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W.P.No.2180 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.11.2023

CORAM

THE HONOURABLE MS. JUSTICE R.N.MANJULA

W.P.No.2180 of 2020 and
W.M.P.No.2551 of 2020

S.Franklin Daniel

... Petitioner

Vs.

1.Regional Joint Director,
Office of the Regional Joint Director of
Collegiate Education,
9th Floor, EVK Sampath Buildings,
College Road, Chennai 600 006.

2.The Principal and Secretary,
Madras Christian College,
Tambaram East, Chennai 600 059.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records of the second respondent pertaining to the order dated 06.06.2019 and quash the same and consequently direct the respondents to pay the increment as entitled by the petitioner.

For Petitioner : Mr.Balan Haridas

For Respondents : Mr.T.Arunkumar, AGP for R1
Mr.Godson Swaminath for
M/s Isaac Chambers for R2



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ORDER

This Writ Petition has been filed seeking issuance of a Writ of Certiorarified Mandamus, to call for the records of the second respondent pertaining to the order dated 06.06.2019 and quash the same and consequently direct the respondents to pay the increment as entitled by the petitioner.

2. Heard Mr.Balan Haridas, learned counsel for the petitioner and Mr.T.Arun Kumar, learned Additional Government Pleader appearing for R1 and Mr.Godson Swaminath, learned counsel appearing for R2.

3. The petitioner is an Associate Professor in the Department of English, Madras Christian College, Tambaram, Chennai - 600 059. He was also the Chairman of Board of Examiners, Department of English during April 2015-17. The Bursar is the person in charge to see the payments due to the faculty for being examiners and paper setters are paid in time. The remuneration to the paper examiners for the semester examination conducted during November 2016 was not settled even after publication of the result. Hence the petitioner wrote a letter on 27.01.2017 to the Bursar and that had resulted in the issuance of charge memo to the petitioner on 20.02.2017. Subsequently, the disciplinary proceedings was initiated against the petitioner and at the end he



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was found guilty. A punishment of withholding five years with cumulative effect from 01.06.2019 to 31.05.2024 was imposed. The petitioner has filed this Petition challenging the said order by stating that the impugned order is totally unjustifiable in law and it is devoid of merits.

4. Mr.Balan Haridas, learned counsel for the petitioner submitted that the petitioner was compelled to send a letter in view of the inaction on the part of the Bursar of the College; the contents of the letter was misconstrued as something denigrating the dignity of the office of the Bursar. It is further submitted that the petitioner had sent an another letter for withdrawing those sentences which might have hurt the receiver by stating that nothing written by the petitioner was intentional. By referring the judgment of the learned Division Bench of this Court held in the case of ***G.Arasukumar & Others Versus State Bank of India, reported in CDJ 2015 MHC 4592***, Mr.Balan Haridas submitted that the misconstrued notions on any communication should not result in punishing the writer. In the said judgment it is held as under:

"38. We agree with the submissions of the counsel for the appellant. Except taking exception to the posters and their display at various places, the bank has not chosen to deny



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the contents of those posters regarding the cash shortages. A mere demand for the resignation of the Chief General Manager owning moral responsibility, cannot be a defamatory statement. The offending passage set out in the charge memo to the effect that the entire amount of shortage was siphoned of by officials is not a correct translation of the sentence found in the poster printed in Tamil. On the other hand, as pointed out earlier the correct translation of the said sentence is as follows: Officers! Can you swindle public funds. It is merely a poser and not an assertion. It was more of a question than an answer. In the light of a series of cash shortages reported, one cannot really blame the appellants of committing a misconduct. We do not know how the action of the trade union and its office-bearers in putting up the posters can be detrimental to the interest of the bank if the substance of those allegations are not denied.

39. Exposing the inaction of the bank in the light of series of cash shortages can only be in public interest and making such statements cannot be detrimental to the interest of the bank. As pointed out earlier, the bank itself expects its officers to take all possible steps to ensure and protect interest of the bank. Publishing or exposing the cash shortages in the bank and the inaction of the top officers cannot amount to willful damage to the property of the bank. It cannot even be said to be prejudicial to the interest of the



bank.

40. In the affidavit filed by the Respondent SBI along with the vacate stay application in W.P.No.10925 of 2007, the bank itself had admitted the various irregularities which were detected.

Para 10 : It is true that on a certain occasion, there was a shortage in the amount remitted in the Currency Chest and the Bank has been taking action against the officials responsible for the said shortage. There has been no let up either in recovering the loss or punishing the officials responsible for the said shortage.

Para 13 : As regards Para No.11 of Writ Petition, it is submitted that necessary action has been taken and the same is in progress with regard to missing amount of Rs.30,00,000.00 (Rupees Thirty Lakhs Only) from the Currency Chest. It is also incorrect to state that the bank was insensitive to the issue of missing amount from the Currency Chest. The Bank has been taking prompt action wherever it was required to be taken. The allegation that public money has been looted and it was growing in an alarming position, is nothing but a reckless and irresponsible



statement without any basis.

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41. After having taken the above position with regard to the missing money, the Bank went on to question the entitlement of the trade union to be bothered about these irregularities. A perusal of the counter affidavit filed by the bank in the writ petitions will clearly show that the bank questioned the role of the trade union more than the veracity of the allegations made by the Union. It is necessary to extract some passages from the affidavit to show the mindset of the bank in this regard:

In any event, these are all matters which are in the exclusive administrative domain of the Bank. Neither the petitioner nor his Trade Union has got any Laws to question the same. Para 14 : Merely because few incidents have taken place in the Bank, that does not give any right to the petitioner to paste posters demanding the resignation of Chief General Manager.

42. It is unthinkable that the Respondent SBI, a premier bank of the Govt. of India should come up with such statements as indicated above. The Constitution of India has guaranteed under [Article 43-A](#), the right for the workers in the management of the industries. Pursuant to the same, the government has made certain provisions for the nomination



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of the officers and employees as Directors of the bank.

Moreover, the fundamental duties prescribed for every citizen under [Article 51-A](#), includes in sub-clause (i), a duty upon every citizen to safeguard public property."

5. In the above case, the appellants have sent a letter through Trade Union to the Reserve Bank of India to take suitable action against the then Manager of State Bank of India for his gross negligence. The posters printed and pasted by the Union was considered as defaming the Bank and affecting its reputation. The Bank has initiated disciplinary action and the same was challenged before this Court. The Court held that the publication of matters involving some scams in the Bank need not be felt so touchy and it cannot be considered as a misconduct. As there is no gross mistake on the part of the appellants the order of punishment of dismissal was set aside.

6. However, Mr.T.Arun Kumar, learned Additional Government Pleader appearing for the first respondent submitted that the disciplinary action can be taken against the employee for using intemperate language and the petitioner should not be encouraged by not being reasonable in his communication. The judgment of this Court held in the case of ***Syed Khader Mohiuddin Vs. The***



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Chairman, Tamil Nadu Public Service Commission and Another, reported

in 1998 (1) LLN 727 was cited in support of the above contention. Even in that case, it is held that imposing a punishment of removal of service for using intemperate and disrespectful language is too severe and it is disproportionate to the seriousness of the charges proved against the appellant.

7. In the case in hand, the petitioner was frustrated due to the procrastination caused in settling the bills by the person in charge of such affairs. Though compelling situation to write a letter to the Bursar of the College is understandable, the language used by the petitioner could have been more polite. The content of the letter which was considered as questionable by the second respondent is extracted hereunder:

"It is a matter of regret and utmost shame that even after "passing of the results", November 2016 Examinations, the remuneration of the Examiners is still pending in your office. Somehow it is beyond my comprehension when 'Online Transfer' of funds is possible, as to why that facility has not been made use of and Semester after Semester in your capacity as the Bursar you have failed in such a deplorable manner, much to the chagrin of the dedicated team of Examiners who are "silently suffering".



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When undue pressure is on the Examiners to finish their allotted work on time, why is your office dragging its feet and the resultant inordinate delay in the disbursement of our remuneration. All that is required is only a small team. (just two members) and the click of the mouse will do the trick and even before the examiners could leave the Main gate, the amount will get credited into their respective accounts.

When MCC has been considered a trendsetter, this ignominy heaped on the Examiners is rather painful and is causing a negative impact amidst the galaxy of the erudite Professors (from neighboring colleges as well as ours) who are smarting under this embarrassment after finishing their assigned task 'On Time' Semester after Semester.

Therefore, kindly make arrangements to settle the bills/ remuneration within a reasonable period of a week, at least from the forthcoming Semester onwards and without any further delay for this Semester. We are eagerly awaiting your response."

8. Though the petitioner's patience was put to test due to the long delay involved in settling the bills by the bursar, the letter being an official communication from one authority to an another authority, it ought not to have



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worded or sounded rudely. In official settings, each file is mooted and processed at several stages and hence, the delay could not have been sometimes beyond the control of the ultimate authority. It is good to bring it to the notice of the person in charge of the section. But while making such inter-personal communication, some amount of discipline is expected from the employees of an Institution especially of an Educational Institution.

9. Sometimes, the individual employees may be at the receiving end of some one's inaction or indifference and eventually tempt to loose temper. But those are the most challenging times when one has to keep his guards up to save himself from any further lateral damage, that might cause to him due to his own temperament. This is one such instance where the petitioner had omitted to be careful in choosing the words and thus invited trouble.

10. The words '*utmost shame*' in particular and the tone of the letter in general is distasteful for the purpose for which the letter is written. Using strong words to convey something in unequivocal terms is one's ability to have command over the language. But choosing harsh words will have a bearing on his own conduct.



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WEB COPY **11.** After receiving the charge memo, the petitioner had expressed his regrets to withdraw those high intensive words employed in his letter, if it hurts. Again, the petitioner's regret is conditional. The petitioner had offered to withdraw the words in his letter, if it is in the opinion of the recipient was hurtful. He was not ready to tender an unconditional apology and withdraw the letter forthwith, without waiting to evaluate the sentiments of the recipient. Because the impact of the words on the recipient is readily understandable and hence there cannot be any condition attached to the remorse expressed by the petitioner. These are all the circumstances where logic has to go to back seat and the intention should be nothing but to heal. The object is to heal and heal only.

12. Since the petitioner continued to be defensive, it did not go well with his superiors and that resulted in the disciplinary action. However, the punishment of withholding five years increment is something disproportionate to the gravity of the charge. An emotional outburst should not have costed this much. In these kind of matters, the issue could have been dealt diplomatically and would have served the purpose. Resorting to severe disciplinary action has



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simply multiplied the consequences.

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13. The petitioner could have met the Bursar to make amends by expressing an unconditional apology / regret for what had happened. The petitioner did not choose to do so and the Institution also did not facilitate the same by taking into consideration of the larger harmony of the Institution. In certain exceptional circumstances, corrective measures through diplomatic approach can yield better result than punitive measures. Even while choosing to adopt a penal action, the utmost or fitting punishment for these kind of charges cannot be more than a severe warning, if it is not a repetitive incident. The past unblemished records of the petitioner was not taken into consideration, while awarding a severe punishment.

14. One isolated emotional outburst arose out of a suppressed grievance, should not have resulted in cut of five increments, which is highly disproportionate to his charge. Hence, in all fairness, I feel a severe warning is sufficient and fitting for the reported lapse on the part of the petitioner.

15. In view of the above stated reasons, this Writ Petition is disposed



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and the impugned order of the second respondent dated 06.06.2019 is set

aside and the second respondent shall issue an order of severe warning to the

petitioner, which does not have any adverse consequences on his service

benefits. The respondents are directed to restore the increments, if the

punishment is implemented and pass an order to release the arrears if any,

within a period of four weeks from the date of receipt of a copy of this order.

Consequently, connected miscellaneous petition is closed. No costs.

10.11.2023

Index : Yes

Internet : Yes/No

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To

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2. The Principal and Secretary,
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R.N.MANJULA, J.

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