

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.06.2018

CORAM:

THE HONOURABLE Dr. JUSTICE S.VIMALA

and

THE HONOURABLE Mrs. JUSTICE S.RAMATHILAGAM

W.A.No.2534 of 2010

and M.P.No.1 of 2010

M.Kandaswami

... Appellant

versus

1. The Registrar,
Tamil Nadu Agricultural University,
Coimbatore - 641 003.

2. The Professor & Head,
Regional Research Station,
Paiyur - 635 112.

.... Respondents

Writ Appeal filed under Clause 15 of the Letters Patent,
against the order dated 06.07.2010 made in W.P.No.13366 of 2000.

Prayer in Writ Petition: Writ petition is filed under Article 226 of the Constitution of India for the issuance of a Writ of Certiorari mandamus calling for the records of the 1st Respondent made in Proceedings No.L2/3976/98 dated 05/10/99 and quash the same and consequently direct the 1st respondent to disburse the amount due to him and to extend all the benefits due to the retired officer.

For Appellant : Mr.P.Gopalan

For R1 and R2 : Mr.Abdul Saleem

Reserved on : 12.06.2018

Pronounced on : 13.06.2018

JUDGMENT

DR.S.VIMALA, J.

Defer no time, delays have dangerous ends - cautioned
William Shakespeare.

2. The consequences are unforeseen and deadly, when there is an inordinate delay in making a decision. Dilation and dilemma are sufficient to wreck even a justifiable cause. In the instant case, this delay had caused the fruitful career of an academic which would have proved to be a boon to the pastoral economy of one of the backward regions of Tamil Nadu where the academic headed the research station.

3. "Interim stay; Notice" - this obfuscating order lead us nowhere. Stay of what? Is it the stay of enquiry proceedings? Is it the stay of order of suspension? No clue. It is left to the imagination and interpretation of each of the parties in tune with their comfort and convenience.

4. The appellant claims that the enquiry proceedings got stayed by virtue of the order dated 25.08.1998 and therefore, the enquiry conducted during the pendency of the writ petition in willful disobedience of the order of the Court and final order dated 05.10.1999 passed, withholding 1/3rd of the DCRG amount due to the appellant, are illegal.

5. According to the learned counsel for the respondent, there was no order of stay regarding the enquiry proceedings and the order of stay was only with reference to suspension proceedings and therefore, the enquiry conducted is perfectly correct and final order dated 05.10.1999 is legally valid and therefore, is binding upon the appellant.

6. It is contended by the appellant that even assuming that the final order dated 05.10.1999 passed during the pendency of the writ petition is valid, the order is invalid on other ground as the appellant is entitled to be heard on two stages, the appellant is entitled to file his written defence, once the final report of the enquiry is served upon him and the appellant has to be heard further, if the authority proposes to impose punishment. In support of the same, the provisions of Tamil Nadu Agricultural University Act, 1971 are invoked.

7. Appendix IX, Rule 4(1)(a)(i) and (ii) read as under:

"..... After the enquiry had been completed, the person charged shall be entitled to put in, if he so desires, any further written statement of his defence. If no enquiry is held and if he had desired to be heard in person, a personal hearing shall be given to him. The proceeding shall contain a sufficient record of evidence and statement of findings and the grounds thereof.

(ii) After the enquiry referred to in clause (i) has been completed and after the authority competent to impose the penalty mentioned in that Clause has arrived at Provisional conclusions in regard to the penalty to be imposed, the person charged shall be supplied with a copy of the report of the enquiring authority and be called upon to show cause, within a reasonable time not ordinarily exceeding one month, against the particular penalty proposed to be inflicted. Any representation in this behalf submitted by the person charged shall be taken into

consideration before final orders are passed, provided that such representation shall be based only on the evidence adduced during the enquiry."

8. Before looking into the procedural violation alleged, we found it imperative to look into the facts to decide whether the suspension itself is warranted under the facts and circumstances of the case.

9. The circumstances under which suspension order is justified are prescribed under Rule (d) (i), which reads as follows:

"(d) (i) An employee may be placed under suspension from service, where:

(1) an enquiry into grave charges against him is contemplated, or is pending, or

(ii)"

10. Whether the charges framed were so grave to the extent of putting the appellant under suspension is the issue raised in the first writ petition.

11. So far as facts are concerned, the main allegation against the appellant is that when he was directed by the Registry to hand over charge by virtue of new appointment of one Dr.K.Ramachandran, he handed over the charge through Assistant Professor (Agronomy) CAE Scheme and not personally. The other charges are with reference to non-handing over of registers, books, etc.

12. None of the charges can be said to be so grave to the extent of warranting suspension.

13. Even in the order of suspension, it is stated that the charges are correct and proved clearly that the appellant cannot negative the above charges with evidence. This would indicate that decision has been taken with regard to the alleged misconduct of the appellant even before the enquiry is conducted with preconceived notions.

14. The order of suspension has been passed on 25.08.1998. Challenging this proceeding, W.P.No.14257 of 1998 has been filed and interim stay has been obtained on 15.09.1998, which was made absolute on 26.12.2002. The appellant joined duty on 18.09.1998. The appellant was permitted to retire on superannuation on 31.12.1998, pending disciplinary proceedings as well as pending disposal of the writ petition.

15. On 24.01.2003, the writ petition has been dismissed. Therefore, the interim stay granted by this Court had been in force till 24.01.2003.

16. It is claimed by the University that enquiry had been conducted during the pendency of the writ petition and final order has been passed on 05.10.1999 withholding 1/3rd of the DCRG amount due to the appellant.

17. The appellant has again filed the second writ petition in W.P.No.13366 of 2000 challenging the impugned order dated 05.10.1999. This Court, by the order dated 06.07.2010, directed the University to furnish a copy of the enquiry report to the appellant along with a show cause notice. Challenging the order passed in writ petition, this Writ Appeal has been filed by the appellant.

18. The learned counsel for the appellant would contend that the enquiry report itself is illegal as it was conducted while there was stay of proceedings and it is also claimed to be an ex parte proceedings. The validity of the proceedings are canvassed by the learned counsel for the respondent.

19. We are not happy to do postmortem of the case of the post-retired employee nor we are happy to direct the university to follow the Rules of providing copy of the enquiry report to the employee and ultimately, if he is found to be guilty to provide an opportunity hearing with regard to the proposed punishment. We feel so especially in the light of the facts which are not grave. The proceedings seem to have emanated out of head to head collision / head on collision, but, not resulting in any financial loss or resulting in serious impediment in the administration of the University. To be branded at any rate as bruises made on the delicate fabric of ego.

20. Enforcement of discipline, promotion of loyalty, prevention of corrupt practices are sought to be achieved through the initiation of disciplinary proceedings. Therefore, the punishment has to be weighed in terms of the charges proved and the punishment has to be corrective, remedial and constructive. Measures for enforcing the discipline must also be proportional, just and reasonable.

21. The appellant herein has rendered 36 years of service. He has also retired from service about two decades back. Unnecessarily for this simple issue, the case has been kept pending for two decades. Providing opportunity to the appellant at two stages at this distant point of time, may perhaps lead to loss of peace of mind to the appellant. Further, it would be predicament for the University to conduct the enquiry with restrained scope for availability of men and matters at this distant point of time.

22. The imposition of punishment of withholding of 1/3rd of DCRG, i.e., Rs.50,000/- would also be disproportionate, in the light of the facts and circumstances.

23. Considering the charges (i.e. not responding to the show cause notice) for which non compliance with the principles of natural justice would not be a defence, we feel that finality to the litigation can be given without driving the parties to further enquiry and without providing scope for prolonging the litigation.

24. Considering the long pendency, the superannuation of the appellant, nature of charges and the interest of the University, we are of the view that withholding of payment of Rs.15,000/- (from DCRG of the appellant) from out of Rs.50,000/- would be sufficient and commensurate with the charges. Accordingly, the respondents are directed to pay the balance of DCRG within a period of two weeks from the date of receipt of a copy of this Judgment.

25. With the above direction, the Writ Appeal is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS IX)

//True copy//

Sub Assistant Registrar

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To

1. The Registrar,
Tamil Nadu Agricultural University,
Coimbatore - 641 003.

2. The Professor & Head,
Regional Research Station,
Paiyur - 635 112.

+1cc to Mr.P.Gopalan, Advocate SR.No.36772

W.A.No.2534 of 2010

NA (CO)
GN (13/06/2018)