

THE HON'BLE SRI JUSTICE A.V.SESHA SAI

W.P.No.17781 of 2007

ORDER:

In the present writ petition, challenge is to the order passed by the Respondent University vide Proceedings No.S.III(1)/2052/1994 dated 5.9.2003 issued by the 2nd respondent.

2. Heard Sri Rajagopala Rao Hanumanthu, learned counsel for the petitioner and Sri K.Jyothi Prasad, learned counsel for the respondent-University, apart from perusing the material available before the Court.

3. On the ground that a crime was registered under Sections 468 and 471 of Indian Penal Code, petitioner herein, who was working as Attender in the Respondent University, was placed under suspension with effect from 18.3.1994. Subsequently, the prosecution launched against the petitioner herein and certain others vide C.C.No.605 of 1998, ended in acquittal on 28.3.2002 on the file of VII Metropolitan Magistrate, Visakhapatnam. In pursuance of the said order of acquittal, petitioner herein appears to have submitted a representation on 4.5.2002 to the Respondent University, requesting for his reinstatement into service by enclosing a copy of the judgment in the said criminal case. Thereafter, after obtaining advice, the Respondent University issued a charge memo vide proceedings No.S.III(1)/2052/94 dated 12.5.2003. On 26.5.2003 an explanation was offered by the petitioner in response to the said charge memo and thereafter vide proceedings under challenge, the Respondent University dispensed with the services of the petitioner herein.

4. It is contended by the learned counsel for the petitioner that the order of dismissal passed by the Respondent University is highly illegal, arbitrary

and violative of Article 14 of the Constitution of India and violative of principles of natural justice and that the Respondent University ought not to have proceeded further in view of clean acquittal order passed by the learned Magistrate.

5. On the contrary, it is strenuously contended by the learned Standing Counsel Sri K.Jyothi Prasad that there is absolutely no illegality nor there exists any procedural infirmity in the impugned action and in the absence of the same, the order impugned is not amenable to any judicial review under Article 226 of the Constitution of India. It is further submitted that since complete opportunity was given to the petitioner before passing the impugned order, the interference of this Court under Article 226 of the Constitution of India is unwarranted.

6. The information available before this Court manifestly reveals that pursuant to the information received from the Police as to the registration of crime against the petitioner herein, he was placed under suspension. There is also no controversy with regard to the reality that the criminal prosecution launched against the petitioner and others vide C.C.No.605 of 1998 on the file of VII Metropolitan Magistrate, Visakhapatnam ended in acquittal. A copy of the judgment which is placed on record in the writ petition as material paper also reveals categorically that the learned Magistrate cleanly acquitted the Accused. Though the impugned order dated 5.9.2003 refers to the report of the Enquiry Officer, there is no clarity in the impugned order as to whether the said enquiry was conducted after giving opportunity to the petitioner. It is also significant to note that after submission of the enquiry report as indicated in the impugned order, a show cause notice dated 12.5.2003 was issued and responding to the same, an explanation was also offered by the petitioner on 26.5.2003. Curiously, after receipt of the said explanation, the

Respondent authorities referred the matter to the Enquiry Officer to send his remarks and also observed peculiarly in the impugned order that the University has no need to answer the aspects questioning the enquiry report and it is a matter to be dealt by the appellate authority. Absolutely, there is no semblance of consideration of explanation offered by the petitioner in the impugned order of dismissal dated 5.9.2003. Therefore, the entire exercise undertaken by the Respondent University while dealing with the issue, is preposterous and cannot be sustained in the eye of law.

7. For the aforesaid reasons, the writ petition is allowed, setting aside the Order passed by the Joint Registrar-2nd Respondent University vide Proceedings No.S.III(1)/2052/1994 dated 5.9.2003 and consequently it is declared that the petitioner herein is entitled for all the consequential benefits viz., seniority and other attendant benefits. It is further made clear that having regard to the facts and circumstances of the case, petitioner herein is entitled for half of the backwages payable after giving credit to the amounts already paid towards subsistence allowance. The petitioner herein shall be reinstated into service within a period of three months from the date of receipt of this order. As a sequel, the miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.

Date: 20.7.2017
DA

A.V.SESHA SAI, J

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