

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.01.2020

CORAM:

THE HONOURABLE Mr. JUSTICE N. ANAND VENKATESH

W.P.NO.22527 of 2019

and

WMP No. 21952 of 2019

R. Kumar

... Petitioner

-Vs-

Bharathiyar University
Rep by its Registrar
Coimbatore 641 046

... Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ, Order or Direction more so in the nature of a Writ of Certiorarified Mandamus calling for the records on the file of the respondent in relation to the impugned Proceedings No. BU/R/E 2/2019/12450 dated 26.06.2019, quash the same and consequentially direct the respondents to permit the petitioner to render service till he attains the age of superannuation with all service and monetary benefits.

For Petitioner : Ms. Dakshayani Reddy

For Respondents : Mr. L.P. Shanmuga Sundaram
Special Government Pleader.

ORDER

The present Writ Petition has been filed challenging the impugned proceedings of the respondent dated 26.06.2019 and imposing the punishment of compulsory retirement against the petitioner and for a consequential direction to promote the petitioner to join service along with all attendant benefits.

2. The petitioner was posted as Section Officer in the Department of Distance Education of the Respondent University during September 2017. In the year 2018, the petitioner was issued with a show cause notice on certain allegations made against him. The petitioner gave his explanation. Not being satisfied with the explanation, the respondent issued a charge memo dated 13.08.2018 under Rule 17(a) of the Tamil Nadu Civil Services (Disciplinary and Appeal) Rules. The charge against the petitioner was that he failed to communicate the orders of the syndicate meeting not to make new admissions from the calendar year 2018. The petitioner gave his explanation to the charge memo issued to him.

3. The petitioner was placed under suspension by proceedings dated 16.08.2018. The petitioner challenged the same before this Court in W.P. No.10602 of 2018 and the same is pending before this Court.

4. While so, a second charge memo was issued on 16.08.2018 by including a fresh charge to the effect that the petitioner used unparliamentary language during the syndicate meeting that was held on 18.06.2018. The petitioner gave his reply on 28.08.2018. An Inquiry Officer was appointed by proceedings dated 04.12.2018 and the petitioner attended the inquiry. Immediately thereafter, the respondent proceeded to pass the impugned order dated 26.06.2019 imposing the punishment of compulsory retirement from service against the petitioner. Aggrieved by the same, the present petition has been filed before this Court.

5. Ms. Dakshayani Reddy, the learned counsel appearing on behalf of the petitioner submitted that, initially the charge memo was issued under Rule 17(a) and thereafter, the second charge memo was issued under Rule 17(b) and therefore, what was contemplated in the second charge memo was an inquiry for a major penalty. The learned counsel submitted that after the inquiry report was submitted to the respondent, the respondent ought to have furnished the inquiry report to the petitioner and must have sought for further explanation. This mandatory procedure was not followed in the present case and therefore, the impugned proceeding of the respondent requires interference of this Court.

6. Mr.L.P. Shanmuga Sundaram, the learned Special Government Pleader appearing on behalf of the respondent submitted that the Inquiry Officer has found that the charges against the petitioner have been proved and therefore, the respondent has proceeded to impose the punishment of compulsory retirement against the petitioner. The learned counsel submitted that there is absolutely no ground to interfere with the impugned order passed by the respondent.

7. It is also brought to the notice of this Court that during the pendency of this Writ Petition, the final report of the Inquiry Officer was also furnished to the Petitioner.

8. The impugned proceedings of the respondent dated 26.06.2019 is liable to be interfered for not complying with the mandatory requirement of furnishing a copy of the findings of the Inquiry Officer and seeking for further explanation from the petitioner.

9. The Second charge memo that was issued against the petitioner was under Rule 17 (b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, which contemplated the imposition of a major penalty. Therefore, it is the duty of the

respondent to have furnished with the inquiry report to the petitioner before passing the final order. By not furnishing the inquiry report to the petitioner, the petitioner has been deprived of an opportunity to give his explanation on the findings of the Inquiry Officer. This opportunity becomes mandatory since the disciplinary authority relied upon the inquiry report and the delinquent employee is not even furnished with this inquiry report before final orders are passed. The punishment imposed by the respondent has resulted in civil consequences to the petitioner and therefore, following the principles of natural justice becomes mandatory.

10. In view of the above discussions, the impugned proceedings of the respondent in BU/R/E 2/2019/12450 dated 26.06.2019 is hereby quashed. The petitioner is directed to be reinstated into service with all attendant benefits. The respondent is directed to furnish the Inquiry Report to the petitioner within a period of four weeks from the date of receipt of a copy of this order. The petitioner, on receipt of the inquiry Report, shall give his further explanation within a period of four weeks thereafter. The respondent shall consider the inquiry report and also the further explanation of the petitioner and shall thereafter, pass final orders in the Disciplinary proceedings.

11. This Writ Petition is accordingly allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-III)

// True Copy//

Sub Assistant Registrar

bga

To

The Registrar, Bharathiyar University
Coimbatore 641 046.

+1cc to Mr.L.P.Shanmugasundaram, Advocate, SR.No.5930.

W.P.NO.22527 of 2019

GJ(CO)
CSR:12.02.2020