

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.09.2019

CORAM

THE HON'BLE MR.JUSTICE M.DHANDAPANI

W.P.No.21831 of 2019

and

W.M.P.No.21041 of 2019

C.Bhaskaran ... Petitioner

Vs.

1.The Vice Chancellor,
Annamalai University,
Annamalai Nagar,
Chidambaram, Cuddalore District.

2.The Registrar,
Annamalai University,
Annamalai Nagar,
Chidambaram, Cuddalore District. ... Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records of the 2nd respondent made in proceedings in Office Memorandum No. C-C1/2105/2009, dated 26.2.2019 and quash the same and consequently direct the 2nd respondent to reinstate the petitioner in service as Assistant Professor in History Department or in any other appropriate Department.

For Petitioner : Mr.N.Umapathi

For Respondents : Mr.V.R.Kamalanathan

O R D E R

By consent, this writ petition is taken up for final disposal at the admission stage itself.

2.The petitioner was appointed as an Assistant Professor in History Wing at Directorate of Distance

Education in Annamalai University and was also pursuing Ph.D Programme. A case was registered against the petitioner in Crime No.99 of 2015 by Annamalai Nagar Police Station, based on a complaint given by one A.Raghupathy, who is the Controller of Examination of Annamalai University, that from 26.12.2014 to 18.02.2015, the answer sheets of the students of University were found missing and the officials had in glove inserted those answer sheets with the papers handled at the valuation hall. The petitioner was arrested and thereafter released on bail. Thereafter, he was suspended from service from 02.04.2015 and subsequently issued with a charge memo dated 19.05.2015. The petitioner submitted his reply on 04.06.2015. Thereafter, he made a representation to the 1st respondent on 30.01.2016 to revoke the order of suspension. However, the 1st respondent by an order dated 08.02.2016 rejected his request on the ground that a criminal case is pending as against the petitioner and till date the petitioner is placed under suspension. Aggrieved by the prolonged period of suspension, the petitioner has filed the present petition.

3.The learned counsel for the petitioner submitted that prolonged period of suspension is illegal and the same is liable to be reviewed in the the light of the judgment passed by the Hon'ble Apex Court in the case of Ajay Kumar Chowdhry.

4.The learned counsel for the respondents submitted that the petitioner had committed very heinous offence that he has stolen eight bundles of answer sheets from Exam Section and handed over the same to the students to write the exam for monetary consideration. If such persons are allowed to continue in the profession, it will degrade the teaching profession. However, on instructions he would submit that if the petitioner gives any representation to the respondents, the same would be considered on merits and pass orders.

5.The grievance of the petitioner is that even though the order of suspension has been passed as early as in the year 2015, there has been no review.

6.This Court is unable to go into the merits of the allegations made by the petitioner. So long as the power of suspension is available with the respondent and it has been exercised by the competent authority, the Court cannot go behind the order of suspension.

7.The Supreme Court in its decision reported in 1990 (3) SCC 60 (Director General and Inspector General of Police, Andhra Pradesh, Hyderabad and others Vs. K.Ratnagiri) has held in paragraph 7 as follows:

"7....The Rule 13(1) empowers the authority to keep the respondent under suspension pending investigation or enquiry into the criminal charges where such suspension is necessary in the public interest. When the first information report is issued, the investigation commences and indeed it has commenced when the respondent was kept under suspension. The order of suspension cannot, therefore, be said to be beyond the scope of Rule 13(1) merely because it has used the word 'prosecution' instead of investigation into the charges against the respondent. A wrong wording in the order does not take away the power if it is otherwise available. The Tribunal seems to have ignored this well accepted principle."

Further, it was observed in paragraph 3 as follows:

"3....The government may review the case and make further or other order but the order of suspension will continue to operate till it is rescinded by an appropriate authority."

8.Once again, the Supreme Court vide its decision reported in 1994 (2) SCC 617 (State of Haryana Vs. Hari Ram Yadav and others) held in paragraph 10 as follows:

"10....The law is well settled that in cases where the exercise of statutory power is subject to the fulfilment of a condition then the recital about the said condition having been fulfilled in the order raises a presumption about the fulfilment of the said condition, and the burden is on the person who challenges the validity of the order to show that the said condition was not fulfilled. In a case, where the order does not contain a recital about the condition being fulfilled, the burden to prove that the condition was fulfilled would be on the authority passing the order if the validity of the order is challenged on the ground that the condition is not fulfilled...."

Further, in paragraph 11 of the judgment, it was observed as follows:

"11....There is no averment in the said petition challenging the validity of the impugned order of suspension on the ground that the Governor of Haryana was not satisfied that it was either necessary or desirable to place Respondent 1 under suspension. In the absence of any such averment it must be held that the impugned order was passed after fulfilling the requirement of Rule 3(1) of the Rules in view of the presumption as to the regularity of official acts which would be applicable and the absence of a recital in the order about the Governor being satisfied that it was either necessary or desirable to place respondent 1 under suspension is of no consequence...."

9. In the light of the above, the writ petition filed by the petitioner is misconceived and deserves to be dismissed. Accordingly, the writ petition shall stand dismissed. No costs. Connected miscellaneous petition is also closed.

10. However, it is open to the petitioner to seek a review of the order of suspension by making a representation before the competent authorities and if such a representation is made, it is needless to state that the authorities will consider the said representation and pass orders on the same in accordance with law.

सत्यमेव जयते Sd/-

Assistant Registrar(Cj conf)

//True Copy//

Sub Assistant Registrar

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To

1.The Vice Chancellor,
Annamalai University,
Annamalai Nagar,
Chidambaram, Cuddalore District.

2.The Registrar,
Annamalai University,
Annamalai Nagar,
Chidambaram, Cuddalore District.

+1cc to Mr.V.R.Kamalanathan , Advocate SR.No. 82837

+1cc to Mr.N.Umapathi , Advocate SR.No. 82746

W.P.No.21831 of 2019

A.SK(04/11/2019)



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