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W.P.No.31184 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 23.11.2022

CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P.No.31184 of 2022
and W.M.P.Nos.30610 & 30611 of 2022

A.P. Mourougane

.. Petitioner

Vs.

1.Pondicherry University (A Central University),
Rep. by its Registrar i/c
Dr. B.R. Ambedkar Administrative Building,
R.V. Nagar, Kalapet,
Puducherry 605 014.

2.Officer on Special Duty (ADMN)
Pondicherry University,
Dr. B.R. Ambedkar Administrative Building,
R.V. Nagar, Kalapet,
Puducherry – 605 014.

3.Mr. S. Padmanaban,
(Retired Additional Sessions Judge),
Enquiry Officer,
No.128, T.S. Road,
Race Course,
Coimbatore – 641 018.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorarified Mandamus, calling for the concerned records from the third and second respondents, quash the Daily Order



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Sheet dated 04.11.2022 of the third respondent and the order of the second respondent dated 16.11.2022 bearing Ref. No.PU/ESTT/NT3/2022(18-1)/2022-23/222 are illegal, arbitrary and in violation of principles of natural justice and consequently direct the respondents to permit the petitioner to avail the assistance of legal practitioner in respect of the domestic enquiry conducted regarding the charge memo dated 05.07.2022 bearing Ref. No.PU/ESTT/NT3/2022-23/89 issued by the first respondent.

For Petitioner : Mr.Balan Haridas

For Respondents : Mr.ARL. Sundaresan,
Senior Advocate
for Mr.M. Ravi,
Standing Counsel

ORDER

This Writ petition has been filed challenging the orders dated 04.11.2022 and 16.11.2022, under which, the petitioner's request for engaging a legal practitioner to defend his case in the disciplinary proceedings, were rejected by the Enquiry Officer.

2. Heard the learned counsel for the petitioner. Mr.ARL. Sundaresan, learned Senior Advocate for Mr.M. Ravi, learned standing counsel, accepts notice on behalf of the respondents. By consent of both the parties, this Writ Petition is taken up for final disposal at the admission stage itself.



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3. The petitioner has raised the following grounds:

a) The petitioner was a Group 'D' employee and only recently, he got promoted as Junior Assistant. The petitioner has no exposure to the departmental enquiry and the procedure to be followed therein. The very Charge Memo is at the instance of the Vice Chancellor and therefore, none of the co-employee is willing to assist the petitioner in the enquiry, fearing that they may also face similar vindictive action. Only in such circumstances, the petitioner requested the Enquiry Officer to permit him to avail the assistance of a legal practitioner.

b) In the daily order sheet, the third respondent has rejected the request for availing the assistance of a legal practitioner. The order of the second respondent dated 16.11.2022, rejecting the request for availing assistance on the ground that it is not feasible for compliance as per Clause 9(8) of the Ordinances governing the control and appeal of the employees. The order of the Enquiry Officer is silent about the provision of Ordinance which bars the delinquent to engage a legal practitioner.

c) In the Ordinance governing the control and appeal of the employees of the University, there is no provision permitting the University to engage an outsider as an Enquiry Officer. In spite of that, the first respondent has



appointed the third respondent as the Enquiry Officer, who is a retired Senior District Judge. While so, the request of the petitioner to avail the assistance of a legal practitioner should have been considered on the basis of University engaging an outsider as an Enquiry Officer and on the said basis, the petitioner ought to have been given assistance of a legal practitioner to defend himself in the enquiry.

d) The third respondent being a senior most District Judge, has a vast legal acumen and experience. The Presenting Officer is the Assistant Registrar of the University, having good academic knowledge and administrative experience over all the issues. Thus, the petitioner is pitted against persons with rich experience and knowledge. The petitioner being a Group 'D' employee, who got promoted as Junior Assistant recently, will be no match to the Presenting Officer as well as to the Enquiry Officer and consequently, will not be able to defend himself.

e) The very transfer to Port Blair followed by suspension and charge sheet, is at the instance of the Vice Chancellor of the University and he had been made a party in the earlier four writ petitions in view of the malafides in the order of transfer, suspension and charge sheet. In such circumstances, the employees of the University are fearful to come forward to assist the petitioner in the enquiry, fearing that they will also face some consequence. This is yet



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another reason for seeking assistance of a legal practitioner.

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f) The entire action against the petitioner was vindictive and malafide and is initiated only to victimize him for pointing out a right provision of law, which does not permit revaluation of an answer sheet of a student, who had taken examination. As the action initiated itself is illegal and unjustified, facing an enquiry without any assistance, the petitioner will face further hardship in the enquiry. That apart, defending himself, will result in a tongue tied situation and the petitioner will be unable to defend himself effectively in the enquiry. Therefore, denial of legal assistance is in violation of principles of natural justice.

g) If the enquiry is allowed to be conducted in a hurried manner, the valuable right of hearing and participating in the enquiry to establish the innocence of the petitioner will become illusory. The action of the respondents in denying the assistance of a legal practitioner is in gross violation of principles of natural justice and wholly without jurisdiction.

4. The learned counsel for the petitioner drew the attention of this Court to the judgment of the Hon'ble Supreme Court in the case of '**Ramesh Chandra Vs. Delhi University and others**' reported in '**(2015) 5 SCC 549**' and would submit that the Hon'ble Supreme Court in the said judgment held that if any



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person who is or was a legal practitioner, including a retired Judge, is appointed as an Enquiry Officer in an enquiry initiated against an employee, the denial of assistance of a legal practitioner to the charged employee, would be unfair.

5. The learned counsel for the petitioner also drew the attention of this Court to the judgment of the Hon'ble Division Bench of this Court in the case of ***'Indian Airlines Corporation (Rep. by Regional Director) and another Vs. N. Sundaram'*** reported in ***'1992 – II L.L.N 811'*** and would submit that even in the said decision, an outsider was permitted to assist a delinquent.

6. The learned counsel for the petitioner further drew the attention of this Court to another judgment of the Hon'ble Division Bench of this Court dated 25.08.2014 passed in *W.P.No.2659 of 2014* in the case of ***'S. Jayavelu Vs. The Central Administrative Tribunal and others'*** and would submit that therein also, the Hon'ble Division Bench has held that even if there is a rule which prohibits the delinquent to engage the services of an outsider, the permission to engage a legal practitioner is a parameter absolutely within the domain of the Disciplinary Authority.



7. Therefore, according to the learned counsel for the petitioner, the petitioner's right to engage a legal practitioner has been defeated by the impugned orders.

8. Insofar as the first decision relied upon by the learned counsel for the petitioner namely '*Ramesh Chandra Vs. Delhi University and others*' as stated supra, is concerned, the facts of that case are different from the case on hand. In the case on hand, there are specific Rules framed by the University which prohibits the engagement of a legal practitioner in a disciplinary proceeding whereas, in the aforesaid decision relied upon by the learned counsel for the petitioner, the facts of that case is not similar to the one which is the subject matter of this writ petition as in that case, there were no specific Rules framed by the employer, prohibiting engagement of a legal practitioner in a disciplinary proceeding. Further, the Enquiry Officer in that decision, was the standing counsel for the employer before he got elevated as a Judge, whereas, in the instant case, the Enquiry Officer is a retired District Judge who was an employee and is an independent person. Therefore, the aforesaid decision relied upon by the learned counsel for the petitioner, has no bearing to the facts of the instant case.



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9. Insofar as the second judgment relied upon by the learned counsel for the petitioner namely ***'Indian Airlines Corporation (Rep. by Regional Director) and another Vs. N. Sundaram'*** as stated supra, is concerned, the same has also got no bearing to the facts of the instant case. As in that case, the question was whether an outsider can assist a delinquent in a disciplinary proceeding whereas, in the instant case, the question is whether a legal practitioner can assist a delinquent. A legal practitioner cannot be equated with an outsider who is not a legal practitioner. A legal practitioner is a skilled person in the field of law and any decision in the disciplinary proceeding is based on preponderance of probability where the Rules or Procedures and Evidence Act need not be strictly followed. Therefore, an outsider who is not a legal practitioner cannot be equated with a legal practitioner. The Rules framed by the respondent/University strictly prohibit engagement of a legal practitioner by a delinquent in a disciplinary proceeding.

10. Insofar as the third judgment relied upon by the learned counsel for the petitioner namely the unreported decision of the Hon'ble Division Bench of this Court dated 25.08.2014, as stated supra, is concerned, the same is also not applicable to the facts of the instant case, as it has been made clear in the said judgment in paragraph No.27 that the permission to engage a legal practitioner



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is a parameter absolutely vested within the domain of the Disciplinary Authority. In the instant case, based on the Rules framed by the employer (respondent University), the Enquiry Officer has rejected the petitioner's request to engage a legal practitioner in the disciplinary proceedings. He has exercised his discretion which cannot also be found to be unsound, as only in accordance with the Rules which prohibit engaging a legal practitioner, the Enquiry Officer has rejected the petitioner's request.

11. Initially, this Court was inclined to direct the respondents to file a counter but since the learned counsel for the petitioner insisted for grant of an order of interim stay of the impugned order and only in order to enable the petitioner to approach a Division Bench in case, he is aggrieved by the non-grant of the interim order, at the admission stage itself, this Court is constrained to dismiss this writ petition, as no *prima facie* case has been made out by the petitioner.

12. For the foregoing reasons, only on the ground that a *prima facie* case has not been made out by the petitioner for the grant of interim stay of the impugned order, at the admission stage itself, this Court is dismissing this writ petition.



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13. Accordingly, the Writ Petition stands dismissed. No costs.

Connected miscellaneous petitions are closed.

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Speaking/Non-speaking order

Index: Yes/No

Internet: Yes/No

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Note: Issue Order Copy today (23.11.2022)



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ABDUL QUDDHOSE,J.

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