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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 18.08.2021

PRONOUNCED ON : 23.12.2021

CORAM:

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

WP.No.13286 of 2021

WMP.No.14105 of 2021

(Through Video Conferencing)

S.V.Durgaprasad

... Petitioner

Vs

1.The Vice Chancellor (i/c), Indian Maritime University
Chennai-119

2.B.Pugazhendi, IOFS (Rtd), Inquiring Authority
Indian Maritime University,
East Coast Road uthandi Chennai-19

... Respondents

Prayer:- This Writ Petition has been filed, under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records of the 1st Respondent in its proceedings bearing Memorandum No.IMU/VIG/3/1/2017,dated 18.02.2020 and to quash the same and consequently to direct the 1st Respondent to disburse the Gratuity, leave salary and wages with accrued interest.

For Petitioner : Mr.Antony L.X.Selvam

For Respondent : Mr.K.R.Tamizhmani

ORDER

1.This Writ Petition has been filed, to issue a Writ of Certiorarified Mandamus to call for the records of the 1st Respondent in Memorandum No.IMU/VIG/3/1/2017, dated 18.02.2020 and to quash the same and consequently to direct the 1st Respondent to disburse the Gratuity, leave salary and wages with interest.

2.The facts of the case, leading to filing of this Writ Petition, are as follows:-



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- a) Pursuant to the appointment order, dated 23.12.2014, appointing the Petitioner in the post of Controller of Examinations, in the 1st Respondent University, on direct recruitment basis, for a period of five years subject to review at the end of the first year, the Petitioner had joined the services of the 1st Respondent University, as the Controller of Examinations on 05.02.2015. His services are governed by the terms and conditions of the Statutes and Ordinances of the 1st Respondent University, as amended from time to time. For the period from 10.12.2015 to 28.06.2017, he was also given full additional charge as the Registrar of the University. In the said period, the recruitment process to fill up the post of Library Assistants was handled by the Petitioner and his probation was confirmed with effect from 04.02.2017. The Petitioner was issued with a questionnaire, dated 23.05.2019, regarding the irregularities said to have been committed by him in the said recruitment process to fill up the posts of Library Assistants in the 1st Respondent University.
- b) Since his tenure was due to expire on 04.02.2020, by way of representation, dated 19.09.2019, he had sought for extension of tenure, which was not acceded to. Hence, he had filed WP.No.2194 of 2020, wherein, an interim order was passed on 30.01.2020, directing the Respondents not to relieve him from the post. In the mean while, an order, dated 11.02.2020, refusing to extend his tenure was passed. A notification was also made, calling for the applications from the eligible candidates for the said post. The WP.No.3809 of 2020 filed by the Petitioner, as against the same was disposed of this Court, by the order dated, 17.02.2020, observing that it is for the Petitioner to participate in the selection process and it is for the 1st Respondent University to assess the performance of the Petitioner and his entitlement for re-appointment and consequently, WP.No.2194 of 2020 was closed. Subsequently, by the Office Order, dated 18.02.2020, of the 1st Respondent University, it was ordered that the Petitioner was ceased to hold the post of the Controller of Examinations.
- c) By the impugned Memorandum, dated 18.02.2020, Articles of Charges were issued against the Petitioner for having committed the irregularities in the recruitment process for the Post of Library Assistant, during the period from 10.12.2015 to 28.06.2017, imputing allegations of misconduct and proposing to conduct an enquiry in this regard. Hence, this Writ Petition has been filed, seeking the reliefs as stated above.



3. This court heard the learned counsel on either side and considered their submissions and also carefully perused the materials placed on record.

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4. According to the Petitioner, he was not at all an Employee either on regular or contract basis and he ceased to be such an employee and as such, the impugned order issued under Rule 8 (2) of Part III of the Ordinance 7 of 2007 of the 1st Respondent University is not sustainable, since the said Ordinance governs the control and appeal of the Employees of the University and after cessation of employment, continuation of disciplinary action is not sustainable. Reliance is placed on behalf of the Petitioner on the decisions reported in 1997 8 SCC 60 (State Bank of India Vs. A.N.Gupta and others) and 2015 SCC Online Mad 4168 (M.Sekar Vs. The Registrar General, Madras High Court).

5. Per contra, as seen from the counter affidavit filed by the 1st Respondent, it is their contention that the action was initiated under the 'major penalty' proceedings and already, by the letter dated, 20.05.2019, the Chief Vigilance Officer of the 1st Respondent University had called for explanation from the Petitioner, in respect of the irregularities committed by him in the selection process to fill up the posts of Library Assistant and a reply was also sent by the Petitioner on 13.02.2020. Though the CVO had recommended to initiate action against the the Petitioner in respect of such misconduct and irregularities, in view of the interim order of this Court, the charge memo could not issued immediately and after dismissal of the Writ Petitions of the Petitioner, the impugned charge memorandum came to be issued and hence, the impugned memorandum is in order.

6. The Petitioner was appointed in the services of the 1st Respondent University as the Controller of Examinations on 05.02.2015 initially for a period of five years and thus, his service was due to expire on 04.02.2020. His services are governed by the terms and conditions of the Statutes and Ordinances of the 1st Respondent University, as amended from time to time. For the period from 10.12.2015 to 28.06.2017, he was also given full additional charge as the Registrar of the University and in the said period, the Petitioner had looked after the recruitment process to fill up the posts of Library Assistant.

7. Regarding the irregularities and misconduct said to have been committed by the Petitioner in the recruitment process to fill up the posts of Library Assistants in the 1st Respondent University, he was issued with a questionnaire, dated



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23.05.2019, calling for explanations from him for such irregularities and misconduct. But, in view of the interim order of this Court, disciplinary proceedings could not be proceeded further by the 1st Respondent University. However, it is apparent that the observations made in the orders passed in the Writ Petitions filed by the Petitioner have no bearing to the case on hand.

- 8.Immediately, after disposal of the Writ Petitions, by the impugned Memorandum, dated 18.02.2020, Articles of Charges were issued against the Petitioner for having committed the irregularities and misconduct, in the recruitment process to fill up the Posts of Library Assistants, during the period from 10.12.2015 to 28.06.2017, imputing allegations of misconduct and proposing to conduct an enquiry in this regard. On the same date, an Office Order, dated 18.02.2020, came to be issued, by the 1st Respondent University, stating that the consequent to the outcome of the Writ Petition filed by the Petitioner, the Petitioner was ceased to hold the said post and consequently, monetary benefits due to him were withheld. Subsequently, it was proposed by the 1st Respondent University to proceed with the enquiry against the Petitioner.
- 9.Subsequent to the impugned memorandum, the Petitioner had also sent a reply dated 28.02.2020, denying the charges and another representation dated 05.10.2020, seeking to drop the charges and to pay the monetary benefits. The 1st Respondent, by letter dated, 31.12.2020, had appointed an Inquiring Authority. On 04.05.2021, the Petitioner had attended the enquiry through Video Conferencing.
- 10.The alleged irregularities were found during the period, in which the Petitioner was in charge of the recruitment process and the Petitioner had alone looked after the said recruitment process. Further, the Petitioner had also claimed service monetary benefits. As seen from the Articles of Charges, the charges are grievous in nature. Even during his tenure, the Petitioner was issued with a questionnaire, dated 23.05.2019, calling for explanation from him, regarding the irregularities said to have been committed by him, in the recruitment process to fill up the posts of Library Assistants in the 1st Respondent University and hence, it can be stated that even at this point of time, the enquiry had started to proceed against the Petitioner for such irregularities.
- 11.Because of the interim order of this Court, further proceedings could not be continued. When the charges are very serious in nature and since the Petitioner has also claimed monetary benefits, without deciding the charges, simply such monetary benefits cannot be granted. It is for the



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Petitioner to put forth his case before the 1st Respondent University and prove his case by valid evidence. If he succeeds in the enquiry, there will not be any impediment for the 1st Respondent University for granting the consequential monetary benefits. The decisions relied on by the learned counsel for the Petitioner cannot be made applicable to the case on hand, since the facts in those cases are different from that of the case on hand.

12. In fine, this Writ Petition is dismissed. No costs. Consequently, the connected MP is closed.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

Srcm

To

1. The Vice Chancellor (i/c),
Indian Maritime University,
East Coast Road, Uthandi, Chennai-19

+1cc to Mr. K. R. Tamizhmani, Advocate, S.R.No.69365

+1cc to Mr. Antony L. X. Selvam, Advocate, S.R.No.69466

WP.No.13286 of 2021

SMI (CO)

CT 25/01/2022