



WEB COPY

W.P.No.4561 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.11.2023

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THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P.No.4561 of 2020

and

W.M.P.Nos.5404 and 8491 of 2020

Dr.V.Joseph

... Petitioner

Vs.

1. The Secretary and Correspondent,
Loyola College, Nungambakkam,
Chennai – 600 034.

2. Rev.Dr.Francis P.Xavier,
Vice Chairman,
Loyola College Governing Body,
Chennai – 600 034.

3. The State of Tamil Nadu,
Rep. by its Secretary,
Education Department,
Fort St.George, Chennai – 600 009.

4. The Director of Collegiate Education,
9th Floor, EVK Sampath Building,
College Road, Chennai – 600 006.

5. The Regional Joint Director of Collegiate Education,
Office of the Regional Joint Director of College Education,
Institute of Advanced Study in Education Campus,
Saidapet, Chennai – 600 015.

... Respondents



Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records of the Impugned Notice dated 08.02.2020 issued by the 1st respondent and quash the same.

For Petitioner : Mr.Nithesh Natarajan
for Mr.Anirudh A Sriram

For R1 & R2 : Mr.Godson Swaminathan
for M/s. Isaac Chambers

For R3 to R5 : Mr.T.Chezhiyan,
Additional Government Pleader

ORDER

The writ petition has been filed against the impugned notice dated 08.02.2020 issued by the 1st respondent.

2. The learned counsel for the petitioner submitted that the petitioner was appointed as Physics Lecturer in the 1st respondent / College on 01.07.1991. On account of certain charges against the petitioner, one Mr.Pauldas (Retired Judge) was appointed as the Enquiry Officer to conduct enquiry, who in turn submitted his report on 03.04.2018. In the said report



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submitted by the Enquiry Officer, it was found that none of the findings have been proved against the petitioner. Subsequently, a show-cause notice dated 12.06.2018 was issued by the 1st respondent / College, disagreeing with the said findings submitted by the Enquiry Officer. Challenging the said show-cause notice dated 12.06.2018, the petitioner had filed a Writ Petition in W.P.No.16679 of 2018, in which the following order dated 08.03.2019 was passed:

“1. The learned counsel for the writ petitioner made a submission that the respondents Management may be permitted to issue a fresh Show Cause Notice setting out the reasons for the deviation of the findings of the Enquiry Report.

2. In view of the undertaking given by the learned counsel for the writ petitioner, the impugned show cause notice issued in proceedings dated 12.06.2018 is quashed. The respondents are at liberty to issue a fresh Show-Cause Notice setting out all the facts and circumstances and the reasons for deviating the Enquiry Report and communicate the same to the



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writ petitioner. The writ petitioner is at liberty to submit his objections / explanations in respect of the Show Cause Notice to be issued and only thereafter, the Competent Authority is empowered to consider the materials available on record, take a decision and pass final orders in the disciplinary proceedings.

3. With these directions, the Writ Petition stands partly allowed. No costs. Consequently, the connected miscellaneous petitions are also closed.”

3. Subsequent to the aforesaid order dated 08.03.2019, another show-cause notice dated 08.02.2020 was issued by the 1st respondent, calling upon the petitioner to submit his explanation. However, the said show-cause notice does not contain any particulars as to how the 1st respondent differ from the findings and conclusions arrived by the Enquiry Officer.

4. According to the learned counsel for the petitioner, the Dissent Note recorded by the Disciplinary Authority attached with the said



show-cause notice also does not contain any particulars as to why the 1st respondent has not chosen to accept the appreciation of the Enquiry Officer and it reproduces the evidence of the witnesses recorded by the Enquiry Officer. Subsequently, the petitioner had also retired from service.

5. The learned Additional Government Pleader appearing for the 3rd to 5th respondents submits that the merits of the show-cause notice cannot be gone into at this stage and the petitioner has to participate in the enquiry proceedings.

6. The learned counsel for the petitioner relied on the judgment of the Hon'ble Supreme Court of India in the case of the ***Union of India and others -vs- P.Gunasekaran*** reported in [(2015) 2 SCC 610]. The relevant portion of the judgment is extracted hereunder:-

“ 12. Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the disciplinary proceedings, reappreciating even the evidence before the enquiry



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officer. The finding on Charge I was accepted by the disciplinary authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under Articles 226/227 of the Constitution of India, shall not venture into reappreciation of the evidence. The High Court can only see whether:

- (a) the enquiry is held by a competent authority;*
- (b) the enquiry is held according to the procedure prescribed in that behalf;*
- (c) there is violation of the principles of natural justice in conducting the proceedings;*
- (d) the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;*
- (e) the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;*
- (f) the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;*
- (g) the disciplinary authority had erroneously failed to admit the admissible and material evidence;*



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(h) the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;

(i) the finding of fact is based on no evidence.

13. Under Article 226/227 of the Constitution of India, the High Court shall not:

(i) reappreciate the evidence;

(ii) interference with the conclusions in the enquiry, in case the same has been conducted in accordance with law;

(iii) go into the adequacy of the evidence;

(iv) go into the reliability of the evidence;

(v) interference, if there be some legal evidence on which the findings can be based;

(vi) correct the error of fact however grave it may appear to be;

(vii) go into the proportionality of punishment unless it shocks its conscience.”

7. However, the above judgment relates to the disciplinary proceedings that had already been initiated. But in the instant case, it is only in the initial stage of issuing a show-cause notice. The petitioner's



endeavour is to appreciate the Dissent Note of the 1st respondent in not choosing to sail along with the enquiry report, despite he was allowed to retire from service vide order dated 31.07.2022 and it has been specifically stated as follows:

“ Now, therefore, you are relieved from service on afternoon of 31st July 2022, subject to and without prejudice to the above disciplinary proceedings, and as such you are required to co-operate in the said disciplinary proceedings, and the settlement of your terminal benefits would depend upon the final outcome of the said disciplinary proceedings.

However, you would be entitled to receive the provisional pension as may be sanctioned and disbursed by the Principal Accountant General, Tamil Nadu, Chennai, which payment again would be subject to and without prejudice to the above disciplinary proceedings.”

8. Even in the opinion of the petitioner, the Dissent Note is not considered and he has been given with an opportunity to submit his explanation and the petitioner can very well exhaust the same by way of



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submitting his explanation. On receiving the same, the 1st respondent shall consider the explanation submitted by the petitioner in the light of the existing situation, where the petitioner had already retired and also the permission given by the respondents to the petitioner to travel abroad. However, in the said permission, it has been observed that there was no disciplinary proceedings pending as against the petitioner and it appears that the 1st respondent also did not have any grudge against the petitioner. Hence, if the petitioner himself puts forth his explanation to the 1st respondent, the same shall be considered in accordance with its own merits within a period of four weeks from the date of receiving the explanation submitted by the petitioner.

9. Accordingly, the Writ Petition stands disposed of. Consequently, the connected Miscellaneous Petition is closed. No costs.

17.11.2023

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Index : Yes / No

Speaking order / Non-speaking order

Neutral Citation : Yes / No



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R.N.MANJULA, J.

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