

IN THE HIGH COURT OF JUDICATURE AT MADRAS  
DATED : 29-03-2019

CORAM  
THE HONOURABLE Mr. JUSTICE S.M.SUBRAMANIAM

W.P.No. 15996, 15997 & 29752 of 2018

Dr.P.M.Anbarasan

... Petitioner in all W.Ps

Vs

The Vice Chancellor  
Periyar University,  
Periyar Palkalai Nagar,  
Salem - 636011.

...R1 in all W.Ps

The Registrar,  
Periyar University,  
Periyar Palkalai Nagar,  
Salem 636 011.

...R2 in all W.Ps

P.Kumaradas

...R3 in W.P.No.15997 of 2018

Thiru.P.Nallathambi, B.A., B.L.,  
District Judge (Rtd)/Enquiry Officer  
Periyar University, Periyar Palkalai Nagar,  
Salem-636 011.

...R3 in W.P.No.29572 of 2018

PRAYER in W.P.No.15996 of 2018: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records relating to the proceedings of the 1<sup>st</sup> respondent in proceedings No.PU/VC/20/2018 dated 09/03/2018 and to quash the same and consequently direct the respondents to reinstate the petitioner into serviced with all consequential and other attendant benefits.

Prayer in W.P.No.15997 of 2018: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus to direct the 1 and 2 respondents to take appropriate legal action against the 3<sup>rd</sup> respondent placing criminal case in Cr.No.287 of 2018 dated 02/03/2018 on the file of Suramangalam Police Station, Salem City, as per Clause 4(d)(i)(b) of Appendix VIII of University Statute by considering the representation submitted by the Petitioner dated 03/04/2018.

Prayer in W.P.No.29752 of 2018: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records relating to the impugned proceedings issued by the 1<sup>st</sup> respondent in

No.PU/R5/019835/2018-1 dated 02/08/2018 and to quash the same and consequently directing the respondents 1 and 2 to reinstate the petitioner into service as Professor in the Department of Physics forthwith, with all consequential and other attendant benefits.

For Petitioner : Mr.G.Sankaran

For Respondents : Mr.Isaac Mohanlal  
Senior Counsel  
for M/s.Isaac Chambers

#### O R D E R

The writ petitioner Dr.P.M.Anbarasan, has filed three writ petitions. In the first writ petition in W.P.No.15996 of 2018, the order of suspension dated 09.03.2018 issued by the first respondent/Vice Chancellor is under challenge.

2. The second writ petition in W.P.No.15997 of 2018 is filed for a direction to direct the respondents 1 and 2 to take appropriate legal action against the third respondent based on the Criminal case in Cr.No.287 of 2018 dated 02.03.2018 on the file of the Suramanagalam Police station Salem City, as per clause 4(d)(i)(b) of Appendix VIII of the University statute, by considering the representation submitted by the writ petitioner dated 03.04.2018.

3. The third writ petition in W.P.No.29752 of 2018 is filed challenging the charge memo issued against the writ petitioner in proceedings dated 02.08.2018.

4. Since the facts and circumstances in all these writ petitions are common, the cases are taken up together for the purpose of passing common order.

5. The writ petitioner is working as Professor in the Department of Physics in Periyar University. On account of certain serious allegations, he was placed under suspension vide proceedings dated 09.03.2018. The order of suspension reads as follows:

" Based on the written complaint by Prof.P.Kumaradhas and your oral complaint an enquiry committee was constituted. The committee constituted to make a preliminary enquiry into the incident which took place around 9.30 a.m. On 02.03.2018 has reported that you were seen holding a chappal at the entrance of the HoD's Chamber based on recorded statements by a couple of research scholars. The report points unambiguously as to who the author of the assault could possibly be. Further, whereas

Prof.P.Kumaradhas has preferred to report the matter in writing, you just made an oral mention and proceeded to lodge a police complaint. The enquiry also reveals that there are valid reasons to initiate suitable action in order to repair the damage done to the reputation of the University. The incident has caused great embarrasment to fellow faculty and drastically affected its credibility among the public. It has sent confusing signals to scholars and students who allegedly feel a sense of shame to declare their association with this University. The incident, reported widely in the media, has also earned the displeasure of the Government of Tamil Nadu who too is not spared from the embarrasment."

6. Citing all these reasons, the writ petitioner is placed under suspension.

7. The learned counsel appearing on behalf of the writ petitioner states that the order of suspension is discriminatory and in violation of the statutes of the University.

8. In order to establish the point of discrimination, it is contended that the writ petitioner has also filed a police complaint which was registered against the HOD. However, no action has been taken on the said complaint.

9. The learned counsel for the writ petitioner further relied on Rule 13(4) (a) which states that "provided that no such order shall be passed unless the person likely to be affected has been given a reasonable opportunity of being heard".

10. It is contended that the Vice Chancellor shall have power to take action on any matter and shall, by order, take such an action, as he may deem necessary but shall, as soon as may be, thereafter report the action taken on the officer or authority or body who or which would have ordinarily dealt with the matter.

11. Even in such cases, the Vice Chancellor has to provide an opportunity to the writ petitioner as contemplated. However, no such opportunity was provided to the writ petitioner and therefore, the order of suspension is to be scrapped. As far as the discrimination is concerned, it is contended that the HOD was also an offender in respect of the incident took place and therefore, the respondents are bound to initiate action against whom criminal case has been registered, pursuant to the complaint lodged by the writ petitioner.

12. The learned senior counsel appearing on behalf of the respondents disputed the contentions raised on behalf of the writ petitioner in entirety. In respect of discrimination, the

learned senior counsel offered a reply stating that there cannot be any discrimination in the matter of maintenance of discipline in the University premises. The authorities competent are bound to maintain the decorum and discipline of the campus and in the present case, action was taken after conducting a preliminary enquiry and on ascertaining the facts and circumstances. In respect of the police complaint lodged by the writ petitioner, the police themselves have conducted an enquiry and found that the allegations in the complaint was mistake of fact. Further, the respondents have also conducted a preliminary enquiry with the assistance of the University authorities and during the preliminary enquiry, they came to understand that the writ petitioner has not suffered any such injury or otherwise. Contrarily, the case registered by the HOD was enquired into and since the HOD was injured, and was admitted as in-patient and had undergone treatment in the hospital for about 10 days. The University had already recorded statements from Research Scholars who are all eye witnesses regarding the incident that took place on that particular day. Thus, it is not as if the University has discriminated the writ petitioner. The authorities of the University is not against the writ petitioner. The writ petitioner is also a Professor, holding a responsible position and when the incident was brought to the knowledge of the Vice Chancellor, an enquiry was conducted and action was initiated in accordance with rules, against the persons who are all connected in this matter.

13. This being the factum, the learned senior counsel is of the opinion that even during the course of enquiry, if it was found that they have indulged in any misconduct, then also the University authorities are bound to initiate action and therefore, the University will not discriminate the writ petitioner in the matter of enforcing discipline within the campus.

14. As far as the jurisdiction of the Vice Chancellor to issue an order of suspension is concerned, the learned senior counsel referred to Chapter VIII Conditions of Service and Recruitment and more specifically Rule 13, Discipline and Control. The University rules states that in matters of disciplinary proceedings, the Tamil Nadu Civil Services (Discipline and Appeal) Rules, as amended from time to time shall be applicable. The code of conduct of the employees has been given in Appendix-VII. Thus, for all purposes, the provisions of the Tamil Nadu Civil Services (Discipline and Appeal) Rules are followed for the purpose of continuing disciplinary proceedings against the staff of the University. The learned senior counsel solicited the attention of this Court with reference to Clause 4(d)(1) Appendix-VIII, which contemplates that an employee may be placed under suspension from service, where:

(a) an enquiry into grave charges against him/her is contemplated or is pending

(b) a complaint against him/her of any criminal offence is under investigation or trial and if such suspension is necessary in the public interests.

15. These being the provisions stipulated in the Tamil Nadu Civil Services(Discipline and Appeal) Rules, they are to be followed.

16. The learned counsel for the writ petitioner states that the period of suspension stipulated in the rules is 3 months. However, in the present case, the order of suspension was issued vide proceedings dated 09.03.2018 and therefore, the suspension order is to be revoked.

17. In this regard, it is pertinent to note that though the order of suspension was issued on 09.03.2018, the present writ petition was filed on 20.06.2018 and thereafter, the matter was kept pending before this Court. Thus, there is no occasion for the authorities to revoke the order of suspension. However, on disposal of the writ petition, it is left open to the authorities competent to revoke the order of suspension, considering the facts and circumstances, and the defence in the enquiry proceedings to be conducted. Periodically, the review of the suspension order shall also be done. Keeping the writ petitioner under suspension without any review of suspension for an unspecified period is certainly not preferable. Thus, the authorities competent are bound to review the order of suspension by considering the circumstances and facts.

18. As far as the ground of jurisdiction is concerned, this Court is of the opinion that the Vice Chancellor, who is the Head of the University is certainly competent to place an employee under suspension. This apart, the proviso clause cited by the learned counsel for the writ petitioner that an opportunity is to be provided before issuing the order of suspension, cannot be considered, in view of the fact that suspension is not a punishment and is only an interim arrangement keeping an employee away from performing his duties and responsibilities, enabling the management to conduct an enquiry in a free and fair manner.

19. Thus, the order of suspension cannot be construed as a final order. In departmental/disciplinary proceedings, preliminary enquiry was conducted by the authorities competent to find out the facts and circumstances. Only based on the preliminary enquiry, the order of suspension is passed. Thus, an opportunity must be provided only thereafter and not before the issuance of the order of suspension. The order of suspension is

issued, even otherwise by invoking the inherent power which is contemplated for imposing the major penalty of removal and even, in the absence of any statute or rules, the competent authority who are all entrusted with the power of dismissal may place the person concerned under suspension also.

20. This being the legal principles to be followed, this Court is of the considered opinion that the Vice Chancellor of the University, who is the Head of the institution, is undoubtedly vested with the power to issue an order of suspension and if the vice chancellor is not having power to place any person under suspension, this Court is of the opinion that no action could be initiated against the writ petitioner. In the present case on hand, preliminary enquiry was conducted and based on that, an order of suspension was issued and no interference as such in respect of the impugned order is called for.

21. As far as the second writ petition is concerned, a direction is sought for to institute action against the third respondent, who is also a professor in Physics and Head of the Department.

22. The learned Senior counsel has made a submission that preliminary enquiry conducted and the same revealed that there was no fault on part of the third respondent. Therefore the criminal case lodged by the writ petitioner against the third respondent was not proceeded with by the police, on the ground of "mistake of fact". In view of the fact that the preliminary enquiry revealed that the third respondent was not responsible for such a misconduct, as of now, no action can be taken. Further enquiry is to be conducted by the competent authorities, if the writ petitioner is able to establish that the third respondent was also responsible for any such misconduct. Then all such actions would be taken against persons who are all responsible and liable for any such misconduct or affecting the decorum and discipline of the University. It is needless to state that during the course of enquiry, if it is found that any other persons have also been involved in the incident, suitable actions are to be taken.

23. As far as the writ petition in W.P.No.15997 of 2018 is concerned, the learned counsel for the writ petitioner is of the opinion that simultaneous proceedings are permissible. When the criminal case is in progress, the department are bound to keep the disciplinary proceedings in abeyance. In the present case, criminal case was registered against the writ petitioner and charge sheet has already been laid by the police officials and therefore, departmental disciplinary proceedings are to be kept in abeyance.

24. This Court is of the opinion that the alleged physical assault of Mr.P.Kumaraswamy, occurred within the University premises, more specifically, inside the chambers of the HOD of the Physics Department in the University.

25. This being the factum, witnesses are very much available and the University has obtained the statements from the research scholars and other persons who had seen or having knowledge about the incident.

26. This being the factum, there is no impediment for the authorities competent to proceed with the process of enquiry. The disciplinary authority is in possession of all the relevant documents and materials to proceed with the enquiry. The authority is at liberty to proceed with the enquiry by affording opportunity to all the parties and conclude the proceedings without causing any undue delay. In the event of non-availability of any materials and files, then only the competent authorities are bound to keep the departmental disciplinary proceedings in abeyance. Pendency of criminal case is not a bar for continuance of the departmental disciplinary proceedings. Mechanically keeping the proceedings in abeyance is certainly undesirable. Whenever the misconduct of such cadre of employees are concerned, there cannot be any leniency on the part of the University authorities. All such cases are to be dealt with strictly and in accordance with law. Growing indiscipline in colleges and educational institutions are a great concern amongst public and also the parents who are sending their students for learning in such University. In some colleges, indiscipline has gone to the zenith and there are frequent cases of sexual harassment and large number of complaints are coming out and it is a high time to take action on the Universities for strict implementation of discipline and decorum in its campus.

27. On a perusal of the allegations, this Court is of the opinion that a Professor physically assaulting HOD of the same department is some thing unusual and the level of tolerance and mind sets are to be considered by the University authorities and guidelines have to be amended suitably for the purpose of avoiding all these kinds of incidents/allegations in future. The charge against the writ petitioner is extracted here under for better appreciation of these cases.

"Charge No.1

Under Clause 13(1)(a) of chapter VIII of the statutes of Periyar University,

It provides that, an employee of the University for good and sufficient reason, including any breach of any of the statutes and laws of the University or negligence, inefficiency, insubordination or failure to show due diligence and attention in the discharge of his

duties or failure to conform to the instructions of his superiors or any irregularities in the discharge of his duties or any criminal offence involving moral turpitude, shall be liable for some penalties by the competent authorities as provided under Appendix VIII and IX of the Act, Statutes, Regulation and Rules of the Periyar University.

As such, on 02.03.2018 at or about 9.45.a.m in the chambers of Prof.P.Kumaradhas, situated within the campus of the Periyar University, you were being fully aware of the fact, that Prof.P.Kumaradhas was your superior, had assaulted him with footwear and rod besides attempting to kill him by strangulation while abusing him in unparliamentary words and threatened to kill him. Thus, your acts and deeds provide good and sufficient reason for presuming a prima facie charge being made out against you within the meaning of the provision contained under clause 13(1)(a) of chapter VIII of the Statutes of the Periyar University.

Therefore, you are hereby called upon to give your explanations for the said charge, in writing within a period of 15 days from the date of receipts of this Charge memo."

28. On a perusal of the charge memo, this Court is of the opinion that undoubtedly the same is serious in nature warranting, an enquiry.

29. The writ petitioner instead of participating in the process of enquiry, has chosen to challenge the very charge memo as well as the order of suspension.

30. No writ proceedings can be entertained against the charge memo in a routine manner. Judicial review against the charge memo are certainly limited.

31. This Court is of the considered opinion that in respect of simultaneous proceedings, the Apex Court had settled the legal principle by stating that there is no bar for the departmental disciplinary authority to proceed with an enquiry even during the pendency of the criminal case. This Court has also considered the grounds in this regard in W.P.No.40702 of 2015 dated 18.09.2017.

" 15. In the case of Sri Bhagwan Ram v. The State of Jharkand, State of Bihar and others(2017), it is well-settled that a domestic enquiry and a criminal trial can proceed simultaneously and the decision in the criminal case would not materially affect the outcome of the domestic enquiry. The nature of both the proceedings and the test applied to reach a final conclusion in the matter, are entirely different.

16. In the case of Dr.Bharathi Pandey-Deputy General Manager V. Union of India[Special Civil Application No.15602 of 2013], the Apex Court held that it is clear that the departmental inquiry proceedings in every case need not be stayed till the criminal proceedings against the petitioner are concluded. It may be done in case of grave nature involving complicated questions of facts and law. The advisability and desirability has to be determined considering facts of each case.

17. In the case of Ajith Kumar Das v. Union of India and Others[W.P.(C) NO.4036 of 2017], the Court held that the departmental enquiry is to maintain discipline in service and efficiency of public service. It would, therefore, be expedient that the disciplinary proceedings are conducted and completed as expeditiously as possible. It is not, therefore, desirable to lay down any guideline as inflexible rules in which the departmental proceeding may or may not be stayed pending trial in criminal case against the delinquent officer. There would be no bar to proceed simultaneously with the departmental proceeding and trial of a criminal case unless the charge in a criminal trial is of grave nature involving complicated questions of fact and law. Offence generally implies infringement of public as distinguished from mere private right punishable under criminal law, when trial for criminal offence is conducted it should be in accordance with the proof of offence as per the evidence defined under the provisions of the evidence act. Converse in the case of departmental enquiry in a departmental proceeding relates to conduct of breach of duty of the delinquent officer who punish him for his misconduct defined under the relevant statute/rule or law that strict standard of rule or applicability of Evidence Act stands excluded in a settled legal position.

18. In the case of Avinash Sadashiv Bhosale v. Union of India[(2012) 13 SCC 142], the Court held that there is no legal bar for both proceedings to go on simultaneously. The only valid ground for claiming that the disciplinary proceedings may be stayed would be to ensure that the defence of the employee in the criminal case may not be prejudiced but even such grounds would be available only in cases involving complex question of fact and law. Such defence ought not to be permitted to unnecessarily delay the departmental proceedings. The interest of the delinquent officer as well as the employer clearly lies in a prompt conclusion of the disciplinary proceedings.

19. The Supreme Court in the case of Karnataka State Road Transport Corporation v. M.G.Vittal Rao [(2012) 1 SCC 442] gave a timely reminder of the principles that are applicable in such situations succinctly summed up in the following words:

"(i) There is no legal bar for both proceedings to go on simultaneously.

(ii) The only valid ground for claiming that the disciplinary proceedings may be stayed would be to ensure that the defence of the employee in the criminal case may not be prejudiced. But even such grounds would be available only in cases involving complex questions of facts and law.

(iii) Such defence ought not to be permitted to unnecessarily delay the departmental proceedings. The interest of the delinquent officer as well as the employer clearly lies in a prompt conclusion of the disciplinary proceedings.

(iv) Departmental Proceedings can go on simultaneously to the criminal trial, except where both the proceedings are based on the same set of facts and the evidence in both the proceedings is common".

20. In the case of NOIDA Entrepreneur Association v. NOIDA and the others [JT 2001 (2) SC 620], the Court held that the standard of proof and nature of evidence in the departmental inquiry is not the same as in criminal case. The purpose of departmental enquiry and of prosecution is two different and distinct aspects. The criminal prosecution is launched for an offence for violation of a duty the offender owes to the society, or for breach of which law has provided that the offender shall make satisfaction to the public. So crime is an act of commission in violation of law or of omission of public duty. The departmental enquiry is to maintain discipline in the service and efficiency of public service. It would, therefore, be expedient that the disciplinary proceedings are conducted and completed as expeditiously as possible. It is not, therefore desirable to lay down any guidelines as inflexible rules in which the departmental proceedings may or may not be stayed pending trial in criminal case against the delinquent officer. Each case requires to be considered in the backdrop of its own facts and circumstances. There would be no bar to proceed simultaneously with departmental enquiry and trial of a criminal case unless the charge in the criminal trial is of grave nature involving complicated questions of fact and law.

21. In the case of State Bank of India & Ors. Versus R.B.Sharma, [AIR 2004 SC 4144], the Hon'ble

Supreme Court reiterated observing that both proceedings can be held simultaneously. It held, "the purpose of departmental inquiry and of prosecution is to put a distinct aspect. Criminal prosecution is launched for an offence for violation of duty. The offender owes to the society, or for breach of which law has provided that the offender shall make satisfaction to the public. So crime is an act of commission in violation of law or of omission of a public duty. The departmental inquiry is to maintain discipline in the service and efficiency of public service."

22. In the case of Ajith Kumar Nag v. General Manager(PJ), Indian Oil Corporation Ltd., Haldia[2005-7-SCC-764], the Honourable Apex Court considered the issue of validity of conducting departmental proceeding when the criminal case was pending against the official and held as follows:

Acquittal by a criminal court would not debar an employer from exercising power in accordance with Rules and Regulations in force. The two proceedings, criminal and departmental, are entirely different. They operate in different fields and have different objectives. Whereas the object of criminal trial is to inflict appropriate punishment on offender, the purpose of enquiry proceedings is to deal with the delinquent departmentally and to impose penalty in accordance with service Rules. In criminal law, burden of proof is on the prosecution and unless the prosecution is able to prove the guilt of the accused 'beyond reasonable doubt', he cannot be convicted by a court of law. In departmental enquiry, on the other hand, penalty can be imposed on the delinquent officer on a finding recorded on the basis of 'preponderance of probability'.

23. In the case of West Bokaro Colliery(Tisco Ltd.) v. Ram Parvesh Singh(2008) 3 SCC 729, the Hon'ble Supreme Court has held in the case of that since standard of proof required in criminal case are beyond reasonable doubt and what is required in departmental inquiry is only of finding the guilt on the basis of preponderance of probability, there is no bar in continuing both simultaneously.

24. In the case of S.A.Venkatraman v. Union of India, AIR 1954, SC 375 it has been held by the Supreme Court that taking recourse to both, does not amount to double jeopardy.

1. In Stanzen Toyotetsu India Private Limited v. Girish V. And Other (2014) 3 SCC 636. It was held that

suffice it to say that while there is no legal bar to the holding of the disciplinary proceedings and the criminal trial simultaneously, stay of disciplinary proceedings may be advisable course in cases where the criminal charge against the employee is grave and continuance of the disciplinary proceedings is likely to plagiarize their defence before the criminal court.

2. The Supreme Court in *State of Rajasthan v. B.K.Meena and Others* (1996) 6 SCC 417 held that In certain situations, it may not be 'desirable', 'advisable', or 'appropriate' to proceed with the disciplinary enquiry when a criminal case is pending on identical charges. Therefore, stay of disciplinary proceedings cannot be, and should not be, a matter of recourse.

3. It is also to note that acquittal in criminal proceedings on the same set of charges, per se, does not entitle the delinquent to claim immunity from disciplinary proceedings, as observed by the Supreme Court in the case of *C.M.D.U.C.O. vs. P.C.Kakkar*, AIR 2003 SC 1571. In the same way, departmental proceedings may be continued even after retirement of the employee. (*U.P.S.S.Corp.Ltd. vs. K.S.Tandon*, AIR 2008 SC 1235)."

32. In this view of the matter, the respondents are bound to proceed with an enquiry and conclude the same as expeditiously as possible in the interest of all concerned.

33. The learned Senior Counsel has brought to the notice of this Court that a retired District Judge has already been appointed as an Enquiry Officer on 03.10.2018. On account of the interim order granted in this writ petition, the enquiry officer is unable to fix the date for an enquiry. However, the enquiry officer is now directed to fix the date of enquiry and conclude the enquiry proceedings as expeditiously as possible, by avoiding frequent adjournment on unnecessary grounds.

34. The writ petitioner is directed to co-operate for an early disposal of the enquiry. In the event of any non-cooperation, the same shall be recorded by the enquiry officer in the report.

35. It is made clear that the parties to the enquiry before the retired District Judge are restrained from seeking unnecessary adjournments and the enquiry officer also need not consider grant of adjournments on flimsy grounds.

36. Under these circumstances, the respondents are directed to proceed with the disciplinary proceedings and conclude the

same and pass final orders by following the procedures contemplated, as expeditiously as possible without causing any undue delay.

37. Under these circumstances, this Court has no hesitation in coming to the conclusion that the writ petitioner has not made out any acceptable ground for the purpose of considering the relief as such sought for in the present writ petition.

38. Accordingly, the writ petitions stand dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS VIII)

//True Copy//

Sub Assistant Registrar

ssb

To

1. The Vice Chancellor  
Periyar University,  
Periyar Palkalai Nagar,  
Salem 636 011.
2. The Registrar,  
Periyar University,  
Periyar Palkalai Nagar,  
Salem 636 011.

+1cc to Mr.G.Sankaran, Advocate, S.R.No.30830

+1cc to Mr.P.Godson Swaminath, Advocate, S.R.No.31281

W.P.No. 15996, 15997 & 29752 of 2018

VBA (CO)

RRS (08/05/2019)

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