

(2006) 10 MAD CK 0181
In the Madras High Court
Case No : Writ Petition No. 576 of 2001

S.L. Chandrakumar

APPELLANT

Vs

Bharathiyar University

RESPONDENT

Date of Decision : 09-10-2006

Acts Referred:

Bharathiar University Statute Act — Section 14(2)
Constitution of India, 1950 — Article 311(2)

Citation : (2006) 10 MAD CK 0181

Hon'ble Judges : R. Banumathi, J

Bench : Single Bench

Advocate : V.J. Latha, for the Appellant; C. Chinnaswami, for E. Sampath Kumar, for the Respondent

Final Decision : Allowed

Judgement

1. The Petitioner seeks Writ of Certiorari-fied Mandamus to call for the records of the First Respondent dated 13.12.2000 refusing permission to engage a lawyer and a direction to the Respondent to permit the Petitioner to engage a lawyer to defend his case in the departmental enquiry.
2. Whether delinquent employee has the right to be represented by a lawyer in the departmental proceeding is the short point involved in this writ petition.
3. The Petitioner has been working as Chief Superintendent in School of Distance Education in Bharathiar University. The Petitioner is alleged to have demanded illegal gratification of Rs. 500/- from Anandamurugan and Rs. 300/- from Ms. Amuthavalli for skipping over the verification of the Original Degree Certificate for admission to P.G.D.C.A. Course. Charge Memo was issued to the Petitioner and the Petitioner has submitted his explanation. Stating that his explanation is not acceptable and convincing, exercising the powers conferred u/s 14(2)(a) of Chapter VII of the Bharathiar University Statute Act, the Registrar ordered disciplinary proceedings. A retired District and Sessions Judge Thiru B. Kali was appointed as the Inquiry Officer to inquire into the complaints against the

Petitioner.

4. Stating that the Inquiry Officer is a highly qualified person with legal acumen and also one of the Complainants - Ananda-murugan is also a law graduate, the Petitioner prayed for permission to engage a lawyer to defend him in the Departmental Proceeding, which was refused by the Respondent/University.

5. Learned Counsel for the Petitioner has submitted that unless the permission is granted to the Petitioner to engage a lawyer, the Petitioner would be subjected to hardship since one of the Complainants is a Law Graduate. Learned Counsel for the Petitioner has further submitted that the Registrar himself has declined the permission to engage a lawyer for oral enquiry. It was further submitted that since serious misconduct of demand of illegal gratification is levelled against the Petitioner, he ought to be allowed to defend himself by engaging a lawyer.

6. Learned Senior Counsel appearing for the Respondent University has submitted that no special circumstances was made out by the Petitioner in his representation for granting him permission to engage a lawyer. It was also submitted that when the presenting Officer is not a legally trained person, the Petitioner is not justified in seeking permission to engage a lawyer.

7. I have carefully considered the rival submissions made by the Learned Counsel for the Petitioner and the learned Senior Counsel for the Respondent.

8. It is well settled that the delinquent has no absolute right of representation to engage a legal practitioner. Where facts involved in the disciplinary proceedings are of complex nature, in which case, the assistance of a lawyer could be permitted.

9. It is left to the discretion of the officer holding the enquiry to allow or refuse to allow a lawyer to represent the delinquent officer. In the decision reported in Krishna Chandra Tandon Vs. The Union of India (UOI), , the Supreme Court has considered whether assistance of a lawyer is necessary and held as follows:

...Natural justice does not postulate a right to be represented or assisted by a lawyer, in departmental inquiries. But, in particular circumstances, the rules of natural justice require that the person charged should have professional help if he so desires e.g., where the subject is technical or where the evidence is voluminous or where the prosecution examines a handwriting expert or the charge is complicated or involves a question of law which does not possible for a person of low educational attainments to comprehend. The refusal of the enquiry officer to permit the person charged to be represented by a lawyer or a friend was perverse, unfair and vitiated the entire departmental enquiry held against him....

10. Grave charges of demand of illegal gratification is levelled against the Petitioner. In the proceeding ordering enquiry, the Respondent / University has proposed to rely upon the complaints of Anandamuru-gan and Amuthavalli and their statements made during oral enquiry. Apart from facing the witnesses and

the Complainant and the statement given by them during oral enquiry, the Petitioner is also to face the Complainant who himself is a law graduate.

11. If the charges are grave and serious and the delinquent has a feeling that he would not be able to have his case defended properly, more particularly of the fact that the Petitioner will have to face the Complainant - Anandamurugan, who is stated to be a law graduate by himself and the Inquiry Officer being a retired District and Sessions Judge with legal acumen, the principles of natural justice read with the provisions of reasonable opportunities as in Article 311(2) of the Constitution of India will have to be considered.

12. The Petitioner has been working as Chief Superintendent in School of Distance Education Department. When he has been charged with serious misconduct of demand of illegal gratification, during the enquiry proceedings he might have a disturbed state of mind and with such disturbed state of mind, it may not be possible for him to make necessary and proper cross-examination of the witnesses and effectively defend himself against the grave charges of demand of illegal gratification without having the help of assistance of a trained lawyer. In consideration of the nature of the charges levelled against the Petitioner that one of the Complainants himself is a law graduate, refusal to grant permission to engage a lawyer was unreasonable in the circumstances of the case. Refusal to engage a lawyer might result in denying the valuable opportunity of effectively defending himself against the charges.

13. Rightly or wrongly the Petitioner has expressed an apprehension that he has been victimised. In view of such apprehension, the request of the Petitioner for professional help is to be acceded to. The delinquent is pitted against the Complainant who himself is a law graduate and the Inquiry Officer is a retired District and Sessions Judge. The charges are quite serious. The questions involved in the departmental proceedings would seriously affect the future career of the Petitioner. In this case, refusal to allow the Petitioner to engage a lawyer would amount to denial of reasonable opportunity resulting in violation of principles of natural justice. The Impugned Order passed by the Respondent University declining permission to engage a lawyer for oral enquiry cannot be sustained.

14. In the result, the Impugned Order of the Respondent dated 13.12.2000 is liable to be quashed and the same is hereby quashed. The Writ Petition is allowed. The Petitioner is permitted to engage a lawyer of his own choice and is directed to co-operate with the disciplinary proceedings. No costs.