

HONOURABLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION Nos.6411 & 7202 OF 2004

COMMON ORDER:

1. Since the issue raised in both the writ petitions is one and the same, they are heard together and are being disposed of by this common order.

2. Both the writ petitions are filed seeking to issue a writ of Mandamus declaring the proceedings dated 18.3.2004 issued by the respondent imposing punishment of compulsory retirement on the petitioners herein, as illegal and arbitrary; to set aside the same, and consequently, to direct the respondent to reinstate the petitioners into service with all consequential benefits and attendant benefits including arrears of subsistence allowance, arrears of salary, seniority and promotion etc.

3. Heard Sri J. Sudheer, learned Counsel for the petitioners and Sri S. Lakshmikanth, learned Standing Counsel for the respondent.

4. Brief facts of the case are as follows:

The petitioner in W.P.No.6411 of 2004 had been functioning as Teacher in Model High School, Osmania University Campus since 1981. The petitioner in W.P.No.7202 of 2004 had been functioning as Key Punch Operator at

Computer Science, Osmania University Campus since 1985.

On the ground that there was some tampering of marks in the Marks sheets of certain candidates for better ranks, both the petitioners were suspended through separate proceedings dated 21.11.1996 and 19.7.1996 respectively. Enquiry officer was also appointed. The enquiry officer issued separate charge memos dated 29.9.1997 to the petitioners and asked them to submit their explanations. The enquiry officer conducted enquiry and obtained depositions of three witnesses. Thereafter, vide proceedings dated 18.12.1997 the second Enquiry Officer was appointed. The second enquiry officer conducted enquiry during May, 1998 and examined the Inspector CBCID and other witnesses. Thereafter, the respondent neither issued final orders nor paid subsistence allowance. On 20.3.2003 show cause notices were issued by the respondent enclosing copies of enquiry officer's report, for which the petitioners submitted their explanations on 28.3.2003. As the respondent was neither passing any final orders nor paying subsistence allowance, the petitioners filed W.P.Nos.4325 of 2000 and 4722 of 2004 seeking reinstatement and payment of arrears of subsistence allowance. Thereafter, vide proceedings dated 18.3.2004, the petitioners were compulsorily retired from service. W.P.Nos.4325 of 2000 and 4722 of 2004 were disposed of on 23.2.2004 and 22.3.2004 respectively, directing the respondent to pay arrears of

subsistence allowance to the petitioners. Challenging the proceedings dated 18.3.2004, the petitioners filed the present writ petitions.

5. Learned Counsel for the petitioners contended that very initiation of disciplinary proceedings is baseless and that as per the procedure, enquiry officer will be appointed only after framing the charges and after calling for explanation, but the respondent before framing charges and calling for explanation, appointed the enquiry officer and that the petitioners lost their valuable right of giving explanation as to the charges. He further contended that the charge memos were issued by the enquiry officer contrary to the rules and that the charge memos have to be issued only by the disciplinary authority. He further contended that appointment of second enquiry officer is contrary to rules of the respondent-University. He further contended that the enquiry officer went beyond the scope of the charges and discussed extraneous factors and gave a report and that the impugned proceedings issued by the disciplinary authority, basing upon such report are not sustainable.

6. Further, it has been contended by the petitioners that no opportunity was given in the enquiry and that the petitioners have specifically pleaded to examine one G. Manohar Rao, Professor, but the said request was not considered. He further contended that the second enquiry officer is not the university

employee but outsider, and that the enquiry officer shall be the superior in rank to the petitioners, but, in the instant case an outsider was appointed as enquiry officer. He further contended that even before issuance of charge sheet, the disciplinary authority appointed the enquiry officer, and the enquiry officer has issued charge memos, which would mean that the disciplinary authority has not independently taken a decision to initiate an action against the petitioners, and that as per the procedure, the disciplinary authority shall issue charge memos calling for explanation from the petitioners, and if the explanation submitted by the petitioners is not convincing, then the disciplinary authority is justified in appointing the enquiry officer, but in the instant case, no such exercise was undertaken, and straight away the enquiry officer was appointed and the enquiry officer issued charge memos contrary to the university regulations. It has been contended by the learned Counsel for the petitioners that similar issue fell for consideration before this Court in the judgment rendered by the Hon'ble Division Bench of this Court in **Ch. Appala Reddy Vs. Eastern Power Distribution Company of A.P., Limited and others**¹, and in the said case, the Hon'ble Division Bench found fault with the appointment of enquiry officer before issuance of charge sheet, and therefore, the punishment of

¹ 2005(2) A.P.L.J 318 (HC)

compulsory retirement imposed by the respondent herein on the petitioners is liable to be set aside as the proceedings impugned were issued with utter disregard to the regulations of the university. He further contended that the enquiry officer has held some charges were not proved, but the disciplinary authority disagreed with the findings of the enquiry officer with regard to unproved charges and issued show cause notices as though the enquiry officer held that all the charges were proved. He further contended that enquiry officer's report was not furnished along with the show cause notices of disagreement, and after two years thereafter, request of the petitioners was considered and the enquiry officer's report was furnished. He contended that the enquiry officer's report should be enclosed along with the dissent note so as to enable the petitioners to give appropriate explanation to the enquiry officer's report as well as dissent note. To strengthen his arguments, the learned Counsel for the petitioners has relied upon the judgment of the Hon'ble Supreme Court in ***Punjab National Bank and others Vs. Kunj Behari Misra***² wherein the Hon'ble Supreme Court held that whenever disciplinary authority disagrees with the findings of the enquiry officer, opportunity should be given to the delinquent officer for submitting his explanation, and the enquiry officer's report shall be furnished to the delinquent

² (1998) 7 SCC 84

officer, and until and unless the enquiry officer's report is furnished, the charged officer could not have given an effective explanation to the dissent note, and in the instant case, enquiry officer's report was not furnished to the petitioners and therefore, the punishment of compulsory retirement imposed by the respondent university is liable to be set aside and the writ petitions be allowed.

7. Learned Counsel for the respondent-University contended that the petitioner committed irregularities, malpractices and for the proven misconduct in the enquiry, the impugned proceedings were issued and that no illegality has been committed by the respondent in passing the impugned proceedings.

8. In both the petitions, the petitioners were issued identical charges and they are the employees of Osmania University. Both the petitioners were imposed punishment of compulsory retirement in somewhat identical manner.

9. This Court having considered the above submissions is of the view that the respondent was not right in appointing the enquiry officer before issuing charges. The charges were framed by the enquiry officer. The disciplinary authority has also disagreed with the findings of the enquiry officer without furnishing a copy of the Enquiry Officer's report. The procedure

exercised by the respondent in conducting disciplinary proceedings against the petitioners is not in accordance with the rules and regulations. In view of the irregularities in the procedure while conducting disciplinary proceedings, thereby violating principles of natural justice, this Court normally gives liberty to conduct afresh the disciplinary proceedings from the stage where injustice has been caused to the petitioners. But it is almost more than two decades from the alleged irregularities committed by the petitioners i.e., 1996, and to conduct fresh disciplinary proceedings from the issue of fresh charge sheet and conduct enquiry may not be feasible and it becomes difficult to the petitioners to defend themselves with the passage of time, this Court is of the view that the impugned orders dated 18.3.2004 are liable to be set aside and accordingly, they are set aside.

10. Accordingly, both the Writ Petitions are allowed with all consequential benefits. No costs. Consequently, miscellaneous petitions pending, if any, shall stand closed.

JUSTICE ABHINAND KUMAR SHAVILI

Dated: 28th December, 2018.

Nn.

HONOURABLE SRI JUSTICE ABHINAND KUMAR SHAVILI



WRIT PETITION Nos.6411 & 7202 OF 2004

28/12/2018

Nn.



JUSTICE ABHINAND KUMAR SHAVILI

Dated:3rd October, 2018.

Nn.