of the delinquent staff and when the management witness herself has admitted that she carried out audio edition and the dubbing, we find that the finding rendered by the learned Single Judge is on the above factual background cannot be assailed.

18. In this regard, it is relevant to state that this Court, while admitting the present writ appeal, has directed the appellant institution to reinstate the respondent herein into service, thereby the respondent was reinstated on 15.02.2013. Moreover, this Court on 21.01.2013 directed the appellant to take steps to re-examine the voice clippings by sending the same to the Forensic Sciences Department, Chennai. Accordingly, the appellant institution has sent the video CD to Forensic Sciences Department, Chennai for examination and the same was returned with a report that the video recordings in the CD is unsuitable for speaker identification. The said report was placed before this Court and in pursuance of which, this Court, by an order dated 06.11.2014, has directed the appellant institution to send the CD for examination to the Director, Central Forensic Science Laboratory, Ramanthapur, Near Osmania University, Hyderabad. The Central Forensic Laboratory, Hyderabad, sent a communication to the appellant institution on 26/27.11.2014 stating that they have no facility for audio-video authentication/analysis and instructed to approach the Director, CFSL Chandigarh for examination. Therefore, the video CD was sent to CFSL, Chandigarh for examination and they also returned the same sating that "the audio signal data present in video recording of the Ex.C.1 found to be not suitable for examination of speaker identification. So it is crystal clear that the video CD

produced before the enquiry officer is not only an edited version and also unauthenticated one.

19. Thus, during the pendency of this writ appeal, in order to unearth the factual position, this Court has permitted the appellant institution to try the original or to send for the voice comparison test. The Forensic Laboratories, wherever the CD was sent, have gave a negative reply stating that Ex.X.1 being the edited and dubbed no positive opinion can be given.

20. In the case of TUKRAM S. DIGHOLE Vs. MANIKRAO SHIVAJI KOKATE reported in (2010) 4 Supreme Court cases 329, the importance of authenticity of an electronic evidence is discussed which is as follows:

"23. The second issue, in our opinion, is of greater importance than the first one. It is well settled that tape-records of speeches are "documents" as defined in Section 3 of the Evidence ACT and stand on no different footing that photographs. (See Ziyauddin Burhanuddin Bukhari V. Brijmohan Ramdass Mehra⁴, SCC p.26, para 19.) There is also no doubt that the new techniques and devices are the order of the day. Audio and video tape technology has emerged as a powerful medium through which a first-hand information about an event can be gathered and in a given situation many prove to be a crucial piece of evidence. At the same time, with fast development in the electronic techniques, the tapes/cassettes are more susceptible to tampering and alterations by transposition, excision etc, which may be difficult to detect and therefore, such evidence has to be received with caution. Though it would neither be feasible nor advisable to lay down any exhaustive set of rules by which the admissibility of such evidence may be judged but it needs to be emphasized that to rule out the possibility of any kind of tampering with the tape, the standard of proof about its authenticity and accuracy has to be more stringent as compared to other documentary evidence."

21. In the case of ANVAR P.V. Vs. P.K. BASHEER and others reported in (2014) 10 Supreme Court cases 473, it was observed as follows:

"An electronic record by way of secondary evidence shall not be admitted in evidence unless the requirements under Section 65-B are satisfied. Thus, in the case of CD, VCD, Chip, etc., the same shall be accompanied by the certificate in terms of Sections 65-B obtained at the time of taking the

document, without which, the secondary evidence pertaining to that electronic record, is inadmissible"

22. The learned counsel appearing for the appellant during the course of his argument has stated that the principles of Evidence Act has no application in a Domestic enquiry. In this context, the learned counsel appearing for the appellant has relied upon a decision of the Apex Court in the case of CHOLAN ROADWAYS LIMITED Vs. G.THIRUGNANASAMBANDAM reported in (2005) 3 Supreme Court Cases 241.

23. We conscious of the law governing the field in respect of domestic enquiry and also the law governing and relating to the electronic evidence. In the case on hand, as stated supra, the entire articles of charges are based upon Ex.X.1-CD, which is said to have been shoot by a hidden camera during the alleged sting operation. While M.W.1 herself, who had produced the Ex.X.1-CD in the domestic enquiry, was confronted by the defence counsel as to the voice edition and editing, she had answered in affirmative in support of the delinquent staff that there was a voice edition and audio was edited by her and dubbed. In view of the admission by M.W.1 during the cross-examination as to the audio dubbing and editing in the Ex.X.1-CD, the finding of the enquiry officer that the burden of proof of the voice contained in the CD is not that of the institution but is on the delinquent staff cannot be sustained and hence, the finding rendered by the learned Single Judge that it is the duty cast upon the management, who ought to have referred the Ex.X.1-CD to the expert opinion for audio testing and hence, such a finding rendered by the learned Single Judge cannot be interfered with.

24. Further, during the pendency of this appeal, in order to unearth the fact, this Court has also permitted the institution to produce the original CD or to send for the voice test. However, to dismay, M.W.1 seems to have stated that the original CD was destroyed due to the expiry of time and while all the three forensic laboratories, to which it was referred to also expressed its inability to give any positive opinion, since the CD produced is edited and dubbed one and hence, voice test cannot be carried out. On the above said factual circumstances, we have left with no other alternate but to concur with the finding of the learned Single Judge that a staff cannot be thrown out of the institution solely based upon the CD which is admittedly and undisputedly edited and dubbed or otherwise based upon the edited electronic evidence, a staff of the institution cannot be thrown out of the institution by imposing major penalty and in this view of the matter, we find it hard to accept the contention of the learned counsel for the appellant in view of the legal limitation in receiving the evidence viz.,

the Ex.X.1-CD which is the root of the matter.

25. As stated supra, the disciplinary proceedings itself was initiated based on the unauthenticated and edited version of CD which will affect the very root of the disciplinary proceedings and hence, the contention of the learned counsel for the appellant will have no force.

26. It is an admitted fact that the enquiry officer was appointed by this Court at the instance of the respondent herein in W.P.No. 24995/2007 and the same was not challenged. No doubt, the enquiry officer appointed by this Court was the then Law Secretary, Government of Tamil Nadu, who is also an ex-officio member of the Syndicate of the University, as per the Madras University Act 1923. Though the enquiry officer was appointed by an order of this Court, nothing prevented the appellant institution to appoint a presenting officer.

27. The learned counsel for the respondent has contended that the materials available before this Court would expose the fact that the enquiry officer has played Triple Role (i.e) (a) enquiry officer (b) presenting officer and (c) disciplinary authority and further contended that the active role played by the enquiry officer as presenting officer would reflect from the cross examination of DW1 and the syndicate is the decision making authority of the appellant institution as per the Madras University Act 1923, in which the Law Secretary, Government of Tamil Nadu also a part of it.

28. Per contra, it was contended by the learned counsel appearing for the appellant that the enquiry officer being an ex-officio member of syndicate in the capacity of Law Secretary [in-charge], Government of Tamil Nadu has not participated in the meeting held on 11.02.2008, whereby the decision was taken to impose the punishment.

29. On reply, the learned counsel appearing for the respondent contended that mere absence of the enquiry officer in the syndicate meeting held on 11.02.2008 will not seize his position as the ex-officio member of the Syndicate.

30. Having regard to the rival contentions with regard to the role played by the enquiry officer, as in the preceding paragraphs, we have held that the order of the learned Single Judge cannot be interfered with and in view of the said finding, we restraining ourselves from expressing any view on the rival contentions as to the role played by the enquiry officer except to say that had the enquiry officer was diligent enough to call for the original CD at the very inception of the enquiry, the picture could have been entirely different one. Besides, having regard to the stand taken by the delinquent staff coupled with

the admission of M.W.1 as to the audio edition in the CD, the enquiry officer should have more diligent while dealing with such sensitive issue touching upon the institution could have ordered for voice comparison as pointed out by the learned Single Judge and now, due to the expiry of time, all the three Forensic Laboratories have expressed its inability to compare and conduct the audio comparison due to the factum of edition in the CD, we left with no other alternative, due to the legal limitations to confirm the order of the learned Single Judge. In such circumstances, the learned single Judge has rightly set aside the impugned order passed by the appellant institution.

31. In view of the discussion in the preceding paragraphs, this Court has left with no other alternate that in the absence of the original CD being produced by the Management and in the absence of any expert evidence on the electronic evidence Ex.X.1 being offered as to the voice dialogues made therein, we are unable to subscribe our view that the articles of charges stand proved in support of the charges and hence, viewing from any stand point, the impugned proceedings wherein major punishment of compulsory retirement was passed against the delinquent staff is not sustainable. Hence, the writ appeal is liable to be dismissed.

32. In the result, the Writ Appeal is dismissed by confirming the order dated 19.04.2012 passed by the learned Single Judge in W.P.No.29413 of 2008. No costs.

s/d-

Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

Jr1

To

1. The Registrar
University of Madras
Madras.

+1 CC to Mr.Mani Sundaragopal. Advocate sr 83458.

+1 CC to Mr.C. Kasirajan, Advocate sr 83536.

W.A.No.2784 of 2012

SP(27/11/2017)