



W.A.(MD).No.860 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 09.07.2024

PRONOUNCED ON :01.08.2024

CORAM

**THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA
AND
THE HONOURABLE MR.JUSTICE K.RAJASEKAR**

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and

C.M.P.(MD).Nos.5256, 5257 of 2018 and 6165 of 2023

Dr.R.Ramesh,
Associate Professor,
Department of English,
The Manonmaniam Sundaranar University,
Abishekapatti,
Tirunelveli – 627012.

... Appellant/Petitioner

Vs.

1.The Manonmaniam Sundaranar University,
Represented by its Registrar,
Abishekapatti,
Tirunelveli – 627 012.

2.Dr.S.Manickam,
The Registrar,
Manonmaniam Sundaranar University,
Abishekapatti,
Tirunelveli – 627 012.

3.The Enquiry Officer,
Plot No.70, K.K. Nagar,
Madurai – 625 020.

... Respondents/Respondents



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PRAYER: Writ Appeal filed under Clause 15 of Letters Patent Act, praying to set aside the order dated 05.03.2018 in W.P.(MD).No.8429 of 2012 on the file of this Court and allow the Writ Petition as prayed for.

For Appellant : Mr.Isaac Mohanlal
Senior Advocate
For R-1 : M/s.Jasima Yasmin
for M/s.Ajmal Associates
For R-2 : No appearance

JUDGMENT

(Judgment of the Court was made by K.RAJASEKAR,J.)

This intra-Court appeal is filed by the writ petitioner aggrieved over the dismissal of the Writ Petition filed seeking to quash the charge memo issued to the writ petitioner dated 09.04.2012.

2. The case of the writ petitioner is that he is working as an Associate Professor in the first respondent University and he has lodged a complaint against certain financial irregularities occurred in the University. He is a whistle blower, who was being harassed by the second respondent/Registrar. Aggrieved over the lodging of complaint, the Registrar, with a malafide intention, issued a charge memo against the writ petitioner. False



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allegations were attributed against the writ petitioner stating that he has produced the fabricated service certificate. According to the writ petitioner, this service certificate was already scrutinised and verified by the authorities concerned and the present charge memo is misconceived and the same was issued on personal vengeance. Hence, he filed a Writ Petition before this Court challenging the said charge memo.

3. The Writ Petition was contested by the respondents on the ground that the alleged complaint lodged by the writ petitioner is no way connected with the allegations made against him in the charge memo. The present charge memo is relating to submission of bogus certificate for the purpose of securing employment in the University. So far, the charge memo has not been replied and the person, who issued the charge memo, has also now retired from service. Hence, the Writ Petition is liable to be dismissed.

4. After hearing both sides, the learned Single Judge of this Court, after narrating the circumstances leading to issuance of the charge memo and after discussing the charges against the writ petitioner in the charge memo, has held that a whistle blower, who is none other than the employee



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of the University, cannot seek exemption from verification of his certificate produced at the time of appointment. The learned Single Judge also held that the ground of malice raised by the writ petitioner has no relevance in the charge memo and he has to participate in the enquiry. The learned Single Judge further held that once the disciplinary proceedings are initiated, it shall be completed within a reasonable time and the same should reach its logical conclusion and by relying on the judgments of the Hon'ble Apex Court in ***Union of India and others Vs. Upendra Singh*** reported in ***(1994) 3 SCC 357*** and ***Secretary, Ministry of Defence and others Vs. Prabhash Chandra Mirdha*** passed in ***Civil appeal No.2333 of 2007*** dated ***29.05.2012***, has dismissed the Writ Petition.

5. Aggrieved over the order passed by the learned Single Judge, this Writ Appeal has been filed by the writ petitioner.

6. The learned Senior Counsel appearing for the appellant submits that the entire proceedings initiated against the appellant herein is issued with malafide intention and since the appellant is a whistle blower, he was targeted by the University and by the then Registrar of the University.



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Already, the service certificate of the appellant was subjected to scrutiny and verification and only thereafter, he was given employment.

Unnecessarily, he has been forced to undergo mental agony and the direction issued by the learned Single Judge to submit further explanation or objections to the respondents is unnecessary. The learned Senior Counsel further submits that they have impleaded the Registrar as one of the parties in the Writ Petition and the allegations of bias and malafide are made against him. However, he has not come forward to contest the petition and deny the allegations made against him. In the absence of denial of allegation, it must be considered as the allegation of malafaide has been accepted. In support of his submission, the learned Senior Counsel relied on the judgment of the Hon'ble Apex Court in ***State of Punjab and another Vs. Gurdial Singh and others*** reported in ***(1980) 2 SCC 471***.

7. Per contra, the learned counsel appearing for the first respondent submits that the appellant herein was served with only a charge memo and earlier, an Enquiry Officer was appointed. Now either the Registrar, against whom, the allegation of malafide is advanced or the then Enquiry Officer appointed by the Registrar is not available and they cannot involve



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themselves in the proceedings as ordered to be proceeded based on the order of the learned Single Judge. Only with a view to avoid the disciplinary proceedings, the appellant has filed the Writ Petition and thereby, dragged on the issue from the year 2012. Hence, the learned counsel prays to confirm the order passed by the learned Single Judge.

8. Heard the learned counsels on both sides and perused the materials available on record.

9. The scope of interference of the Writ Court while exercising powers under Article 226 of the Constitution of India in the charge memos is well settled and the learned Single Judge, in his order, has referred to the judgment of the Hon'ble Apex Court in the case of ***Union of India Vs. Kunishetty Satyanarayana*** reported in ***(2006) 12 SCC 28*** and dismissed the Writ Petition. The relevant portion of the judgment reads as follows:

“13. It is well settled by a series of decisions of this Court that ordinarily no writ lies against a charge-sheet or show-cause notice vide Executive Engineer, Bihar State Housing Board v. Ramesh Kumar Singh [(1996) 1 SCC 327 : JT (1995) 8 SC 331] , Special Director v. Mohd. Ghulam Ghose [(2004) 3 SCC 440 :2004 SCC (Cri) 826 :AIR 2004 SC 1467], Ulagappa v.



Divisional Commr., Mysore [(2001) 10 SCC 639] , State of U.P. v. Brahm Datt Sharma [(1987) 2 SCC 179 : (1987) 3 ATC 319 : AIR 1987 SC 943] , etc.

14. The reason why ordinarily a writ petition should not be entertained against a mere show-cause notice or charge-sheet is that at that stage the writ petition may be held to be premature. A mere charge-sheet or show-cause notice does not give rise to any cause of action, because it does not amount to an adverse order which affects the rights of any party unless the same has been issued by a person having no jurisdiction to do so. It is quite possible that after considering the reply to the show-cause notice or after holding an enquiry the authority concerned may drop the proceedings and/or hold that the charges are not established. It is well settled that a writ petition lies when some right of any party is infringed. A mere show-cause notice or charge-sheet does not infringe the right of anyone. It is only when a final order imposing some punishment or otherwise adversely affecting a party is passed, that the said party can be said to have any grievance.

15. Writ jurisdiction is discretionary jurisdiction and hence such discretion under Article 226 should not ordinarily be exercised by quashing a show-cause notice or charge-sheet.

16. No doubt, in some very rare and exceptional cases the High Court can quash a charge-sheet or show-cause notice if it is found to be wholly without jurisdiction or for some other reason if it is wholly illegal. However, ordinarily the High Court should not interfere in such a matter.”



(ii) The Apex Court in ***Union of India v. VICO Laboratories, (2007) 13 SCC 270***, in paragraph 31, has held as follows:

“31. Normally, the writ court should not interfere at the stage of issuance of show-cause notice by the authorities. In such a case, the parties get ample opportunity to put forth their contentions before the authorities concerned and to satisfy the authorities concerned about the absence of case for proceeding against the person against whom the show-cause notices have been issued. Abstinence from interference at the stage of issuance of show-cause notice in order to relegate the parties to the proceedings before the authorities concerned is the normal rule. However, the said rule is not without exceptions. Where a show-cause notice is issued either without jurisdiction or in an abuse of process of law, certainly in that case, the writ court would not hesitate to interfere even at the stage of issuance of show-cause notice. The interference at the show-cause notice stage should be rare and not in a routine manner. Mere assertion by the writ petitioner that notice was without jurisdiction and/or abuse of process of law would not suffice. It should be prima facie established to be so. Where factual adjudication would be necessary, interference is ruled out”

10. In the present case, it is admitted by the parties that the appellant has lodged a complaint with regard to serious allegations of mismanagement



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and financial irregularities of the University, in which, the appellant was working as an Associate Professor. Subsequently, it came to the knowledge of the University that the service certificate produced by the appellant was not genuine and the Syndicate of the University has passed a resolution dated 15.03.2012 to initiate necessary action in this regard. Thereafter, based on the Syndicate's resolution, the appellant was served with the charge memo dated 09.04.2012. The appellant has submitted his explanation on 02.05.2012 denying the allegations in the charge memo, along with the relevant annexures I – III. After submission of explanation, enquiry notice dated 04.06.2012 was served on him appointing Mr.M.E.Ilango,, B.B.A., B.L., as the Enquiry Officer and subsequently, the Enquiry Officer has also fixed the date of enquiry. At that stage, the appellant has approached this Court by way of Writ Petition challenging the charge memo issued against him.

11. According to the appellant, since he has lodged a complaint regarding the financial irregularities in the University, he has been targeted by the then Registrar with malafide intention. According to the appellant, the Memorandum of Service Certificate dated 06.07.2007 issued by the Secretary and Principal, Scott Christian College (Autonomous), Nagercoil



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and Certificate Service issued by Dr.K.S.Gopalakrishnan, Registrar in-charge, Madurai Kamaraj University, Madurai dated 03.07.2003 are genuine. The University Syndicate has not properly considered the appellant's explanation and has not decided whether an enquiry has to be conducted and who should be the Enquiry Officer. The entire proceedings was initiated on the behest of S.Manickam, the then Registrar of the University and on the ground of malafide, the entire proceedings is liable to be quashed.

12. However, on perusal of records, it shows that this explanation has not been satisfied by the Appointing Authority and an Enquiry Officer has also been appointed in this regard. Even though allegations of malafide intention have been attributed against the Registrar, on perusal of records, it is seen that the Syndicate of the University has passed a resolution to initiate disciplinary action against the appellant herein and only thereafter, further proceedings were initiated by the then Registrar. The appellant having submitted his explanation, waited till the appointment of the Enquiry Officer and only thereafter, he has come forward to challenge the charge memo on the ground of malafide.



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13. In *Gurdial Singh's* case cited supra, which was relied on by the learned Senior Counsel for the appellant, wherein, the Hon'ble Apex Court has held that in the absence of any denial of the allegations made in the Writ Petition by a person having personal and direct knowledge in the matter and having regard to the entire history of the case, it is difficult to resist the conclusion that the averments in the Writ Petition alleging mala fides must be accepted.

14. The learned Single Judge, after thoroughly examining the allegations and also the materials placed on record, has considered whether there is malice in the disciplinary proceedings initiated against the appellant. The appellant is now working as responsible Associate Professor and as a staff of the University, he is bound to bring it to the notice of the authorities, if irregularities are noted. There is also records to show that letters have been received from various persons, who have issued the service certificate, denying the authenticity of the service certificates produced by the appellant herein. Under the said circumstances, it is incumbent upon the University to conduct an enquiry in this regard. Since the disciplinary proceedings is in the initial stage of enquiry, the appellant



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can very well substantiate his claim that the service certificates have been issued by the appropriate authorities concerned. He cannot shy away from participating in the enquiry proceedings. The allegations levelled against the appellant are independent and are not in any way linked with the allegations of financial irregularities levelled by him in the complaint. It is also stated across the Bar that both the then Registrar as well as the then Enquiry Officer are not available now and they cannot involve themselves in the disciplinary proceedings. Since there are *prima facie* documents and a decision has been taken by the Syndicate of the University against the appellant, he cannot claim that the charge memo was issued only with malafide intention.

15. The learned Single Judge has directed the appellant to submit his further explanation within a period of three weeks from the date of receipt of a copy of the order and directed the University to appoint a fresh Enquiry Officer so as to conduct departmental disciplinary proceedings in a free and fair manner and further directed to conclude the same within a reasonable period. In view of the same, this Court is of the view that the interest of the appellant is well protected with the direction issued by the learned Single



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Judge to conduct enquiry by appointing a fresh Enquiry Officer and to conclude the same within a reasonable period and this Court is not inclined to interfere with the order of the learned Single Judge.

16. Accordingly, the Writ Appeal stands dismissed and the order passed by the learned Single Judge in W.P.(MD).No.8429 of 2012 dated 05.03.2018 stands confirmed. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

(A.D.J.C.,J.) (K.R.S.,J.)
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NCC : Yes / No
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