

HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION No. 23378 of 2011

ORDER:

This writ petition is filed seeking to issue a writ of mandamus declaring the proceedings No.AV(3)/61167/2007 dated 23.07.2011 issued by the 1st respondent terminating the services of the petitioner, as illegal and arbitrary.

2. Heard Sri N. Bharat Babu, learned counsel for the petitioner, and Sri K. Jyothi Prasad, learned standing counsel for Andhra University, appearing for the respondents.

3. It has been contended by the petitioner that he was initially appointed as Junior Assistant in the respondent University on 23.04.1991. While so, on the allegation that he had not maintained the records properly which led to misappropriation of funds by the former Honorary Director, Population Research Center, the Executive Council issued show cause notices dated 12.03.2007 and 23.03.2007 calling upon him to show cause as to why action should not be taken against him and submit explanation within two weeks, to the enquiry report dated 01.03.2007. Though he made several representations to the respondents seeking to furnish certain documents as they are crucial documents for the purpose of submitting explanation to the enquiry report, they did not furnish the documents. But, surprisingly, the 1st respondent issued proceedings dated 11.04.2007 terminating his services due to non-submission of explanation, relying on the

remarks of the Enquiry Officer in his report dated 01.03.2007 without there being any charge against him and enquiry. The same was impugned in W.P.No.8083 of 2007 and this Court on 19.04.2007, while admitting the said writ petition, granted interim suspension of the order dated 11.04.2007 in W.P.M.P.No.10378 of 2007. Questioning the same, the respondent University filed W.A.No.375 of 2007, which was disposed of as infructuous vide order dated 01.05.2007, in view of the statement made by the learned counsel for the respondent University that the order impugned in W.P.No.8083 of 2007 will be withdrawn and action in accordance with law will be taken against the petitioner. Pursuant thereto, the 1st respondent passed orders revoking the order of dismissal and reinstated him into service. Subsequently, an enquiry committee was appointed on 03.06.2007 and basing on the report of the Enquiry Committee, a charge memo was issued against him, for which he submitted a detailed explanation denying the charges. But, without furnishing a copy of the enquiry committee's report and without considering his explanation, the 1st respondent terminated his services vide orders dated 23.07.2011. The same is questioned in this writ petition.

4. As can be seen from the impugned orders of termination, the Enquiry Committee's report was placed before the Executive Council on 02.06.2011. Basing on the said report, the Executive Council resolved to terminate the services of the petitioner and, accordingly,

the services of the petitioner were terminated vide orders dated 23.07.2011. It has been mainly contended by the learned counsel for the petitioner that no copy of enquiry committee's report was furnished to the petitioner and the same was also not denied by the standing counsel for the respondent University. From the above, it is clear that the respondents have not followed the principles of natural justice by not furnishing the copy of enquiry committee's report to the petitioner. The failure to supply copy of enquiry report to the delinquent would be unfair procedure offending not only Articles 14, 21 and 311(2) of the Constitution, but also, the principles of natural justice, as per the law laid down by the Apex Court in ***Managing Director, ECIL, Hyderabad Vs. B. Karunakar***¹. The relevant portion of the judgment passed by the Apex Court in the said case reads as follows:

“It is now settled law that the proceedings must be just, fair and reasonable and negation thereof offend Arts. 14 and 21. It is well settled law that principle of natural justice are integral part of Art.14. No decision prejudicial to a party should be taken without affording an opportunity or supplying the material which is the basis for the decision. The enquiry report constitutes fresh material which has great persuasive force or effect on the mind of the disciplinary authority. The supply of the report along with the final order is like a post mortem certificate with purifying odour. The failure to supply copy thereof to the delinquent would be unfair procedure offending not only Arts. 14, 21 and 311(2) of the Constitution, but also, the principles of natural justice. The contention on behalf of the Govt./management that the report is not evidence adduced during such enquiry envisaged under proviso to Art.311(2) is also devoid of substance. It is settled law that Evidence Act has no application to the enquiry conducted during the disciplinary proceedings. The evidence adduced is not in strict conformity with Indian Evidence Act, though the essential principle of fair play envisaged in the Evidence Act are applicable. What was

¹ (1993) 4 SCC 727

meant by 'evidence, in the proviso to Art.311(2) is the totality of the material collected during the enquiry including the report of the enquiry officer forming part of that material. Therefore, when reliance is sought to be placed, by the disciplinary authority, on the report of the enquiry officer for proof of the charge or for imposition of the penalty, then it is incumbent that the copy thereof should be supplied before reaching any conclusion either on proof of the charge or the nature of the penalty to be imposed on the proved charge or on both."

5. In view of the above, the writ petition is allowed. The order of termination dated 23.07.2001 issued by the 1st respondent is set aside and the respondents are directed to furnish a copy of the enquiry committee's report to the petitioner and commence the disciplinary proceedings from the stage of inviting objections to the enquiry committee's report.

Consequently, miscellaneous petitions, if any, pending in the writ petition shall stand closed. No order as to costs.

ABHINAND KUMAR SHAVILI, J

27th August, 2018
cbs

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Writ Petition No. 23378 of 2011
(allowed)

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