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WP.No.8172/2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 24.07.2023

CORAM

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

WP.No.8172/2019 & WMP.No.8746/2019

Dr.P.Stanely Mainzen Prince

... Petitioner

Versus

1.The Syndicate

Annamalai University

Annamalai Nagar

Cuddalore District 608 002.

2.The Vice Chancellor, rep.by its

Chairman, Annamalai University

Annamalai Nagar

Cuddalore District 608 002.

3.The Registrar,

Annamalai University

Annamalai Nagar

Cuddalore District 608 002.

... Respondents

Prayer :- Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus calling for the records of the 1st respondent's Resolution No.23, dated 01.11.2016 and the consequential order No.933/2016 [C] dated 23.11.2016 passed by the 3rd



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respondent University and to quash the same and directing the respondents to grant the annual increment of the petitioner for a period of three years.

For Petitioner : Mr.Aloysius Raja Pragash
For RR 2 & 3 : Mr. N.Ramiah
R1 : No appearance

ORDER

- (1) The writ petition has been filed in the nature of a certiorarified mandamus, seeking records of the 1st respondent's Resolution No.23, dated 01.11.2016 and the consequential order No.933/2016 [C] dated 23.11.2016, passed by the 3rd respondent-University and quash the same. The petitioner further seeks grant of annual increment to him for a period of three years.
- (2) The petitioner was working as Assistant Professor in the Department of Bio-Chemistry/Bio Technology at Annamalai University. The Head of the Department of the said Department of Bio-Chemistry/Bio Technology, had an occasion to give a complaint that the petitioner had entered her chambers and had raised his voice and had actually threatened her of "consequences" and therefore, had preferred a complaint against the petitioner.
- (3) In his affidavit, the petitioner claimed the reason for such over



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reaction on his part was that he was eligible to train and act as a Guide for those who aspired for Doctorate degree and had given a letter seeking assignment of students to pursue such Doctorate degree. But, the Head of the Department did not so forwarded the list of any students to the petitioner and taking umbrage of that particular fact, the petitioner had entered into her chambers. On the basis of her complaint, more particularly which was insisted also because she claimed that the said incident took place in the presence of a guest of hers, an Enquiry Committee was formed by the respondents.

- (4) Even before the Enquiry Committee could discharge their duty, they were given the records of a preliminary enquiry. The preliminary enquiry was by way of a telephonic call to a Professor by name Dr.P.Sankara Narayana Rao, Neurophysiology, NIMHANS, at Bengaluru. During preliminary enquiry, the respondents contacted this particular Professor over phone, and over phone to them/those who conducted preliminary enquiry, the Professor confirmed the incident. At no point of time, his presence was called for by the respondents and at no point of time, the petitioner was ever permitted



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to cross examine or to verify this particular conversation which took place over phone between the said Dr.P.Sankara Narayana Rao and those who conducted the preliminary enquiry.

- (5) One of the fundamental features of principles of natural justice is that equal opportunity should be given to everyone to contest any charge. Equal opportunity would also imply effective opportunity. There cannot be proof of a particular charge merely because a person on the other end of the telephone confirms the behaviour of a delinquent. If it is to be so presumed, then, it is required that the said individual who so alleges or so confirms an incident, should be asked to come over in person and state the same before the delinquent. The delinquent must be given an opportunity to put questions to the said individual. There cannot be any conversation over phone which can be held to the disadvantage of any person much less the petitioner herein.
- (6) That is the only piece of evidence which has been relied on by the Enquiry Officer, by the Disciplinary Authority to impose the punishment of cut of increment for a period of three years with cumulative effect on the petitioner herein.



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- (7) I am really dismayed at the nature of enquiry conducted by the respondents. At least to satisfy their conscience, they must have called upon Dr.P.Sankara Narayana Rao to come over in person and give a statement before them and before the delinquent in the presence of the Enquiry Officers. It must be recorded and thereafter, the delinquent must be given an opportunity to put questions relating to the authenticity of such allegation or authenticity of the statement confirming the allegations raised against him by the Head of the Department. The respondents appear to have thrown to the wind all necessary requirements for conducting a fair enquiry. Opportunity should have been granted at each and every stage.
- (8) It is also stated by the respondents that the petitioner had not given any explanation. However, in the impugned order, an explanation has been extracted and moreover in the Enquiry Report, explanation in full has been extracted.
- (9) The petitioner herein had been contesting the charges. When he contests the genuinity of the allegations against him, naturally, it



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should be proved, may be not beyond reasonable doubt as is required otherwise, but at least by preponderance of probabilities. Even for proving a fact by preponderance of probabilities, evidence must be let in. The nature of evidence, both in disciplinary proceedings and before the criminal Court are the same. It is the analysis of such evidence which differs. In one, it stops with preponderance of probabilities, i.e., presumption, that an incident could have happened and in the other, there is strict proof required and one of the cardinal principle is that no amount of suspicion should be termed as proof.

- (10) In a Departmental proceeding, evidence must be let in with respect to the allegations or charges made against the delinquent. In the instant case, three charges have been framed against the petitioner herein. They all surround his entering the room of the Head of the Department and raising his voice and remonstrating against her. It is alleged he also did so in the presence of a guest of the Head of the Department. I could understand that she would have been mentally hurt by this behaviour of the petitioner and if the charge was to be pressed and substantiated, she should have given a statement. She



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should have subjected herself for cross examination. The guest should have given a statement. The guest should have subjected himself for cross examination. Dr.P.Sankara Narayana Rao, who is also mentioned, should have come over and given a statement and should have subjected himself for cross examination. Analysis of the evidence as a whole, could be to the extent of examining whether the incident stood established by a preponderance of probability. But, such evidence should have been let in by the respondents. Failure to do so, goes to the heart of the matter and the punishment imposed will necessarily have to be interfered by this Court and is therefore, set aside.

- (11) The writ petition stands **allowed**. The respondents are directed to rework the increments payable to the petitioner herein and also restore his seniority if it had been affected. His pay scale must be restored to should have been granted to him had the punishment not been imposed. The respondents are directed to rework the salary and other benefits payable to the petitioner within a period of sixteen weeks from the date of receipt of a copy of this order. No costs.



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Consequently, connected miscellaneous petition is closed.

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Internet : Yes

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C.V.KARTHIKEYAN, J.,

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