

(2000) 12 MAD CK 0079

In the Madras High Court

Case No : Writ Petition No. 3831 of 1993

Era. Ganesan

APPELLANT

Vs

Anna University and University of Madras

RESPONDENT

Date of Decision : 22-12-2000

Acts Referred:

Anna University Act, 1978 — Section 2, 3, 33, 33(1), 33(4)

Madras University Act, 1923 — Section 16(1), 16(2), 19

Madras University Employees Conduct Rules — Rule 16, 19, 2, 3, 7

Citation : (2000) 12 MAD CK 0079

Hon'ble Judges : P.D. Dinakaran, J

Bench : Single Bench

Advocate : V. Selvaraj, for the Appellant; R. Vaidyanathan, for Respondent 1 and S.S. Sunder, for Respondent 2, for the Respondent

Judgement

P.D. Dinakaran, J.—The Petitioner was appointed as a Lecturer in Electrical Engineering in the department of Chemical Technology of Alagappa Chettiar College of Technology, Guindy, Madras on 21.6.1968 and after the incorporation of the Anna University, his service was transferred to the Anna University as per Section 33 read with Section 2(b) and Section 3 of the Anna University Act, governed by the same tenure, at the same remuneration and upon the same terms and conditions and with the same rights and privileges as to pension or gratuity, if any, and other matters as he would have held the same on the appointed day, namely, 4.7.1978 as if the Anna University Act had not been passed.

2. By the proceedings of the first Respondent-Anna University dated 24.2.1993, in Memo No. 27707/AI/88-2, which is impugned in the above writ petition, the Petitioner was directed to hand over the charge as Head, Training Cell. Anna University on 26.2.1993 AN and relieved of his duties on 28.2.1993 AN in consequence of the approval of the resolution of the Syndicate of Anna University dated 10.2.1993 by the Vice Chancellor to compulsorily retire the Petitioner from the post of Lecturer in Electrical Engineering in the Respondent-University with

effect from 28.2.1993 AN pursuant to a disciplinary action initiated against him for the alleged contravention of Rules 2(c), 2(d), 3, 3(a), 7(a) and 7(b) of the Madras University Employee's Conduct Rules, for the following alleged charges, vide charge memo dated 26.2.1980;

(i) that Thiru R. Ganesan, Lecturer in Electrical Engg.A.C. College of Technology, refused to give a written representation regarding his accusation of intimidation of the students and spoiling of their career by Dr. G.S. Laddha, Director, Dr. S. Krishna Murthy, Professor of Textile Technology, Dr. S. Vedaiyan, Warden and Mr. Natarajan, Deputy Warden and replied that his talk of warning them alone is sufficient (vide Lr. No. TAJ/DF/ Staff/2443 dated 12.9.1979 of the Director A.C. College of Technology, Madras), even-though he is fully aware that he is only a subordinate to the Director and his refusal and statements in this regard are in contravention of Rule 2(d) and (3), of the Madras University Employees Conduct Rules:

(ii) that he had been engaging himself and participating in demonstrations which are prejudicial to the interest of the University (vide his letters dated 24.8.79, 8.9.79 letter No. 20506/B4/79, dated 8.10.79 of the Principal. College of Engineering, Guindy, Resolution dated 12.10.79 received from the Secretary. Perarignar Anna University of Technology Non-Teaching Staff Association letter No. TAJ/DF/RD/2501 dated 16.10.1979 from the Director A.C. College of Technology Madras) Regulations dated 17.12.1979, AUNTS/ DISPUTE /79 dated 21.12.79 from the Secretary P.A.U.T. Non-Teaching Staff Association, letter dated 27.12.79 from the Principal. College of Engineering, Guindy to the Inspector of Police, Guindy copy marked to this office letter dated 28.12.79, 29.12.79 2.1.80. 3.1.80 and No. 27077/B4/79 dated 24.1.80 from the Principal, College of Engineering, Guindy, enclosing a copy of the report dated 23.1.1980 from the Inspector of Police, J3 Police Station, Guindy knowing that his activities are in contravention of Rule 7 of the Madras University Employees Conduct Rules.

(iii) that he had been inciting the non-teaching Staff of the College of Engineering. Guindy and Madras Institute of Technology to resort to fast, black flag demonstration in all the meetings in the Perarignar Anna University of Technology campus in which the Vice-Chancellor of this University participates, leading processions and shouting slogans in front of the office of the Perarignar Anna University of Technology, Directorate of Technical Education etc. (vide, his letters dated 24.8.79, 27.8.79, 28.8.79, resolution dated 12.10.79 received from the Secretary PAUT Non-Teaching Staff Association letters No. TAJ/Staff/2056 dated 18.10.79 and Non TAJ /DF/2522 dated 26.10.79 from Dr. S. Vedaiyan. Professor of Engineering, A.C. College of Technology Madras) though he is fully aware that his actions are in contravention of Rules 3, 7(a) and 7(b) of the Madras University Employee's Conduct Rules.

(iv) that he had been discourteous towards the Director A.C. College of Technology Dr. S. Vedaiyan and P.A. to the vice-Chancellor (vide letter No. TAJ/DF/Staff 2443 dated 12.9.79 from the Director, A.C. College of Technology,

Madras letter No. TAJ/Staff/2506 dated 18.10.79 from Dr. S. Vedaiyan, Professor of Engineering A.C. College of Technology, Madras and note dated 22.10.79 from the P.A. to the Vice-Chancellor P.A.U.T.) which is in contravention of Rule 3 of the Madras University Employee's Conduct Rules.

(v) that he had a procession of Non-teaching Staff of the College of Engineering, Guindy and the Madras Institute of Technology, to the Raj Bhavan and presented a memorandum to the Governor of Tamil Nadu and Chancellor of the University criticising the actions of the Vice-Chancellor and Registrar of this University-in contravention of Rules (3), (7) and (16) of the Madras University Employee Conduct Rules (Vide letter No. AUNTS A/79-80 dated 26.10.79 of the P.A.U.T. Non-teaching Staff Association)

(vi) that he refused to receive official communications from the Professor of Engineering, A.C. College of Technology (who is responsible for immediate supervision of all the teaching and non-teaching Staff of Engineering Laboratories including nontechnical Electrical and Workshop) and thereby contravened Rules 2(c) and 2(d) of the Madras University Employee's Conduct Rules.

3. The first Respondent Anna University is incorporated under the Anna University Act, 1978 with effect from 4.9.1978 for the development of Engineering Technology and allied Science and for furthering the advancement of learning and prosecution of research in Engineering Technology and allied Science.

4. As per Section 2(b) of the Anna University Act. the constituent College means any institution specified in Schedule 1. namely:

SCHEDULE I

1. The following Departments of the University of Madras, located in the Alagappa Chettiar College of Technology, Guindy, Madras, namely:

(1) Chemical Technology:

(2) Leather Technology;

(3) Textile Technology:

(4) The School of Architecture and Town Planning.

II. The Madras Institute of Technology, Chromepet, Madras.

5. The Anna University shall be of the unitary type and shall comprise of the College of Engineering, Guindy, Madras and the Institutions specified in Schedule-1 referred to above, as per Section 3 of the Anna University Act.

6. Section 33 of the Anna University Act provides for transfer of colleges, employees and funds, which reads as follows:

Section: 33: (1) Notwithstanding anything contained in the Madras University

Act, 1923 (Tamil Nadu Act 7 of 1923) relating to the establishment of the University of Madras or the statutes, ordinances, regulations and orders made thereunder, on and from the appointed day, the college of Engineering, Guindy, Madras and the Institutions specified in Schedule I shall be disaffiliated from the University of Madras to which they were affiliated on the date immediately preceding such day. The institutions specified in Schedule I shall form constituent colleges of the University and the provisions of this Act shall apply accordingly.

(2) On and from the appointed day. the control and management of the College of Engineering, Guindy; Madras and the institutions specified in Schedule 1. all properties, assets and liabilities of the Government the University of Madras and the Governing Council of Madras Institute of Technology in relation thereto shall stand transferred to and vest in the University.

(3) The Government may, at any time after the appointed day, transfer to the University any of their lands for its use on such terms and conditions as they deem proper.

(4) The Government may, at anytime after the appointed day, transfer to the University the control and management of any of their colleges and institutions situated within the jurisdiction of the University on such terms and conditions as they deem proper.

(5) Notwithstanding anything contained in any other law relating to the establishment of a University in the State or the statutes, ordinances regulations and order made thereunder, on from the date to be notified by the Government the colleges or institutions referred to in Sub-section (4) shall be disaffiliated from the University to which they were affiliated on the date, immediately preceding the notified date and shall be transferred to, and maintained by the University as its constituent colleges or institutions and the provisions of this Act shall apply accordingly.

7. By virtue of such transfer of the College and the institutions in Schedule 1. the same shall be disaffiliated from the University of Madras on and from the appointed day, namely, 4.9.1978 and consequently, the service of certain employees working in the Madras Institute of Technology Chrompet and Departments of University of Madras specified in item (1) of Schedule 1 are also transferred to Anna University and they become the employees of Anna University as per Section 36 of the Anna University Act, which reads as follows:

Section:36: (1) Every person who immediately before the appointed day is serving in:

(a) the Madras Institute of Technology, Chrompet Madras; and

(b) the departments of the University of Madras specified in item 1 of Schedule 1, shall as from the said date become an employee of the Anna University and shall cease to be an employee of the Madras Institute of Technology or the University of Madras as the case may be.

(2) (a) As soon as may be, after the appointed day, the Government may, after consulting the Vice-Chancellor direct by general or special order that:

(i) such of the employees of the Government who immediately before the appointed day were serving in the College of Engineering, Guindy, Madras; and

(ii) such of the employees of the Government in the Department of Technical Education, who immediately before the appointed day, were liable on orders of transfer issued by the competent authority under the rules then existing for such transfers to serve in the College of Engineering, Guindy, Madras, as are specified in such order shall stand allotted to serve in connection with the affairs of the Anna University with effect from such date as may be specified in such order:

Provided that no such order shall be issued in respect of any such employee without his consent for such allotment.

(b) An order may be issued under Clause (a) of this Sub-section so as to have retrospective effect on and from a date not earlier than the 4th September 1978.

(c) With effect from the date specified in the order under Clause (a) of this Sub-section, the persons specified in such order shall become employees of the Anna University and shall cease to be employees of the Government

(3) Every person referred to in Sub-section (1) and Sub-section (2), shall hold office under the Anna University by the same tenure, at the same remuneration and upon the same terms and conditions and with the same rights and privileges as to pension or gratuity, if any, and other matters as he would have held the same on the appointed day or the date specified in the order under Sub-section (2), as the case may be, as if this Act had not been passed.

(4) (a) Where the Anna University is satisfied that, for the purpose of securing uniformity in the terms and conditions of service applicable to officers, teachers and other persons employed in the said University, it is necessary so to do or that, in the interest of the said University a revision of the terms and conditions of service applicable to officers, teachers or other persons employed in the said University is called for, the Anna University may, notwithstanding anything contained in Sub-section (3) or in any other law for the time being in force or in any agreement or contract for the time being in force alter the terms and conditions of service to such extent and in such manner as it may think fit:

Provided that the remuneration and other terms and conditions of service of any such officer, teacher or other person employed in the Anna University shall not be varied by the said University to his disadvantage.

(b) If any alternation of the terms and conditions of service made under Clause (a) of this Sub-section is not acceptable to any officer, teacher or other person employed in the Anna University, the said University may, unless otherwise the contract of service of such officer, teacher or other person employed in the University provides for a shorter notice of termination, terminate his employment

by giving him compensation equivalent to three months remuneration.

(c) The compensation payable to any officer teacher or person employed in the Anna University under Clause (b) of this Sub-section shall be in addition to and shall not affect any pension, gratuity, provident fund or insurance or any other benefit to which the officer, teacher or other person employed in the same University is entitled under the contract of service.

8. Section 44 of the Anna University Act, which reads as follows:

Section: 44: (1) On and from the appointed day, the provisions of the Madras University Act, 1923 (Tamil Nadu Act 7 of 1923) (hereinafter in this section referred to as the said Act), shall cease to apply to and in respect of the College of Engineering, Guindy. Madras and the institutions specified in Schedule 1.

(2) Such cessor shall not affect:

(a) the previous operation of the said Act: or

(b) any penalty, forfeiture or punishment, incurred in respect of any offence committed against the said Act: or

(c) any investigation, legal proceeding or remedy in respect of such penalty, forfeiture or punishment, and any such investigation legal proceeding or remedy may be instituted, continued or enforced and any such penalty, forfeiture or punishment may be imposed as if this act had not been passed.

(3) Notwithstanding anything contained in Sub-section (1), all statutes ordinances and regulations made under the said Act and in force on the appointed day, shall in so far as they are not inconsistent with the provisions of this Act, continue to be in force until they are repealed by statutes, ordinances and regulations made under this Act.

Therefore the provision of the Madras University Act shall cease to apply to in respect. of the College of Engineering, Guindy, Madras and the. institutions specified in Schedule I.

9.1. Admittedly, the Syndicate of Madras University approved the Madras University Employee's Conduct Rule, on 28.4.1976 and the same was circulated to the teaching, research and non-teaching Staff of the Madras University. As per Rule 19 of the Madras University Employee's Conduct Rules, the "Employee" includes members of both sexes of teaching research and non-teaching Departments of the University. Accordingly, the Madras University Employees Conduct Rules were published and enforced to teaching, research, and non-teaching Staff of the Madras University.

9.2. Even though, the Syndicate approved the proposal to frame the code of conduct for the University teachers on 29.6.1978 with an observation that the Madras University Employee's Conduct Rules would thereafter apply to the non-teaching staff only, the same was withdrawn by a motion dated 27.11.1978 of

the senate of the Madras University.

9.3. Under such circumstances the Anna University initiated a disciplinary action against the Petitioner by their memo dated 26.2.1980 for certain alleged contraventions of Rules 2(c), 2(d), 3, 3(a), 7(a) and 7(b) of the Madras University Employee's Conduct Rules, as referred to above in view of Section 33, 36 and 44 read with Section 2(b) and 3 of the Anna University Act.

10. The Petitioner challenged the charge memo dated 26.2.1980 in W.P. No. 605 of 1981. Even though the same was dismissed by order dated 22.6.1982, on appeal in W.A. No. 479 of 1982, by order dated 3.10.1988, the charge memo dated 26.2.1980 was quashed. However, in Civil Appeal No. 3564 of 1989 arising out of SLP (C) No. 13772 of 1988, against the order dated 3.10.1988 in W.A. No. 479 of 1982 the Apex Court by order dated 29.8.1989, observed that the Registrar by issuing the charge memo dated 26.2.1980, did only a ministerial act and communicated the decision of the Syndicate in the form of charge sheet; that even though, some charges which were added by the Registrar and the same were not part of the earlier resolution of the syndicate they were subsequently approved by the syndicate and hence, the Apex Court held that such technical questions had no significance in enquiring into the charges framed under the charge memo dated 22.6.1980 and accordingly directed the first Respondent to entrust the enquiry to a retired Judicial Officer.

11. In the meanwhile, the Petitioner filed W.P. No. 16078 to 16080 of 1969 to quash the said disciplinary proceedings, claiming full salary from the date of suspension and challenging the order of suspension respectively. However the Petitioner was reinstated on 26.11.1990. Therefore, this Court by a common order dated 30.11.1990 taking note of the orders of the Apex Court dated 21.8.1989 in Civil Appeal No. 3564 of 1989 dismissed all the above writ petitions. However, the Petitioner has preferred W.A. No. 220 of 1991 against the order dated 30.11.1990 refusing to pay the full salary for the period of suspension namely, from 20.6.1980 to 26.11.1990; but the Division Bench of this Court by order dated 5.3.1991 dismissed the writ appeal No. 220 of 1991 leaving the matter to the Petitioner to agitate for his full salary after the completion of the disciplinary action.

12. A full fledged disciplinary action was conducted by a retired Judicial Officer, who by his report dated 7.12.1992 found that the Petitioner was guilty of charges 1 to 4. and held that charges 5 and 6 were not proved. The Petitioner has, of course, no grievance as to the procedure followed in the said disciplinary enquiry.

13. A further opportunity was given to the Petitioner against the proposed punishment on 6.2.1993 to explain his case to the Sub-Committee consisting members of the Syndicate of the Anna University. The Subcommittee after giving sufficient opportunity to the Petitioner decided to leave the matter to the Syndicate and the Anna University to decide on the proposed punishment. Accordingly, the Syndicate by their resolution dated 10.2.1993, decided

compulsorily retire the Petitioner from service with effect from the afternoon of 28.2.1993 and to treat the period of suspension from 20.6.1980 to 26.11.1990 as leave to which he was eligible including unlimited extraordinary leave without pay.

14. Aggrieved by the said resolution dated 10.2.1993, the Petitioner preferred W.P. No. 3408 of 1993 on the ground that the order of compulsory retirement could not have been awarded without the approval of the Chancellor. However, pending the above write petition, the Chancellor approved the resolution of the Syndicate of the Anna University dated 10.2.1993 imposing, the punishment of compulsory retirement to the Petitioner with effect from the afternoon of 28.2.1993. pursuant to which, the Anna University by proceedings dated 24.2.1993 directed the Petitioner to hand over the charges on the AN of 26.2.1993 and relieved him of his duties from the AN of 28.2.1993. Hence the Petitioner has filed the above W.P. No. 3831 of 1993 for issue of the a writ of Certiorari calling for the records relating to the proceedings of the Respondent in Memo No. 27707/AI/99-I dated 24.2.1993 and quash the same.

15. In view of the approval of the resolution dated 10.2.1993 of the Syndicate of the Anna University, by the Chancellor on 23.2.1993, retiring the Petitioner compulsorily from service, which is impugned in W.P. No. 3408 of 1993. nothing survived in the W.P. No. 3408 of 1993 and therefore, the same was dismissed on 14.12.1998.

16. Pending the above W.P. No. 3831 of 1993, the Anna University raised an objection that the same is not maintainable in law without impleading Madras University as a Respondent. Hence, this Court permitted the Petitioner to implead the University of Madras and hence, by order dated 1.2.2000 in W.M.P. No. 29548 of 2000, the University of Madras was impleaded as second Respondent.

17. Mr. V. Selvaraj, the learned Counsel appearing for the Petitioner contends as follows:

(i) As per the decision of the Syndicate of Madras University dated 29.6.1978 proposing to frame code of conduct for University teachers, and to apply the Madras University Employee's Conduct Rules to the non-teaching staff only, from then, the terms and conditions of the Petitioner's service, which was transferred from Madras University to Anna University with effect from 4.9.1978, are governed by the provisions of the Code of Conduct of University teachers, but not the Madras University Employee's Conduct Rules, even though the said Code of Conduct of the University Teachers was withdrawn by the Senate by a motion dated 27.11.1978 as per Section 36(3) read with Section 2(b), 3 and 33 of the Anna University Act:

(ii) Since the syndicate of Anna University by their resolution dated 29.6.1978 already resolved that the Madras University Employee's Conduct Rules would apply to the non-teaching staff only from 29.6.1978 on wards, the charges framed against the Petitioner for certain alleged contraventions of Rules 2(c),

2(d), 3, 3(a) 7(a) and 7(b) of the Madras University Employee's Conduct Rules, are not sustainable in law. Consequently, the impugned disciplinary action and the order of compulsory retirement are liable to be quashed as they are bad in law and the Petitioner is entitled for entire service benefits:

(iii) Even though the first Respondent is empowered to suspend the Petitioner by way of a punishment, u/s 19(g) and 19(h) of the Madras University Act, such punishment of suspension should not exceed one year as per Clause 5 of Chapter IX of the Laws of the University which deals with statutes and ordinances;

(iv) The Respondent have no power to place the Petitioner under an interim suspension pending an enquiry; and

(v) Assuming the power to suspend the Petitioner pending a disciplinary enquiry is incidental to the disciplinary powers conferred u/s 19(g) and 19(h) of the Madras University Act, the Petitioner could not be placed under interim suspension without full salary as there is no provision under the Act, statute and ordinance for mere payment of subsistence allowance and therefore, the Petitioner is entitled for full salary during the period of suspension from 20.6.1980 to 26.11.1990.

18.1. Mr. S. Vaidyanathan, the learned Counsel for the first Respondent-Anna University and Mr. S.S. Sunder, the learned Counsel for the second Respondent-Madras University contend that the Petitioner is not entitled to claim that he could not be subjected to any disciplinary action for his alleged misconducts; and that the terms and conditions of service of the Petitioner, in so far as the disciplinary action is concerned are governed under the Madras University Employee's Conduct Rules, in view of Section 33, 36 and 44 read with Section 2(b) and 3 of the Anna University Act, in as much as, the said Madras University Employee's Conduct Rules apply to the teaching members of the University as per Rule 19 of the Madras University also as per Employee's Conduct Rules.

18.2. The learned Counsel for the Respondent further contend that in view of the motion of the Senate dated 27.11.1979 to withdraw the proposal of framing the Code of Conduct, the Madras University Employee's Conduct Rules are alone enforceable against the Petitioner.

19.1. Mr. S. Vidayanathan, the learned Counsel for the Petitioner further contends that if Section 33(1), 33(4) and 33(5); 36(1), 36(3); and 36(4); and Section 44(1) and 44(3) are read together, the misconducts of the Petitioner is attracted by the provisions of the Madras University Employee's Conduct Rules which are made by the exercise of powers u/s 19(g) and 19(h) of the Madras University Act, read with Clause 5 of, Chapter IX of the Laws of the University, wherein the Respondents are empowered to; retire the Petitioner compulsory from his service.

19.2. According to Mr. S. Vaidyanathan, the power to place the Petitioner under suspension pending an enquiry is incidental to the disciplinary powers of the

Respondents and therefore, there is no illegality in placing the Petitioner under suspension pending an enquiry; and it is further contended that the Petitioner is entitled only for subsistence allowance as per Clause 26(a) of Chapter XXIV of the Laws of the University.

20. I have bestowed my careful consideration to the submissions of all parties, in the light of the following undisputed facts:

(i) On 29.6.1978, the Syndicate of the Madras University took a decision, proposing to frame Code of Conduct for University teachers and to apply the Madras University Employee's Conduct Rules for the non-teaching staff only, from then;

(ii) The service of the Petitioner was transferred from Madras University to Anna University with effect from 4.9.1978; and

(iii) The decision of the Syndicate dated 29.6.1978 of Madras University was withdrawn by the Senate of the Madras University, by motion dated 27.11.1978.

21.1. In this regard I am obliged to refer the following authorities of the Universities as per Section 13 of the Madras University Act:

(1) The Senate;

(2) The Syndicate;

(3) The Academic Council;

(4) The Faculties;

(4 A) The Finance Committee;

(5) The Boards of Studies; and

(6) such other bodies as may be declared by the statutes to be authorities of the University.

21.2. Section 16(1) and 16(2) of the Madras University Act provide the following powers to the Senate:

Section: 16(1)- Powers of the Senate: To make Statutes and amend or repeal the same;

(2) to modify or cancel ordinances and regulations in the manner prescribed by the Act.

21.3. Section 19(a), 19(g) and 19(h) of the Madras University Act provides the following powers to the Syndicate of the said University:

Section: 19- Powers of the Syndicate: (a) to make Ordinances and amend or repeal the same;

(b) to (f)....

(g) to appoint the University Professors and Readers and Lecturers and the Teachers and Servants of the University, fix their emoluments, if any, define their duties and the conditions of their service; and provide for the filling up of temporary vacancies;

(h) to suspend and dismiss the University Professors, Readers, and Lecturers, and the Teachers and servants of the University.

(i) to (y)...

21.4. As per Section 2(j) of the Madras University Act, "Teacher", means, such professors, assistant professors, readers, lecturers librarians and other like persons as may be declared by the statutes to be teachers and therefore, the Syndicate is empowered to retire the Petitioner compulsory from his office under Clause 5 of Chapter DC of the Laws of the University which deals with the Statutes, Ordinances relating to the service of the University professors, readers and lecturers.

22. It is not in dispute that the Syndicate in their meeting held on 28.4.1976, made the Madras University Employee's Conduct Rules applicable to all the members of the teaching, research and non-teaching departments as per Rule 19 of the said Rules, as referred to above.

23. Even though, Mr. V. Selveraj, the learned Counsel for the Petitioner, seriously contends that the very Madras University Employee's Conduct Rules are not enforceable to the Petitioner in view of the decision of the Syndicate dated 29.6.1978. proposing to frame Code of Conduct and to apply the Madras University Employee's Conduct Rules to the teaching staff only, from then, as the Petitioner was transferred from Madras University to Anna University only with effect from 4.9.1978, i.e., after the said decision dated 29.6.1976. I find from the records that pursuant to such proposal to frame the Code of Conduct to University Teachers, no Ordinance was made by the Syndicate u/s 19(g) of the Madras University Act 18.11.1978 nor any Ordinance was placed before the Senate on 27.11.1978. However, by a motion dated 27.11.1978, the Senate withdrew the very: proposal of the Syndicate dated 29.6.1978 to frame Code of Conduct for University Teachers.

24. In my considered opinion, even though, the Syndicate of the Madras University on 29.6.1978 decided proposing to frame Code of Conduct for University teachers and to apply the Madras University Employee's Conduct Rules to the non-teaching staff only from then, the provisions of the Madras University Employee's Conduct Rules are alone enforceable as the proposal to frame the Code of Conduct for University teachers itself was withdrawn by a motion dated 27.11.1978, by the Senate. As a result, the proposal to frame the Code of Conduct for University teachers had not fructified and consequently, the said proposal is a nullity and suffers from want of force and very existence in the eye of law, which is incurable. Hence, the alleged misconducts of the Petitioner referred to in the charge memo dated 26.2.1980 are attracted under Rules 2(c),

2(d), 3, 3(a), 7(a), and 7(b) of the Madras University Employees Conduct Rules.

25. In this regard, I am obliged to refer the following Sections of the Anna University Act, namely Sections 33(1) and 33(5), 36(1a), 36(1b), 36(3), 36(4a), 36(4b); and 44(1) and 44(3) referred to above.

26. A harmonious reading of the above sections particularly in the context of non-obstante clauses u/s 33(1), 33(5), 36(4) and 44(3), make it clear that, even though the terms and conditions of service of the Petitioner governed under the Madras University Act, in spite of transfer of his service to Anna University, remains unaltered in view of Section 36(3) of the Anna University Act, notwithstanding the same, the Anna University is empowered to secure uniformity in the terms and conditions of the service applicable to the officers, teachers, and other persons employed in the Anna University u/s 36-4(a) of the Anna University Act; and all the statutes, ordinances and regulations made under the Madras University Act continue to be in force until they were repealed by statute, ordinance and regulation under the Anna University Act, as per Section 44(3) of the Anna University Act, the Madras University Employee's Conduct Rules are alone enforceable for taking appropriate disciplinary action against the Petitioner for his alleged misconduct as the very proposal to frame the Code of Conduct for the University teachers made by the Syndicate of the Madras University on 29.6.1978 is held to be a nullity and hence, there is no illegality in the charges framed against the Petitioner for the alleged contravention of Rules 2(c), 2(d), 3, 3(a), 7(a) and 7(b) of the Madras University Employee's Conduct Rules nor in the impugned punishment of compulsory retirement.

27. Further, the Petitioner has no grievance as to the conduct of the disciplinary action either in arriving at the findings pursuant to an enquiry in compliance of the principles of natural justice or in imposing the punishment and therefore, there is no illegality in retiring the Petitioner compulsorily by exercising the powers conferred u/s 19(g) and 19(h) of the Madras University Act read with Clause 5 of Chapter IX of the Laws of the University which reads as follows:

LAWS OF THE UNIVERSITY

CHAPTER IX

(STATUTES AND ORDINANCES)

UNIVERSITY PROFESSORSHIPS.

EMERITUS PROFESSORSHIPS, READERSHIPS AND LECTURERSHIPS, UNIVERSITY LECTURERS

Clause: 1 to 4.....

(5) Powers to suspend Professorships, etc. The Syndicate shall have power upon sufficient cause shown and after due investigation, by a resolution approved of by not less than two-thirds of the members of the Syndicate, to suspend any Teacher of the University from office and from the emoluments thereof in whole

or in part for any period not exceeding one year, or to require him to retire, or to deprive him of office and during the suspension of any Teacher to make provision for his work; provided no such sentence of suspension etc., shall have effect until approved by His Excellency the Chancellor.

Clause: 6 to 29.....

Therefore, the contention of the Petitioner that the Respondent could suspend the Petitioner only by way of punishment that too, not for more than one year is not tenable.

28. Once the Respondent are vested with powers to take disciplinary action against the Petitioner and the pass appropriate punishment thereon u/s 19(g) and 19(h) of the Madras University Act read with Clause 5 of Chapter IX of the Laws of the University for the alleged contravention of Rules 2(c), 2(d), 3, 3(a), 7(a) and 7(b) of the Madras University Employee's Conduct Rules, it cannot be denied that the power to place the Petitioner under interim suspension pending such enquiry is incidental and inherent to such disciplinary powers.

29. However, I do not agree with the contention of the learned Counsel for the first Respondent Anna University that the Petitioner is entitled only for subsistence allowance as per Clause 26(a) of Chapter XXIV of the Laws of the University as the same in my consideration is applicable only to the servants of establishments of the University but not for the teachers whose conditions of service are specifically governed under Chapter IX of the Laws of the University, as it is well settled in law the Special provisions always prevail over the General.

30. As rightly contended by the learned Counsel for the Petitioner Mr. V. Selvaraj, assuming the Respondents are empowered to place the Petitioner under suspension pending an enquiry which is incidental and inherent to their disciplinary powers u/s 19(g) and 19(h) of the Madras University Act, since the said suspension has been once revoked by an order dated 26.11.1990, the Petitioner is entitled to full salary, as per law, for the period under suspension namely 20.6.1980 to 26.11.1990, as though he had not been suspended.

31. In fine, the alleged misconduct of the Petitioner is attracted by Rules 2(c), 2(d), 3, 3(a), 7(a) and 7(b) of the Madras University Employee's Conduct Rules as the proposal to frame the Code to Conduct for University Teachers had not fructified and therefore, the same is a nullity; and Respondents have given a fair and reasonable opportunity to the Petitioner both at the time of the enquiry before arriving at the findings that the charges 1 to 4 are proved, as well as, while imposing the punishment of dismissal which they are empowered to by exercising the powers conferred u/s 19(g) and 19(h) of the Madras University Act read with Clause 5 of Chapter IX of the Laws of the University.

32. However, the Petitioner is entitled for the full salary during the period of suspension namely from 20.6.1980 to 26.11.1990, even though, the power to place the Petitioner under suspension pending an enquiry is incidental and

inherent to the disciplinary powers of the Respondents, as Clause 26(a) of Chapter XXIV of the Laws of the University is not applicable to the teachers who are specifically governed only under Chapter IX of the Laws of the University as well as the Madras University Employees Conduct Rules, in as much as the same do not provide for the payment of subsistence allowance alone, as already held by the Division Bench of this Court by order dated 22.9.1993 in W.A. No. 977 of 1993. Hence, the balance of full salary payable to the Petitioner as per law during the period of suspension i.e., from 20.6.1980 to 26.11.1990 shall be paid to him within thirty days from the date of receipt of the copy of "this order with interest at 12% per annum from 26.11.1990 till the same is settled.

33. This writ petition is ordered accordingly. No costs. Consequently connected W.M.P. Nos. 23674 and 6128 of 1993 are closed.