

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.04.2019

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.23737 of 2018

and

W.M.P.No.27689 to 27691 of 2018

Dr. A.S. Arul Lawrence ... Petitioner

Vs.

1. The Principal Secretary to Government
of Tamil Nadu, Higher Education Department,
The Secretariat, Fort St.George, Chennai -9.

2. The Vice-Chancellor,
Tamil Nadu Open University,
No.577-Anna Salai, Saidapet,
Chennai - 600 015.

3. The Registrar i/c
Tamil Nadu Open University,
577-Anna Salai, Saidapet,
Chennai - 600 015.

4. Dr.K.M. Subramaniam,
Assistant Professor/ The Registrar(incharge)
Tamil Nadu Open University,
577-Anna Salai, Saidapet,
Chennai - 600 015.

...Respondents

Prayer: The writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari calling for the records from the 3rd respondent in Connection with the impugned charge viz. F.No.TNOU/Estt/NT/SFCS/2018/01 dated 23.08.2018, and quash the same.

For Petitioner

: Mr.V. Prakash, Senior Counsel
for Mr.K.Krishnamoorthy

For Respondent-1 : Mr.V. Kadhirvelu
Special Government Pleader.

For Respondent-3 : Mr.P.Godson Swaminathan
for M/s. Isaac Chambers

For Respondent-2 and 4 : No appearance

O R D E R

The charge memo dated 23.08.2018 is under challenge in this writ petition.

2. The learned counsel for the writ petitioner states that the Registrar who issued the charge memo has no Jurisdiction. This apart the very complaint itself was given by the Registrar against the writ petitioner and he is the witness in the Disciplinary proceedings. Thus, the charge memo is liable to be scrapped. The learned counsel has taken efforts to convince this Court by stating that the allegations against the writ petitioner are flimsy in nature and certain rightful claims hosted by the writ petitioner is taken as a wrongful claims and charge memo has been issued at the whims and fancies of the authorities competent.

3. When there is no substance in the allegations, the charge memo cannot be proceeded with.

4. The learned counsel appearing on behalf of the respondents states that the decision to institute the Departmental proceedings was taken by the syndicate/Vice Chancellor and the Registrar is the authority to communicate the decisions taken by the syndicate/Vice Chancellor. Therefore, the Registrar has not taken action for instituting Disciplinary proceedings against the writ petitioner.

5. Thus, the question of jurisdiction raised is untenable. This apart, the charges framed against the writ petitioner involves the discipline and decorum of the institution and warranting an enquiry. Under these circumstances, the respondents may be permitted to conduct an enquiry and further the learned counsel for the respondents states that the order of suspension will be reviewed by the competent authority within a period of two weeks and in respect of Departmental Disciplinary proceedings, they will conclude within a reasonable period of time, preferably within a period of two months, from the date of receipt of a copy of this order. Such a time limit is subject to the condition that the writ petitioner also co-

operates for the early disposal of the Disciplinary proceedings instituted against him.

6. The allegations which are set out in the charge memo are extracted here under:

Charge (1) Insubordination and Disobedience:

Registration of Ph.D. Programme of Mrs. M. Sujeetha was cancelled vide letter F.No.RPS/245/2016 dated 21/09/2016 by the Research Co-ordinator through Head of the Department, SOE and which was acknowledged by Dr. A.S. Arul Lawrence. However, based on her request of Mrs. M. Sujeetha, with Medical Reasons, the University has considered and issued permission as a special case to continue Ph.D with pending allotment of Supervisor and other requirements to consider her to regulate her Ph.D. registration as per the New UGC guidelines. As per the UGC guidelines as Assistant Professor has to guide only 4(four Ph.D. Scholars. Therefore, while submitting the approval Doctoral Committee, the Director of Research and the Registrar instructed the Head i/e. SOE to submit the file as per latest UGC regulation to consider her registration in the interest of the student and institution.

Without any prima facie and going through the above facts and knowingly the guidelines of the UGC. Dr. A.S. Arul Lawrence, vide his letter dated 20.04.2018 has questioned for the baseless reasons and levelling allegation against the Registrar i/c who is the Executive Officer and custodian of the Institutions / Office Proceedings. Further, he also submitted his reply for the show cause notice that, he has not submitted proper reply to the explanations called for and he has submitted his reply with high handedness and again he has commented the activities of the Registrar i/c. It show clearly the insubordination and disobedience and unbecoming of the employee as per the conduct and Discipline rules.

Charge(2) Criticising the Authorities

He has criticised the Executing authority of TNOU who is Registrar i/c in his letter dated 20.04.2018 by using the words such as illegal, unwarranted, ill-motivated, biased, hidden intention and so on, which are taboo in official

correspondence without any facts and figures. Further, he accused the Registrar i/c has spoiling his reputation, good name and illegally interfering in his professional duties and besmirching his reputation with malign intentions. An employee in the cadre of Assistant professor who has long services to render in Government systems has to submit the representation to the authorities, in case he has any grievances with the supporting documents, in contrary, he has criticised the authorities. Even in the reply for the show cause notice of the Registrar i/c he has accusing the Registrar i/c, without any proof vides para no.7 and 8 of his reply which is gross violation and criticising the authorities?

Charge(3) Ineligible to act as an Assistant Professor:

He has submitted explanation to the show notice that, he is having little knowledge in English, he is not an English Literature Student or a born English Speaker and hence he is not well-versed with the use of the do's and don'ts in the office procedure and shall submit the representation with due knowledge and knowing the meaning of the words. However, he has accused the authorities by using the bizarre words, and in his reply to the show cause notice he is admitting that, he does not know the meaning of the words which he is used for accusing the authorities. This shows, he is ineligible to act as an Assistant professor. Since, he has to involve in students oriented various academic activities in his career.

Charge(4) Levelling baseless allegations

In his representation dated 20.04.2018 levelling baseless allegation against the Registrar i/c that Registrar i/c has spoiling his reputation, good name and illegally interfering in his professional duties and besmirching his reputation with malign intentions. Further, the levelled allegations that, the Registrar i/e has compelled the Scholar to change the Supervisor and his activities as illegal, unwarranted, ill-motivated, biased, hidden intention for which has not submitted any evidences in his representation, even in his reply to his show

cause notice, he has neither admitted his mistakes nor submitted evidences for levelling baseless allegations.

Charge(5) Refusal of receiving Order of suspension

In pursuance of the approval of the competent authority, the order of suspension was issued to Dr.A.S. Arul Lawarance in person by Dr.C.Bharathi, Assistant professor cum Coordinator i/e Chennai and Thiru M. Munisamy, Assistant Registrar on 03/07/2018 @ 10.30 a.m in the Villupuram Regional Centre vide TNOU/order of Suspension/2018 dated July 03,2018. However, Dr. A.S. Arul Lawrence, has refused to receive the order of suspension. In the meanwhile, the order of suspension has been sent through email and by Registered post to him. Therefore, he left the offive at Villupuram Regional Centre without receiving the order of suspension

7. Annexure-2 of the charge memo provides statement of allegations and Annexure-III denotes the list of documents relied upon by the Disciplinary Authority. Under these circumstances, there is no infirmity in the charge sheet issued against the writ petitioner.

8. This Court at this stage cannot adjudicate the merits and demerits of the allegations set out in the impugned charge memo. Such an exercise cannot be done in the writ proceedings under Article 226 of the Constitution of India. The baseless grounds raised by the learned counsel for the writ petitioner need not be considered in view of the fact that the allegations in the charge memo are specific and are capable of proceeding with the enquiry.

9. However, the apprehension raised by the writ petitioner is that the relevant documents were not furnished to the writ petitioner enabling him to defend the case. It is made clear that at the time of conducting enquiry, the authorities competent are bound to furnish the relevant documents to the delinquent enabling him to defend his case by availing the opportunities.

10. This Court is of the considered opinion that as far as the specific order is concerned, now the learned counsel for the respondents made a submission that the authority is competent to review the order of suspension. Thus, the respondents are

permitted to proceed with the Departmental Disciplinary proceedings, based on the charge memo, and complete the same and pass final orders. As far as the challenge of charge memo is concerned this Court has considered the legal principles in W.P.No.17151 of 2005 dated 07.12.2017 and the relevant portion of the order is extracted hereunder:-

3. Therefore, this Court is of the opinion that there is no infirmity in the charge memorandum framed against the writ petitioner. A charge memo can be challenged on a limited ground and a judicial review against the charge memo is certainly limited. A charge memo can be challenged on limited grounds and the Court can entertain a writ petition on exceptional circumstances. A charge memo can be challenged if the same was issued by an incompetent authority having no jurisdiction, an allegation of mala fides is raised if the same is in violation of statutory rules. Even in case of raising the allegation of mala fides, the authority against whom such an allegation is raised, has to be impleaded as a party respondent in the writ proceedings in his personal capacity. In the absence of any such legal grounds, no charge memo can be entertained by way of writ petition.

11. The Honourable Supreme Court of India in the case of Union of India and others Vs. Upendra Singh, reported in (1994) 3 SCC 357 and the paragraph 6 which is extracted hereunder:

"6. In the case of charges framed in a disciplinary inquiry the tribunal or court can interfere only if on the charges framed (read with imputation or particulars of the charges, if any) no misconduct or other irregularity alleged can be said to have been made out or the charges framed are contrary to any law. At this stage, the tribunal has no jurisdiction to go into the correctness or truth of the charges. The tribunal cannot take over the functions of the disciplinary authority. The truth or otherwise of the charges is a matter for the disciplinary authority to go into. Indeed, even after the conclusion of the disciplinary proceedings, if the matter comes

to court or tribunal, they have no jurisdiction to look into the truth of the charges or into the correctness of the findings recorded by the disciplinary authority or the appellate authority as the case may be. The function of the court/tribunal is one of judicial review, the parameters of which are repeatedly laid down by this Court. It would be sufficient to quote the decision in H.B. Gandhi, Excise and Taxation Officer-cum- Assessing Authority, Kamal v. Gopi Nath & Sons. The Bench comprising M.N. Venkatachaliah, J. (as he then was) and A.M. Ahmadi, J., affirmed the principle thus : (SCC p. 317, para 8)

"Judicial review, it is trite, is not directed against the decision but is confined to the decision-making process. Judicial review cannot extend to the examination of the correctness or reasonableness of a decision as a matter of fact. The purpose of judicial review is to ensure that the individual receives fair treatment and not to ensure that the authority after according fair treatment reaches, on a matter which it is authorized by law to decide, a conclusion which is correct in the eyes of the Court. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. It will be erroneous to think that the Court sits in judgment not only on the correctness of the decision making process but also on the correctness of the decision itself."

12. In the case of Secretary, Ministry of Defence and Others Vs. Prabhash Chandra Mirdha [Civil Appeal No.2333 of 2007, Decided on May 29, 2012], the Apex Court of India held that normally, a Charge sheet is not liable to be quashed as it does not adversely affect the rights of an employee and does not give rise to any cause of action. A writ lies only when some right of a party is infringed. The charge sheet does not infringe the right of a party. It is only when a final order imposing punishment or otherwise, it may have a cause of action. Hence, writ petition challenging charge sheet by itself is not maintainable. However, it can be quashed on the ground that issuing authority being not competent to issue the same.

13. In the case of Union of India vs. Kunishetty Satyanarayana [(2006) 12 SCC 28], it was held that writ jurisdiction is discretionary jurisdiction and hence such

discretion under Article 226 should not be ordinarily exercised by quashing a charge sheet. No doubt, in some very rare and exceptional cases, the High Court can quash a charge sheet if it is found to be wholly without jurisdiction or for some other reason if it is wholly illegal.

14. Considering the facts and circumstances, the respondents are directed to review the order of suspension within a period of two weeks and accordingly pass orders. As far as the charge memo is concerned, the respondents are directed to proceed with the disciplinary proceedings by providing opportunity to the writ petitioner in all respects and conclude the same and pass final orders within a period of 12 weeks from the date of receipt of the copy of this order.

15. It is made clear that though the writ petitioner is directed to co-operate for the early disposal of the case, but in the event of non co-operation on the part of the writ petitioner, the same shall be recorded in the proceedings itself by the authority competent.

16. With the above directions, this writ petition stands disposed of. However, no order as to costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1. The Principal Secretary to Government
of Tamil Nadu, Higher Education Department,
The Secretariat, Fort St.George, Chennai -9.
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No.577-Anna Salai, Saidapet, Chennai - 600 015.
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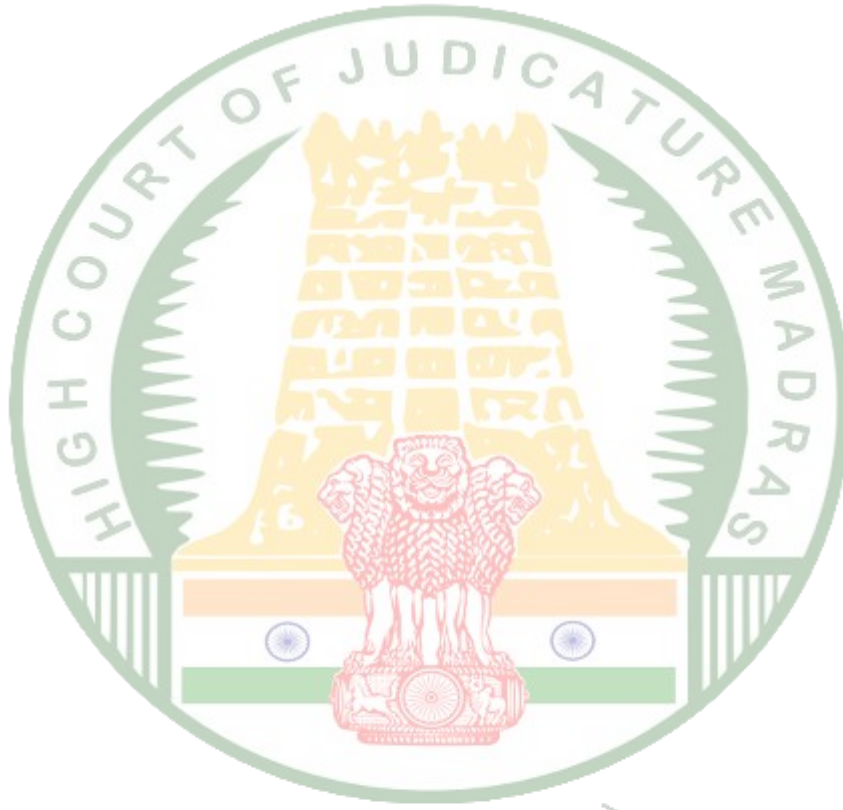
+1 cc to Mr.K.Krishnamoorthy, Advocate, Sr.No. 36128

+1 cc to M/s.Isaac Chambers, Advocate, Sr.No. 36136

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CSL/27.06.2019



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