

IN THE HIGH COURT OF ANDHRA PRADESH

WRIT APPEAL No.854 of 2008

Between:

Prof. M.Vivekananda Murthy.

.... Appellant

AND

The Government of Andhra Pradesh,
Rep. By the Principal Secretary to Government,
Higher Education Department, Secretariat,
Hyderabad & 4 others.

.... Respondents

DATE OF JUDGMENT PRONOUNCED: 03.05.2023

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE A.V. SESA SAI

&

THE HON'BLE SRI JUSTICE DUPPALA VENKATA RAMANA

1. Whether Reporters of Local Newspapers
may be allowed to see the judgment? Yes / No
2. Whether the copies of judgment may be
marked to Law Reporters /Journals? Yes / No
3. Whether His Lordship wish to
see the fair copy of the Judgment? Yes / No

A.V. SESA SAI, J

DUPPALA VENKATA RAMANA, J

*** THE HON'BLE SRI JUSTICE A.V. SESA SAI**
&
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! Counsel for Appellants : Sri D.V.Sitharam Murthy

^ Counsel for Respondents : Government Pleader for
Education; Sri K.A.Narasimham, representing Sri V.Sai
Kumar, learned Standing Counsel for Andhra University.

< Gist:

> Head Note:

? Cases referred:

1. AIR 2001 (2) SCC 330.
2. 1996 (1) LLM 599.
3. *State of Uttar Pradesh and others v. Rajit Singh in Civil Appeal No.2049-2050 of 2022.*
4. AIR 2007 SC 3180.
5. *Order in W.P.(C) 5453/2008 and C.M.Appeal 10415/2008.*

THE HON'BLE SRI JUSTICE A.V. SESA SAI
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WRIT APPEAL No.854 OF 2008

JUDGMENT: *(per Hon'ble Sri A.V. Sesa Sai, J)*

Petitioner in W.P.No.21166 of 2007 is the appellant in the present Writ Appeal, preferred under Clause 15 of the Letters Patent.

2. Challenge in the present Appeal is to the order, dated 10.06.2008, of the learned single Judge in W.P.No.21166 of 2007. By way of the order under challenge in the Appeal, the learned single Judge dismissed the Writ Petition.

3. Appellants herein filed the aforementioned Writ Petition, for the following relief:

“to issue an appropriate writ or order more particularly one in the nature of writ of certiorari calling for the records of the Resolution dated 16.12.2005 where under the 4th respondent Executive Council ordered inquiry and appointed inquiry officer and communicated by the Vice Chancellor vide his proceedings No.A.V.3/PRC/2005 dated 21.01.2006 and the resolution dated 07.04.2007 of the Executive Council 4th respondent and the consequential

proceedings of the 4th respondent bearing NS II1/298/98 dated 09.04.2007 and also the orders of the 1st respondent Vide Lr.No.6520/UEI/A1/20072 dated 10.09.2007 and declare them as illegal arbitrary and unconstitutional and consequently direct the respondents 1 to 4 to take the petitioner into service with all benefits continuity of service by setting aside the above impugned orders.”

Appellant was initially appointed as a Lecturer in Andhra University in the year, 1985 and got promotions as Associate Professor in the year, 1990 and Professor in the year, 1998. In the year, 1987, appellant was appointed as Honorary Director of Population Research Centre, established in Andhra University by the Ministry of Health and Family Welfare, Government of India and, on 14.09.2005, he was replaced by the third respondent as Honorary Director. *Vide* Resolution, dated 16.12.2005, the Executive Council of Andhra University-fourth respondent herein resolved to appoint an Enquiry Officer to enquire into the allegations levelled against the appellant in connection with his functioning as Honorary Director. As a sequel to the same, the Vice Chancellor *vide* proceedings,

dated 21.02.2006, appointed an Enquiry Officer. The Enquiry Officer framed the following charges:

1. That you, Prof. M.Vivekananda Murty while working as Honorary Director of the Population Research Centre from the afternoon of 13-5-1997 till the forenoon of 15-9-2005 have been responsible for misappropriation of a sum of Rs.32,65,698/- during October, 2003 to September 14th, 2005 (the details of which are mentioned in the allegations hereunder), as such guilty of gross misuse of your office.

2. That you are also responsible for misappropriation of an amount of about Rs.98,00,000/- out of an estimated amount of Rs.1,90,00,000/- received by the Population Research Centre during the period from May, 1997 to September, 2003 with respect to the earlier 3 phases of Rapid Household Survey under Reproductive and Child Health (RHS-RCH) Project/District Level Household Survey under Reproductive and Child Health (DLHS-RCH) Project, Baseline Survey under RCH Sub-Projects and other Projects/Surveys of the PRC and as such, guilty of gross misuse of office”.

4. In response to the said charges, appellant herein submitted an explanation on 12.06.2006. The Enquiry Officer submitted the Enquiry Report on 01.03.2007,

holding the appellant guilty of the charges framed against him. Subsequently, fourth respondent herein issued a show cause notice to the appellant on 09.03.2007, calling upon him to submit his explanation. Responding thereto, an explanation was submitted by the appellant on 03.04.2007. Eventually, *vide* proceedings, dated 09.04.2007, of the fourth respondent, appellant was dismissed from service. Thereafter, assailing the order of dismissal, dated 09.04.2007, appellant filed W.P.No.9137 of 2007 before the composite High Court of A.P. The Composite High Court of A.P., *vide* order, dated 30.04.2007, disposed of the Writ Petition, relegating the appellant to the remedy of appeal before the Chancellor under Rule 19 (b) of Chapter V dealing with Appointments and Special Conditions of Service-University Teachers-General Administrative Manual and also directed the respondents not to give effect to the order of dismissal till then.

5. Appellant herein, thereafter, filed W.P.No.14055 of 2007 before the composite High Court of A.P., complaining

about the non-disposal of the appeal as directed earlier. On noticing the rejection of the said appeal by the Chancellor *vide* order, dated 10.09.2007, the said Writ Petition came to be closed by the composite High Court of A.P. on 13.09.2007. Thereafter, the present Writ Petition came to be filed by the appellant herein before this Court, questioning the order of dismissal so also the order, dismissing the appeal by the Chancellor. The learned single Judge *vide* order, dated 10.06.2008, dismissed the Writ Petition. In the above background, the present Letters Patent Appeal came to be preferred by the writ petitioner.

6. Heard Sri D.V.SithaRam Murthy, learned Senior Counsel for Sri N.Ashwani Kumar, learned counsel for the appellant-writ petitioner and Sri K.A.Narasimham, learned counsel representing Sri V.Sai Kumar, learned Standing Counsel for Andhra University, apart from perusing the entire material available on record.

7. Submissions/contentions of the learned counsel for the appellant:

- i) Order of the learned single Judge is highly erroneous, contrary to law, and the basic principles of service jurisprudence.
- ii) The very framing of charges by the Enquiry Officer and not by the disciplinary authority is in contravention of Rule 6 of Chapter XII of the Administrative Manual.
- iii) The undisputed realities such as commencement of disciplinary proceedings with the appointment of Enquiry Officer and framing of charges by the Enquiry Officer, would vitiate the entire proceedings and render the enquiry proceedings void *ab initio*.
- iv) The learned single Judge ought to have seen that the failure on the part of the employee in raising objection would not automatically empower or give jurisdiction to proceed contrary to the mandatory procedure.
- v) Since the Rule does not empower the Enquiry Officer to frame charges, such charges cannot form the basis for awarding punishment.

vi) The learned single Judge erred in holding that the writ petitioner waived his right of objecting framing of charges by the Enquiry Officer by remaining silent during enquiry. Since the respondents violated the procedure of substantive nature, the learned single Judge ought to have allowed the Writ Petition.

vii) The learned single Judge erred in holding that the contention of the writ petitioner as regards violation of the procedure cannot be accepted on the ground of waiver by the writ petitioner and failure of the writ petitioner in proving prejudice suffered on account of such violation.

viii) The findings of the Enquiry Officer are full of conjectures and surmises and it is a case of no evidence at all.

ix) The learned single Judge ought to have seen that the findings of the Enquiry Officer, as affirmed by the disciplinary authority, are perverse and not tenable and the rejection of the appeal is also not tenable.

- x) The Enquiry Officer's Report is not based on evidences examined and noted by him and not based on the exhibits marked.
- xi) The Enquiry Officer did not consider the request for examining witnesses.
- xii) The judgments referred to by the learned single Judge for disallowing the petitioner's stand have absolutely no relevance to the facts of the case.

8. In support of his submissions and contentions, the learned Senior Counsel places reliance on the following judgments:

6. *AIR 2001 (2) SCC 330.*

7. *1996 (1) LLM 599.*

9. On the contrary, Sri K.A.Narasimham, learned counsel for the respondents, strongly resisting the Writ appeal, contends that the framing of charges is a procedural aspect and the framing of charges by the Enquiry Officer cannot be treated as fatal to the departmental proceedings. It is further submitted that the appellant failed to defend the case properly before the Enquiry Officer, as such, he is not entitled for any relief

from this Court. It is further argued that the framing of charges by the Enquiry Officer did not cause any prejudice to the writ petitioner-appellant and the appellant failed to raise any objection during the course of enquiry. It is further submitted by the learned counsel that the findings of fact recorded by the Enquiry Officer, as confirmed by the learned single Judge, cannot be interfered with unless there is perversity.

10. To bolster his submissions and contentions, learned counsel for the respondents takes the support of the following judgments:

1. *State of Uttar Pradesh and others v. Rajit Singh in Civil Appeal No.2049-2050 of 2022.*
2. *AIR 2007 SC 3180.*
3. *Order in W.P.(C) 5453/2008 and C.M.Appeal 10415/2008.*

11. In the above background, now the issues that emerge for consideration of his Court in the present appeal are as follows:

1. *Whether the order of the learned single Judge, which is impugned in the present Writ Appeal, is sustainable and tenable?*

2. Whether the order of the learned single Judge warrants any interference of this Court under Clause 15 of the Letters Patent?

12. A reading of the order passed by the learned single Judge, which is impugned in the present Writ Appeal, shows that, though the learned single Judge agreed with the stand of the writ petitioner with regard to lack of jurisdiction of the Enquiry Officer for framing the charges, the learned Judge refused to interfere with the enquiry proceedings and the punishment order only on the ground that the writ petitioner-appellant herein did not raise any objection about the framing of charges by the Enquiry Officer during the enquiry proceedings, thereby, waived his right, as such, the said aspect is not fatal to the case of the Department and would not vitiate the entire departmental proceedings.

13. The learned single Judge also held that the above aspect is a procedural infirmity. In this context, it would be appropriate and apposite to refer to the relevant Rules, which govern the situation.

14. The service conditions of the employees of the respondent-University are governed by the Administrative Manual. Chapter XII of the said Manual deals with penalties and appeals. Rule 6 of the same deals with the major penalties and the said Rule reads as follows:

Rule (6):

(a): Enquiry relating to any disciplinary action may be made by the Vice-Chancellor or the Discipline Committee of the Executive Council as circumstances require, or by such other Officer of Special Committee appointed for the purpose, provided that in cases of lapses for which the Registrar or any other Officer of the University or the head of a Department or Office is directly or indirectly responsible, the Vice-Chancellor shall appoint a committee to hold an enquiry and fix liability.

(b): No order of dismissal, removal, compulsory retirement or reduction shall be imposed on an employee of the University (other than an order based on facts which have led to his conviction in a Criminal Court), unless he has been informed in writing of the grounds in which it is proposed to take action, and has been afforded an adequate opportunity of defending himself. The grounds on which it is

proposed to take action shall be reduced to the form of a definite charge or charges, which shall be communicated to the person charged together with a statement of the allegations on which each charge is based and of any other circumstances which it is proposed to take into consideration in passing orders in the case. He shall be required, within a reasonable time to put in a written statement of his defence and to state whether he desires an oral enquiry or only to be heard in person. If he desires an oral enquiry or if the authority concerned so directs, an oral enquiry shall be held. At that enquiry oral evidence shall be heard as to such of the allegations as are not admitted, and the person charges shall be entitled to cross examine the witness, to give evidence in person and to examine such witnesses as he may produce. Provided that the authority conducting the enquiry may, for special and sufficient reasons to be recorded in writing refuse to examine a witness. If no oral enquiry is held and if he had desired to be heard in person, a personal hearing shall be given to him. The proceedings shall contain a sufficient record of the evidence and a statement of the findings and the grounds thereof.

(c): The requirement of sub-rule (b) shall not apply where the person concerned has

absconded, or where it is for other reasons impracticable to communicate with him.

(d): All or any of the provisions of sub-rule(b) may, in exceptional cases, for special and sufficient reasons to be recorded in writing be waived where there is a difficulty in observing exactly the requirements of the sub-rule and those requirements can be waived without injustice to the person charged.

(e): Where the officer of committee holding the enquiry is not competent to award a penalty, his duty ends with recording of his or its findings on the charges and it is no part of his or its function to make any suggestions regarding the penalty to be awarded or the further disposal of the case.

(f): Any member of the university service may be placed under suspension from service by the Vice- Chancellor pending enquiry into grave charges, where such suspension is deemed by him to be necessary in the interest of the University. The period of suspension from office and the emoluments thereof either in whole or in part shall not in the case of teachers exceed one year where suspension is imposed as a punishment under rule I(vi)".

15. While referring to the above said Rule and the provisions contained therein, the learned single Judge categorically found that the occasion to appoint an Enquiry Officer would arise only when the employee concerned desires oral enquiry or the disciplinary authority himself directs such enquiry. The learned Judge also recorded a categorical finding that an Enquiry Officer can be appointed only after receipt of explanation from the employee concerned to a charge sheet and that the function of the Enquiry Officer is only to record the findings as to the proof or otherwise of the charges. The learned single Judge also found that the Executive Council of the University had straightaway appointed the Enquiry Officer and the same was not preceded by issuance of charge memo as contemplated under Rule 6 (b) of the above mentioned Rules. It is also significant to note that the learned Judge also recorded a finding that the course of action adopted by the respondent-University is contrary to Rule 6 of the Andhra University Administrative Manual and also recorded a finding in favour of the writ petitioner.

16. It is a settled and well established principle of law that when the law directs a particular thing to be done in a particular manner, the same should be done in that manner only and any act in deviation to the same, is required to be treated as void. It is also a cardinal principle of law that there is no estoppel or waiver against law. Failure on the part of the person in raising objection against illegality, during the course of disciplinary proceedings, does not render such act legal and valid. It is not in dispute that the above Rule specifically mandates framing of charges by the disciplinary authority. The respondents deviated and contravened the same and the Enquiry Officer on whom no such power is conferred by the Rules framed the charges. Therefore, the very framing of the charges by the Enquiry Officer suffers from inherent lack of jurisdiction and is an incurable defect, which undoubtedly strikes at the root of the matter and, in the considered opinion of this Court, the said aspect vitiates the entire disciplinary proceedings. Mere procedural deviation is different from action which suffers from inherent lack of jurisdiction. In this context, it would be

appropriate to refer to the judgment cited by the learned Senior Counsel appearing for the appellant.

17. In **Sardar Prakash Singh Badal v V.K. Khanna** (AIR 2001 SC 343), the Hon'ble Supreme Court, at paragraph No.34, held as follows:

34. *The High Court while delving into the issue went into the factum of announcement of the Chief Minister in regard to appointment of an Inquiry Officer to substantiate the frame of mind of the authorities and thus depicting bias – What bias means has already been dealt with by us earlier in this judgment, as such it does not require any further dilation but the factum of announcement has been taken note of as an illustration to a mindse viz. : the inquiry shall proceed irrespective of the reply – Is it an indication of a free and fair attitude towards the concerned officer? The answer cannot possibly be in the affirmative. It is well settled in Service Jurisprudence that the concerned authority has to apply its mind upon receipt of reply to the charge-sheet or show-cause as the case may be, as to whether a further inquiry is called for. In the event upon deliberations and due considerations it is in the affirmative – the inquiry follows but not otherwise and it is this part of Service Jurisprudence on which reliance was placed by Mr. Subramaniam and on that score, strongly criticized the conduct of the respondents here and accused them of being*

biased. We do find some justification in such a criticism upon consideration of the materials on record”.

18. Coming to the judgment cited by the learned Standing Counsel for the respondent-University, in the ***State of Uttar Pradesh and Others v. Rajit Singh*** in [Civil Appeal No.2049-2050 of 2022, [2022 SCC online SC 341], the Hon’ble Supreme Court, at paragraph Nos.9 and 10, held as follows:

09. From the impugned judgment and order passed by the High Court, it appears that when the aforesaid submission and the aforesaid 8 decision was pressed into service, the High Court has not considered the same on the ground that the other officers involved in respect of the same incident are exonerated and/or no action is taken against them. Applying the law laid down in the case of A. Masilamani (supra) to the facts of the case on hand, we are of the opinion that the Tribunal as well as the High Court ought to have remanded the matter to the Disciplinary Authority to conduct the enquiry from the stage it stood vitiated. Therefore, the order passed by the High Court in not allowing further proceedings from the stage it stood vitiated, i.e., after the issuance of the charge sheet, is unsustainable.

10. In view of the above discussion and for the reasons stated above, the findings recorded by the Tribunal as well as the High Court quashing and setting aside the order of punishment imposed by the Disciplinary Authority by applying the Doctrine of Equality is hereby quashed and set aside. However, as the enquiry is found to be vitiated and is found to be in violation of the principles of natural justice in as much as it is alleged that the relevant documents mentioned in the charge sheet were not supplied to the delinquent officer, we remand the matter to the Disciplinary Authority to conduct a fresh enquiry from the stage it stood vitiated, i.e., after the issuance of the charge sheet and to proceed further with the enquiry after furnishing all the necessary documents 9 mentioned in the charge sheet and after following due principles of natural justice. The aforesaid exercise shall be completed within a period of six months from today.

19. Though there is an attempt made in the direction of requesting this Court to remand the matter, this Court is not inclined to do so as the instant departmental proceedings has been pending since long time and the action was initiated as long back as in the year, 2005. In the considered opinion of this Court and having regard to the ratio laid down in the judgments cited by the learned counsel for the appellant and having regard to the reasons

mentioned supra, this Court is of the opinion that the present appeal is liable to allowed. Having regard to the factual and circumstantial variation, the judgments cited by the learned counsel for the respondent-University would not render any assistance to the case of the respondents.

20. Since the very basis for holding the enquiry i.e., framing of charges suffers from inherent lack of jurisdiction, in the opinion of this Court, the other findings recorded by the learned single Judge are also liable to be set aside.

21. For the aforesaid reasons, Writ Appeal is allowed, setting aside the order, dated 10.06.2008, passed by the learned single Judge in W.P.No.21166 of 2007 and, consequently, W.P.No.21166 of 2007 is also allowed, setting aside the proceedings impugned in the Writ Petition. It is needless to observe that the appellant-writ petitioner is entitled for all the consequential benefits. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this case,
shall stand closed.

A.V. SESA SAI, J

DUPPALA VENKATA RAMANA

03rd May, 2023.

Note:

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