

(2007) 11 MAD CK 0208

In the Madras High Court

Case No : Writ Petition (MD) No. 9265 of 2007 and M.P. (MD) No's. 1 and 2 of 2007

Dr. R. Jayaraman

APPELLANT

Vs

Madurai Kamaraj University

RESPONDENT

Date of Decision : 15-11-2007

Acts Referred:

All India Services (Discipline and Appeal) Rules, 1969 — Rule 2(8), 3

Citation : (2007) 11 MAD CK 0208

Hon'ble Judges : N. Paul Vasanthakumar, J

Bench : Single Bench

Advocate : G.R. Swaminathan, for the Appellant;

Final Decision : Dismissed

Judgement

N. Paul Vasanthakumar, J.—Prayer in the writ petition is to quash the resolution item No. 60 dated 6.9.2007 passed by the Syndicate of

Madurai Kamaraj University placing the petitioner under suspension pending enquiry into charges framed against him subject to the approval of the

Chancellor of Madurai Kamaraj University.

2. The case of the petitioner is that he formed an association, a registered Public Charitable Trust called "Centre for Entrepreneurship

Development" (hereinafter called "CED"), which was registered in the year 1990, originally functioned under the Department of Entrepreneurship

Studies of Madurai Kamaraj University. According to the petitioner, the Syndicate passed a resolution on 25.10.1993 de-linking CED from the

University and the said CED became an independent body. The Syndicate also passed a resolution on 30.11.1993 permitting the petitioner to

continue to serve as Honorary Secretary of the said Trust and according to the

petitioner the said resolution was withdrawn only on 25.8.2006.

Due to the activities of the petitioner in the said Trust, the Syndicate passed resolution against the petitioner and the said actions were challenged

by the petitioner and one Lakshmanan before this Court in W.P.Nos.10711 of 2005, 7733 and 8120 of 2006 and W.A. No. 94 of 2006 and a

Division Bench of this Court by common Judgment dated 25.6.2007 dismissed the writ petitions filed by the petitioner.

3. According to the learned counsel for the petitioner, as against the said judgment, SLP No. 14746 of 2007 was filed and without ordering notice

to the University, the counsel for the University was directed to file counter. When the matter was pending before the Supreme Court, the

University resorted to pass the impugned resolution placing the petitioner under suspension subject to the approval of the Chancellor. The said

order is challenged in this writ petition on the ground that interim suspension is not warranted since the events took place way back in the year

1999 and the jurisdictional issue of the respondent University being pending before the Supreme Court, there is no justification at this point of time

to pass the impugned resolution and there is no necessity to pass the order of suspension since the petitioner is on leave and the action of the

Syndicate is vindictive and stigmatic in nature.

4. I have considered the submissions of the learned counsel for the petitioner and perused the documents filed.

5. The Division Bench of this Court in paragraphs 26 to 31 of the Judgment dated 25.6.2007 held as follows:

26. The number of litigations initiated by the petitioner and Jayaraman also would reveal the fact that they are always trying to put some stumbling

blocks in the process of initiation of action against them by the University, going upto the extent of denying the right and jurisdiction of the

University to launch any action against them, which was rejected by this Court.

27. A bare perusal of the audit report, which is the root cause for initiation of action against the petitioner and Jayaraman, would reveal the fact of

embezzlement of funds of the University. When the very creating of the Trust, while the petitioners were occupying high positions in the University,

appears to be for their self-enrichment and when such serious allegations of misuse of power, misappropriation, embezzlement and diversion of

public funds by the petitioners are made against them, it is but appropriate for the University to probe into the matter to unearth the true facts of the case.

28. Prima facie, there are materials to show that petitioners Lakshmanan and Jayaraman have misused their official positions for creating the Trust and acting much against the interest of the University, betraying the trust reposed on them. In the light of the above discussion, we are unable to either appreciate or accept the contention of the petitioners that they are victimised.

29. The learned single Judge, has considered all the aspects of the case regarding constitution of the Enquiry Committee by the Vice Chancellor in proper perspective and dismissed W.P. No. 730 of 2006, by the order dated 20.9.2006. We do not find any illegality or perversity in approach by the learned single Judge. Therefore, the interference sought for by the appellant in W.A. No. 394 of 2006 is uncalled for and accordingly, W.A.

No. 394 of 2006 is dismissed.

30. Though it is contended on behalf of the petitioner in W.P. No. 10711 of 2005 that CED is an autonomous body, there is no scrap of material on record to show that the University has accorded the status of autonomous body to the CED. On the contrary, there is voluminous material on record to prove that even after de-linking, CED is making use of the name, fame and banner of the University and when the reputation of the University is at stake at the hands of its own employees, either working or retired, under the garb of CED, it cannot be said that the University cannot interfere with the affairs of the CED being run by Dr. M. Lakshmanan with the help of his stooges like Mr. Jayaraman. Therefore, the relief sought for in W.P. No. 10711 of 2005 cannot at all be granted and it deserves outright rejection.

31. Since the properly constituted Enquiry Committee has found that there are prima facie materials to proceed against the petitioner Jayaraman and further, on perusal of the entire materials placed on record, as has already been adverted to supra, this Court is also able to find some prima facie material as against the petitioner to initiate action against him to unearth the true facts, it is unsafe to allow him to continue as Head of Department and hence, the 1st respondent has rightly removed the petitioner

from the position of the Head of Department on account of the continuing investigation into the grave charges levelled against him in connection with public funds, in which, this Court is unable to find any motives to be attributed to the University and hence the reliefs sought for by the petitioner in W.P.Nos.10711 of 2005, 7733 of 2006 and 8120 of 2006 cannot be granted thereby giving a deep burial to the fact finding process and nipping the investigation process at the budding stage itself without allowing it to reach its logical ends, and hence these writ petitions also deserve to be dismissed.

From the above extracted portion it is evident that the Division Bench came to the conclusion that the Enquiry Committee found that there are prima facie materials to proceed against the petitioner and this Court also found some prima facie materials against the petitioner to initiate action against him to unearth the true facts. The motive attributed against the University was not accepted by this Court. The said findings having not been stayed by the Supreme Court in spite of the specific prayer made, I am of the view that the respondent University is entitled to proceed with the matter and pending enquiry into the charges it is the prerogative of the University to place the petitioner under suspension subject to the approval of the Chancellor.

6. From the resolution it could be seen that on review of the audit objections relating to the year 2003 concluded on 20.9.2005, there is prima facie case to proceed against the petitioner for misappropriation of public funds, cheating and breach of trust and therefore it was recommended to initiate necessary departmental action. The Vigilance and Anti Corruption Department is now investigating into the charges against the petitioner as to the audit objections regarding the accounts of DES alleging among other things, leakage of revenue towards course fees collection of Rs. 106.28 lakhs and Rs. 25,00,000/- and the explanation offered by the petitioner for the audit objection on 26.9.2006 was not found satisfactory. Charges were framed against the petitioner through show cause notice dated 3.8.2007 for which the petitioner submitted explanation on 10.8.2007 and the same was also found not satisfactory. Therefore the Syndicate found sufficient cause to suspend the petitioner in the interest of the University and passed the impugned resolution.

7. The power of the Syndicate to suspend and dismiss the University Lecturers, University Readers, University Professors, Teachers and servants

of the University is found in Chapter XI Rule 2(8). The power of suspension includes the power of interim suspension and the same is well settled

principle of law as per various decisions of the Supreme Court.

8. The contention of the learned counsel for the petitioner that suspension is not warranted cannot be countenanced in view of the fact that whether

to suspend a person or not is the discretion of the Disciplinary Authority, here in this case the Syndicate. The contention that because the petitioner

is on leave, there is no necessity to place the petitioner under suspension also cannot be accepted, as taking leave by the petitioner has nothing to

do with the exercising of power of suspension by the competent authority. The vindictive nature adopted by the Syndicate as propounded by the

petitioner is already repelled by this Court in the Division Bench judgment cited supra.

9. The contention that the said findings cannot be taken as the basis for passing the impugned resolution cannot be sustained because of the

pendency of SLP, as admittedly the said findings are not stayed by the Supreme Court. The impugned suspension order having been passed

pending SLP, it is always subject to the results of the orders to be passed in the SLP. Hence on the said ground the impugned order of suspension

cannot be quashed.

10. The power of the department to place an officer under suspension pending enquiry into the disciplinary proceeding is well settled.

(a) In the decision reported in P.R. Nayak Vs. Union of India (UOI), , the Supreme Court considered the power of suspension conferred in Rule

3 of the All India Services (Discipline and Appeal) Rules, 1969, and held that when the rule provides for passing an order of ad-interim suspension

of an employee during pendency of the enquiry, in respect of certain charges, is well within the power. In the said case, the pending enquiry into the

charges were only contemplated and in fact, charges were not pending on the date of suspension. Taking note of the said fact, the Supreme Court

held that the order of suspension being contrary to Rule 3 of the All India Services (Discipline and Appeal) Rules, 1969, the suspension order was

unsustainable.

(b) The above decision of the Supreme Court was followed by me in the decision reported in M.K. Dange Vs. Chairman-cum-Managing Director,

Oil and Natural Gas Corporation, The Director (Finance), Oil and Natural Gas Corporation and The General Manager (F and A), Oil and Natural

Gas Corporation,

(c) The power to suspend an employee provided in express terms either in the contract or in the statute, came up for consideration before the

Supreme Court in the decision reported in The Management of Hotel Imperial, New Delhi and Others Vs. Hotel Workers' Union, . In paragraph

10, the Supreme Court held thus,

10. The first question therefore that falls for consideration is the extent of the power of the employer to suspend an employee under the ordinary

law of master and servant. It is now well settled that the power to suspend, in the sense of a right to forbid a servant to work, is not an implied

term in an ordinary contract between master and servant, and that such a power can only be the creature either of a statute governing the contract,

or of an express term in the contract itself. Ordinarily, therefore, the absence of such power either as an express term in the contract or in the rules

framed under some statute would mean that the master would have no power to suspend a workman and even if he does so in the sense that he

forbids the employee to work, he will have to pay wages during the so-called period of suspension. Where, however, there is power to suspend

either in the contract of employment or in the statute or the rules framed thereunder, the suspension has the effect of temporarily suspending the

relation of master and servant with the consequence that the servant is not bound to render service and the master is not bound to pay. These

principles of the ordinary law of master and servant are well settled and have not been disputed before us by either party. Reference in this

connection may be made to Hanley v. Pease and Partners Ltd. 1915-1 KB 698, Wallwork v. Fielding 1922-2 KB 66, Secretary of State v.

Surendra Nath ILR (1939) 1 Cal 46 : AIR 1938 Cal. 759 and Rura Ram Vs. Divisional Supdt., N.W. Rly., Lahore, .

(d) Again in the decision reported in R.P. Kapur Vs. Union of India (UOI) and Another, , the Supreme Court held that the authority entitled to

appoint a public servant would be entitled to suspend him pending departmental

enquiry into his conduct or pending criminal proceeding, which may eventually result in departmental enquiry against him.

(e) In *Balvantray Ratilal Patel Vs. The State of Maharashtra*, a question arose as to whether a person, who was placed under suspension pending further orders due to pendency of criminal case, gets automatically restored into the service if the criminal case ended in acquittal. The Supreme Court held that even after the acquittal, a fresh order revoking the order of suspension should be passed by the department and there is no automatic revocation of suspension arises.

11. From the above referred decisions it is evident that the power exercised by the respondents in placing the petitioner under suspension pending enquiry into the charges is justified in the interest of the University.

There is no merit in the writ petition and the writ petition is dismissed in limine. Connected miscellaneous petitions are also dismissed.