

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:05.09.2018

CORAM :

THE HONOURABLE MR. JUSTICE SATRUGHANA PUJAHARI

W.P.Nos.9134 & 9135 of 2014

and MP.Nos.1 & 2 of 2014 in W.P.No.9134 of 2014  
& MP.Nos.1 of 2014 & 1 of 2015 in W.P.No.9135 of 2014

Dr.K.Nagarajan ... Petitioner in both W.Ps.

Vs

1.The Director of Collegiate Education,  
Nungambakkam, Chennai-600 006.

2.The Joint Director of Collegiate Education,  
Race Course Road, Coimbatore-18,

3.The College Committee,  
P.S.G. College of Arts & Science,  
Coimbatore-641 014.  
rep. by its Principal.

4.The Secretary,  
P.S.G. College of Arts & Science,  
Coimbatore-641 014.

5.The Registrar,  
Bharathiyar University,  
Marudhamalai Road,  
Coimbatore-46.

... Respondents in both Wps.

Petitions filed under Article 226 of the Constitution of India, praying for:

(i)issuance of a Writ of Certiorari, to call for the records on the file of the fourth respondent dated 12.08.2013 and quash the same(W.P.No.9134 of 2014).

(ii)issuance of a Writ of mandamus to direct the respondents to permit the petitioner to join duty as Assistant Professor in Physics in the 4<sup>th</sup> respondent College and to treat the period from 17.08.2012 till the date of permitting him to join duty, as duty period with all service and monetary benefits(W.P.No.9135 of 2014).

For Petitioner(both Wps): Mr.S.Selvathirumurugan

For R1 &2 : Mr.P.Kavitha,  
Government Advocate

For R3 & 4 : Mr.A.Jenasenan

For R5 : Mr.V.Selvaraj, SC  
(in both W.Ps.)

Both the aforesaid writ petitions at the instance of the same writ petitioner against the same respondents, arising out of the same transaction and being interlinked, on consent of the parties, both are heard together and disposed of by this common order.

2. The case of the petitioner is that he was appointed as Assistant Professor in Physics in the PSG College of Arts and Science, Coimbatore against a sanctioned post vide order dated 01.02.2007 of the fourth respondent. Pursuant to the same, he joined in the said post. Soon after joining, he being a teacher of outstanding merit, an amount of Rs.44,00,000/- for two research work from the UGC was received by him, which invited professional jealousy and thereafter he was subjected to humiliation and harassment by rival group in the college including the Head of the department. The petitioner as such went through mental agony and stress for which he was forced to take leave. Hence he made application for earned leave but he was allowed one day earned leave only. The petitioner after proceeding on leave for one day as such did not join on duty from 17.10.2011 due to such mental agony and remained absent till 16.08.2012. When the petitioner reported for duty on 17.08.2012 indicating his reason of absence, the fourth respondent intimated him that the matter shall be placed before the third respondent college committee. However, subsequently the petitioner received a communication from the fourth respondent that the third respondent has taken the absence of the petitioner seriously and decided to initiate disciplinary proceeding. The petitioner thereafter on 23.11.2012 though requested to the Chairman of the College Committee, to allow him to join duty but he was advised to submit resignation and accordingly the petitioner tendered his resignation. He was intimated that the same shall be placed before the college committee. The petitioner however, before the acceptance of the such resignation made withdrawal of the same on 23.01.2013. Thereafter, without allowing the petitioner to join in duty or without putting the petitioner under suspension as contemplated under Section 19(4) of the Tamil Nadu Private college (Regulation) Act, 1976 (hereinafter referred to as Regulation Act in short), a charge memo was issued to him on 27.02.2013, indicating two charges, one for remaining unauthorised absence

from 15.10.2011 alleging the same to have disturbed the academic interest of the college and as such amounts to misconduct and the other that in spite of the direction of the respondent college to join in duty, he failed to comply with the same which resulted in gross negligence on the responsibility of the petitioner as an employee of the college. The petitioner however, explained the reason of his absence by way of a representation but he was asked to appear before Sub Committee, wherein it was intimated to him that enquiry shall be conducted and accordingly enquiry was conducted wherein the petitioner submitted his representation with a further request to allow him to join in duty. Then on 12.08.2013, a show cause notice was served on him asking to explain as to why punishment of dismissal shall not be imposed on him for the charges proven. The petitioner made a detailed representation and also challenged such issuance of show cause without furnishing the enquiry report. Thereafter no action on the same was taken and the petitioner was not allowed to join in his duty. No reply in pursuance to the same having been received, the petitioner made a representation pointing out the difficulties faced in not allowing to join in duty on 10.02.2014 but the same evoked no response. Hence the petitioner came to challenge the show cause notice issued to him without furnishing the enquiry officer report and also challenging the proportionality of the proposed punishment, with the prayer to quash such notice of show cause given on 12.08.2013 and take back him to service with all backwages from 13.08.2012 with continuity in service. The other writ petition has been filed by the petitioner challenging the action of the respondent not allowing him to join in duty even if he is willing to join in duty and has also not been put under suspension inasmuch as the same would tantamount to violation of his fundamental right under Article 21 of the Constitution of India, with a prayer to direct the respondents particularly the 3<sup>rd</sup> and 4<sup>th</sup> respondent to allow him to join in duty forthwith pending disposal of the other writ petition.

3. A common counter affidavit has been filed by the third and fourth respondents who are contesting respondents in both the writ petitions, challenging the maintainability of the writ petition against such show cause notice given to the petitioner inasmuch as no final action in this regard has been taken in the absence of approval of the second respondent on the ground that the same is premature. The prayer to allow him to join in duty has been challenged as he was not under suspension as the petitioner conduct amounts to abandonment of service. So also the allegation of the petitioner that he was harassed for professional jealousy, has also been denied inasmuch as the materials on record reveal that the petitioner remained unauthorisedly absent on his own and did not turn up inspite of the telegram made to him and issued notice through newspaper.

Thereafter, the petitioner resigned on his own which he later withdrew. The aforesaid act of the petitioner being amounting to abandonment of service, no order of suspension was issued to the petitioner. However, for such unauthorised absence charge memo was issued to the petitioner and the enquiry was conducted wherein the petitioner appeared and participated on 15.04.2013 and admitted the charges and made prayer for mercy. When the enquiry report was furnished with the report that the charges to have been proved considering the admission of the petitioner, the third respondent thereafter did not consider the necessity of seeking the explanation of the petitioner on such report before acceptance and considering the seriousness of the delinquency, decided to impose a punishment of removal of the petitioner and as such issued the notice of show cause proposing such punishment to the petitioner and after receipt of such show cause, finally decided to impose such punishment and as such submitted to the Government respondent the proposal to accord approval as required under the Section 19 (1) of the Regulation Act to impose the said punishment which is pending, therefore the final decision is yet to be taken in the disciplinary proceeding against the petitioner. Hence, the petitioner could not have come to challenge the same in this writ petition on the ground stated more particularly when he has admitted the charges before the enquiry officer, so also considering the delinquency and conduct of the petitioner who appears to have abandoned the service, the proposed punishment cannot be said to be disproportionate and the same also being a proposed one its proportionality at this stage cannot be questioned. Hence, the prayer made in both the writ petitions are devoid of merit.

4. The second respondent however, has filed reply affidavit in both the writ petitions wherein it has been disclosed that to take a decision on the proposal submitted by the third respondent, the records have been called for from the third respondent and hence the writ petitions filed by the petitioner before imposition of punishment challenging such show cause notice, appears to be premature. Furthermore it has also been pleaded that the matter being subjudice no decision on the proposal submitted with regard to imposition of punishment has been taken. But subsequently, pursuant to the interim order passed to take a decision on such proposal, it appears that the second respondent has refused to approve the imposition of proposed punishment of removal vide letter dated 18.04.2017 to the third respondent and also directed to reconsider the proposed punishment. Thereafter as gathered from the counsel for the third and fourth respondents, that the third respondent again taking the aforesaid letter of the second respondent to be not binding and only advisory in nature resubmitted such proposal sticking to the earlier proposed punishment of removal of the writ petitioner for the proven delinquency.

5. Learned counsel appearing for the petitioner submits that since in this case, the enquiry report was not furnished to the petitioner and his explanation was not sought for as the same, before acceptance of the same and the same was accepted by the first respondent without seeking response of the petitioner and also the show cause notice for imposition of the proposed punishment was issued to him without seeking the prior approval of the Government respondent as contemplated under Section 19 (1) of the Regulation Act, the domestic enquiry conducted in this case wherein the petitioner has been held to be guilty of the charges and acceptance of the same by the third respondent is vitiated so also show cause for the proposed punishment. In such premises, when the petitioner was ready and willing to join in his duty, but he was not allowed to join in duty, this Court should quash the notice of show cause for proposed punishment including the domestic enquiry report and direct the third respondent to allow the petitioner to join in his post with all monetary benefit accrued to him during the period of absence more particularly after 13.08.2012, with continuity in service. It is further submitted by the counsel appearing for the petitioner that since the petitioner was not allowed to discharge his duty eventhough he was not put under suspension, he is entitled to the relief of joining in his duty pending final decision in the disciplinary proceeding. Hence, accordingly the prayer made in both the writ petitions be allowed.

6. In response, the learned counsel appearing for the third and fourth respondents submits such a contention of the petitioner is without any substance. It is submitted by him that this writ petition is premature inasmuch as no decision on the domestic enquiry conducted against the petitioner with regard to the punishment has been taken and he has been issued with a notice of show cause on the proposed punishment only. It is further submitted that the contention that is advanced that without furnishing the report of the domestic enquiry, the acceptance of the same and issuance of the show cause notice with proposed punishment to be impermissible, appears to be without any substance inasmuch as even if the enquiry report is required to be submitted before acceptance of the same seeking the explanation of delinquent by the third respondent but non furnishing of the same and the acceptance of the enquiry report holding the delinquent guilty of the charge in a domestic enquiry, does not automatically vitiates the proceedings in the domestic enquiry. The same can only be in the circumstances when non-furnishing of the report of the domestic enquiry before acceptance, holding a delinquent guilty of charge, has caused substantial prejudice to the delinquent. In such circumstances,

the delinquent can only take the aforesaid to be a ground to challenge the delinquency against him to have been proved. However, the delinquent must plead and prove the prejudice caused to him, for acceptance of such domestic enquiry report without seeking his response on the same. In this case, as it appears that the charges against the petitioner were for the delinquency of his remaining unauthorisedly absent. The petitioner from the very beginning had not disputed the same though assigned the reasons that the same was due to mental agony and suffering meted to him by his colleague in the department including the Head of the Department in the college on account of the professional jealousy. The petitioner however remained unauthorisedly absent. In the domestic enquiry, he admitted the same and pleaded for mercy. The domestic enquiry as such taking note of his such admission was concluded without taking further evidence with the finding that the charges to have been proved. In such premises, non supply of the report of the domestic enquiry before acceptance of the same by the third respondent appears to have caused no prejudice to him. Hence, the petitioner can not be heard of saying that non furnishing of such report in the domestic enquiry before acceptance and asking for the show cause on the proposed punishment to him, has caused prejudice to him and as such the show cause notice and the finding of the domestic enquiry report are liable to be quashed. Reliance in this regard has been placed on a decision of the Apex Court reported in *Uttarakhand Transport Corporation and Others vs. Sukhveer Singh* reported in (2018 )1 SCC 231, wherein the Apex Court have held that 'mere non supply of the enquiry report to the delinquent employee does not automatically warrant reinstatement of the delinquent employee. In the absence of any pleading or proof regarding prejudice being caused to the delinquent due to non supply of the enquiry report prior to the issuance of show cause notice impugned judgment of the High Court directing reinstatement of the respondent with all consequential benefit on the said ground, therefore unsustainable'. It is submitted that the question of seeking approval for removal as contemplated under Section 19(1) of the Regulation Act, would arise only when the third respondent on receipt of the response on the show cause of the delinquent on the proposed punishment, decides to proceed to impose such punishment not before that. Hence challenge to the notice of such show cause that too after furnishing the show cause on the ground of lack of prior approval of the competent authority is without any substance. So also it is submitted that the proposed punishment also cannot be said to be disproportionate considering the nature of delinquency which amounts to abandonment of service on the part of the petitioner in view of the law laid down in the case of *Syndicate Bank vs General Secretary, Syndicate Bank Staff Assn. & another* reported in (2000) 5 SCC 65, *Aligarh Muslim University Vs. Mansoor Ali Khan* reported in (2000) 7 SCC 529. Furthermore it is submitted that

when no final decision has been taken in the domestic enquiry by imposing punishment, no right of the petitioner having been infringed, a writ petition at this stage is not maintainable hence the writ petition is liable to be dismissed. Reliance in this regard has been placed in the case of Union of India and another Vs. Kunisetty Satyanarayana reported in (2006) 12 SCC 28. Advancing the aforesaid submissions and more particularly that the petitioner, has abandoned the service by his conduct, it is submitted the writ petitioner is not entitled to the relief sought for. Hence, both the writ petitions are liable to be dismissed, submits the counsel for the third and fourth respondents.

7. The learned counsel for the second respondent however submits that the approval sought for imposition of penalty of removal of the petitioner was refused and the third respondent was directed to reconsider such punishment. The same though binding on the third respondent but the third respondent misconstruing the same had resubmitted the proposal indicating that they have reconsidered the same and according to them the proposed punishment of removal is just and proper and as such sought for approval again. However, the second respondent vide Rc.No.391/A5(B3)/2014 dated 3.9.2018 has intimated to the fourth respondent that the decision of refusal to accord approval for termination of service of the petitioner vide earlier order dated 18.04.2017 of the competent authority was final and as such directed the college to act as per the said order. In such premises, it is submitted that the punishment of removal hereinafter being impermissible for the delinquency, the challenge to the notice of show cause with regard to the punishment has become infructuous. The petitioner thereafter can only challenge the punishment to be imposed which may be any other punishment except the removal termination of the petitioner from service, if so aggrieved. In such premises, he submits to dismiss the writ petition.

8. Responding to the aforesaid submission of the first and second respondents, the learned counsel for the third respondent would submit that the same subsequent communication of the second respondent is not within the knowledge of the third respondent and if such communication has been made, the same shall be considered in proper perspective and before the same, the writ petitions being premature, are liable to be dismissed.

9. No contention is advanced on behalf of the fifth respondent as no relief is sought for against the said respondent.

10. After hearing the counsel for the parties and going through the materials on record, as it appears the writ petitioner appears to have challenge the notice of show cause on the ground that the proposed punishment accepting the enquiry report on the delinquency to have been proved without seeking response of the petitioner is impermissible. According to the petitioner, before acceptance of the domestic enquiry report that the delinquency to have been proved, by the third respondent employer, the petitioner has right to have his response on such report of the domestic enquiry. Therefore, without furnishing copy of said enquiry report to the petitioner and seeking his response the third respondent could not have accepted the same and issue the show cause on the proposed punishment. No doubt a delinquent has right to know and respond to the report in a domestic enquiry conducted other than the disciplinary Authority before acceptance of the report on the proven delinquency by the disciplinary Authority but acceptance of the same without such compliance by the disciplinary Authority cannot be questioned always on the said ground. The delinquent when pleads the prejudice to have been caused to him and show the same to have been caused, for acceptance of such enquiry report holding him guilty of charge without seeking his response, the same can only be a reason of quashment of enquiry report on the proven delinquency, consequently the punishment if any imposed on the same as held by the Apex Court in the case of Uttarakhand Transport Corporation(supra), reliance on which has been placed by the counsel for the private respondents. It is an undisputed fact that the petitioner had admitted the unauthorised absence and prayed for mercy in the enquiry. From the very beginning in all the communications, it appears that the petitioner had never disputed that he remained unauthorisedly absent which was the foundation of the charge in other words the charge. The petitioner when did not dispute the delinquency and he admitted the same in the domestic enquiry, the finding was recorded that the charge to have been proved. In such premises when the third respondent employer did not decide to furnish a copy thereof to him before acceptance of the same and then accepting the same, when a show cause indicating the proposed punishment was issued, the contention advanced that for non supply of such enquiry report seeking his response before issuance of such show cause, the proceeding and the show cause is vitiated, appears to this Court to be without substance, especially when no prejudice is proved to the petitioner for non supply of such copy. Otherwise also in view of the further development in the matter that the approval sought for to impose such punishment of removal on the petitioner for the proven delinquency as proposed by the third respondent having been refused by the authority competent to accord approval and it being the mandate of section 19 (1) of

the Regulation Act, that imposition of the punishment proposed can only be with the approval of the competent Authority, the third respondent hereinafter for the proven delinquency cannot impose the punishment proposed. Thereafter, the challenge to legality of such show cause on punishment proposed and proportionality of such proposed punishment as such has become redundant. The contention challenging the decision to issue show cause on the proposed punishment without prior approval of the competent authority which is also fallacious as question of prior approval of the competent authority arises only when the third respondent considering the explanation of the delinquent on the proposed punishment of removal decides to impose such punishment and not before the decision to ask for show cause. The challenge on proportionality is also premature as the same is proposed one. So far as the prayer of the petitioner with regard to the backwages and other monetary benefits are concerned, inasmuch as hereinafter his removal is impermissible and he is required to be taken back to service even for the proven delinquency, by imposing any other punishment concerned, it has been contended that since the petitioner was not allowed to join after 13.08.2012 inspite of his willingness to work without any reason hence he is entitled to the same. However, this court is of the view that the same is without any substance considering the fact that the petitioner on his own remained unauthorisedly absent and in spite of the insistence of the respondent did not join in duty and also at one point of time, had resigned on his own but withdrawn the same and for his such admitted misconduct, the college authority was compelled to proceed against him. In such premises, this Court is of the view that the petitioner is not entitled to the bakwages for the period he claimed. But hereinafter punishment as indicated in Section 19(1) of the Regulation Act, the third respondent being incompetent to be imposed in view of refusal of the competent Authority to approve such proposal and the petitioner can be visited with punishment other than that is mentioned in Section 19(1) of the Regulation Act, prayer in other writ petition to take back the petitioner into service, deserves to be allowed.

11. Hence, for the forgoing reasons, this Court disposes of this writ petition of the petitioner refusing the relief sought for by the petitioner in the writ petition No.9134 of 2014 but with a direction to the third respondent to take a decision with regard to punishment to be imposed on the writ petitioner for the proven delinquency of unauthorised absence as deem fit and proper except the punishment as mentioned in Section 19 (1) of the Regulation Act inasmuch as the competent Authority under the Regulation Act, has refused to accord the approval for imposition of the proposed punishment on the proven delinquency, within a period of three weeks from the date of receipt of a copy of this Order. But the disposal of this writ petition shall

not preclude the petitioner challenge the proportionality of such punishment after imposition if so aggrieved, in appropriate forum. However, since the punishment as indicated in Section 19 (1) of the Regultaion Act cannot be imposed, the other writ petition filed by the petitioner to take back into service as he is not under suspension immediately deserves to be allowed. Accordingly the same stands allowed with a direction to take back the petitioner into service within a week of receipt of a copy of this order. In the circumstances, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-  
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

dn

To

- 1.The Director of Collegiate Education,  
Nungambakkam, Chennai-600 006.
- 2.The Joint Director of Collegiate Education,  
Race Course Road, Coimbatore-18,
- 3.The College Committee,  
P.S.G. College of Arts & Science,  
Coimbatore-641 014.  
rep. by its Principal.
- 4.The Secretary,  
P.S.G. College of Arts & Science,  
Coimbatore-641 014.
- 5.The Registrar,  
Bharathiyar University,  
Marudhamalai Road,  
Coimbatore-46.

+1cc to Mr.S.Selvathirumurugan, Advocate, S.R.No.61853  
+2ccs to Mr.A.Jenasenan, Advocate, S.R.No.61490  
+1cc to the Government Pleader, S.R.No.62132

W.P.Nos.9134 & 9135 of 2014

rrs 25/10/2018