



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.12.2023

CORAM

THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P.No.5597 of 2020
and
W.M.P.No.6552 of 2020

M.Mercina

... Petitioner

Vs.

1. The Secretary and Correspondent,
Loyola College, Nungambakkam,
Chennai – 600 034.
2. Rev.Fr.Provincial,
Madurai Jesuit Province,
Governing Body Chairman of Loyola College,
St. Mary's Residence, P.Box No.6,
Dindingul 624 001.
3. The University of Madras,
Rep. By its Registrar,
University Centenary Building,
Chepauk, Chennai-600 005.

... 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 Show Cause Notice dated 08.02.2020 on the file of the 1st respondent and quash the same.



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For Petitioner : M/s.K.Aparna Devi
For respondents : Mr.Godson Swaminathan
for M/s. Isaac Chambers for RR1 & 2
: Mr.A.S.Vijayaragavan
standing counsel for R3

ORDER

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

2.Heard M/s.K.Aparna Devi, learned counsel for the petitioner and Mr.Godson Swaminathan for M/s. Isaac Chambers, learned counsel for the respondents 1 & 2 and Mr.A.S.Vijayaragavan, learned counsel for the 3rd respondent and perused the materials available on record.

“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.

3. M/s.K.Aparna Devi, the learned counsel for the petitioner submitted that the petitioner was appointed as Physics Lecturer in the 1st respondent /



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College on 04.06.2006. On 07.12.2017, the petitioner was issued with a suspension order by the 1st respondent. 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 her report on 03.04.2018. In the said report submitted by the Enquiry Officer, it was found that none of the charges have been proved against the petitioner. Subsequently, the impugned show-cause notice dated 12.06.2018 was issued by the 1st respondent / College for disagreeing the findings of the Enquiry Officer. On 06.07.2018 the petitioner sent a reply to the notice.

4. Considering the request letter submitted by the petitioner on 11.07.2018, the 1st respondent revoked the suspension order. The 1st respondent's impugned show-cause notice dated 12.06.2018 was challenged by a similarly placed person by filing a Writ Petition in W.P.No.16679 of 2018 and in which the following order dated 08.03.2019 has been 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



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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 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.”

5. Subsequent to the aforesaid order dated 08.03.2019, another



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show-cause notice dated 08.02.2020 was issued by the 1st respondent, calling upon the petitioner to submit her explanation. However, the said show-cause notice does not contain any particulars as to the reasons why the 1st respondent differs from the findings and conclusions arrived by the Enquiry Officer.

6. The learned counsel for the petitioner submitted that 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 report. The petitioner had also retired from service, subsequently.

7. Mr.A.S.Vijayaragavan, learned standing counsel appearing for the 3rd respondent submitted that at this stage, the merits of the show-cause notice cannot be gone into and the petitioner has to participate in the enquiry proceedings.

8. 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 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;*



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(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;

(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;



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

9. 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 make the 1st respondent to appreciate the merits of the enquiry report, which has findings that charges against the petitioner was not proved and then pass an order.

10. The Writ Petition stands **disposed** of by giving liberty to the petitioner to submit her explanation to the 1st respondent and on receipt of the same the 1st respondent shall consider the same in accordance with its own merits and pass an order within a period of four weeks from the date of receiving the explanation of the petitioner. No costs. Consequently, the connected Miscellaneous Petition is closed.

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jrs

Index : Yes / No

Speaking order / Non-speaking order

Neutral Citation : Yes / No



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