

Dr Yogananda A Vs. The Visvesvaraya Techonological University

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Court : Karnataka

Decided On : Mar-18-2024

Judge : Sachin Shankar Magadum

Appeal No. : WP 21705/2021

Appellant : Dr Yogananda A

Respondent : The Visvesvaraya Techonological University

Judgement :

1 R IN THE HIGH COURT OF KARNATAKA AT BENGALURU DATED THIS THE18H DAY OF MARCH, 2024 BEFORE THE HONBLE MR. JUSTICE SACHIN SHANKAR MAGADUM WRIT PETITION NO.21705 OF2021(S-RES) BETWEEN: DR. YOGANANDA A S/O APPU SHETTY AGED ABOUT47YEARS RESIDING AT NO.547, B CROSS3D STAGE, 4TH BLOCK BASAVESHWARA NAGAR BANGALORE - 560 079 ...PETITIONER (BY SRI PRITHVEESH M.K., ADVOCATE) AND:

1. . THE VISVESVARAYA TECHONOLOGICAL UNIVERSITY REPRESENTED BY ITS VICE CHANCELLOR JNANA SANGAMA, BELAGAVI - 590 018 2 . THE EXECUTIVE COUNCIL REPRESENTED BY ITS CHAIRMAN, VISVESVARAYA TECHNOLOGICAL UNIVERSITY, JNANA SANGAMA, BELAGAVI - 590 018 3 . THE REGISTRAR VISVESVARAYA TECHONOLOGICAL UNIVERSITY, 2 JNANA SANGAMA, BELAGAVI - 590 018 RESPONDENTS (BY SRI SANTOSH

S. NAGARALE, ADVOCATE FOR R3; R1 & R2 SERVED & UNREPRESENTED)
THIS WP IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA
PRAYING TO CALL FOR RECORDS PERTAINING TO THE IMPUGNED

ORDER

DATED 22.09.2021 BEARING NO.VTU/ BGM/ DPAR/CR (2)/ 03/ 2014-15/3451
PASSED BY THE R2 ANNEXURE-A AND QUASH THE IMPUGNED

ORDER

DATED 22.09.2021 BEARING NO.VTU/ BGM/ DPAR/CR (2)/ 03/ 2014-15/3451
PASSED BY THE R2 ANNEXURE-A AND CONSEQUENTLY GRANT ALL
CONSEQUENTIAL BENEFITS. THIS PETITION HAVING BEEN HEARD AND
RESERVED FOR

ORDER

S ON 15.03.2024, COMING ON FOR PRONOUNCEMENT OF

ORDER

THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

The case at hand pertains to disciplinary action taken against the petitioner herein by the Governing Council resulting in recommendation for petitioners compulsory retirement and consequently, respondent No.2 who is the Disciplinary Authority has issued a second show cause notice indicating inflicting of penalty thereby raising concern regarding procedural irregularities and potential page no.2 is re-typed and replaced vide court order dated 23.04.2024 3 violation of Article 311(1) of the Constitution of India. It is in this background, petitioner in the captioned petition has assailed the impugned order of penalty of compulsory retirement passed by the respondent No.2 as per Annexure-A.

2. Heard learned counsel appearing for the petitioner and learned counsel appearing for the respondents.

3. Before I advert to the case on hand, it would be useful for this Court to refer to the recommendation made by the Governing Council as per Annexure-S.

Resolution 9.5 reads as under: The proceedings drawn, evidence lead which is oral and documentary and the findings are considered and discussed at length and as the findings are based on evidence lead, hence the Executive Council resolved to accept the Departmental Enquiry Report submitted by the Enquiry Officer, Shri Ajit N.Solapurkar, a Retired 4 District Judge, with respect to the Departmental Enquiry of Dr.Yogananda, Assistant Professor, Dept. of PG Studies, Muddenahalli. Further, the Executive Council directed the University to take Disciplinary Action as per VTU CCA Rules 2000 on the University Employee and impose the penalty covered under clause 6(1)(vi) Compulsory Retirement on the said employee. Further, Executive Council resolved to extend the period of suspension of the said employee until final orders in this matter. (emphasis supplied) 4. Based on the recommendation by the Governing Council, a second show cause notice issued by the respondent No.3 dated 05.07.2021 as per Annexure-T reads as under: Based on the Departmental Enquiry Report submitted by the Enquiry Officer, and with the approval of the Executive Council thereon, this Show Cause Notice has been issued to you as to why the following penalty should not be imposed on yourself under the provisions of Visvesvaraya Technological University Employees (Classification, Control and appeal) Statutes. 2000, read with the object and 5 provisions of VTU Act 1994, on the ground of the act of grave misconducts on your part, proved under Rule 3(1)(i) to (iii), of Visvesvaraya Technological University Conduct of Employees Statute, 2001: Penalties proposed to be imposed as per Statute 6(1)(vi) of VTU (CCA) Statutes, 2000 "Compulsory Retirement" You are hereby requested to submit a written explanation of your conduct and give a reason as to why the above penalty should not be imposed on you. Your explanation should reach the undersigned within Fifteen days from the date of receipt of this Notice. If the reply is not received within Fifteen days, actions will be initiated as per the law. A copy of the Enquiry Report is enclosed herewith for your reference.

5. Regulation 11 enumerates Action on inquiry Report. The same is culled out as under: 11. Action on inquiry Report,-

(1) Disciplinary Authority may where it is or he is not itself the Inquiring Authority, for reasons to be 6 recorded in writing remit the case to the Inquiring authority for

further inquiry and report. The Inquiring Authority shall thereupon proceed to hold the further inquiry as per the provisions of Statute 10;

(2) The Disciplinary Authority, if it disagrees with the findings of the Inquiring Authority on any charge, records its own findings on such charge, if the evidence on the record is sufficient for the purpose.

(3) The Disciplinary Authority having regard to the findings on all or any of the articles of charge is of the opinion that any of the penalties specified in clauses (i) to (iva) of statute 6 should be imposed on the employee, then it shall not withstanding anything contained in statute 11, make an order imposing such penalties.

(4) The Disciplinary Authority having regard to the findings on all or any of the articles of charge is of the opinion that any of the penalties specified in clauses (iv) to (viii) of statute 6 should be imposed on the employee then it shall, (a) furnish to the employee a copy of the report of Inquiring Authority and its findings on each article of charge where the inquiry has been held by the Inquiring Authority. 7 (b) give the employee a notice stating the penalty proposed to be imposed on him. He shall be called upon to submit within fifteen days of receipt of the notice or such further time not exceeding fifteen days, such representation as he may wish to make on the proposed penalty. (c) the Disciplinary Authority shall after considering the representation, if any, made by the employee, determine what penalty, if any, should be imposed on him and make such order as it or he may deem fit.

6. In the present case on hand, petitioner is challenging imposition of penalty of compulsory retirement recommended by the Governing Council and the subsequent issuance of second show cause notice by respondent No.3. This Court in the light of the judgments cited by the counsel on record has deliberated on constitutional and legal provisions along with pertinent precedents. 8

7. Article 311(1) of the Constitution of India guarantees certain safeguards to Government employees including the right to fair enquiry before any adverse action is taken against the employees. This constitutional provision ensures that no Government employee is deprived of their livelihood arbitrary or without due

process. It would be useful for this Court to take cognizance of the landmark judgment rendered by the Honble Apex Court in the case of Managing Director, ECIL Hyderabad and others vs. B. Karunakar and Others¹. It would be useful for this Court to extract para 24 which reads as under: 24. Since the Government of India Act, 1935 till the Forty-second Amendment of the Constitution, the Government servant had always the right to receive the report of the enquiry officer/authority and to represent against the findings recorded in it when the enquiry officer/authority was a not the disciplinary authority. This right was however, exercisable by him at the second stage of the disciplinary proceedings viz., when he was served 1 (1993) 4 SCC7279 with a notice to show cause against the proposed penalty. The issuance of the notice to show cause against the penalty necessarily required the furnishing of a copy of the enquiry officer's report since, as held by the Courts, the right to show cause against the penalty also implied the right to represent against the findings on the charges. This was considered to be an essential part of the reasonable opportunity' incorporated earlier in Section 240(3) of the GOI Act and later in Article 311(2) of the Constitution as originally enacted. The right to receive the enquiry officer's report and to show cause against the findings in the report was independent of the right to show cause against the penalty proposed. The two rights came to be confused with each other because as the law stood prior to the Forty-second Amendment of the Constitution, the two rights arose simultaneously only at the stage when a notice to show cause against the proposed penalty was issued. If the disciplinary authority after considering the enquiry officer's report had dropped the proceedings or had decided to impose a penalty other than that of dismissal, removal or reduction in rank, there was no occasion for issuance of the notice to show cause against the proposed penalty. In that case, the 10 employee had neither the right to receive the report and represent against the finding of guilt nor the right to show cause against the proposed penalty. The right to receive the report and to represent against the findings recorded in it was thus inextricably connected with the acceptance of the report by the disciplinary authority and the nature of the penalty proposed. Since the Forty-second Amendment of the Constitution dispensed with the issuance of the notice to show cause against the penalty proposed even if it was dismissal, removal or reduction in rank, some courts took

the view that the Government servant was deprived of his right to represent against the findings of guilt as well. The error occurred on account of the failure to distinguish the two rights which were independent of each other.

8. The Honble Apex Court while examining the employees right to have a reasonable opportunity to refute and offer his explanation to the findings recorded by the Enquiry Officer was of the view that right to show cause against the findings of the enquiry report is considered to 11 be an essential part of a reasonable opportunity incorporated earlier in Section 240(3) of Government of India Act and later in Article 311(2) of Constitution as originally enacted. The Apex Court was of the view that right to receive the enquiry officers report and to show cause against the findings in the report was independent of the right to show cause against the penalty proposed. The Apex Court while noticing the anomaly prior to amendment and post 42nd amendment to Article 311 of the Constitution of India was of the view that the two rights came to be confused with each other as the law stood prior to 42nd amendment to the constitution. The Apex Court noting that 42nd amendment of constitution dispenses with issuance of notice to show cause against the penalty proposed, held that if the law as it stood prior to 42nd amendment and notice is issued to show cause against the proposed penalty, the right of employee to receive the report and 12 represent against the finding of guilt would be rendered infructuous.

9. What can be gathered from the dictum laid down by the Apex Court is that prior to 42nd amendment, both issuance of show cause notice and the commencement of disciplinary proceedings are simultaneous. However, subsequent amendments preclude such concurrent actions, amending the sequential process wherein show cause notice must precede by furnishing of enquiry report on the delinquent employee.

10. The culled out portion of the proceedings of the Governing council clearly indicates that it is the Governing Council by recommending to impose penalty has virtually preempted the right of the Disciplinary Authority to receive explanation and then apply its mind as to whether this is a fit case to impose penalty. Therefore, it is clearly evident that respondent No.3/Registrar/Disciplinary

Authority being 13 sub-ordinate to the Governing Council had no discretion to independently evaluate the situation or apply its own judgment. Constitutional Safeguards and Precedents:

11. Article 311(1) of the Constitution of India guarantees certain safeguards to government employees, including the right to a fair enquiry before any adverse action is taken against the employees. This constitutional provision aims to prevent arbitrary deprivation of livelihood and ensures that Government employees are afforded due process. The landmark judgment rendered by the Honble Apex Court in the case of *Managing Director, ECIL vs. B. Karunakar* (supra), provides invaluable guidance on the rights of employees in disciplinary proceedings. It underscores the importance of providing employees with enquiry reports prior to the initiation of any punitive action, thereby enabling them to effectively defend themselves against allegations and ensuring procedural fairness. 14 Procedural Irregularities and Violations surrounding the impugned penalty passed by respondent No.2:

12. It is evident from the facts presented that the sequential process mandated by the 42nd amendment, wherein the show cause notice must precede by serving a copy of enquiry report is not at all adhered to in this case. The issuance of second show cause notice by the respondent No.2-Disciplinary Authority, subsequent to the recommendation for compulsory retirement by the Governing Council represents a departure from established legal norms. Furthermore, the respondent No.3 being subordinate to the Governing Council, lacked the autonomy to independently assess the situation or exercise judgment. This lack of discretion compromises the fairness and impartiality of the disciplinary process.

13. In light of the constitutional provisions, landmark judgment rendered by the five Judges of the Honble Apex Court and the procedural irregularities observed in the case page no.14 is re-typed and replaced vide court order dated 23.04.2024 15 on hand, this Court is of the view that the impugned imposition of penalty of compulsory retirement recommended by the Governing Council and the subsequent issuance of second show cause notice by the respondent No.3/Disciplinary Authority as violation of Article 311(1) of the Constitution of India

and the principles enunciated in *Managing Director, ECIL vs. B. Karunakar* (supra). The legal precedents including the similar judgments rendered by the Apex Court supra underscores the necessity of transparency and procedural fairness in disciplinary proceedings. The employees are entitled to receive enquiry report before any punitive action is taken. The central issue before this Court pertains to alleged lack of independence on the part of respondent No.3-authority in assessing the enquiry report while considering the employees explanation.

14. This Court in the light of landmark judgment cited supra, recognizes the fundamental importance of an 16 impartial and independent Disciplinary Authority in ensuring procedural fairness and upholding the principles of natural justice. The role of the Disciplinary Authority extends beyond mere adherence to procedural formalities; it necessitates the exercise of independent judgment, free from undue influence or bias. The respondent No.3/Registrar lacked autonomy and freedom in view of recommendation by the Governing Council to impose penalty and therefore, the impugned penalty imposed by the respondent No.2 in compliance of the dictate of the Governing Council is not at all sustainable.

15. For the reasons stated supra, this Court proceeds to pass the following:

ORDER

(i) The writ petition is allowed; (ii) The impugned penalty of compulsory retirement passed by the respondent No.2 as per Annexure-A is hereby quashed; 17 (iii) The respondent No.3-Disciplinary Authority is hereby directed to adhere to the mandate of the Honble Apex Court in the judgment cited supra and also take cognizance of Article 311(1) of the Constitution of India and shall issue a fresh show cause notice in accordance with law; (iv) If such a show cause notice is issued, liberty is reserved to the petitioner to offer fresh explanation and the respondent No.3 shall thereafter proceed to take appropriate action by strictly adhering to the findings and observations recorded by this Court supra. (V) This exercise shall be accomplished by respondent No.2 within a period of eight weeks from the date of receipt of order copy. Sd/- JUDGE CA page no.17 is re-typed and replaced vide court order dated 23.04.2024