(2010) 12 MAD CK 0255

Madras High Court (Madurai Bench)

Case No: Writ Petition (MD) No. 14944 of 2010 and M.P. (MD) No. 1 of 2010

K. Dhanabal		APPELLANT
	Vs	
Bharathidasan University		RESPONDENT

Date of Decision: Dec. 23, 2010

Hon'ble Judges: V. Dhanapalan, J

Bench: Single Bench

Advocate: Party in Person in W.P. MD No. 14944/2010 and Party in Person in W.P. MD No. 14945/2010, for the Appellant; V.R. Shanmuganathan, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

V. Dhanapalan, J.
By consent, both the writ petitions are taken up for disposal.

2. Both the cases are taken up together and disposed of by a common order, since the issues involved in both the writ petitions are one and the same.

3. The Petitioner in W.P. (MD) No. 14944 of 2010 was appointed as Office Assistant in the Bharathidasan University (hereinafter referred as the university) on 08.08.1998. He acquired B.A. degree in the year 2003. Thereafter, he was promoted as Attender/Lab Attender vide order dated 11.06.2007 and further promoted as Assistant on 29.04.2008. His promotion as Assistant was also approved and he had been given annual increment, since he possesses the required qualification.

4. Similarly, the Petitioner in W.P. (MD). No. 14945 of 2010, has been appointed as Record Clerk in the Respondent university on 11.08.1997. She acquired M.A. degree in the year 2005. Thereafter, she was promoted as Assistant on 29.04.2008 and her promotion was approved and she had been given annual increment, since she possesses the required qualification.

5. While that being so, the Respondent taking into consideration the Government Order in G.O. Ms. No. 107, Personnel and Administrative Reforms (M) Department, dated 18.08.2009, passed the impugned order of reversion on 15.12.2010 stating that they have obtained degree in the open university, without undergoing XII examinations and also on the ground that a person who holds a degree after completion of his X and XII examination alone shall be eligible for appointment and promotion. Therefore, the Petitioners have challenged the said reversion orders on the ground that the impugned orders have been passed without any opportunity and without notice and therefore, the impugned orders are in violation of the principles of natural justice. The promotion of the Petitioners were made as per the qualification prescribed and after passing the resolution by the syndicate of the university. Therefore, the reversion orders are against the statute and regulation, which prescribed qualification. So long as the statute and regulation have not been amended, the Government Order is only an administrative instructions in the eye of law, which cannot have overriding effect.

6. Both the Petitioners are present in the Court today and they have represented their case and their consistent plea before the Court is that they have been reverted to the lower post without notice and affording an opportunity of hearing. Therefore, the impugned orders are in violation of principles of naturel justice. The Petitioners'' further contention is that there was a resolution by the Syndicate, taking into account the Statute and regulation, which prescribed the necessary qualification and the same was the basis for their promotion. Therefore, the administrative orders cannot override the statute.

7. On the other hand, Mr. V.R. Shanmuganathan, the learned Counsel for the Respondent university on instructions submits that the Respondent university is binding on the decisions of the Government and they have to implement the orders passed by the Government, particularly the orders of the Personnel and Administrative Reforms (M) Department. He also informed that the reversion orders passed by the Respondent university have now been approved by the syndicate of the university. Therefore, the decision of the Respondent cannot be found fault with.

8. I have heard the Petitioners in person and the learned Counsel for the Respondent university. I have also gone through the material document annexed in the type set of papers and the Government Order.

9. Admittedly, the Petitioners were appointed as Office Assistant and Record Clerk respectively in the Respondent university and they have been promoted to the next cadre on 29.04.2008. Both of them have been promoted as Assistant, by virtue of their qualification of degree. Further, the various decisions had been taken into account by the Government and an order has been passed in G.O. Ms. No. 107, Personnel and Administrative Reforms(M) Department, dated 18.08.2009, wherein the persons who possess the degree without undergoing the XII examination have not been considered for promotion and the Government have passed the said order

directing various departments and institutions under the Government to implement the same and to give effect the said order. Based on which, the Respondent has passed the impugned orders, dated 15.12.2010, reverting the Petitioners from the post of Assistants to their lower cadre respectively.

10. In the above position and considering the submissions of the Petitioners and the learned Counsel for the Respondent university, it would be necessary to examine whether the impugned orders has been passed without any opportunity or without any notice.

11. A circumspection of the fact and a clear analysis of the impugned orders would reveal that there was no notice given to the Petitioners and also no hearing was made available to them. Therefore, the law is well settled that no adverse order resulting in civil consequence could be passed without hearing the person concerned, as held by the honourable Apex Court in number of decisions and one of the decisions in Karnail Singh v. State of Punjab and Anr. 1994 SUPP (3) SCC 724 wherein in paragraph 2 it is stated as follows;

Even assuming that they had adverse remarks, admittedly no enquiry was made, no findings were given after conducting an enquiry and after giving an opportunity to the Appellants. Therefore, their reversion as head constables is clearly illegal.

12. It is the cardinal principle that even if the persons are promoted without the required qualification and other eligibility condition, once a person holds a civil post and his promotions are made after following the procedure contemplated under law, they could not be reverted unceremoniously and without following any procedure.

13. Law is well settled now that principles of natural justice were required to be complied with by the competent authority and the person concerned could be given an opportunity of hearing after giving a show cause notice. The non observance of natural justice itself is prejudicial to any man and the non compliance with the principles of natural justice would make the order null and void. The theory of reasonable opportunity and the principles of natural justice have been evolved to uphold the rule of law and to assist the individual to vindicate his just rights. They are not incantations to be invoked nor rites to be performed on all and sundry occasions.

14. In the light of the above position, the impugned orders passed by the university are liable to be set aside on a short ground that the same were passed without notice and affording an opportunity of hearing and therefore, it is in violation of principles of natural justice. Accordingly, the impugned orders are set aside. However, the matter is remanded back to the Respondent university for fresh consideration to follow the procedure contemplated under law by issuing notice and after hearing the Petitioners and to pass appropriate orders, in accordance with law and on merits, within a period of eight weeks from the date of receipt of a copy of

this order. In the meanwhile the parties to this writ petitions shall be directed to maintain status quo as on today (23.12.2010). The writ petitions are allowed with the above direction.