

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 16.03.2021

Coram:

THE HON'BLE MR.JUSTICE R.SUBBIAH
and
THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

Writ Appeal No.1593 of 2019
and
C.M.P.Nos.10897 and 10898 of 2019

Dr.C.R.Gladys Leema Rose .. Appellant
Vs.

1. The Vice-Chancellor Committee,
Bharathiar University,
Coimbatore-641 046.
2. The Registrar,
Bharathiar University,
Coimbatore-641 046. .. Respondents

Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 27.02.2019 passed by the learned Single Judge, in W.P.No.29220 of 2018 on the file of this Court.

PRAYER in WP.No. 29220 of 2018: - : Writ Petition filed under issuance of Writ of Certiorarified mandamus to call for the records pertaining to the Charge Memo vide Ref.No:BU/COE/2018 dated 12.04.2018 issued by the 2nd respondent against the Petitioner and quash the same and subsequently direct the respondents to regularise the petitioner's suspension period from 30.08.2015 to 11.10.2015 with all attendant benefits accrued at all, less the subsistence allowances paid to the Petitioner while on the suspension period.

For appellant : Mr.T.Mohan
for Mr. A. Suresh Sakthi Murugan
For respondents : Mr. L.P. Shanmugasundaram

JUDGMENT

(The Judgment of the Court was delivered by R.Subbiah,J)

This Writ Appeal is filed by the appellant aggrieved by the order of dismissal, dated 27.02.2019 passed by the learned Single Judge in W.P.No.29220 of 2018 filed by him.

2. The said Writ Petition was filed for issuance of a Writ of Certiorarified Mandamus to call for the records pertaining to the charge memo, dated 12.04.2018 issued by the second respondent, to quash the same and consequently to direct

the respondents to regularise the period of suspension from 30.08.2015 to 11.10.2015 with all accrued attendant benefits less the subsistence allowances paid to her during the period of suspension.

3. The facts, which led to the filing of the writ petition before this Court are required to be examined for disposal of this appeal.

4. The appellant/writ petitioner was appointed as Controller of Examinations for a period of three years in the respondents/University, vide proceedings dated 13.04.2015. She joined duty and assumed charge as Controller of Examinations in the respondents/University on the forenoon of 15.04.2015. After completion of her tenure period, the appellant/writ petitioner was relieved from the service of the respondents/University on 14.04.2018.

5. In the meantime, on 01.08.2015, as per the instructions of the then Registrar, the appellant/writ petitioner issued a Gate Pass to remove the old card boards and other paper thrash to be sent to an old paper buying merchant with the aid of a temporary employee. While so, on 27.08.2015, the appellant was directed by the second respondent-Registrar to attend an enquiry before an Enquiry Committee. The appellant also attended the enquiry and offered her explanation. However, without considering the explanation, pending enquiry, the appellant was placed under suspension on 30.08.2015 by the Vice-Chancellor of the respondents-University. Challenging the order of suspension, the appellant filed W.P. No. 30868 of 2015 inter alia to regularise the period of suspension. The said Writ Petition was partly allowed by this Court on 05.10.2015 by setting aside the suspension order with a direction to the respondents to reinstate the appellant/writ petitioner forthwith into service, with liberty to the respondents-University to proceed against the appellant/writ petitioner strictly in accordance with The Bharathiar University Act, 1981.

6. Pursuant to the said order of this Court, the appellant/writ petitioner gave a representation on 09.10.2015 to the second respondent-Registrar of the University seeking to reinstate her with effect from 30.08.2015. She was also permitted to join duty on 12.10.2015 without any written order. After joining duty, on 11.11.2015 and 12.11.2015, the appellant gave representations to the respondents seeking sanction of two increments as accorded by the Syndicate in the meeting held on 24.06.2015 and approved by the Vice-Chancellor's Committee on 11.11.2015 with re-fixation of pay. According to the appellant, even though the suspension order was revoked with effect from 08.10.2015, she ought to have been reinstated with effect from 30.08.2015 being the date of suspension order. Hence, she made representations on 09.05.2017 and 27.02.2018 seeking regularisation of the period of suspension and also for consequential monetary benefits due to revocation of suspension order.

7. In the meanwhile, the Enquiry Committee constituted

by the Vice-Chancellor of the respondent-University, submitted a detailed report, dated 04.01.2018. In the Minutes of the meeting held on 04.01.2018, it was concluded that the appellant/writ petitioner had to be reinstated from the date of suspension as directed by this Court. But, on the appellant/writ petitioner's representation for regularisation of the suspension order, the second respondent-Registrar of the University sought opinion from the Legal Officer of the University, who gave opinion on 21.09.2017 that the period of suspension had to be treated as duty period and the incumbent is entitled to receive the salary and other benefits, as applicable.

8. In the above circumstances, on 17.01.2018, the Finance Officer of the respondents-University sent an opinion to the second respondent that "after getting the concurrence of the Enquiry Committee, they shall proceed on the basis of the opinion of the Legal Officer's to treat the suspension period from 30.08.2015 to 11.10.2015 as duty period". Thereafter, the office of the second respondent circulated an Official Note to the then Vice-Chancellor based on the appellant/writ petitioner's request, the opinion of the Legal Officer and the Finance Officer and the same was approved by the then Vice-Chancellor. The second respondent was also directed to submit the said Official Note before the Syndicate. Thereafter, no order has been passed to regularise the suspension period. When the appellant caused an enquiry with respect to regularising the period of suspension, it was informed that there was no provision in the Bharathiar University Act, 1981 and the Bharathiar University Statutes for regularisation of suspension period.

9. In such circumstances, the appellant filed another Writ Petition in W.P.No.8647 of 2018 to direct the respondents-University to regularise her suspension period from 30.08.2015 to 11.10.2015 with all attendant benefits by adjusting the subsistence allowance paid to her while on the suspension period. This Court, by order dated 11.04.2018, disposed of the said Writ Petition by directing the respondents-University to conduct departmental disciplinary proceedings in all respects, by affording an opportunity of hearing to her and to pass orders on merits and in accordance with law, within a period of 12 weeks from the date of receipt of a copy of the order. Accordingly, departmental disciplinary action was initiated against the appellant/writ petitioner resulting in issuing the charge memo, dated 12.04.2018 for the following charges:

"Charge-I: Dr.C.R.Gladys Leema Rose while working as Controller of Examination, Bharathiar University, Coimbatore, being the competent authority to dispose old answer scripts, with the knowledge of Vice-Chancellor, have colluded with Thiru.Murugan, the proprietor of Murugan Waste Paper and sold 1,56,215 Kgs. of answer scripts at a lesser price of Rs.15/- per kg. to M/s.Murugan Waste Paper, without inviting a competitive tender

and in violation of syndicate resolution No.42, dated 08.03.2010. It was noticed that there was under weightment of cardboard boxes and old answer scripts bundle.

Charge-II: In the previous year, old answer scripts of the University were disposed of at Rs.21.50 per kg after inviting competitive tender. During the year 2015, 1,56,215 kgs. of old answer scripts were sold at Rs.15/- per kg instead of Rs.21.50 per kg to M/s.Murugan Waste Paper, R.K.G.Nagar, Kalveerampalayam, Coimbatore without inviting competitive tender thereby causing Rs.10,15,397 loss to the University."

10. Challenging the said charge memo, the present Writ Petition in W.P.No.29220 of 2018 is filed for the relief stated supra. The learned Judge by order dated 27.02.2019, dismissed the writ petition by relying upon the decision of the Supreme Court reported in 1994 (3) SCC 357 (Union of India and others Vs. Upendra Singh); 2012 (11) SCC 565 (Secretary, Ministry of Defence and others Vs. Prabhaskh Chandra Mirdha) and 2006 (12) SCC 58 (Union of India and another Vs. Kunishetty Satyanarayana) and gave liberty to the appellant/writ petitioner to submit her further explanation or objection with reference to the allegations set out in the charge memo, against which, the present Writ Appeal is filed by her.

11. Heard both sides and perused the materials available on record.

12. It is seen from the records that the appellant had received the impugned charge memo dated 12.04.2018, on the same day namely 12.04.2018. However, the appellant did not submit her explanation to the charge memo dated 12.04.2018 within 15 days. Therefore, by a communication dated 31.05.2018, the appellant was called upon to submit her explanation to the charge memo immediately. It is also seen from the records that the appellant, thereafter, submitted a letter dated 07.06.2018 seeking to furnish certain documents to submit her explanation. Accordingly, on 20.06.2018, the documents sought for by the appellant were also furnished to her. Further, on 28.06.2018, the appellant was also permitted to peruse certain documents in the office of the Registrar of Bharathiar University. Ultimately, on 04.07.2018, the appellant has submitted her statement of defence. Thereafter, the appellant has come forward with the present writ petition challenging the charge memo issued to her. Thus, it is evident that the appellant subjected herself to the departmental enquiry and the statement of defence submitted by her has to be considered by the respondent during the departmental enquiry. The learned Single Judge also dealt with the above aspects in detail and refused to interfere with the charge memo. In such view of the matter, we do not find any infirmity in the order under challenge in this Writ Appeal. Accordingly, the Writ Appeal is dismissed. As held by the learned single Judge, liberty is given to the appellant to give any further

explanation/objection with reference to the allegations set out in the charge memo. The respondents are also directed to proceed with the enquiry initiated against the appellant/writ petitioner and complete it within a period of three months from the date of receipt of a copy of this judgment. No costs. Consequently, C.M.Ps. are closed.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

cs

To

1. The Vice-Chancellor Committee,
Bharathiar University,
Coimbatore-641 046.
2. The Registrar,
Bharathiar University,
Coimbatore-641 046.

+1cc to Mr.A.Suresh Shakthi Murugan, Advocate, S.R.No. 17500

Writ Appeal No.1593 of 2019

JPL (CO)
GN (12/07/2021)

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