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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.03.2022

CORAM

THE HONOURABLE MR. JUSTICE S. VAIDYANATHAN
AND
THE HONOURABLE MR. JUSTICE MOHAMMED SHAFFIQ

W.A. Nos. 1541, 1543, 1547 & 1548 of 2021
&
C.M.P. Nos. 9727, 9706, 9710 & 9724 of 2021

R. Kanivannan	..Appellant in W.A. No. 1541 of 2021/Petitioner
P. Krishnaveni	..Appellant in W.A. No. 1543 of 2021/Petitioner
S. Senthilkumar	..Appellant in W.A. No. 1547 of 2021/Petitioner
C. Sakthivel	..Appellant in W.A. No. 1548 of 2021/Petitioner

Vs.

1. Periyar University,
rep. by its Registrar,
Periyar University,
Periyar Palgalai Nagar,
Salem 636 011.
2. The Vice Chancellor,
Periyar University,
Periyar Palgalai Nagar,
Salem 636 011.
3. The Registrar In charge,
Periyar University,
Periyar Palgalai Nagar,
Salem 636 011.
4. The Inquiry Officer,
Periyar University,
Periyar Palgalai Nagar,
Salem 636 011.

..Respondents in all the
Writ Appeals/ Respondents

Prayer: Writ Appeals as against the order dated 09.12.2020



passed in W.P. Nos. 17379, 17385, 17383 & 17374 of 2020 respectively.

Prayer: W.P. Nos. 17379, 17385, 17383 & 17374 of 2020

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Petitions filed under Article 226 of the Constitution of India, praying for the issue a Writ of Mandamus, directing the Respondents to pay the petitioner 75 percentage of his regular salary as subsistence allowance with effect from 29.04.2020 to permit him to take assistance of an advocate during the course of the entire enquiry and to complete the enquiry in a time bound manner and within a specified time as may be fixed by this Court by providing all the documents and by providing him fair reasonable and equal opportunity Award costs.

For Appellant in
all Writ Appeals :: Mr.V. Ajoy Khose
For Respondents
in all Writ Appeals :: Mr.Godson Swaminathan
for M/s. Isaac Chambers

C O M M O N J U D G M E N T

S. VAIDYANATHAN, J. AND MOHAMMED SHAFFIQ, J.

Assailing the order dated 09.12.2020 passed by the learned Single Judge, rejecting the prayer sought by the appellants/writ petitioners, the writ appeals have been filed.

2. The appellants/writ petitioners, who are employees of the respondent University were issued with a charge memo dated 03.10.2019 for certain misconduct violating the conduct rules applicable to the service conditions of employees and after receipt of their explanation, preliminary enquiry was conducted and they were placed under suspension on 29.10.2019. Though the appellants filed writ petitions before this Court to revoke the suspension orders and a direction was also issued by this Court in the said writ petitions to the University to review the suspension orders, however, the University directed the appellants to appear before the Enquiry Officer for enquiry on 06.02.2020. Since the appellants's representations seeking postponement of enquiry proceedings till a decision was taken on revocation of suspension orders based on the order passed by this Court, were not considered and their further request to engage a lawyer to defend themselves in the departmental proceedings was also kept pending, W.P. Nos. 17379, 17385, 17383 & 17374 of 2020 respectively were filed seeking a direction to the respondent University to permit them to engage a lawyer and to pay the subsistence allowance at the rate of 75% and also to conclude the enquiry expeditiously providing them the documents



and affording fair opportunity.

3. The learned Single Judge, after considering the submissions made by the learned counsel for the writ petitioners, was of the view that such an omnibus relief covering the entire gamut of domestic enquiry initiated by the University, is not maintainable and issuance of comprehensive directions as sought by the writ petitioners would amount to needless interference in the affairs of the respondent University and the University's right to deal with the employees as it deserves fit and proper. Observing so, the writ petitions came to be dismissed. Hence, the present writ appeals.

4. According to the learned counsel for the appellants, the learned Single Judge ought not to have rejected the request of the appellants for engaging a lawyer when the University had appointed a retired District Judge as Enquiry Officer and the University's representative in the enquiry was a practising lawyer. The reliefs sought by the appellants arise out of a single charge memo and the enquiry initiated pursuant thereto and it would not amount to multiple or omnibus prayer. When the statutes of the University provide for payment of subsistence allowance, the learned Single Judge ought to have considered the request of the appellants/writ petitioners for payment of subsistence allowance.

5. Heard the learned counsel for the respondents.

6. The sum and substance of the issue on hand is whether the rejection of the request of the appellants to engage the services of a lawyer to effectively represent their case in the domestic enquiry is sustainable when the University was represented in the domestic enquiry by a lawyer and the Enquiry Officer, who was appointed to conduct the enquiry was a retired District Judge.

7. During the course of hearing of the writ appeals, it is brought to the notice of this Court that pursuant to the interim orders of this Court dated 13.08.2021, the Management had withdrawn the Presenting Officer, who was a lawyer and permitted an employee/officer to represent the University in the Domestic Enquiry. In spite of the notice, the appellants did not appear, which resulted in an ex parte decision being taken and the appellants were asked to submit their reply to the second show cause notice issued with regard to the proposed punishment.

8. The learned counsel for the appellants would submit that the decision taken by the University to withdraw the Presenting Officer, who was a lawyer, was not properly communicated to them earlier and the request of the appellants



to the Enquiry Officer by letter dated 08.10.2021 to await further orders from this Court in order to vindicate their stand, was also not acceded to and the enquiry was proceeded with, ex parte, about which, according to the learned counsel, the appellants were not aware of and they were under the bona fide impression that the enquiry proceedings had been stalled based on their request. He would further contend that there was no notice from the University calling upon the appellants/writ petitioners to furnish their comments on the enquiry officer's report, but the proposed punishment had been mentioned and the final orders were sought to be passed.

9. In response, learned counsel appearing for the University would submit that no final decision has been taken and a copy of the enquiry report has been sent to the employees inviting their explanation to the Enquiry Officer's Report.

10 During the last hearing, this Court posed a suggestion as to why the matter shall not be given a quietus by proposing a lesser punishment for the misconduct said to have been committed by the writ petitioners.

11. Today, Mr. Godson Swaminathan, learned counsel for the University would submit that the University is willing to take a final decision and the misconduct, though appears to be minor in nature, is indeed a serious one, which is bound to have lots of repercussion and it will undermine the functioning of the University.

12. After considering the submissions made by either side, when this Court posed a question as to why not the Management and the Workmen be permitted to be represented by a lawyer in the domestic enquiry, learned counsel appearing for the respondent University submitted that they have no objection for both parties to have the assistance of a lawyer. Therefore, after traversing into the various contentions made by both parties to the writ appeal, we are inclined to modify the order of the learned Single Judge and permit both parties to be represented by a lawyer in the domestic enquiry and the proceedings conducted as of now shall stand recalled and from the stage where the employees were set ex parte, the domestic enquiry shall commence and parties shall be given an opportunity to put forth their defence before the Enquiry Officer. This Court makes it very clear that the parties are entitled to be represented by a lawyer and the enquiry shall be proceeded on day-to-day basis without adjourning the matter beyond 7 working days at any point of time. The employees are expected to co-operate for the enquiry and avoid facing one more ex parte decision that may be taken by the University. After the completion of the enquiry proceedings, the copy of the



proceedings shall be furnished to the appellants concerned. As, according to the University, serious misconduct has been committed by the employees, it is open to them to videograph the enquiry proceedings so that defects, if any pointed out by the employees, could be accounted for by the University at a later point of time. The evidence and pleadings, that have been drawn upto the stage of chief examination shall remain intact and it shall be handed over to the appellants for the purpose of enabling them to cross-examine.

13. The writ appeals are disposed of on the above terms. No costs. Connected C.M.Ps are closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

nv
To

1. The Registrar,
Periyar University,
Periyar University,
Periyar Palgalai Nagar,
Salem 636 011.
2. The Vice Chancellor,
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+1cc to Mr.V. Ajoy Khose, Advocate, S.R.No.17293

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1548 of 2021

SSD(CO)
CT 08/04/2022