



W.A.No.2642 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 08.12.2022

Coram:

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

Writ Appeal No.2642 of 2022
and
C.M.P.No.21196 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

Writ Appeal filed under Clause 15 of the Letters Patent, against the order dated 23.11.2022 passed in Writ Petition No.31184 of 2002 by the learned Single Judge of this Court.

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Writ Petition No.31184 of 2002 filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus to call for the concerned records from the third and second respondents, quash the Daily Order 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 appellant : Mr.Balan Haridas

For respondents: Mr.AR.L.Sundaresan, Senior Counsel for
Mr.M.Ravi

JUDGMENT

The appellant is the writ petitioner before this Court. Before the Writ Court, the appellant/writ petitioner has challenged the orders dated 04.11.2022 and 16.11.2022, whereby the request for engaging the legal practitioner to defend him in the disciplinary proceedings, was rejected.

2. For the sake of convenience, the parties are referred to as they are ranked in the Writ Court.

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3. The appellant/writ petitioner was an employee, who was promoted to the post of Junior Assistant. He has been faced with grave charges, for which, an enquiry has been initiated and that he has no exposure to the Departmental Enquiry. He further submitted that as no other co-employee has come forward to assist him and that charge memo has been issued at the instance of the Vice Chancellor, the appellant/writ petitioner made a representation to the Enquiry Officer to enable him to permit assistance in the enquiry. The appellant/writ petitioner also made a representation to the disciplinary authority for the same. The request for availing the assistance of a legal practitioner, was ultimately rejected by the third respondent on the ground that in terms of sub-clause (8) of Rule 9 of the Ordinance governing the control and appeal of the employees of the University (i.e.) Pondicherry University (Control and Appeal) Rules, permission to engage a Lawyer is a bar.

4. It is further contended that the Enquiry Officer being an outsider and that in the absence of the provisions in the aforesaid appeal Rules, the Enquiry Officer ought not to have been appointed for conducting the case, since the Presiding Officer is a legally trained person and the assistance of the legal practitioner to defend the petitioner in the enquiry, is not at all going to cause any harm.

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5. The District Judge/Enquiry Officer has got wide experience in the field of law and that the Assistant Registrar of the University who is the Presiding Officer, has good knowledge in his administrative experience and hence, it is the contention of the appellant/writ petitioner that it would be difficult for the appellant/writ petitioner to defend himself in the enquiry.

6. The petitioner is pitted against the respondents with whom there is no knowledge. He reiterated that issuance of charge-sheet was at the instance of the Vice Chancellor of the University. A co-employee was over the field to come and defend the appellant/writ petitioner in the enquiry and hence, he has no other option except to seek the assistance of an outsider, who is none other than a Lawyer.

7. The appellant/writ petitioner further submitted that during the pendency of the Writ Petition, enquiry has been conducted and P.Ws.1 and 2 have been examined and he could not cross-examine the witnesses and he has been set ex-parte.

8. Learned counsel for the appellant/writ petitioner drew the attention of this Court to various decisions of the Courts and contended that the assistance

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of a Lawyer can be given, even if there is an embargo in the disciplinary Rules applicable to the University.

9. The decision of the Apex Court relied on by the learned counsel for the appellant/writ petitioner, reported in 2015 (5) SCC 549 (Ramesh Chandra Vs. Delhi University) and a decision of a Division Bench of this Court reported in 1992 (2) LLN 811 (Indian Airlines Corporation Vs. N.Suindaram) are distinguishable on facts and the same are not applicable to the facts of the present case. In the above decision referred to by the learned counsel for the appellant/writ petitioner reported in 2015 (5) SCC 549, in which, the facts are quite different from the case on hand, the Apex Court held that even though there is no embargo, the principles of natural justice require that he should not have been engaged by the Management and conducting enquiry for satisfying the enquiry, as the Enquiry Officer, a retired Judge, was a lawyer for the Management. That is not the case here.

10. Admittedly, the appellant/writ petitioner had no personal bias or official bias against the Enquiry Officer.

11. The Ordinance (i.e. Rules stated supra), referred to by the learned counsel appearing for the appellant/writ petitioner does not have any provision

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for appointment of an Enquiry Officer and an outsider and it is only for the purpose of conducting a fair enquiry, if a person is aggrieved that the University has appointed an Enquiry Officer, certainly the aggrieved person can take a contention that an employee who is under the control of a Vice Chancellor cannot render justice to him and an outsider can be appointed.

12. The learned counsel for the petitioner cannot blow hot and cold and there is no prejudice/bias against the Enquiry Officer and that the charges framed against the appellant/writ petitioner are not grave in nature, and hence there is no requirement for a trained mind to defend the employee in the enquiry and even though it is for the Department to decide what kind of punishment has to be imposed in the enquiry proceedings, but it does not help to defend the petitioner in the enquiry

13. We are of the view that if the appellant/writ petitioner has no right to demand a person to be a legal representative or Lawyer or even an outsider, as a matter of right and hence, we find that the impugned order passed by the learned Single Judge, does not warrant any interference. Hence, we confirm the impugned order passed by the learned Single Judge. The prayer sought for by the appellant/writ petitioner in the Writ Petition, has been rightly rejected the learned Single Judge. Accordingly, the present Writ Appeal is dismissed. There

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shall be no order as to costs. Consequently, C.M.P. is closed.

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14. Since the appellant/writ petitioner has been set ex-parte, the learned Senior Counsel appearing for the respondent-University stated across the Bar that they are willing to give an opportunity to cross-examine the witness, provided the appellant/writ petitioner is willing to participate in the enquiry, and hence, we are of the view that the appellant/writ petitioner shall appear for the enquiry on 23.12.2022 at 11 am., on which day, he shall be permitted to cross-examine the witnesses, put-forth his defence witness, and if in any case the appellant/writ petitioner is not present in the Departmental enquiry, it is open to the University to proceed with the departmental enquiry in accordance with law. To avoid further protraction, the enquiry can be videographed, if required.

(S.V.N., J) (M.S.Q., J)
08.12.2022

Index: Yes
Speaking Order: Yes

CS

To

1. Pondicherry University,
(A Central University) Rep. by its
Registrar i/c,
Dr.B.R.Ambedkar Administrative Building,

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R.V.Nagar, Kalapet,
Puducherry-605 014.

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

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and

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MOHAMMED SHAFFIQ, J

CS

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