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**(2002) 08 MAD CK 0062**

**In the Madras High Court**

**Case No :** Writ Petition No"s. 5641 and 6740 of 1999 and W.M.P. No"s. 8186 and 9716 of 1999

S. Vincent

APPELLANT

Vs

The Registrar, Madurai Kamaraj University, Palkalai Nagar,  
Madurai

RESPONDENT

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**Date of Decision :** 09-08-2002

**Acts Referred:**

Madurai Kamaraj University Act, 1965 — Section 12, 12(4), 12(5), 20, 20(8)

**Citation :** (2002) 08 MAD CK 0062

**Hon'ble Judges :** P.K. Misra, J

**Bench :** Single Bench

**Advocate :** V. Vijay Shankar, for the Appellant; S. Jayaraman, for the Respondent

**Final Decision :** Allowed

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**Judgement**

P.K. Misra, J.—The facts giving rise to the present writ petitions briefly stated are as follows:-

Petitioner joined as Junior Assistant in St. Joseph College, Trichy in 1960 and continued as such till 2.6.1971, when he joined as junior assistant

under Madurai Kamaraj University, the respondent herein. Petitioner was promoted as Superintendent on 31.5.1978. Petitioner was suspended

from the service by order dated 11.10.91 and on 23.6.1992 punishment was imposed stopping three increments with cumulative effect and he was

directed to rejoin the duty. Subsequently, the petitioner preferred appeal to the Syndicate of the University and by order dated 23.11.1993, on the

basis of the reservation of the Syndicate, the punishment was reduced to stoppage of two increments without cumulative effect. The petitioner

made several representations claiming that period of suspension between

11.10.1991 and 23.6.1992 should be treated as on duty. An order was passed by the respondent on 23.11.1994 treating the period from 11.10.1991 to 7.4.1992 as leave admissible under earned leave and from 8.4.1992 to 28.6.1992 as leave on loss of pay. Thereafter the petitioner was allowed to retire on 30.6.1996. However, the retirement benefits such as pension, gratuity, etc. were not granted immediately, but only a sum of Rs.1,900/- was paid as Provisional Pension. The petitioner made several representations and ultimately since no action was taken, he was forced to issue an Advocate's notice on 20.4.1998 which also evoked no response from the respondent. Ultimately the petitioner filed W.P.No.8972 of 1998 seeking for a direction to the respondent to pay interest on belated payment of pension and W.P.No.8973 of 1998 seeking for a direction to the respondent to treat the period of suspension as on duty.

Both the writ petitions were disposed of by a common order dated 2.7.1998 directing the University to consider the representation of the petitioner dated 4.8.1997 and to pass appropriate orders. Thereafter by order dated 17.11.1998 the representation of the petitioner was rejected.

2. W.P.No.5641 of 1999 has been filed seeking for a direction to pay interest on various amounts payable towards retirement benefits on the ground that such benefits have been paid belatedly and W.P.No.6740 of 1999 has been filed seeking to quash the order rejecting the representation of the petitioner to treat the period of suspension as on duty.

3. In the writ petition relating to the question of suspension it has been contended that the Registrar has no jurisdiction to pass the order of suspension or give direction treating the period of suspension as on leave and leave without pay and the Syndicate is the appropriate authority. In the other writ petition it has been contended that since there has been undue delay in payment of retirement benefits, the University should be directed to pay interest.

4. Two sets of counters have been filed. In the counter relating to the matter of suspension, it has been indicated that on the basis of the order passed by the Vice Chancellor rejecting the prayer of the petitioner to treat the period of suspension as on duty, communication has been made by the Registrar and such decision has been subsequently ratified by the Syndicate. In the counter filed in the connected writ petition relating to

payment of interest it has been stated that various aspects had to be examined before finalising the question of payment of pension and gratuity, etc.

and there was no undue delay on the part of the University.

5. Madurai Kamaraj University has been established by Madurai - Kamaraj University Act, 1965. Section 30 of the Act contemplates that

statutes may provide for any of the matters indicated. Clause (e) of Section 30 relates to the powers, duties and conditions of service of the

officers of the University other than the Chancellor and the Pro-Chancellor. Chapter XXIV of the Laws of the University relate to conditions of

service of the establishments of the University. This Chapter contain ordinances relating to superior and inferior establishments of the University.

Rule 27 deals with the matter relating to suspension and being relevant, it is extracted hereunder :-

27. When the suspension of a University servant has been held to have been unjustifiable or not wholly justifiable, or when a university servant

who has been dismissed or removed or suspended has been reinstated, the Syndicate may grant him for the period of his absence from duty-

(a) Should he be honourably acquitted, the full pay to which he would have been entitled, if he had not been dismissed or removed or, suspended;

and by an order to be separately recorded, any allowance of which he was in receipt prior to his dismissal or removal or suspension; (b) if found

guilty or not wholly justifiable, such proportion of such pay and allowance as the syndicate may fix.

In cases falling under clause (a), the period of absence from duty shall be treated as a period spent on duty. In cases falling under clause (b) it will

not be treated as a period spent on duty unless the Syndicate as directs.

6. A perusal of the aforesaid Rule makes it clear that the question as to whether a person, who is reinstated, should be paid pay, allowance is the

matter to be considered by the Syndicate.

7. Section 20 of the Act provides that Syndicate has power to appoint inter alia the servants of the University, fix their emoluments and the

conditions of their service. Section 12 of the Act deals with the power and duties of the Vice-Chancellor. Sub-section (4) and (5) are being

relevant, extracted hereunder :-

(4) (a) in any emergency which in the opinion of the Vice-Chancellor requires

that immediate action should be taken, he may take such action with the sanction of the Chancellor, or the Pro-Chancellor, as the case may be, and shall as soon as may be thereafter report his action to the officer or authority who or which would have ordinarily dealt with the matter.

(b) When action taken by the Vice-Chancellor under this sub-section affects any person in the service of the University, such person shall be entitled to prefer an appeal to the Syndicate within thirty days from the date on which he has notice of such action.

(5) The Vice-Chancellor shall give effect to the orders of the Syndicate regarding the appointment, suspension and dismissal of the teachers and servants of the University and shall exercise general control over the affairs of the University.

8. In the present case, it appears that the question relating to suspension has been dealt with by the Vice-Chancellor, who has directed that period of suspension cannot be treated as on duty and should be treated as earned leave and leave without pay. Section 20(8) read with Sec.12(5) makes it clear that question relating to suspension is a matter within the jurisdiction of the Syndicate. It is of course true that the Vice-Chancellor is empowered to act in any emergency in which case he may take action with the sanction of the Chancellor or the Pro-Chancellor and report such action to the officer or authority who or which would have ordinarily dealt with the matter and Section 12(4)(b) makes it clear that when any such action taken by the Vice Chancellor u/s 12(4)(a) affects any person in the service of the University, such person shall be entitled to prefer an appeal to the Syndicate.

9. In the present case, the question was as to whether the period of suspension was to be treated as on duty or in any other manner. Under Rule 27, Syndicate is specifically authorised to deal with such matters. It cannot be said that representation of the petitioner to consider the period of suspension as on duty was one of the emergent matters required to be considered by the Vice Chancellor u/s 12(4)(a). It may be true that the question as to whether employee should be suspended or not may require urgent attention and if the Syndicate is not immediately available, the Vice-Chancellor may exercise such power. However, the question was not relating to suspension as such, but as to whether the period of

suspension should be treated as on duty and as to whether any pay and in what proportion should be paid or not. It cannot be said that such a

question could not brook any delay so as to be dealt with by the Vice Chancellor under the purported power as envisaged in Section 12(4)(a).

The question as to whether the period of suspension, on reinstatement of the petitioner on imposition of some minor penalty should have been

treated as on duty or not and as to whether any amount should be paid or not was required to be considered primarily by the Syndicate and not by

the Vice Chancellor. The order passed by the Vice-Chancellor treating the period as leave (either admissible as earned leave or leave without

pay) was a matter which was to be decided by the Syndicate itself and the order of the Vice-Chancellor was therefore without jurisdiction. It is of

course true that subsequently the Syndicate purported to ratify the order of the Vice-Chancellor. However, when the initial order passed by the

Vice-Chancellor was not within his jurisdiction, the order must be considered as non-est and the question of ratifying such an order, which is void

from its inception, does not arise. In this context, the decision reported in Barada Kanta Mishra Vs. Orissa High Court, is applicable.

10. Since the matter was required to be decided by the Syndicate as the preliminary authority, it is necessary that the matter has to be

reconsidered by the Syndicate in accordance with law. The Syndicate is therefore required to consider in accordance with Rule 27 as to how the

period of suspension of the petitioner should be treated. This exercise should be completed by the Syndicate within a period of six months from the

date of communication of the order.

11. Coming to the question raised in the connected W.P.No.5641 of 1999 it appears that the grievance of the petitioner is justified. The petitioner

had retired in June, 1996. As laid down by several decisions including Dr. Uma Agrawal Vs. State of U.P. and Another, that pension is not a

bounty but the person has got a right to get pension and the retirement benefits should be paid to the person as expeditiously as possible without

any delay. Such view has also been expressed by this Court in the decision reported in 2000 M.L.J. R. 554 (S. NALLAMADAN (Died) AND

ANOTHER Vs. ADMINISTRATIVE OFFICER, TOWN PANCHAYAT, SRIVAIGUNDAM, CHIDAMBARAM DISTRICT AND

ANOTHER).

12. In the present case, even though the University has stated that various aspects has to be considered, it is apparent that there has been undue delay in the matter relating to payment of pension and other retirement benefits.

13. Keeping in view the facts and circumstances of the case, interest of justice would be served by directing the University to pay a consolidated sum of Rs.10,000/-- to the petitioner as compensation for the delay in making various payments. Such payment should be made within a period of two months from the date of communication of the order.

14. In the result, both the writ petitions are allowed to the extent indicated without any order as to costs. Consequently, W.M.P.Nos.8186 & 9716 of 1999 are closed.