

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:04.08.2020

CORAM :

THE HON'BLE MR.A.P.SAHI, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.A.No.310 of 2020

Dr.M.Hema

..Appellant/Petitioner

Vs

1.The Registrar,
Anna University,
Chennai.

2.The Additional Registrar (CCC),
Anna University,
Chennai.

3.The Dean In-charge,
University College of Engineering,
Thirukkuvalai,
Nagapattinam District.

..Respondents/Respondents

Prayer: Appeal filed under Clause 15 of the Letters Patent against the order dated 12.02.2020 passed in W.P.No.286 of 2020.

Prayer in WP No 286 of 2020:

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 first respondent vide memo no.UCE/THIRUKKUVALAI/PR/26/2019 dated 09.12.2019 and quash the same and consequently direct the first respondent to instate the petitioner into service.

For Appellant

: Mr.N.Rajan

For Respondents

: Mr.M.Vijayakumar
for respondent Nos.1 and 2

JUDGMENT
(Delivered by The Hon'ble Chief Justice)

Heard learned counsel for the appellant and learned counsel for the Anna University.

2. A Single Judge has dismissed the writ petition filed by the appellant where a prayer had been made for quashing the suspension order and for reinstating her back in service.

3. The dispute appears to have arisen when the appellant is stated to have made a complaint against the Dean In-charge of Thirukkuvalai Campus at the University College of Engineering, Thirukkuvalai affiliated to the Anna University.

4. The contention of the appellant is that two complaints were made, one on 09.10.2019 and again on 10.10.2019, on which, a preliminary enquiry was conducted which itself was not in conformity with the rules and the requirements of law, inasmuch as the complaint made by the appellant was not only against the Dean having faulted in his administration, but also of certain allegations of sexual harassment against the Dean himself. It is urged that the preliminary enquiry was conducted consisting of four persons viz., Dr.G.Nagarajan, Dr.S.Lakshmi, Dr.K.Annamalai and Dr.S.Selladurai.

5. Shri Rajan, learned counsel for the appellant contends that the constitution of this Committee was itself in violation of Vishaka guidelines, (1997) 6 SCC 241 and the said guidelines continue to be in force, which ought to have been complied with by the University. But, instead of taking action on the complaints made by the appellant, the preliminary enquiry report reversed the entire flow of allegations against the appellant and one Dr.A.Janaki Ramya, and both of them were made victims instead of paying attention to the allegations contained in the letters sent by the appellant. The crux of the said argument is that subjecting the complainant to victimization by giving an adverse report, the preliminary enquiry report against the appellant is a mala fide act and therefore, any such action of suspension against the appellant being an outcome of such mala fides is unsustainable in law.

6. The second submission of Shri Rajan is that there were no facts to substantiate the allegations that have been indicated in the preliminary enquiry report dated 09.11.2019 and no action

ought to have been taken on the basis of such recommendations, inasmuch as an enquiry could have been held had there been any allegation of any misdemeanor or misconduct on the part of the appellant. But in the absence of any such material, there was no occasion for recommending stringent action against the appellant and Dr.A.Janaki Ramya.

7. The third ground taken is that the order of suspension was passed by the Registrar, who is not empowered to pass any such order. The attention of the Court on the earlier occasion had been drawn to Appendix-II of the Anna University Statutes of Disciplinary Procedure, where only the Vice Chancellor has the power to suspend the appellant. The impugned order was passed by the Registrar and not by the Vice Chancellor. Appendix-II is extracted hereinunder:

S.N o.	Catego ry of Staff	Fine (only for basi c serv ice	Censu re	Withho lding of Increm ents or recove ry from pay	Withho lding or promot ion includ ing stoppa ge at an effici ency bar	Recov ery from pay of the whole or part of any pecun iary loss to the Unive rsity	Suspe nsion pendi ng enqui ry	Reduc tion to lower rank in the senio rity list or to a lower stage in the same scale or to a lower scale or to a lower post	Compul sory retire ment or remova l or dismis sal from servic e
1	2	3	4	5	6	7	8	9	10

S.No.	Category of Staff	Fine (only for basic service)	Censure	Withholding of Increments or recovery from pay	Withholding or promotion including stoppage at an efficiency bar	Recovery from pay of the whole or part of any pecuniary loss to the University	Suspension pending enquiry	Reduction to lower rank in the seniority list or to a lower stage in the same scale or to a lower post	Compulsory retirement or removal or dismissal from service
I.	Teaching and Academic Staff Members of all categories of teaching and academic staff								

S.N o.	Catego ry of Staff	Fine (only for basi c serv ice	Censu re	Withho lding of Increm ents or recove ry from pay	Withho lding or promot ion includ ing stoppa ge at an effici ency bar	Recov ery from pay of the whole or part of any pecun iary loss to the Unive rsity	Suspe nsion pendi ng enqui ry	Reduc tion to lower rank in the senio rity list or to a lower stage in the same scale or to a lower scale or to a lower post	Compul sory retire ment or remova l or dismis sal from servic e
II.	Non- Teachi ng and non- teachi ng techni cal staff includ ing admini stra- tive staff								

S.No.	Category of Staff	Fine (only for basic service)	Censure	Withholding of Increments or recovery from pay	Withholding or promotion including stoppage at an efficiency bar	Recovery from pay of the whole or part of any pecuniary loss to the University	Suspension pending enquiry	Reduction to lower rank in the seniority list or to a lower stage in the same scale or to a lower scale or to a lower post	Compulsory retirement or removal or dismissal from service
1.	Employees on scales of pay of which the minimum is Rs.12000/- and above		VC	VC	VC	VC	VC	Syndicate	Syndicate

S.No.	Category of Staff	Fine (only for basic service)	Censure	Withholding of Increments or recovery from pay	Withholding or promotion including stoppage at an efficiency bar	Recovery from pay of the whole or part of any pecuniary loss to the University	Suspension pending enquiry	Reduction to lower rank in the seniority list or to a lower stage in the same scale or to a lower post	Compulsory retirement or removal or dismissal from service
2.	Employees on scales of pay of which the minimum is Rs.550 0/- and above but less than Rs.120 00/- in the ordinary grade scale		Registrar	Registrar	VC	VC	VC	Syndicate	Syndicate

S.No.	Category of Staff	Fine (only for basic service)	Censure	Withholding of Increments or recovery from pay	Withholding or promotion including stoppage at an efficiency bar	Recovery from pay of the whole or part of any pecuniary loss to the University	Suspension pending enquiry	Reduction to lower rank in the seniority list or to a lower stage in the same scale or to a lower post	Compulsory retirement or removal or dismissal from service
3.	Employees on scales of pay of which the minimum is Rs.2610/- and above but less than Rs.5500/- in the ordinary grade scales	Registrar	Registrar	Registrar	VC	Registrar	Registrar	VC	VC

S.No.	Category of Staff	Fine (only for basic service)	Censure	Withholding of Increments or recovery from pay	Withholding or promotion including stoppage at an efficiency bar	Recovery from pay of the whole or part of any pecuniary loss to the University	Suspension pending enquiry	Reduction to lower rank in the seniority list or to a lower stage in the same scale or to a lower post	Compulsory retirement or removal or dismissal from service
4.	Employees who are not covered under 1, 2 and 3 above	Registrar	Registrar	Registrar	Registrar	Registrar	Registrar	VC	VC

8. It is further the submission of learned counsel that the fact of harassment has been noticed by the learned Single Judge in paragraph 5 of the impugned judgment and there being no effective response by the University, the learned Single Judge committed an error by omitting to consider the said aspect and issue appropriate directions.

9. The fourth argument of learned counsel is that there is no contemplation of an enquiry or enquiry in existence so as to

warrant suspension and therefore, the power of suspension could not have been exercised.

10. Responding to the said contentions, Shri M.Vijaya Kumar, learned counsel for the University, at the outset, has invited the attention of the Court to the document dated 09.12.2019 appended at page 8 of the typed set of papers filed by him to urge that the Registrar had only issued the order on the approval of the Vice Chancellor and therefore, it was an order passed by the Vice Chancellor and not by the Registrar. For this, he has invited the attention of the Court to the endorsement made at the bottom of the said document.

11. He further submits that the preliminary enquiry was conducted and almost nine faculty members from different departments had appeared before the committee. Upon a consideration of the material the preliminary enquiry committee observed that the allegations against the Dean faculty were baseless and at the same time, the appellant along with Dr.A.Janaki Ramya were stated to have been indulging in certain activities against the students and the staff and using inappropriate language which amounted to an indisciplined conduct that deserved to be enquired into. He further submits that Dr.K.Lakshmi is also the In-charge of the committee looking into harassment complaints as were alleged by the appellant and therefore, she being a member of the preliminary enquiry committee, the committee so organised and constituted did not suffer from any infirmity so as to render its recommendation to be invalid for taking disciplinary action against the appellant.

12. During the course of hearing, we had called upon the learned counsel for the University to inform the Court as to whether any formal enquiry proceedings have been initiated or not, upon which, he informed that a show cause notice along with the imputation of charges has been issued to the appellant dated 19.02.2020. The factum of the issuance of the said notice was got confirmed from the learned counsel for the appellant, who submitted that such a document had been received by the appellant. Shri Vijaya Kumar, learned counsel for the University contends that with the issuance of the said notice and explanation called for, the enquiry is to proceed but the appellant so far has not given any reply to the same.

13. He has further submitted that in the absence of any further material, there was no occasion for the Vice Chancellor to have either withdrawn the suspension order or discontinue the proceedings. It is after appropriate consideration that the learned Single Judge declined to interfere with the impugned

order of suspension and therefore, the impugned judgment is not vitiated on any of the grounds as urged by learned counsel for the appellant.

14. We have considered the submissions raised and we find that the ground of the Vice Chancellor not having passed the impugned order of suspension was noted by us in our order dated 23.07.2020, which is extracted herein under:

"Learned counsel for the Respondent Anna University, Sri.M.Vijayakumar, who is present, submits that the papers in the writ appeal have not been circulated to him. Let the papers in this writ appeal be served on the learned counsel.

2.The first ground taken by the learned counsel for the appellant in this appeal is that the order of suspension has emanated from the Registrar, who is not an authority competent, keeping in view the provisions contained in Appendix-II of Anna University Statutes of Disciplinary Procedure, for the purpose of exercising power of suspension. It is the contention of the learned counsel on the basis of the documents placed on record that the suspension order has been passed and issued by the Registrar and hence, the same suffers from the vice of jurisdiction.

3.Learned counsel for the Anna University submits that the order of the Registrar has emanated pursuant to the orders of the Vice Chancellor. We do not find any such recital contained in the order, which has been filed in the description of documents and therefore, the learned counsel for the Anna University may bring on record the orders so passed by the Vice Chancellor, to enable us to proceed further. Sri.Vijayakumar prays for a week's time.

List on 30.07.2020."

15. In response thereto, learned counsel for the University has brought on record the document dated 09.12.2019 bearing the endorsement of approval by the Vice Chancellor. We are, therefore, satisfied that the order has been issued only with the approval of the Vice Chancellor and not by the Registrar on his own. Thus, the order of suspension has been issued by the proper authority, the communication whereof was made by the Registrar.

16. We may further point out that this point or ground of challenge was not even raised by the appellant before the learned Single Judge and has been raised for the first time in this appeal, but, in order to satisfy ourselves, we have examined the issue and we find that the said argument does not merit consideration, in view of what has been recorded by us herein above.

17. The second ground taken with regard to non-constitution of the Committee as per Vishaka guidelines, we may put on record that there is a Central Act and a State Act in this regard. The Central Act is The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. The said Act within the definition of Section 2(o) defines "workplace" which also includes Institution under sub-clause (ii) thereof. The Tamil Nadu Prohibition of Harassment of Woman Act, 1998 also entails taking of appropriate action on account of harassment at any place. The University, therefore, has the obligation of conducting any such enquiry about such allegations as and when such a complaint is raised before the appropriate authority.

18. However, in the present case, we find that the writ petition was filed by the appellant with a very limited prayer for issuing a Certiorarified Mandamus to call for the records and quash the impugned order of suspension dated 09.12.2019. Even though a ground was taken in respect of the allegation of the harassment as complained of, yet, no relief was claimed before the learned Single Judge either for setting up of an enquiry committee or directing the University to hold any such enquiry on allegations of such harassment. This plea, therefore being absent in the writ petition itself, cannot be taken as a ground to question the correctness of the conclusions drawn by the learned Single Judge on the validity or otherwise of the suspension order.

19. We find that the suspension order is preceded by a preliminary enquiry taken by a four member committee, including Dr.K.Lakshmi and investigated the matter with the participation of nine faculty members. It is worthwhile to extract the same in order to understand as to whether there was any material before the Vice Chancellor to take appropriate steps as recommended by the Committee or not. The same is extracted hereinunder:

"Nine faculty members from different departments appeared before the enquiry committee members voluntarily and submitted that unpleasant incidents stated above are true and they were unhappy with the situation prevailing in UCET which is not conducive for a working environment. The faculty members unanimously mentioned that the behaviour of Dr.Hema

and Dr. Janaki Ramya damages the reputation of the institute and requested to take necessary steps to create a pleasant environment. A joint letter from the nine faculty members is given as Annexure VIII."

20. Thus, the issue as to whether any enquiry should be held against the appellant or not was considered on the basis of a preliminary enquiry and which is now the subject matter of proceedings, that have crystalized into the issuing of show cause notice with a recital of imputation of charges dated 19.02.2020. In the given circumstances, it cannot be said that the Vice Chancellor had acted without applying his mind and the suspension order was otherwise without authority in law.

21. The Committee also recorded as follows:-

" Dr. Hema's allegations against the Dean i/c UCET are baseless because of her imagination and there was no evidence to prove the allegations against the Dean i/c."

22. Having said so even otherwise if there are any such allegations which deserve enquiry, the same being a separate issue and not subject matter of the writ petition can be pursued by the appellant before the appropriate forum in the event such a course is open in accordance with the relevant rules and regulations before the competent authority. We have no doubt that in the event any such course is pursued by any aggrieved employee, the University will be obliged to consider the same and take appropriate steps in the matter.

23. One of the arguments advanced by the learned counsel for the appellant is that after the appellant had lodged a complaint with the police that the suspension order came as a counter-blast for mala fide reasons and motives. We cannot comment on the same or conclude on the said basis, inasmuch as even otherwise if the appellant had any grievance or had any such remedy open to her, it is still open to pursue the same in accordance with law as may be permissible. We would say nothing further as already observed above, this was not the subject matter of the relief prayed for before the learned Single Judge.

24. Consequently, for all the aforesaid reasons, we neither find the impugned suspension order suffering from any such invalidity or infirmity so as to interfere with the same at this stage and consequently, we find no error in the judgment of the learned Single Judge in refusing to exercise discretion in the matter under Article 226 of the Constitution of India. The impugned judgment has proceeded judiciously on the issues which

were raised and the answer given by the learned Single Judge does not call for any interference by us in this appeal.

The appeal is, accordingly, rejected. No costs. Consequently, C.M.P.No.5328 of 2020 and 5330 of 2020 are closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

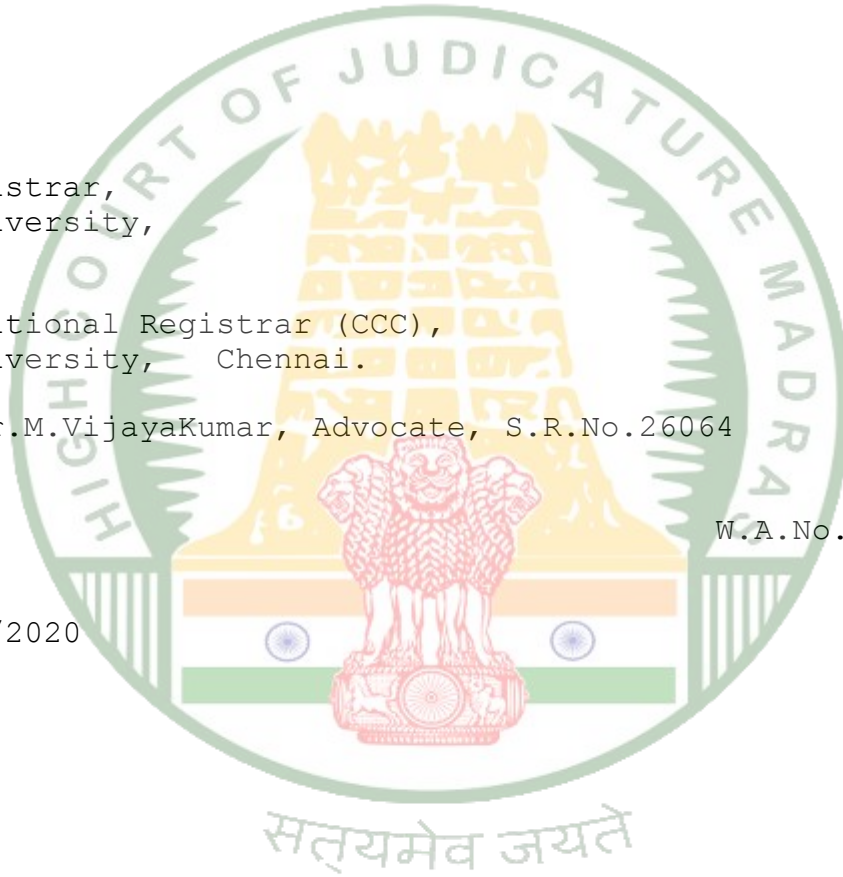
1.The Registrar,
Anna University,
Chennai.

2.The Additional Registrar (CCC),
Anna University, Chennai.

+1cc to Mr.M.VijayaKumar, Advocate, S.R.No.26064

W.A.No.310 of 2020

NSA (CO)
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