
(2005) 01 KAR CK 0024
In the Karnataka High Court
Case No : Writ Petition No. 32316 of 2002

Smt. C.S. Narmada

APPELLANT

Vs

Visveswaraiah Technological University and Another

RESPONDENT

Date of Decision : 04-01-2005

Acts Referred:

Constitution of India, 1950 — Article 21

Citation : (2005) 106 FLR 377 : (2005) ILR (Kar) 1156 : (2005) 2 KarLJ 109 : (2005) 1 KCCR 544

Hon'ble Judges : N.K. Patil, J

Bench : Single Bench

Advocate : K.C. Ashok, for Vagdevi Associates, for the Appellant; Basavaprabhu S. Patil, for Holla and Holla and Patil and Nettar, for the Respondent

Judgement

N.K. Patil, J.—The petitioner being aggrieved by impugned memo bearing No. VTU/EXAM7/2001-02/2680, dated 19th June, 2002 issued by the Registrar (Evaluation) vide Annexure-A, order dated 19th June, 2002 bearing No. VTU/EXAM/2002-03/2685, dated 19th June, 2002 vide Annexure-C and the order dated 9th July, 2002 bearing No. VTU/EXAM/2001-02/3032 vide Annexure-K, respectively, has presented the instant writ petition. Further, the petitioner has sought to declare the memo and the aforesaid orders as devoid of any authority of law and as stigmatory and penal in nature.

2. The brief facts of the case are that, the petitioner was in-service in R.V. Engineering College, Bangalore as Lecturer in the Department of Electronics and Communications. At the 3rd semester Examination conducted by the first and second respondents-Visveswaraiah Technological University, Belgaum (hereinafter called the "University") in the month of January/February 2002, the petitioner was appointed as external examiner for conduct of IC lab examinations held at the PESIT, Bangalore. Be that as it may.

3. It is the case of the petitioner that, she scrupulously discharged the Examination duty that had been assigned to her by the University and there was

no dereliction of duty on her part nor any negligence that she had shown. When things stood thus, the second respondent herein has issued the memo dated 19th June, 2002 calling upon her to furnish her explanation as to why action should not be taken against her for dereliction of duty. Immediately, the petitioner has given her explanation to the said memo on 20th June, 2002 vide Annexure-B requesting the University Authority to permit her to see the original answer booklets in order to give the explanation and by mere seeing the photo copy of the answer booklet cover, it would not be possible for her to give the explanation and requested the University to make necessary arrangements to make available the original answer booklets. Instead of considering the request of the petitioner and making available the original answer booklets, the second respondent herein has passed the order dated 19th June, 2002 vide Annexure-C, directing the petitioner to refund the remuneration paid to her for the conduct of practical examination in the subject I.C. Lab and that, the amount shall be submitted to the principal of the respective College in the form of a Demand Draft drawn in favour of the Finance Officer, VTU, Belgaum. Further, the petitioner was also directed to be suitably warned to be more vigilant in future. In pursuance of the said order, the petitioner has given a detailed representation to the first respondent dated 26th June, 2002 vide Annexure-F. Be that as it may. The Principal of the R.V. Engineering College has issued a memo dated 24th June, 2002 bearing No. RVE/1061/2002-03 directing the petitioner to refund the remuneration paid to her for the conduct of practical Examination for the subject I.C. Lab by way of Demand Draft in favour of Finance Officer, VTU, Belgaum and was also warned that, she should be more vigilant in future. Immediately, she replied to the Principal on 26th June, 2002 vide Annexure-H and thereafter, once again she submitted a representation on 26th June, 2002 stating that, there is no negligence on her part and the warning administered to her in the order was wholly misplaced and unfortunate, the same having been administered without affording the basic minimum opportunity of having her say in the matter. It is the further case of the petitioner that, without considering the reply filed by her and without giving opportunity and without providing the original answer scripts to enable her to give proper explanation, with regard to the mistake that had crept in, the second respondent has straightway passed the order dated 9th July, 2002, permanently debarring the petitioner from the confidential work of the University for dereliction of duty and in view that, the allotment of any confidential work of the University to the petitioner was strictly prohibited thereafter. Being aggrieved by the impugned orders referred to above, the petitioner felt necessitated to present the instant writ petition.

4. The principal ground urged by the petitioner in the instant writ petition is that, the manner in which the proceedings are initiated and concluded and the impugned orders came to be passed debarring the petitioner permanently and directing the refund of the remuneration paid to her towards the duty discharged by her as an external examiner for the practical Examination conducted by the University for the academic year Jan./Feb. 2002, are all wholly illegal, arbitrary

and totally devoid of any authority of law. He submitted that, the said action is highhanded, arbitrary, signatory, defamatory and penal in nature having been taken vindictively and for extraneous reasons, at the instance of disgruntled elements without any enquiry into the matter and without conducting proper enquiry as envisaged under the mandatory provisions of the VTU, Belgaum read with relevant regulations. Further, it is specifically contended that, the second respondent has no jurisdiction to proceed against the petitioner who is not an employee of the University and any such penal or signatory order ought not to have been passed except by following due process of law after holding an enquiry and by following the principles of natural justice. He submitted that, the second respondent has assumed to himself powers not vested in him by any law and has deliberately caused severe injury to the petitioner and as a direct consequence of the impugned memo and the orders, the petitioner herein has been unceremoniously removed from the services of the College where she was employed. He submitted that, the impugned memo and the orders passed by respondents have a deleterious effect on the service prospects of the petitioner and a negation of the right to life enshrined under Article 21 of the Constitution of India. Therefore, the memo and the orders passed by respondents are liable to be set aside with exemplary costs.

5. Per contra, the learned Standing Counsel appearing for respondents, inter alia, contended and substantiated the impugned memo and the orders passed by the Competent Authority and submitted that, the said orders have been passed after giving sufficient opportunity to the petitioner and after considering the reply filed by the petitioner. Further, he drew my attention to the reply/explanation given by the petitioner dated 19th June, 2002 addressed to the Registrar, evaluation, VTU, Belgaum (copy of which is not produced in the writ petition but made available by the learned Counsel at the time of hearing) and pointed out that, the petitioner herself has stated in the said reply that, the wrong entry of total marks of "12" instead of "72" in respect of the candidate bearing University Seat No. IPIOOEC 127 and also the missing of the signature of the external examiner was mainly due to oversight. He submitted that, further, the petitioner has stated in unequivocal terms that, these types of mistakes will never happen in future and she would apologise for the inconvenience caused by her to the students and the University. Hence, in view of the admission made by the petitioner in the explanation given by her, the question of giving opportunity and following the principles of natural justice does not arise. Therefore, he vehemently submitted that, the respondent-University has not committed any error or illegality as such in passing the impugned orders having regard to the serious lapses on the part of the petitioner in discharging her duties in a casual manner nor the petitioner has made out any good grounds to interfere in the impugned orders passed by the University. Hence, the writ petition filed by the petitioner is liable to be rejected.

6. Having heard the learned Counsel appearing for the petitioner and the learned Standing Counsel appearing for respondents for considerable length of time,

after thorough evaluation of the entire material available on record threadbare, it emerges on the face of the impugned memo and the orders that, the respondents have committed an error much less material irregularity inasmuch as the impugned orders are passed without conducting proper enquiry and without affording sufficient opportunity to the petitioner to have her say in the matter. It is significant to note that, in pursuance of the memo issued to the petitioner vide Annexure-A, dated 19th June, 2002, the petitioner promptly gave the explanation, as stated above, admitting that, the lapses were mainly due to oversight. Further, she gave assurance that, such type of mistakes would not happen in future and also apologised for the inconvenience caused by her to the students and the University. When the authorities have received the explanation dated 19th June, 2002, the respondent-University ought not to have proceeded and taken such a stern decision of debarring permanently the services of the petitioner in respect of the confidential work of the University and also strictly prohibiting the allotment of any confidential work of the University thereafter. Further, it is pertinent to note, after careful perusal of the order vide Annexure-C and order vide Annexure-K that, there is no whisper regarding the said statement made by the petitioner by way of her reply dated 19th June, 2002, which is made available by the Counsel for respondents-University. On perusal of the detailed reply given by the petitioner vide Annexure-F, dated 26th June, 2002, it is proved beyond all reasonable doubt that, the University authority has proceeded without conducting proper enquiry, without affording any opportunity to the petitioner before passing the impugned order and also without taking into consideration the penal civil consequences that may result and the permanent stigma to the career of the petitioner. It is well-settled principles of law, laid down by the Apex Court as well as this Court in host of judgments that, wherever there are penal civil consequences involved, it is duty-bound that, the concerned Competent Authority should take a decision only after affording sufficient opportunity to the persons aggrieved and after conducting enquiry in strict compliance of the mandatory provisions of the Act and Rules. But, in the instant case, after thorough analysis of the entire material available on record, it is clear that, the petitioner has not been given any opportunity to have her say in the matter. The respondents ought not to have taken such a stern decision resulting in penal civil consequence as rightly pointed out by the learned Counsel for petitioner. In pursuance of the impugned orders passed by the respondent-University, the services of the petitioner has been terminated by the College authority where the petitioner has been discharging her duty. If all these aspects are taken into consideration, the respondent-authority ought not to have passed the impugned orders, without affording sufficient opportunity to the petitioner. Therefore, in my considered view, the impugned orders passed by the University are liable to vitiate. Further, yet another ground on which the impugned orders are liable to vitiate is, for non-compliance of the principles of natural justice.

7. Having regard to the facts and circumstances of the case, as stated above, and taking into consideration the factual legal aspects of the matter, I do not find

any justification to sustain the impugned order dated 19th June, 2002 passed by the University vide Annexure-C. Accordingly, the writ petition filed by the petitioner stands disposed of with the following directions.-

(i) The writ petition filed by the petitioner is allowed.

(ii) The impugned orders dated 19th June, 2002 in Reference No. VTU/EXAM/2002-2003/2685 and dated 9th July, 2002 in Reference No. VTU/EXAM/2001-02/3032 are hereby set aside and the matter stands remitted to the second respondent for reconsideration afresh in accordance with law, and to decide the same, after affording an opportunity to the petitioner, as expeditiously as possible, taking into consideration the status of the petitioner, within an outer limit of four months from the date of receipt of a copy of this order.

8. With these observations, the writ petition filed by the petitioner stands-disposed of.