

(2011) 08 MAD CK 0315

Madras High Court

Case No: Writ Petition No. 23929 of 2009

P. Ramesh Babu

APPELLANT

Vs

The Registrar, The
Executive Council and
The Vice Chancellor,
Pondicherry
University

RESPONDENT

Date of Decision: Aug. 11, 2011

Acts Referred:

- Constitution of India, 1950 - Article 20(2), 226
- Pondicherry Universities Act, 1985 - Section 17(3)

Hon'ble Judges: K. Chandru, J

Bench: Single Bench

Advocate: N.R. Chandran for R. Muthukannu, for the Appellant; A.V. Bharathi, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

K. Chandru, J.

The Petitioner in the first writ petition (W.P. No. 23929 of 2009) was employed as an Assistant in the Department of French in the Responden Pondicherry University. He has filed the writ petition seeking to challenge the rejection of his appeal filed against the penalty of reduction to lower time scale of pay, communicated vide order dated 26.6.2009, as well as the earlier order of rejection dated 19.1.2009.

2. Likewise, in the second writ petition (W.P. No. 23930 of 2009), the Petitioner had challenged the order dated 6.7.2009, wherein and by which he was imposed with a penalty of compulsory retirement. In that case, the Petitioner was working as Junior Assistant in the Respondent/ University.

3. Both the writ petitions were admitted on 23.11.2009. On notice from this Court, the first Respondent has filed counter affidavit in W.P. No. 23929 of 2009 on 19.7.2011 and in W.P. No. 23930 of 2009 on 8.6.2011.

4.1. In the first writ petition (W.P. No. 23929 of 2009), the Petitioner (P.Ramesh Babu) was appointed as Typist-cum-Clerk in the year 1986 and he was promoted to the post of Assistant on 12.1.1995 and subsequently, as Senior Assistant/Office Manager on 6.11.2000. When he was working as Senior Assistant/Office Manager in the Academic II Section of the University, in the year 2003, he was looking after the duty of issuing transcripts of the answer sheets for verification.

4.2. A complaint was received on 14.11.2003 from K.Geetha Nayak, a Ph.D. student attached to the School of Ecology and Environmental Sciences, and it was informed to the University by the Bank officials that the challans given to K.Geetha Nayak by the Petitioner, as a proof of remittance of money for obtaining transcripts, are fake and it was found that while the challans carried the bank cash seal, there was No. official's signature and No. cash remittance was made to the University.

4.3. The Petitioner was, therefore, issued a charge memo on 9.12.2003, asking him as to why disciplinary action should not be taken against him. He submitted explanation on 26.12.2003. Thereafter, a random check was made on the financial transactions and it was found that most of the transcripts of the answer sheets for the year 2002-2003 were untraceable. But, on scrutiny of the register maintained by the Petitioner for recording the challans, it was found that several amounts had not been remitted to the University account.

4.4. A preliminary Enquiry Committee was constituted to enquire into the issue on 19.7.2005. After enquiring the Bank Manager and K.Geetha Nayak and after perusing the relevant material, the Committee noted that fake bank seal was used and there was a deviation of procedure for obtaining required application in the prescribed format and hence, the Committee recommended initiating disciplinary action against the Petitioner.

4.5. Further, irregularities in the matter of utilization of house building advance was also noticed. While the Petitioner has drawn an advance of ` 1,90,750/-towards first and second instalments, he was directed to complete the construction of house within 24 months. As he failed to intimate the progress of the construction, he was also asked to explain the same by a memo dated 1.7.2005. In his reply dated 15.7.2005, he has stated that the construction has already reached the plinth level and requested for an inspection and for release of third instalment. But, during the inspection, it was found that only a dummy foundation was laid with a view to mislead the inspection team and hence, he was issued with a memo dated 14.9.2005, asking for his explanation. Another inspection of his construction was carried out in his presence by the Executive Engineer and two Assistant Engineers on 25.9.2005 and it was found that the earlier allegation was true.

4.6. In the light of these commissions and omissions made by the Petitioner, it was decided to initiate disciplinary action and, therefore, he was placed under suspension by an order dated 29.9.2005. By a charge memo dated 27.2.2006, specific charges were framed against the Petitioner. The Petitioner gave his reply dated 17.3.2006 and denied the charges.

4.7. After that, an enquiry officer was appointed. The enquiry officer submitted a detailed report dated 31.1.2008 holding the first charge relating to misappropriation of house building advance was partially proved. The second charge relating to misappropriation of money collected from K.Geetha Nayak was also proved. But, the third charge that the Petitioner produced fake challans in few other cases to defraud the University was not proved. In the departmental enquiry, 9 witnesses were examined on behalf of the University and the Petitioner examined himself on his side. While 30 exhibits were filed by the University, 13 exhibits were filed by the Petitioner. A copy of the enquiry report was furnished to the Petitioner and his further explanation dated 7.3.2008 was also received.

4.8. Thereafter, the matter was placed before the Executive Council of the University on 17.7.2008. The Executive Council, after consideration of all the relevant facts, accepted the findings of the enquiry officer and resolved to impose a penalty of reduction to the post of Assistant for a period of five years. It was stated that after completion of five years, he may be considered once again for promotion to the post of Senior Assistant based upon his performance during the period. The Executive Council also resolved to revoke the suspension, but it held that it will not be treated as duty and the emoluments during the period of suspension will be restricted to the subsistence allowance already received by him.

4.9. The Petitioner sent an appeal dated 15.9.2008 against the penalty imposed. The same was also considered in the Executive Council meeting held on 18.11.2008. The Executive Council rejected his appeal and a communication was also sent to the Petitioner on 21.1.2009. Notwithstanding the same, the Petitioner once again sent a second appeal dated 9.3.2009. The Petitioner was informed that in the normal course the Petitioner should have been imposed the maximum penalty of dismissal, especially as the misconduct involved moral turpitude, but taking a considerate view of the issue, a lower punishment was given to him. Challenging these orders, the writ petition came to be filed.

4.10. The contention raised by the Petitioner was that the appellate authority did not assign reason for rejecting his appeal. It was stated that in similar case of misuse of house building advance, only a censure was imposed to another employee. It was also stated that the documents produced during the enquiry were not relevant and the punishment imposed was contrary to the Ordinance of the University and the imposition of multiple punishment was also contrary to the statutes.

5.1. In the second writ petition (W.P. No. 23930 of 2009), the Petitioner (M.Rajendran) was employed initially as a Junior Assistant in the year 1989. He was working in the Examination Wing and was entrusted with the work of looking after the MBBS course. He dealt with the written answer scripts and other exam related documents. The Petitioner's work covered assigning dummy numbers on various answer scripts for MBBS course and keeping them in safe custody in the store room and assisting the examiners in valuation of papers. It is also his duty to distribute the answer scripts to the examiners and collect the same after evaluation along with the individual mark sheet in which the marks are entered by the examiners.

5.2. While the examinations were conducted in May, 2006 for MBBS course, the answer scripts were kept under the custody of the Petitioner. It was subsequently valued by the examiners and marks were awarded. Dummy numbers were allotted to the answer sheets and the Petitioner had to take out the answer scripts from the store room for valuation and replace the same under safe custody. It was found that the dummy numbers and the marks in the valued answer sheets for the year 2006 for MBBS examination were altered and tampered and the signatures of the examiners were also forged. Since it was the Petitioner who was mainly dealing with the May, 2006 examination and was handling the answer scripts in the store room, the University, by an order dated 18.8.2006, placed the Petitioner under suspension for his act of misconduct and also ordered for a departmental enquiry.

5.3. The tampered records containing the handwriting of the Petitioner as well as other staff members and officers of the examination were sent to Forensic Department and the alteration and manipulation were confirmed. The handwriting in the alteration and manipulation were found to be in the handwriting of the Petitioner and, therefore, the Petitioner was issued with a charge memo dated 24.5.2007 containing as many as five charges. The Petitioner's explanation was sought. Since the Petitioner's explanation was not satisfactory, it was decided to hold a full-fledged enquiry.

5.4. Thereafter, the then Dean of the School of Management was appointed as an enquiry officer. The enquiry officer, after examining the records and reports of the Forensic Department and after giving sufficient opportunity to the Petitioner, came to the conclusion that the first four charges were proved and the fifth charge was not proved and gave a report accordingly on 26.2.2009. The Petitioner, on the basis of the enquiry report, submitted a further reply on 2.4.2009.

5.5. The entire enquiry report along with the Petitioner's explanation were placed before the Executive Council on 30.6.2009. The Executive Council accepted the findings of the enquiry officer and, by an order dated 6.7.2009, imposed a penalty of compulsory retirement with immediate effect. The suspension period was also directed not to be treated as duty period. The Petitioner preferred an appeal against the decision taken by the Executive Council and also submitted additional grounds. Since the Executive Council was not inclined to interfere with the decision already

taken, it rejected the appeal in a decision taken in the meeting held on 24.9.2009. The Petitioner challenging those orders is before this Court.

5.6. The contention raised by the Petitioner was that there was No. legal evidence to hold the Petitioner guilty and there are several other persons in the University who have also dealt with the assignment of dummy numbers and only the Petitioner is held as culprit and it was selective action taken against the Petitioner. It was also stated that the enquiry was only an empty formality and the enquiry officer himself has acted as an investigator, prosecutor and judge. The appeal filed against the punishment was dismissed by a non speaking order and there was No. determination of the grounds raised by him in the appeal. It is also stated that the Registrar, who initially rejected the case of the Petitioner, had also participated in the appeal proceedings by attending the Executive Council meeting and in that view of the matter, the order is liable to be set aside.

6.1. Mr. N.R.Chandran, learned Senior Counsel leading Mr. R.Muthukannu, submitted that the final order was not a speaking order and hence, non est in the eye of law and for this purpose, he placed reliance upon the decisions in [S.N. Mukherjee Vs. Union of India](#), , Raj Kishore Jha v. State of Bihar [2003] 11 SCC 519, Union of India and Ors. v. Jai Prakash Singh and Anr. [2007] 10 SCC 712, K.Chelliah v. Chairman, Industrial Finance Corporation of India and Anr. AIR 1973 Madras 122, and G. Vallikumari v. Andhra Education Society and Ors. [2010] 2 SCC 497.

6.2. Secondly, he submitted that the order of the appellate authority did not give any reason while confirming the order of the disciplinary authority and therefore, they are not sustainable and for this purpose, he relied upon the decisions in [Ram Chander Vs. Union of India \(UOI\) and Others](#), , Chairman, Disciplinary Authority, Rani Lakshmi Bai Kshetriya Gramin Bank v. Jagdish Sharan Varshney and Ors. [2009] 4 SCC 240, T.Bapuraj v. Commissioner of Police, Chennai and Ors. [2008] 6 MLJ 882, and Chairman and Managing Director, Tamil Nadu Small Industries Development Corporation Ltd., Madras and Ors. v. M.Jagadeesan and Ors. [2009] 7 MLJ 17.

6.3. The third submission was that the persons who passed the original order cannot involve themselves in the appeal filed against the original order. Even though the Registrar is only an Ex-Officio member of the Executive Council, still the term "Ex-Officio" means that the person becomes a member by virtue of his office and he also stated that the decision of the Executive Council was communicated by the Registrar and hence, he is part of the Executive Council decision making process and, therefore, the order of the appellate authority confirming the original order is also invalid and for this purpose, he referred to the decisions in Cantonment Executive Officer and Anr. v. Vijay D.Wani and Ors. [2008] 12 SCC 230, A.U.Kureshi v. High Court of Gujarat and Anr. [2009] 11 SCC 84, Chairman and Managing Director, Tamil Nadu Small Industries Development Corporation Ltd., Madras and Ors. v. M.Jagadeesan and Ors. [2009] 7 MLJ 17, and S.D.Balasubramaniam v. Director of Animal Husbandry and Veterinary Services, Chennai, 2009 Indlaw Mad 1919.

7. Refuting these arguments, it was contended by the learned Counsel for the Respondents that the enquiry against the Petitioners was conducted in conformity with the principles of natural justice and there was nothing unfair or unreasonable. The orders communicated to the Petitioners were reasoned orders and they are not cryptic. It is submitted that based on the request of the Petitioner in W.P. No. 23929 of 2009 an outsider was appointed as Enquiry Officer in the place of a Professor of the University. It is further submitted that the Executive Council was competent to impose the penalty under Rule 6 and the appellate authority, in the first case, had considered the issue and imposed a lesser penalty. The Registrar is only a communicating authority of the decisions of the Executive Council or the Vice Chancellor and he is only an Ex-Officio Secretary of the Executive Council and not a member of the Executive Council.

8. It must be noted that the charges levelled against the Petitioners are serious and in respect of the first case, even for the proved misconduct, he was let off with a lesser penalty, though it was rightly contended in the counter affidavit that it requires a severe penalty. Tampering with the records and misappropriating the amount due to the University is a serious misconduct. In the second case, the charges were clearly proved against the Petitioner and for the proved misconduct, he was only imposed with the penalty of compulsory retirement.

9. In respect of the first contention made by the learned Senior Counsel that the competent authority's order is cryptic and not reasoned one, it must be noted that the disciplinary authority is required to give reasons only when he disagrees with the findings of the enquiry officer and not when he is in agreement and therefore, the contention raised by the learned Senior Counsel cannot be accepted in the light of the judgment of the Supreme Court in *National Fertilizers Limited v. P.K.Khanna*, [2005] 7 SCC 597.

10. In respect of the second argument that the appellate authority did not give reasons, it must be noted that the appellate authority is the supreme authority on all administrative matters and the entire agenda of the meeting was placed in the Executive Council meeting and after discussion, the case of the Petitioners was rejected.

11. Though the Petitioner in the second writ petition contended that there are several other persons working in the Examination Wing and selective action is taken against him, it must be noted that the signatures and handwritings of all the persons concerned were sent to Forensic Department and only the Petitioner's signature and handwriting tallied with the alteration and manipulation and therefore, he cannot complain of any discrimination in the matter of penalty.

12. The next submission that the Registrar had participated in the Executive Council proceedings and therefore, the orders of the appellate authority are vitiated also cannot be accepted. The Statute 4(5) of the Pondicherry University Act, 1985 clearly

states that the Registrar shall be the Ex-Officio Secretary of the Executive Council, the Academic Council and the Board of Schools, but he shall not be deemed to be a member of any of these authorities. Notwithstanding the statutory position of the Registrar, the Petitioners contended that Registrar must have participated in the deliberations of the Executive Council while disposing of the appeals and as it has not been controverted in the counter affidavits, the allegation made by the Petitioners must be deemed to have been proved.

13. In fact, in paragraph [27] of the counter affidavit, it has been specifically stated that the contention that the Registrar has participated in the appeal proceedings is incorrect and he is only an Ex-Officio Secretary and he conducts official correspondence on behalf of the Executive Council. It was also stated that he was neither the penalty imposing authority nor the appellate authority.

14. The contention of the learned Senior Counsel was largely inspired by the judgment of the Supreme Court in *Institute of Chartered Accountants of India v. L.K.Ratna*, [1986] 4 SCC 537. But, the ratio of the said judgment as seen from paragraphs [25] and [26], which are as follows:

25. We must remember that the President and the Vice-President of the Council and three members of the Council compose the Disciplinary Committee. The President and the Vice-President do certainly hold significant status in the meetings of the Council. A member whose conduct has been the subject of enquiry by the Disciplinary Committee ending in conclusions adverse to him can legitimately entertain an apprehension that the President and the Vice-President of the Council and the other members of the Disciplinary Committee would maintain the opinion expressed by them in their report and would press for the acceptance of the report by the Council. To the member whose conduct has been investigated by the Committee, the possibility of the Council disagreeing with the report in the presence of the President and the Vice-President and the other members of the Committee would seem rather remote. His fears would be aggravated by the circumstances that the President would preside over the meeting of the Council, and would thus be in a position to control and possibly dominate the proceedings during the meeting. We do not doubt that the President and the Vice-President, and also the three other members of the Disciplinary Committee, should find it possible to act objectively during the decision-making process of the Council. But to the member accused of misconduct, the danger of partisan consideration being accorded to the report would seem very real indeed.

26. The objection on the ground of bias would have been excluded if the statute had expressed itself to the contrary. But nowhere do we find in the Act any evidence to establish such exclusion. It is true that by virtue of Section 17(3) it is obligatory that the Disciplinary Committee should be composed of the President and the Vice-President of the Council and three other members of the Council. While that is so, there is nothing in the Act to suggest that the meetings of the Council must

always be presided over by the President or the Vice-President, and that No. meeting can be held in their absence. We find that Regulation 140 framed under the Act contemplates that the Council may meet in the absence of the President and the Vice President, and provides that in their absence a member elected from among the members who are present should preside. There is an element of flexibility which makes it possible for the Council to consider the report of the Disciplinary Committee without the participation of the members of the Committee. Because of the "flexibility" potential in the scheme, the doctrine of necessity, to which reference has been made on behalf of the Institute, cannot come into play. We must admit that it does appear anomalous that the President and the Vice-President of the Council should be disabled from participating in a meeting of the Council because they are bound by statute to function as the Chairman and the Vice-Chairman of the Disciplinary Committee, and were it not for the factor of flexibility which we see in the scheme, we would have been compelled to the conclusion that the Act implies an exclusion of the doctrine of bias. But as we have observed, No. such exclusion is implied by the scheme of the Act on its policy. We suggest the removal of the anomaly by suitable legislative amendment of Section 17(3) of the Act so that the constitution of the Disciplinary Committee should not necessarily include the President and the Vice-President of the Council. It is only appropriate that due recognition should be given to the fundamental principles and accepted axioms of law.

makes it clear that in that case, the President and Vice President of the Chartered Accountants Council comprised the Disciplinary Committee and thereafter, when the Disciplinary Committee's conclusions were considered by the Full Council, the question arose whether the President and Vice President, who were members of the Disciplinary Committee, can be part of the Council. Though it was contended that they must function as Chairman and Vice Chairman of the Disciplinary Committee as per the statutes and No. exception can be taken, the Supreme Court held that their participation in the Full Council will not bring objectivity during the decision making process of the Council, but suggested amendment of the statutory position so that the constitution of the Disciplinary Committee should not necessarily include the President and the Vice-President of the Council, as there would be an apprehension that the Council's decision, including those members of the Disciplinary Committee, will be influenced by bias. But, in the present case, such a question never arose. In the case on hand, not only the statute makes the Registrar only an Ex-Officio Secretary and in-charge of correspondence, but the very officer himself had denied his role in the decision making process.

15. The contention that multiple punishment was imposed on the Petitioners also cannot be accepted. The fundamental right which is guaranteed in Article 20(2) of the Constitution of India enunciates the principle of "double jeopardy". But, such concepts are never imported into the service law. Even otherwise, in the case on hand, there is only one penalty each against the Petitioners. The Supreme Court in

the judgment in *State of Uttar Pradesh v. Madhav Prasad Sharma*, [2011] 2 SCC 212 held as follows:

17. The doctrine of double jeopardy enshrined in Article 20(2) of the Constitution of India has No. application in the event of there being only one punishment awarded to the Respondent under the Rules on charges being proved during the course of disciplinary enquiry.

16. In respect of the next issue relating to the denial of wages, the same is not a penalty, but a consequence flowing from the imposition of penalty and governed by the Rules made in this regard.

17. The contention of the first Petitioner that in similar cases relating to housing building advance only a censure was given as a penalty also cannot be accepted, as the Petitioner has also been accused of some other misconduct which is more serious. The penalty or punishment unless shockingly disproportionate cannot be interfered with in a judicial review under Article 226 of the Constitution of India. The scope conferred on this Court in this regard is very limited and restricted to exceptional cases, as held by the Supreme Court in *State of Meghalaya v. Mecken Singh N. Marak*, [2008] 7 SCC 580.

18. In the light of the above, this Court does not find any case made out to interfere with the penalty imposed on the Petitioners. Hence, these writ petitions are dismissed. No. costs.