

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.03.2021

CORAM

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.4195 of 2020 and
W.M.P.Nos.4956 & 18757 of 2020

Dr.A.Panneerselvam

... Petitioner

-vs-

1.The Vice Chancellor,
Thiruvalluvar University,
Serkkadu,
Vellore - 632 115.

2.The Registrar,
Thiruvalluvar University,
Serkkadu,
Vellore - 632 115.

... Respondents

Prayer: Petition filed under Article 226 of Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records of the second respondent dated 19.01.2020 bearing Charge Memorandum No.Letter/Memo No.TVU/R/2020/188 issued as contrary to Sec.14(2)(a) of Thiruvalluvar University Act, 2002 as well as citing the Inquiry Officer as one of the witnesses by the second respondent/Inquiry Officer and to quash the same with consequential direction to the first respondent to act in respect of the enquiry proceedings after production of all necessary material documents - pursuant to the letter dated 12.12.2014 of the petitioner sought under the Right to Information Act, 2002, which are under the custody of the second respondent in accordance with Law, besides providing an opportunity of being heard to the petitioner.

For Petitioner : Mr.Haja Nazirudeen, Sr. Counsel
For Mr.P.Haribabu

For Respondents: Mr.M.C.Swamy

O R D E R

The petitioner has come forward with the present writ petition, challenging the charge memo dated 19.01.2020 bearing No.Letter/Memo No.TVU/R/2020/188 on the ground that it is

contrary to Sec.14(2)(a) of Thiruvalluvar University Act, 2002 as well as by citing the deposition of the Inquiry Officer as one of the witnesses during enquiry and consequently for a direction to the first respondent to proceed further only after production of all necessary material documents - pursuant to the letter dated 12.12.2014 of the petitioner made under the Right to Information Act, 2002, which are under the custody of the second respondent, in accordance with Law, besides providing an opportunity of being heard to the petitioner.

2. The petitioner joined the services as an Associate Professor (Zoology) in the department of Zoology on 09.11.2010. The petitioner has submitted that the present charge memo has been issued on 19.01.2020. Earlier, on 28.11.2014, a show cause memo was issued with regard to fake experience certificate alleged to have been given by the petitioner for which a detailed explanation has been given and thereafter no further proceedings took place. Suddenly on 19.01.2020, the petitioner received a communication that the Registrar In-charge, Thiruvalluvar University has proposed to hold an enquiry against the charges framed against the petitioner. According to the petitioner, the charge memorandum dated 19.01.2020 itself is illegal on three counts:

- (i) The entire proceedings are malafide to victimize the petitioner.
- (ii) There is a delay in issuing the charge memo, since, after a decade of the incident, a charge memo has been issued and;
- (iii) The Registrar, who has given a charge memo has no power to issue it. That apart he has been cited as a witness and hence, the entire charges itself has got to be interfered with.

3. According to the petitioner in terms of Section 14(2)(a) of Thiruvalluvar University Act, 2002, the Registrar has no power to hold an enquiry against a Teaching Staff, which fact is admitted in Paragraph 6 of the counter affidavit filed by the second respondent and hence, no further proceedings should be held.

4. The respondents have filed a vacate stay petition in W.M.P.No.18757 of 2020 against the interim order of stay granted by this Court on 20.02.2020 in the above writ petition. A detailed counter affidavit has been filed by the second respondent. The sum and substance of the counter is that the petitioner had produced a fake experience certificate from three institutions, which are not genuine. It has been covered up and manipulated by the petitioner, which came to light on

verification. He further submitted that the impugned order under challenge is only a charge memo and not an enquiry notice and one Mr.Krishnan has been appointed as an Enquiry Officer. The learned counsel appearing for the respondents also drew the attention of this Court to the proceedings dated 23.09.2019, wherein, it has been decided by the Registrar (In-charge), Thiruvalluvar University to frame charges against the petitioner as directed by the Syndicate of the Thiruvallurvar University. It was only the Syndicate's decision that has been communicated to the petitioner and not otherwise. The Syndicate in its 85th meeting held on 09.08.2019 had resolved to take disciplinary proceedings against the petitioner for producing fake experience certificate at the time of applying for the post of Associate Professor, Zoology on 24.05.2010. He would further submit that there is no malafide intention at all and that the petitioner has been informed about the fake experience certificate and that he could have very well participated in the enquiry and disputed the records summoned by the three Universities / Colleges with regard to the experience certificate alleged to have been produced by him. He would further submit that there is no delay in initiating the proceedings and the certificates are with the respondents, but on enquiry, it came to light that they are fake, hence, departmental action has been initiated. A fake certificate will not become genuine certificate after a decade. Hence, the writ petition is liable to be dismissed.

5. In reply, the learned counsel for the petitioner would submit that in terms of the decision of the Apex Court and this Court, if there is a delay and enquiry proceedings are protracted, which may cause distress to the delinquent, it has got to be presumed to give a room for bias / malafide misuse of power. If the delay is unexplained and is unexplained, the Court may well interfere and quash the charges in the light of the judgment of this Court in the case of C.P.Harish vs. The Central Warehousing, reported in 2000 (4) CTC 517.

6. Mr.M.C.Swamy, learned counsel appearing for the respondents, apart from reiterating the factual aspects stated supra, relied upon the judgment of the Supreme Court in State of Odisha and another vs. Bibhisan Kanhar, [Civil Appeal No.9124 of 2017] decided on 17.07.2017, wherein it has been held as follows:

"It was held by Denning, L.J. in Lazarus Estates, Ltd. v. Beasley (1956) 1 All E.R.341, 345 that no Court will allow a person to keep an advantage which he has obtained by fraud.[...] Fraud unravels everything. The Court is careful not to find fraud unless it is distinctly pleaded and proved; but once it is proved it vitiates judgments, contracts and all transactions whatsoever."

He would submit that when a fake certificate was produced, it

has to be cancelled by the State Level Scrutiny Committee.

7. Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondents.

8. The pleadings of both parties and judgments referred to supra would make it very clear that there are certificates produced by the petitioner, which according to the petitioner is genuine and that fact has been disputed by the respondents as those certificates are fake. Whether genuine or fake would be established during the domestic enquiry. This Court cannot conduct a roving enquiry and render a finding. The Court will have to analyse as to whether there is a delay and whether there is a contradiction of provisions of the Thiruvalluvar University Act, 2002 with regard to initiation of disciplinary proceedings as referred / pleaded by the petitioner. Though the charge memo dated 19.01.2020 has used a word "The undersigned proposes to hold an inquiry", which has been given to the petitioner in a standard format and the language used therein may not be good enough to make it as a charge sheet, but by reading one sentence it cannot be concluded that it is not a charge sheet. A reading of Appendices and Annexures would make it clear that it is only a charge sheet, which fact has been admitted by the petitioner. The charge sheet has been issued by the Registrar-Incharge, Thiruvalluvar University may not be correct. The decision of the Syndicate of the Thiruvalluvar University has been communicated to the petitioner. Hence, no power under Section 14(2) of the Thiruvalluvar University Act has been invoked in this case. The power is vested with the Syndicate and the same has been clearly set out in Section (24)(a), (27) and (28) of the Act, which reads as under:

"Sec.24. (a) The Syndicate shall have the following powers, namely:-

"(27)(a) to appoint the University Lecturers, University Readers, University Professors and the teachers of the University, fix their emoluments, if any, define their duties and the conditions of their services and provide for filling up of temporary vacancies.

(b) to make ordinances specifying the mode of appointment of administrative and other similar posts and fix their employments, if any, define their duties and the conditions of their services and provide for filling up of temporary vacancies.

(28) to suspend and dismiss the University Lecturers, University Readers, University Professors and the teachers and other employees of the University."

9. Based on the 85th Syndicate meeting held on 09.08.2019, a

departmental action has been initiated against the petitioner for which a charge memo dated 19.01.2020 has been issued. The Syndicate alone has got power to initiate action against a Professor, which has been done in this case, communicated by the Registrar, who may be a witness, who may or may not go into facts at later point of time. It does not mean that the Registrar In-charge cannot communicate the Syndicate decision to the petitioner, even if he is going to be a witness in this case. Insofar as the delay is concerned as narrated supra in view of the judgment of Apex Court and even going by the reference made by the petitioner, in C.P.Harish vs. The Central War Housing reported in 2000 (4) CTC 517, it has been held that in a given case, the nature of the offence and other circumstances may be such that quashing of the proceedings may not be in the interest of justice. In such a case, it has been observed, it is open to the Court to make such other appropriate order as it finds just and equitable in the circumstance of the case. In A.R.Antulay v.R.S.Nayak reported in 1988 AIR 1531, a Constitution Bench of Apex Court has granted the relief of terminal benefits, as there was a huge delay. In this case, as the charges are serious in nature, the Petitioner / Professor, who has got to impart education and has no qualification, if involved in production of fake certificate, cannot be shown any leniency on the ground of delay so as to interfere with the charge memo.

10. In this country, teachers are regarded as Guru and Gods / Goddess and this Court has also described the importance of the teacher in the society by citing a judgment of the Hon'ble Supreme Court in the case of Avinash Nagra Vs. Navodaya Vidyalaya Samiti and others, reported in 1997(2) SCC 534, wherein it has been held as under:

"Before answering the question whether the order terminating the services of the appellant in terms of his appointment letter is in violation of the Rules or the principles of natural justice, it is necessary to consider the need for the education and the place of the teacher in that behalf. Article 45 of the constitution enjoins the State to endeavour to provide free and compulsory education to all children, till they complete the age of 14 years. The Supreme Court has held that right to education is a fundamental right and the State is required to organise education through its agencies or private institutions in accordance with the law and the regulations or the scheme. The State has taken care of service conditions of the teacher and he owes dual fundamental duties to himself and to the society. As a member of the noble teaching profession and a citizen of India he should always be willing, self disciplined, dedicated with integrity to remain ever a learner of

knowledge, intelligently to articulate and communicate the imbibe in his students, as social duty, to impart education, to bring them up with discipline, inculcate to abjure violence and to develop scientific temper with a spirit of enquiry and reform constantly to rise to higher levels in any walk of life nurturing constitutional ideals enshrined in Article 51 A so as to make the students responsible citizens of the country. The quality, competence and character of the teacher are, therefore, most significant to mould the institutions and to sustain them in their later years of life as a responsible citizen in different responsibilities."

10. Mahatma Gandhi, the Father of the Nation has stated that "a teacher cannot be without character. If he lacks it, he will be like salt without its savour. A teacher must touch the hearts of his students. Boys imbibe more from the teacher's own life than they do from books. If teachers impart all the knowledge in the world to their students but do not inculcate truth and purity amongst them, they will have betrayed them. ...

..... Dr. S. Radhakrishnan has stated that "we in our country look upon teacher as gurus or, as acharyas. An Acharya is one whose aachar or conduct is exemplary. He must be an example of Sadachar or good conduct. He must inspire the pupils who are entrusted to his care with love of virtue and goodness."

11. It is in this backdrop, therefore, that the Indian society has elevated the teacher as "Guru Brahma, Gurur Vishnu, Guru Devo Maheswaraha". As Brahma, the teacher creates knowledge, learning, wisdom and also creates out of his students, men and women, equipped with ability and knowledge, discipline and intellectualism to enable them to face the challenges of their lives. As Vishnu, the teacher is preserver of learning. As Maheswara, he destroys ignorance."

11. Hence, I find there are no merits in the writ petition and the same is dismissed. It is open to the respondents to proceed with the enquiry on day to-day basis without adjourning the matter beyond seven working days at any point of time. This Court makes it very clear that any observation made in this order touching upon the merits of the case will not affect the rights of either of the parties and de hors any observation on

merits by this Court. The decision shall be taken by the Appropriate Authority in an independent manner and the same shall be communicated to the petitioner. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

rsi/ar

To:

1.The Vice Chancellor,
Thiruvalluvar University,
Serkkadu,
Vellore - 632 115.

2.The Registrar,
Thiruvalluvar University,
Serkkadu,
Vellore - 632 115.

+1cc to Mr.P.Haribabu, Advocate, S.R.No. 13061
+1cc to Mr.M.C.Swamy, Advocate, S.R.No. 12708

W.P.No.4195 of 2020 and
W.M.P.Nos.4956 & 18757 of 2020

BP (CO)
GN (28/06/2021)

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