

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 01.10.2020

PRONOUNCED ON : 09.10.2020

CORAM :

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.P.No.3252 of 2020 and
W.M.P.No.3768 of 2020

Dr.L.Ramesh

... Petitioner

-Vs-

1.The Chancellor,
Bharathiar University, Coimbatore.
Raj Bhavan, Guindy, Chennai 600 032.

2.The Vice-Chancellor/Disciplinary Authority,
Bharathiar University,
Coimbatore 641 046.

3.The Registrar,
Bharathiar University,
Coimbatore 641 046.

.... Respondents

Prayer : Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the entire records leading to the award of punishment of Compulsory Retirement against the petitioner in Order proceedings No.BU/R/E10/2018/11349-7, dated 30.04.2019 on the file of the third respondent, Registrar, Bharathiar University, Coimbatore and quash the same and direct the respondents herein to restore the petitioner back to service as Principal, Bharathiar University Arts and Science College, Valparai, along with back wages and arrears of pay and all other attendant benefits.

For Petitioner : Mr.K.Sridhar

For Respondents : Mr.C.Vigneshwaran,
Standing Counsel

O R D E R

This writ petition has been filed to issue a Writ of Certiorarified Mandamus, to call for the entire records leading to the award of punishment of Compulsory Retirement against the petitioner in Order proceedings No.BU/R/E10/2018/11349-7, dated 30.04.2019 on the file of the third respondent, The Registrar, Bharathiar University, Coimbatore and quash the same and direct the respondents herein to restore the petitioner back to service as Principal, Bharathiar University Arts and Science College, Valparai, along with back wages and arrears of pay and all other attendant benefits.

2. The petitioner was working as a Principal at Arts and Science College, Gudalur at Valparai, affiliated to Bharathiar University. According to the petitioner, he has been enjoying blemishless record of service throughout his career, commencing from his date of appointment as Lecturer in 2009, until he was appointed and served as Principal at the above said college. While he was working as Principal of the said college, a dispute arose in regard to his role in the selection of candidates to the post of temporary Assistant Professors, for which, a charge memo was issued to him on 05.05.2017. The charge memo contained two articles of charges as under:

Charge-I

That the said duty of the Principal Dr.L.Ramesh to inform the selection of Dr.B.Thannarasi as Assistant Professor (Consolidated pay) directly to her who attended the walk in interview held on 21.07.2016.

Charge-II

Dr.L.Ramesh, Principal, has not informed to the University Authorities that Dr.B.Thannarasi who was selected as Assistant Professor (Consolidated pay) has not joined duty at BUASC, Gudalur.

3. The petitioner appears to have submitted his representation strongly denying the charges framed against him by his letter dated 30.05.2017. Thereafter, he was directed to appear before the One Man Committee which was constituted to enquire into the charges framed against the petitioner. The said Committee conducted the enquiry and in the enquiry proceedings, witnesses were examined. The petitioner was also provided an opportunity to participate in the enquiry and to cross-examine the witnesses. On conclusion of the enquiry, the Committee submitted a report holding that the charges were proved against the petitioner. Thereafter, an explanation was called for from the petitioner and the same was submitted by him on 10.08.2018.

4. Ostensibly, not being satisfied with the explanation, by proceedings dated 30.04.2019, the third respondent conveyed the decision of the Syndicate to impose a major punishment of compulsory retirement from service on the petitioner with effect from 30.04.2019. Aggrieved by the same, the petitioner preferred an appeal before the first respondent who is the Chancellor of the said University, on 23.05.2019. However, despite several reminders being addressed to the appellate authority, no order was passed in the appeal and therefore, challenging the punishment of compulsory retirement from service, the petitioner is before this Court by way of this writ petition.

5. At the time when the writ petition was entertained, though an objection was raised on behalf of the University in regard to the pendency of the appeal, but, the learned Judge of this Court entertained the writ petition on the sole ground that in the punishment order, it was stated that the petitioner was convicted in a criminal case under the provisions of Prevention of Corruption Act, 1988 and hence, the impugned punishment was imposed. The fact of the matter was that there was no criminal case either initiated or pending against the petitioner, much less conviction as referred to in the impugned proceedings.

6. When the writ petition was heard even on subsequent dates, it was clarified by the University that there was no criminal case against the petitioner and the said fact has been wrongly incorporated in the impugned order, inadvertently. However, a counter affidavit has been filed on behalf of the third respondent, otherwise justifying the punishment. In the counter affidavit, it is stated that the petitioner herein has committed irregularity in the matter of selection and appointment to the post of teaching faculty. For which, a detailed enquiry was conducted by One Man Committee and he was found guilty. According to the counter affidavit, after the finding of the One Man Committee in respect of the charges issued under Section 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1973, the University Syndicate by its resolution dated 15.03.2019, has resolved that the petitioner to be imposed with the major punishment of compulsory retirement from service. The imposition of penalty was only with reference to the proved misconduct committed by the petitioner.

7. Mr.K.Sridhar, learned counsel appearing for the petitioner would vehemently submit that what is stated in the impugned order alone is the subject matter of consideration before this Court and the statement in the impugned order cannot be improvised or improved by making averment in the counter affidavit. The impugned proceedings as conveyed by the third respondent suffers from complete misapplication or non-application of mind, as it is admitted that there was no

initiation of any criminal case nor conviction as admitted by the University itself, therefore, the impugned proceedings has to be set aside on that ground alone.

8. Moreover, the learned counsel for the petitioner further submitted that there was absolutely no material whatsoever let in before the One Man Committee for enquiry and the charges were not established at all. In fact, on behalf of the petitioner, a rejoinder affidavit has been filed re-emphasising the point that the foundation of the impugned proceedings was only the so called conviction in the criminal case and therefore, in any case, the impugned proceedings is liable to be set aside. Besides, the rejoinder affidavit has also contained several averments in the nature of the petitioner's explanation to the departmental charges. In the rejoinder, there are other grounds taken by the petitioner as to the illegality of the departmental proceedings initiated under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, which rules according to the petitioner, would not apply to the University service as the petitioner being an University faculty and also with regard to the punishment of compulsory retirement, which was not one of the punishments included in the major penalties of the University regulations.

9. In response to the above averments contained in the rejoinder affidavit, the learned counsel appearing on behalf of the University was directed to produce all the relevant records which formed the basis for initiation of the impugned action against the petitioner. The records was also produced and it was perused by this Court. This Court from the records could deduce that the syndicate who is the competent body to impose penalty on the petitioner, in fact has passed a resolution as indicated in the impugned proceedings on 15.03.2019 vide Item No.012 in its meeting and in the resolution, it was only stated as a consequence of the disciplinary action taken against the petitioner in pursuance of the departmental charges and the charges being proved in the enquiry, the punishment of compulsory retirement is to be imposed.

10. In the above said circumstances, the basis of the impugned order of penalty cannot held to be illegal, as the penalty was premised on correct understanding of the departmental action taken against the petitioner and conclusion of the same against the petitioner. However, when the same was communicated to the petitioner, unfortunately, the proceedings disclosed as if the petitioner was imposed with the impugned penalty on the basis of his conviction by the Criminal Court under the provisions of Prevention of Corruption Act. Therefore, this Court for the present, is not inclined go behind the impugned order and hold it illegal and in that circumstances,

this Court is constrained to set aside the impugned proceedings as conveyed by the third respondent. However, considering the serious allegations made against the petitioner which allegations were said to have been proved by the University, it is open to the University to proceed against the petitioner afresh from the stage of imposition of penalty by once again calling for the petitioner's explanation after following the due process of law.

11. The petitioner may be given an opportunity to furnish his explanation once again and the University is at liberty to take further or other action as it deems fit after taking note of the objections to be raised by the petitioner to the proposed action of the University. In this regard, the respondent University is directed to issue notice to the petitioner and give him reasonable time and on taking his factual and legal objections, the University can proceed further and pass appropriate orders as expeditiously as possible.

12. In case any adverse order is passed, it is open to the petitioner to file an appeal as provided under the University statute to the appellate authority. As far as the present impugned proceedings No.BU/R/E10/2018/11349-7, dated 30.04.2019, is concerned, the same is set aside on the limited grounds as indicated above, leaving it open to the petitioner to raise all objections as he may deem fit against the conclusion of the disciplinary action.

13. As a result, the writ petition is allowed to the limited extent as indicated above. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

gsk

To

1.The Chancellor,
Bharathiar University, Coimbatore.
Raj Bhavan, Guindy,
Chennai 600 032.

WEB COPY

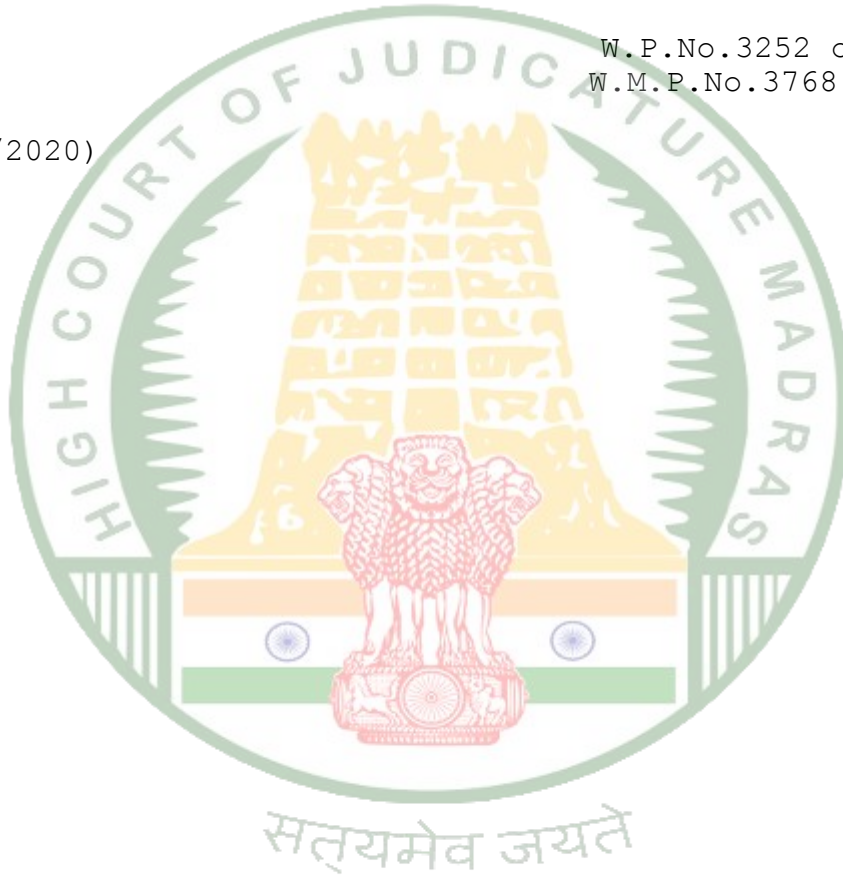
2.The Vice-Chancellor/Disciplinary Authority,
Bharathiar University,
Coimbatore 641 046.

3.The Registrar,
Bharathiar University,
Coimbatore 641 046.

+1 cc to M/s.k.Sridhar, Advocate Sr.No. 33389

VSNI (CO)
RMP (13/10/2020)

W.P.No.3252 of 2020 and
W.M.P.No.3768 of 2020



WEB COPY