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W.P.No.31455 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 07..07..2023

Orders Pronounced on : 27..07..2023

Coram

THE HON'BLE MR JUSTICE N.SATHISH KUMAR

Writ Petition No.31455 of 2022

and

W.M.P.Nos.30911, 30913 and 30914 of 2022

Dr.L.Ramesh

..... Petitioner

-Versus-

1.The Chancellor / Appellate Authority,
Bharathiar University,
Coimbatore,
Rep. by The Deputy Secretary to Governor (Universities),
Raj Bhavan, Guindy,
Chennai 600 022.

2.The Vice- Chancellor / Disciplinary Authority,
Bharathiar University,
Coimbatore – 641 046.

3.The Registrar,
Bharathiar University,
Coimbatore – 641 046.

..... Respondents

Petition filed under Article 226 of The Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the entire records leading to the award of punishment of Compulsory Retirement against the petitioner in



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Proceedings No.BU/Dr.L.Ramesh/CRS Order/2021 dated 20.01.2021 on the file of the 3rd respondent, Registrar, Bharathiar University, Coimbatore, as confirmed in Appeal by the 1st respondent Chancellor / Appellate Authority, Bharathiar University, Coimbatore, in his proceedings dated 30.10.2022 along with covering Letter No.1881/U1/2021 dated 04.11.2022 Deputy Secretary to Governor (Universities) and to quash the same and direct the respondents 1 to 3 herein to restore the petitioner back to service as Principal Bharathiar University Arts and Science College, Valparai, with effect from 30.04.2019 along with entire back wages and arrears of pay and all other attendant benefits.

For Petitioner : *Mr.K.Sridhar*

For Respondents : *Mr.C.Vigneshwaran*
for RRI to 3

ORDER

This writ petition has been filed challenging the punishment of Compulsory Retirement imposed by the 3rd respondent by his proceedings No.BU/Dr.L.Ramesh/CRS Order/2021 dated 20.01.2021 on the file of the 3rd respondent, Registrar, Bharathiar University, Coimbatore against the petitioner as confirmed in Appeal by the 1st respondent Chancellor / Appellate Authority, Bharathiar University, Coimbatore, in his proceedings dated 30.10.2022 seeking consequential relief of reinstatement of the petitioner in service as Principal, Bharathiar University Arts and Science College, Valparai, with effect from 30.04.2019 with continuity of service, back wages and arrears of pay and



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all other attendant benefits. The petitioner was appointed as Lecturer (Assistant Professor) Commerce in Bharathiar University (hereinafter called as University) and joined duty on 30.01.2009. He was made permanent Principal in the Bharathiar University Arts and Science College, Valparai and joined on 24.06.2015.

2. While so, the 3rd respondent University notified a Walk-in-Interview for filling up the posts of Assistant Professor on temporary basis and Non Teaching staff on consolidated pay for 3 constituent colleges of the University. The interview was held on 21.07.2016. He was one of the members of the interview committee. Based on the report of the interview committee, totally 33 candidates were selected by the 3rd respondent -Registrar of the University vide his proceedings dated 22.07.2016 for filling up the above posts in the 3 affiliated colleges. The petitioner received the proceedings by hand from the 3rd respondent. There was no further instruction on the matter from the University. However, the petitioner on his own volition informed the candidates over mobile and requested them to join duty. There was no individual appointment order issued to any of the selected candidates. There were 8 candidates including B.Thennarasi selected for Gudalur College. Insofar as B.Thennarasi is concerned, he could not contact her over mobile phone. However, the petitioner



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communicated her selection to her husband Dr.Karikalan, Assistant Professor, working in the same college. When Dr.Karikalan wanted time for his wife to join, the petitioner informed him to he could not help him in the matter and requested him to approach the Registrar of the University. However, B.Thennarasi joined duty as Temporary Assistant Professor on 17.02.2017. Subsequently, he came to know that the husband of B.Thennarasi made a complaint against the petitioner alleging that he had not allowed his wife to join duty. The 3rd respondent constituted a three-member committee to inquire into the complaint of the husband of B.Thennarasi. The petitioner submitted his explanation to the allegations made against him. Upon enquiry, the committee held that Dr.Karikalan substantiated his allegations and directed a disciplinary action to be initiated under Rule 17(b) of the Tamil Nadu Government Servant Conduct Rules. The petitioner submitted his written explanation to the charges on 30.05.2017. Not satisfied with such explanation, the committee issued a charge memo levelling two charges under Rule 17(b) (3) of The Tamil Nadu Civil Services (Discipline and Appeal) Rules. The charges are (i) that the said duty of the Principal Dr.L.Ramesh to inform the selection of Dr.B.Thennarasi as Assistant Professor (Consolidated pay) directly to her who attended the walk in interview held on 21.07.2016; and (ii) Dr.L.Ramesh Principal has not



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informed to the University Authorities that Dr.B.Thennarasi who was selected as Assistant Professor (Consolidated Pay) has not joined duty at BUASC, Gudalur.

3. The University constituted a One Man Inquiry Committee and appointed one Mr.R.Vinoth Kumar, a retired Under Secretary, Government of Tamil Nadu, as inquiry officer. By letter of the University dated 18.09.2017, the petitioner was requested to appear before the inquiry committee on 25.09.2017 at 10.30 a.m. for inquiry. The University did not appoint a Presenting Officer to present the case of the University. Neither oral nor documentary evidence was let in by the University. The inquiry officer was biased against the petitioner as he assumed the dual role of presenting officer/prosecutor and judge. Ultimately, the inquiry officer had given a finding holding that the charges were proved against the petitioner and on the basis of the inquiry report, the 3rd respondent imposed a punishment of compulsory retirement against the petitioner. Challenging the above said order of the 3rd respondent, the petitioner filed a writ petition in W.P.No.3252 of 2020. The main ground of attack was that when there was no criminal case registered against the petitioner and as such no question of any conviction against the petitioner for the criminal charges and whereas the impugned order of punishment had a



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reference as if he was imposed with the severe punishment on the basis of his conviction by a criminal court under the Prevention of Corruption Act. This court by order dated 09.10.2020 was pleased to set aside the impugned proceedings, however, considering the fact that charges had been proved, permitted the University to proceed against the petitioner afresh from the stage of imposition of penalty by once again calling the explanation from the petitioner after following the due process of law. This court had also given liberty to the University to take further or other action as it deemed fit after taking note of the objections raised by the petitioner to the proposed action of the university.

4. Pursuant to the order of this Court, the 3rd respondent again imposed a punishment of compulsory retirement against the petitioner for the proven charges under Rule 17(b)(3). According to the petitioner, the inquiry was conducted against the very provision of the statute and in violation of the order of this court in W.P.No.3252 of 2020 dated 09.10.2020. The petitioner is a permanent employee of the university and thus, neither the provisions of Rule 17(b)(3) of the Tamil Nadu Civil Service (Discipline and Appeal) Rules nor the provisions of the Tamil Nadu Government Servant Conduct Rules, 1973 are applicable. Special Rules under The Bharathiar University Statutes (Volume-II)



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Statute 4 Discipline and Control and Statute 15 of The Bharathiar University

Employees Conduct alone will apply to him. Punishment of compulsory retirement is not one of the punishments under the University Discipline and Control Rules. Therefore, the inquiry and punishment of compulsory retirement are vitiated. There is violation of principles of natural justice as the inquiry officer played dual role of the prosecuting officer and judge and submitted a report as if charges were proved without any basis. Imposition of a punishment with retrospective effect is illegal and against the settled law. Aggrieved by the order of the 3rd respondent, the petitioner preferred an appeal to the 1st respondent. The 1st respondent did not at all consider any of the grounds raised in the appeal with regard to applicability of rules governing the disciplinary action to the petitioner and the way in which the inquiry officer proceeded against him in the enquiry by assuming dual role of presenting officer and judge. Hence, the writ petition.

5. The 3rd respondent filed his counter denying the allegations made in support of the writ petition and inter alia contending that Vice Chancellor is not a necessary party to the writ petition and punishment of compulsory retirement was imposed for the proved charges and it does not require any interference at the hands of this court.



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6. I have heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondents 1 to 3.

7. The learned counsel for the petitioner mainly contended that imposition of punishment of compulsory retirement has not been contemplated in the Bharathiar University Disciplinary Rules. The way in which the inquiry officer proceeded in the inquiry by assuming dual role of presenting officer and prosecuting officer would show that inquiry officer was biased against the petitioner. That apart, according to the learned counsel, there is evidence to prove the charges and when the finding of fact is based on no evidence, the charges must necessarily go.

8. The learned counsel for the petitioner further submitted that the appellate authority has not at all considered the appeal preferred by the petitioner and has simply confirmed the finding of the 3rd respondent.

9. The learned counsel for the respondents on the other hand vehemently contended that opportunities had been given to the petitioner and there is no bar under the law for the enquiry officer to put a leading question to the prosecution witnesses. Therefore, merely because the inquiry officer had put certain questions to the witnesses, it cannot be held that the inquiry officer was



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biased against the petitioner. The finding was based on proper appreciation of evidence and for the proved charges the punishment of compulsory retirement was imposed and the same cannot be said to be disproportionate. This court under Article 226 of the Constitution of India cannot ordinarily re-appreciate the evidence to arrive at its own conclusion in respect of the penalty imposed unless and until the punishment imposed is so disproportionate to the charges. Therefore, according to the learned counsel for the petitioner, the order of the 3rd respondent as confirmed the 1st respondent does not require any interference at the hands of this court.

10. I have considered the rival submissions and also perused the records carefully.

11. This is second round of litigation. Earlier, on the same set of charges and based on the very same inquiry report, the 3rd respondent by his proceedings dated 30.04.2019 imposed a punishment of compulsory retirement against the petitioner. That order of penalty was put under challenge by the petitioner before this court in W.P.No.3252 of 2020. This court by order dated 09.10.2020 allowed the said writ petition, set aside the impugned order only with respect to punishment and remitted the matter to the 3rd respondent. While remitting the matter, this court had specifically directed the 3rd respondent to



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proceed against the petitioner afresh from the stage of imposition of penalty by once again calling for the petitioner's explanation after following the due process of law. The relevant paragraphs of the order read as under:-

“10. In the above said circumstances, the basis of the impugned order of penalty cannot held to be illegal, as the penalty was premised on correct understanding of the departmental action taken against the petitioner and conclusion of the same against the petitioner. However, when the same was communicated to the petitioner, unfortunately, the proceedings disclosed as if the petitioner was imposed with the impugned penalty on the basis of his conviction by the Criminal Court under the provisions of Prevention of Corruption Act. Therefore, this Court for the present, is not inclined go behind the impugned order and hold it illegal and in that circumstances, this Court is constrained to set aside the impugned proceedings as conveyed by the third respondent. However, considering the serious allegations made against the petitioner which allegations were said to have been proved by the University, it is open to the University to proceed against the petitioner afresh from the stage of imposition of penalty by once again calling for the petitioner's explanation



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after following the due process of law.

11. The petitioner may be given an opportunity to furnish his explanation once again and the University is at liberty to take further or other action as it deems fit after taking note of the objections to be raised by the petitioner to the proposed action of the University. In this regard, the respondent University is directed to issue notice to the petitioner and give him reasonable time and on taking his factual and legal objections, the University can proceed further and pass appropriate orders as expeditiously as possible.”

12. On remand, after following the due procedures and the directions of this court, the 3rd respondent again resorted to impose punishment of compulsory retirement against the petitioner by order dated 20.01.2021. On appeal, the order of the 3rd respondent came to be confirmed by the 1st respondent by his order dated 30.10.2022. Aggrieved by the punishment of compulsory retirement imposed against the petitioner, he is again before the court by way of the present writ petition.

13. Indisputably, an Enquiry Officer is an agent of the Disciplinary Authority on a fact finding mission. He is more or less like a judge or what may be called, “Quasi Judicial Tribunal”. He is expected to conduct the enquiry in



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an impartial, unbiased, fair way with open mind. He should not take the role of the Presenting Officer or Defence Representative. He need not follow rules or procedures of courts or apply the provisions of Evidence Act or any other law. If the delinquent employee objects to the enquiry officer conducting the enquiry on the ground that the enquiry officer has a prejudice or bias against him, the enquiry officer should refer the matter to the disciplinary authority, before conducting the enquiry. This court would have considered the issues, whether the Enquiry Officer was biased, was there any illegality or irregularity committed by the Enquiry Officer in conducting the enquiry, and whether the finding of the enquiry officer was based on no evidence, but for the order of this court in W.P.No.3252 of 2020 dated 09.10.2020.

14. Neither the petitioner nor the respondents filed any appeal against the order of this court in W.P.No.3252 of 2020 dated 09.10.2020 and the said order of this court has become final.

15. In the above factual and legal position in the matter, this court can only to see whether the punishment of compulsory retirement is legally sustainable and such a punishment is really warranted for the proved charges?

16. It was brought to the notice of this court that punishment of compulsory retirement has not at all been prescribed under the Service



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Condition of the Establishment.

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17. Statute 14 of the Service Statutes of the Establishment under the Bharathiar University deals with Discipline and Control which reads as follows:-

“Statute 14: DISCIPLINE AND CONTROL

1. Causes for imposing penalties — An employee of the University for good and sufficient reasons, including any breach of any of the statutes and laws of the University or nerrgence, inefficiency, insubordination or failure to show due diligence and attention in the discharge of his duties or failure to conform to the instructions of his superiors or any irregularities in the discharge of his duties or any criminal offence involving moral turpitude, shall be liable for the following penalties.

2. Kinds of penalties — The following penalties may be imposed on a University employee namely,

(1) Minor Penalties

(a) Censure

(b) Stoppage of increment with or without cumulative effect,

(c) Fine not exceeding Rs. 10, at a time in the case of employees of Class

(2) Major Penalties



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- (a) Any period of suspension pending enquiry which shall be treated as a substantive punishment either the whole or part of the period.
- (b) Reduction to a lower stage of pay or to a lower category of the University Service.
- (c) Removal or dismissal from the service.

18. The learned counsel for the respondents was not able to justify his stand that the disciplinary authority was right in imposing the punishment of compulsory retirement against the petitioner on the basis of the findings in the enquiry report.

19. Therefore, the question that has to be decided is whether the disciplinary authority can impose a punishment not prescribed under the statutory rules on the basis of the findings in the enquiry report. The fact that the punishment of compulsory retirement awarded against the petitioner by the 3rd respondent was not prescribed under the relevant rules. The contention of the petitioner is that when punishment was awarded without jurisdiction, the impugned order is liable to be quashed. It is the settled law that as a result of disciplinary proceedings punishment not prescribed under the rules cannot be awarded. But that will no way help the petitioner to contend that the entire enquiry proceeding is liable to be quashed. In the instant case, admittedly, the



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disciplinary authority has no jurisdiction to impose the punishment of compulsory retirement against the petitioner for the proved charges.

20. The charges are not so serious warranting such a major penalty of compulsory retirement. The sum and substance of the charges is that the petitioner had failed to discharge his duty as Principal to inform the selection of Dr.B.Thennarasi as Assistant Professor on consolidated pay directly to her who attended the walk-in-interview held on 21.07.2016 and that as Principal, the petitioner had not informed to the University authorities that Dr.B.Thennarasi who was selected as Assistant Professor on consolidated pay had not joined duty at Bharathiar University Arts and Science College, Gudalur.

21. This court is conscious of the parameters within which this court has to exercise its powers under Article 226 of the Constitution of India. The writ court could not venture into re-appreciation of the evidence while sitting in writ jurisdiction under Article 226 of the Constitution of India. The settled position of law that in exercise of powers under Article 226 of the Constitution, it 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



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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; (h) the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding; and (i) the finding of fact is based on no evidence. Further, this is court cannot (i) re-appreciate the evidence; (ii) interfere 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) interfere, if there be some legal evidence on which findings can be based; (vi) correct the error of fact however grave it may appear to be; and (vii) go into the proportionality of punishment unless it shocks its conscience.” [vide **Union of India v. P.Gunasekaran (2015) 2 SCC 610**].

22. In **Union of India v. Ex. Constable Ram Karan, (2022) 1 SCC 373**, the Supreme Court has held as under:-

“24. Even in cases where the punishment imposed by the disciplinary authority is found to be shocking to the conscience of the court, normally the disciplinary



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authority or the appellate authority should be directed to reconsider the question of imposition of penalty. The scope of judicial review on the quantum of punishment is available but with a limited scope. It is only when the penalty imposed appears to be shockingly disproportionate to the nature of misconduct that the courts would frown upon. Even in such a case, after setting aside the penalty order, it is to be left to the disciplinary/appellate authority to take a call and it is not for the court to substitute its decision by prescribing the quantum of punishment. However, it is only in rare and exceptional cases where the court might to shorten the litigation may think of substituting its own view as to the quantum of punishment in place of punishment awarded by the competent authority that too after assigning cogent reasons.”

23. In **Union of India v. Subrata Nath (2022 LiveLaw (SC) 998**, the Supreme Court applying the law laid down in P.Gunasekaran's case (supra) in para 22 has held as under:-

“22. To sum up the legal position, being fact finding authorities, both the Disciplinary Authority and the Appellate Authority are vested with the exclusive power to examine the evidence forming part of the inquiry report. On finding the evidence to be adequate and reliable during the departmental inquiry, the Disciplinary Authority has the discretion to impose



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appropriate punishment on the delinquent employee keeping in mind the gravity of the misconduct. However, in exercise of powers of judicial review, the High Court or for that matter, the Tribunal cannot ordinarily reappreciate the evidence to arrive at its own conclusion in respect of the penalty imposed unless and until the punishment imposed is so disproportionate to the offence that it would shock the conscience of the High Court/Tribunal or is found to be flawed for other reasons, as enumerated in P. Gunasekaran (supra). If the punishment imposed on the delinquent employee is such that shocks the conscience of the High Court or the Tribunal, then the Disciplinary/Appellate Authority may be called upon to reconsider the penalty imposed. Only in exceptional circumstances, which need to be mentioned, should the High Court/Tribunal decide to impose appropriate punishment by itself, on offering cogent reasons therefor.”

24. In the case on hand, there is no provision in the Statute to impose major penalty of compulsory retirement, such a punishment imposed on the petitioner without having power is perverse and illegal and the same certainly calls for interference at the hands of this court. It is not a fit case to remand the matter again to the 3rd respondent, as already stated, it is second round of litigation. In such view of the matter, this court does not want to remand the matter back to the 3rd respondent.

25. In order to test whether major penalty prescribed under the Statute is



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warranted, for a limited purpose, this court has decided to appreciate the charges and evidence let in by the prosecuting party. Dr.B.Thennarasi in her evidence stated that she came to know about her selection only through her husband, who was also working in the same university as Assistant Professor, on 26.07.2016. Whereas the evidence of the husband of Dr.B.Thennarasi is otherwise. This material contradiction would only probabalize the defence put forth by the petitioner. However the 1st charge is that the petitioner did not inform the candidate directly about her selection. The 2nd charge is that he had not informed to the University authorities that Dr.B.Thennarasi who was selected as Assistant Professor on consolidated pay had not joined duty at Bharathiar University Arts and Science College, Gudalur. It is also seen from her evidence that she had joined duty on 17.02.2017. Yet, the proved charges do not warrant any of the major penalties prescribed under the heading “Kind of Penalties” under the Statute. At the most the petitioner could be punished for dereliction of duty. The charges are not for any serious misconduct. Therefore, this court is of the view that the punishment of compulsory retirement imposed against the petitioner by way of impugned order as a result of disciplinary proceedings is liable to be set aside and instead he is imposed with the punishment of stoppage of increment for one year with cumulative



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effect. The petitioner is entitled for reinstatement in service with continuity of service, back wages and all other attendant benefits.

In the result, the writ petition is partly allowed. The impugned order of punishment passed by the 3rd respondent as confirmed by the 1st respondent is set aside. The respondents are directed to reinstate the petitioner in service with continuity of service, back wages and all other attendant benefits. The said exercise shall be completed within a period of two months from the date of receipt of a copy of this order. No costs. Consequently, connected WMPs are closed.

27..07..2023

Index : yes / no
Neutral Citation : yes.
kmk

To

- 1.The Deputy Secretary to Governor (Universities),
Raj Bhavan, Guindy, Chennai 600 022.
- 2.The Vice- Chancellor / Disciplinary Authority,
Bharathiar University, Coimbatore – 641 046.
- 3.The Registrar, Bharathiar University,
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