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W.P.No.20528 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14..07..2023

Coram

THE HON'BLE MR JUSTICE N.SATHISH KUMAR

Writ Petition No.20528 of 2023

and

W.M.P.Nos.19917, 19918 & 1919 of 2023

B.Lakshmipathi

..... Petitioner

-Versus-

1.The Registrar,
Anna University,
Chennai.

2.The Dean,
University College of Engineering Kancheepuram,
Kancheepuram.

..... Respondents

Petition filed under Article 226 of The Constitution of India, praying to issue a Writ of Certiorari calling for the records of the 1st respondent in its Syndicate Res.No.267.13 dated 20.04.2023 resolving to impose a punishment of Compulsory Retirement to the Petitioner and to recover financial loss of Rs.15,76,587/- from the petitioner and consequential show cause notice of the 1st respondent in Memo.No.AU/UCE-KPM/CFL/2023 dated 30.06.2023 and to quash the same as being illegal and unsustainable in law.

For Petitioner : *Mrs.N.Kavitha Rameshwar*

For Respondents : *Mr.Avinash Wadhawani*
for RR1 and 2



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ORDER

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This writ petition challenges the resolution of the Syndicate of the Anna University in Res.No.267.13 dated 20.04.2023 whereby it has been resolved to impose a punishment of Compulsory Retirement to the Petitioner and to recover financial loss of Rs.15,76,587/- from the petitioner and the consequential show cause notice of the 1st respondent in Memo.No.AU/UCE-KPM/CFL/2023 dated 30.06.2023.

2. The petitioner was appointed as a Lecturer in Computer Science and Engineering Department in Government College of Technology, Anna University, Coimbatore on 05.08.2008. His probation was declared on 22.01.2021 w.e.f. 18.08.2010. Thereafter, he was transferred from Coimbatore to University College of Engineering, Kanchipuram through proceedings dated 10.06.2014. He has been working as Assistant Professor at the 2nd respondent college.

3. While so, he was placed under suspension by proceedings dated 31.10.2018. Thereafter, he was issued with charge memoranda dated 11.11.2019 and on 05.08.2021 levelling the charges of misappropriation and transferring the funds to his own account. Thereafter, enquiry was conducted and the enquiry officer submitted his report holding that charges against the



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petitioner have been proved. At that stage, for imposition of penalty, the impugned notice has been issued.

4. The impugned resolution and the consequential show cause notice have been challenged mainly on the ground that a copy of the enquiry report has not been furnished to the petitioner and without obtaining an explanation from petitioner on the enquiry report, the disciplinary authority predetermined to impose a major penalty of compulsory retirement and to recover the amount from the petitioner.

5. Heard both sides.

6. Mrs.N.Kavitha Rameshwar, learned counsel for the petitioner would submit that the only grievance against the impugned resolution and the show cause notice is that the authorities have predetermined the punishment and without even serving a copy of the enquiry report, the syndicate has passed such a resolution to impose a major penalty of compulsory retirement. This is, according to her, fundamentally illegal, and before resorting to impose any punishment, a copy of the enquiry report should be furnished to the delinquent and the delinquent should be given an opportunity to submit his explanation to the report. In the case on hand, the said mandatory procedures have been violated and the authorities have predetermined the punishment to be imposed



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in the show cause notice itself which is ex facie illegal and liable to be set aside.

7. Per contra, Mr.Avinash Wadhwani, learned counsel for the respondents 1 and 2 would contend that impugned notice has been issued as per the procedure contemplated under Clause 4(1) (a) & (b) of the Anna University Statutes on Disciplinary Procedure.

8. I have considered the rival submissions carefully and also perused the entire materials placed before the court.

9. The short point that arises for consideration is, whether the impugned resolution of the syndicate and the consequential show cause notice could be sustained in law?

10. The issue, whether non-supply of a copy of inquiry report to delinquent officer at pre-decision stage violates the principle of natural justice is well-settled in a catena of decisions.

11. In **Managing Director, ECIL, Hyderabad v. B.Karunakar and others [(1993) 4 SCC 727]**, the Supreme Court has held that an inquiry report in a disciplinary proceeding is required to be furnished to the delinquent employee so that he can make an adequate representation explaining his own stand. In para 29, the Supreme Court has held as under:



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“29. Hence it has to be held that when the Inquiry Officer is not the disciplinary authority, the delinquent employee has right to receive a copy of the inquiry Officer's report before the disciplinary authority arrives at its conclusions with regard to the guilt or innocence of the employee with regard to the charges levelled against him. That right is a part of the employee's right to defend himself against the charges levelled against him. A denial of the Inquiry Officer's report before the disciplinary authority takes its decision on the charges is a denial of reasonable opportunity to the employee to prove his innocence and is a breach of the principles of natural justice.”

12. The relevant rule relied upon by the respondents is of the year 1980. Since the law has been settled by the Constitution Bench, the rule which has been in vogue prior to that cannot be applied and as per the dictum of the Supreme Court, it is mandatory on the part of the disciplinary authority to serve a copy of the enquiry report to the petitioner before the disciplinary authority takes any decision on the finding of the enquiry officer calling upon him to submit his explanation for the enquiry report. Admittedly, copy of the enquiry report was not furnished to the petitioner. Non supply of copy of the enquiry report in the instant case, in the considered opinion of this court, would amount



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to denial of reasonable opportunity to the delinquent to explain his own stand.

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13. At this juncture, the learned counsel for the petitioner submitted that now a copy of the enquiry report has been furnished to the petitioner.

14. Admittedly, the resolution of the syndicate which was the basis for issuance of the second show cause notice reflects that the syndicate has predetermined the punishment to be imposed on the petitioner. Thus, it requires interference at the hands of this court. Consequently, the impugned show cause notice is also liable to be set aside. Therefore, both the resolution of the syndicate and the show cause notice impugned in the writ petition are liable to be quashed and the matter is remitted to the disciplinary authority to proceed with the disciplinary proceedings afresh from the stage of issuing show cause notice.

In the result, this writ petition is allowed. The impugned resolution of the syndicate of Anna University and the show cause notice are set aside. The 1st respondent is directed to give a fresh show cause notice to the petitioner within a period of one week from the date of receipt of a copy of this order calling upon him to submit his further explanation on the enquiry report in ten days. Thereafter, if any explanation is submitted by the petitioner within the stipulated time, the respondents shall place the same before the syndicate for



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taking appropriate decision in the matter. If no such explanation is submitted by the petitioner within the stipulated time, it is open to the disciplinary authority to place the matter before the syndicate and thereafter take a decision on imposition of punishment. It is made clear that the disciplinary authority will have to continue the disciplinary proceedings from the stage of issuing show cause notice calling upon the petitioner to submit his explanation for the enquiry report. No costs. Consequently connected MPS are closed.

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Index : yes / no
Neutral Citation : yes
Speaking / Non Speaking Order
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To

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Chennai.
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N.SATHISH KUMAR.J.,
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