



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.01.2017

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH  
AND  
THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.A.[MD].No.1615 of 2016

K.Jayaraman : Appellant/Petitioner

Vs.

1.The Registrar,  
Bharathidasan University,  
Trichy 22.

2.C.Arumugam,  
Advocate, Enquiry Officer,  
No.11A, Barracks Colony,  
EVR Road, Puthur, Trichy 17. : Respondents/Respondents

PRAYER: Writ Appeal is filed under Clause 15 of the Letters Patent against the order dated 14.12.2016 made in W.P.(MD).No.23970 of 2016, on the file of this Court.

Prayer in WP(MD). 23970/ 2016 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Mandamus directing the 2nd respondent to provide the petitioner an opportunity to defend himself through an advocate of his choice in the department proceedings before the 2nd respondent which is conducted in pursuant to the proceedings of the 1st respondent in Ref.No.03774/H4/2014 dated 16.11.2016.

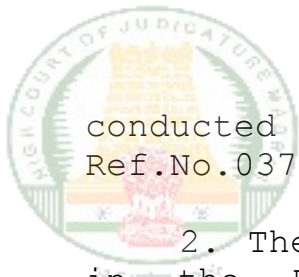
For Appellant : Mr.RM.Sivakumar

For Respondent No.1 : Mr.VR.Shanmuganathan

JUDGMENT

[Judgment of the Court was made by R.SUBBIAH, J.]

The present Writ Appeal has been filed as against the order, dated 14.12.2016, made in W.P.(MD).No.23970 of 2016, whereby and whereunder, the prayer sought for by the appellant herein to defend himself through an Advocate of his choice in the departmental proceedings before the second respondent, to be



conducted pursuant to the proceedings of the first respondent in Ref.No.03774/H4/2014, dated 16.11.2016, was negatived.

2. The case of the appellant is that he joined as a Lecturer in the Department of Educational Technology in the first respondent University on temporary basis, on 22.08.2001. Subsequently, he was appointed as Temporary Lecturer in the said department by the first respondent on 18.04.2002. While the appellant was so serving, there was a call from the first respondent for the post of Lecturer in the Department of Educational Technology. The appellant applied for the said post and he was selected by the duly constituted Selection Committee of the first respondent. After joining as a Lecturer in the Department of Educational Technology, on permanent basis, the appellant requested the first respondent to consider his salary hike under carrier advancement scheme, by way of various communications. Since the first respondent has not considered the claim of the appellant, he was constrained to file W.P.(MD). No.22875 of 2015 praying to fix his pay at various rates considering his seniority.

3. During the hearing of the said Writ Petition, the first respondent submitted a communication in Ref.No.03774/H4/2014, dated 11.12.2015, informing that if the appellant satisfies the requirement of the said communication, his request under carrier advancement scheme would be considered in the proper manner. Accordingly, the appellant submitted evidence to the first respondent as required in the official communication in Ref.No.03774/H4/2014, dated 11.12.2015. However, the first respondent issued an order on 17.02.2016, stating that his past experience cannot be counted for carrier advancement scheme, as it was not proper. Further, the first respondent has stated that the appellant produced fake appointment order and his employment is based only on hourly basis. Thereafter, the first respondent issued a charge memo to the appellant stating that he is found guilty for giving false information about his experience and for producing bogus appointment order. The appellant offered his explanation for the said charge memo. Being not satisfied with the explanation offered by the appellant, the second respondent was appointed as Enquiry Officer to enquire into the charges levelled against him. The appellant also appeared before the Enquiry Officer and made a written request that he could be permitted to engage an Advocate to defend himself in the departmental proceedings, as the charges were grave and also on the ground that the Enquiry Officer is also a practising Advocate and the witness is also a law degree holder. Since the said request of the appellant was not considered, he filed W.P.(MD).No.23970 of 2016, for the relief stated supra.

<https://hcservices.ecourts.gov.in/hcservices/>

4. The learned Single Judge, by order dated 14.12.2016, negatived the request of the appellant holding that he is not



entitled to have the assistance of an Advocate. Aggrieved over the same, the appellant is now before this Court with this Writ Appeal.

5. The learned counsel appearing for the appellant submitted that the Enquiry Officer himself is an Advocate by profession and the witness is also holding law degree. When that being the position, the appellant is entitled to have legal assistance. But, this aspect was not considered by the learned Single Judge. In support of his contention, the learned counsel for the appellant relied upon the following Judgments:-

- Board of Trustees of the Port of Bombay Vs. Dilipkumar Raghavendranath Nadkarni and others, reported in 1983 (1) SCC 124,
- J.K. Aggarwal Vs. Haryana Seeds Development Corporation, reported in 1992 (2) SCC 283,
- Indian Airlines Corporation Vs. N. Sundaram, reported in 1992 (ii) LLN 811,
- S. Jayavelu Vs. Central Administrative Tribunal, reported in 2014 (7) MLJ 287 and
- Ramesh Chandra Vs. Delhi University, reported in 2015 (5) SCC 549.

6. Per contra, Mr. VR. Shanmuganathan, the learned counsel appearing for the first respondent University, submitted that there is no vested right to claim assistance of an Advocate in a departmental proceedings and if only the charges levelled against the delinquent are complex in nature, he could be allowed to have legal assistance. But, in the instant case, going by the charges levelled against him, the appellant is not entitled to have the legal assistance. Therefore, the learned counsel for the first respondent sought for dismissal of the Writ Appeal.

7. By way of reply, the learned counsel for the appellant submitted that the charge memo issued to the appellant specifically states that the enquiry will be conducted under Section 25(28) of the Bharathidasan University Act, 1981, r/w Rule 17(b) of the Tamil Nadu Civil Services [Discipline and Appeal] Rules. Section 25(28) of the Bharathidasan University Act, 1981, clearly states that the syndicate has power even to dismiss a person based on an enquiry report submitted in the departmental proceedings. Therefore, according to the learned counsel, the appellant is entitled to have the legal assistance of an Advocate to defend himself in the departmental proceedings. In this regard, the learned counsel placed reliance on a Judgment of the Hon'ble Supreme Court in Ramesh Chandra Vs. Delhi University and others, reported in 2015 (5) SCC 549, wherein in Paragraph Nos. 68 to 72, it has been held as follows:-



pp. 129-30 & 132, paras 10 & 12)

"/O. ... Now if the rules prescribed for such an enquiry did not place an embargo on the right of the delinquent employee to be represented by a legal practitioner, the matter would be in the discretion of the enquiry officer whether looking to the nature of charges, the type of evidence and complex or simple issues that may arise in the course of enquiry, the delinquent employee in order to afford a reasonable opportunity to defend himself should be permitted to appear through a legal practitioner.

12. ... In our view we have reached a stage in our onward march to fair play in action that where in an enquiry before a domestic tribunal the delinquent officer is pitted against a legally trained mind, if he seeks permission to appear through a legal practitioner the refusal to grant this request would amount to denial of a reasonable request to defend himself and the essential principles of natural justice would be violated."

0. In J.K. Aggarwal v. Haryana Seeds Development Corpn. Ltd.<sup>9</sup>, this Court held that the denial of the assistance of a legal practitioner in inquiry proceedings would be unfair. This Court held as follows: (SCC pp. 286-87, f para 8)

"8. It would appear that in the inquiry, the respondent Corporation was represented by its Personnel and Administration Manager who is stated to be a man of law. The rule itself recognises that where the charges are so serious as to entail a dismissal from service the inquiry authority may permit the services of a lawyer. This rule vests a discretion. In the matter of exercise of this discretion one of the relevant factors is whether there is likelihood of the combat being unequal entailing a miscarriage or failure of justice and a denial of a real and reasonable opportunity, for defence by reasons of the appellant being pitted against a presenting officer who is trained in law. Legal Adviser and a lawyer are for this purpose somewhat liberally construed and must include 'whoever assists or advises on facts and in law must be deemed to be in the position of a legal adviser'. In the last analysis, a decision has to be reached on a case-to-case basis on the situational particularities and the special requirements of justice of the case. It is unnecessary, therefore, to go into the larger question 'whether as a sequel to an adverse verdict in a domestic enquiry serious civil



and pecuniary consequences are likely to ensue, in order to enable the person so likely to suffer such consequences with a view to giving him a reasonable Opportunity to defend himself, on his request, should be permitted to appear through a legal practitioner' which was kept open in Port of Bombay v. Dilipkumar Raghavendranath Nadkarni<sup>8</sup>. However, it was field in that case: (SCC p. 132, para 12)

12. ... In our view we have reached a stage in our onward march to fair play in action that where in an enquiry before a domestic tribunal the delinquent officer is pitted against a legally trained mind, if he seeks permission to appear through a legal practitioner the refusal to grant this request would amount to denial of a reasonable request to defend himself and the essential principles of natural justice would be violated."

70. In view of the law laid down by this Court, we are of the view that if any person who is or was a legal practitioner, including a retired Hon'ble Judge is appointed as an enquiry officer in an inquiry initiated against an employee, the denial of assistance of a legal practitioner to the charged employee would be unfair.

71. For the reasons aforesaid, we hold that all the departmental enquiries conducted against the appellant were in violation of rules of natural justice. This apart, as the third inquiry report is based on extraneous facts and first part pf the charge held to be proved in memorandum dated 26-3-2010 not being the part of the charges shown in the (third) charge-sheet, the order of punishment, including Resolution by memorandum dated 26-3-2010 cannot be upheld.

72. For the reasons aforesaid, we set aside both the penal memoranda date 22-2-2010 and 26-3-2010. In effect, the appellant stands reinstated to the post of the Professor but in the facts and circumstances, we allow only 50% jof back wages (salary) to the appellant for the intervening period i.e. from' the date of his disengagement till the date of this judgment. However, the aforesaid period shall be treated "on duty" for all purposes including seniority, increment, fixation of pay, retiral benefits, etc. The respondents are directed to pay the appellant arrears within two months, failing which they shall be liable to pay interest @ 6% from the date of this



judgment".

8. We have considered the above submissions and perused the records carefully.

9. The dictum laid down by the Hon'ble Supreme Court in the Judgment, cited supra, in our considered view, is squarely applicable to the facts of the present case. Therefore, following the said Judgment, the order dated 14.12.2016, made in W.P.(MD). No.23970 of 2016, is set aside and the respondents are directed to provide the appellant an opportunity to defend himself through an Advocate of his choice in the departmental proceedings before the second respondent. Such an enquiry shall be commenced and completed within a period of eight weeks from the date of receipt of a copy of this order. The appellant is directed to co-operate for the same.

10. The Writ Appeal is allowed, as indicated above. No costs.

Sd/-

Assistant Registrar(co)

/True copy/

Sub Assistant Registrar

To

The Registrar,  
Bharathidasan University,  
Trichy 22.

nb

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JUDGMENT MADE IN  
W.A. [MD].No.1615 of 2016  
19.01.2017