

WP.No.3711 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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RESERVED ON : 14.10.2024

PRONOUNCED ON : 07.01.2025

CORAM

THE HON'BLE Mr.JUSTICE C.KUMARAPPAN

WP.No.3711 of 2020

Dr.S.John William

... Petitioner

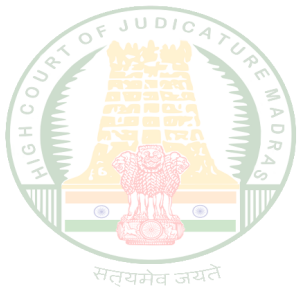
- Vs -

Loyala College (Autonomous)
Rep. by its Secretary and Correspondent,
Nungambakkam,
Chennai-34.

... Respondent

Writ petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorarified Mandamus, calling for the records relating to the proceedings No.Nil dated 24.01.2020 of the respondent herein and quash the same and consequently direct the respondent to reinstate the petitioner back into service with all attendant and monetary benefits.

For petitioner : Mr.S.John William
Petitioner-in-person
For Respondent : Mr.Godson Swaminathan
for M/s.Isaac Chambers



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ORDER

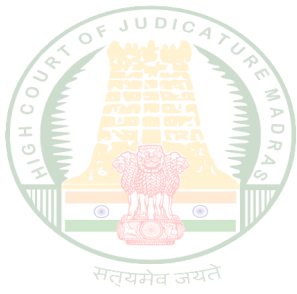
The order impugned in the writ petition is the order of dismissal dated 24.01.2020 against the petitioner.

2. The brief facts, which are necessary for the disposal of the present writ petition is that, the petitioner is an Associate Professor of the respondent-College, and he joined the respondent-institution in 1990 and served for more than 27 years. According to the petitioner, he got many encomia and also held various responsible positions in the institution. While so, vide order dated 30.10.2017 he was suspended from service, and was also served with a charge memorandum dated 09.11.2017 containing the following charges:-

“I. CHARGES

1. That you working as Teaching Staff in Loyola College have committed highly reprehensible, indisciplinary and grave misconduct by authoring and submitting to the Management a letter written by you containing unfounded, highly defamatory, malicious, reckless and scurrilous allegations:

- 1. Against Rev.Dr.Danis Ponniah, Head of Jesuit Madurai Province (Provincial) and President of Loyola College Society, intended to tarnish his character, reputation, status and credibility in the College and in the Jesuit Province;*



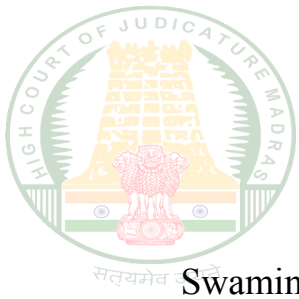
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2. *Against Members of Loyola College Management and Society of Jesus generally and by names;*
3. *Against Dr.J.Merline Shyla, Assistant Professor, Physics Department, Loyola College, with intention to outrage her modesty, fair name and reputation in College and in Society and further caused harassment to her in her workplace, and further;*

2. That you have also spoken to other Members of staff of the College about the contents of your defamatory letter thus indulging in slandering. The contents of your defamatory letter is also in circulation in campus and in social media like WhatsApp.”

3. In pursuance of the above charge, an enquiry was conducted and ultimately the Enquiry Officer gave a positive report holding that the charges against the petitioner are proved. After that, the petitioner was served with the second show cause notice dated 12.03.2019, and on the basis of the enquiry report and the explanation given by the petitioner to the second show cause notice, he was dismissed from service vide the impugned order dated 24.01.2020.

4. Heard Mr.S.John William, petitioner/party-in-person and Mr.Godson



Swaminathan, learned counsel for the respondent.

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5. The petitioner would contend that the order of dismissal is against the evidence, and procedures. He would further submit that vide order dated 14.10.2019, though this Court directed the respondent to consider his past service and to dispose of the disciplinary proceedings sympathetically, in total disregard to the order of this Court, passed the dismissal order, which is an apparent infirmity on the face of the impugned order. He would further contend that though there is no imputation against him for the circulation of his letter dated 07.10.2017, the Enquiry Officer gone beyond the imputation and gave a finding that the petitioner was instrumental in circulating the confidential communication, which is perverse finding, and contrary to the evidence. The petitioner would also contend that the punishment imposed against the petitioner is shockingly disproportionate. Hence, prayed to interfere with the order of the dismissal by allowing this writ petition.

6. Per contra, the learned counsel appearing for the respondent would contend that the petitioner has made a deliberate false and vituperative statement against the responsible persons of their institution, and that such statements are highly defamatory in nature. It is the further submission of the



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learned counsel that, the authorship of letter is not in dispute and that he caused circulation of the same in the WhatsApp and thereby, caused great disrepute to the institution and to its officials. He would also draw the attention of this Court, as to the extent of power of judicial review, and would contend that unless the finding of the Enquiry Officer is perverse, this Court should not interfere with the findings. He would also contend that the punishment is proportionate to the gravity of the charge, and that under the power of judicial review, the quantum of punishment cannot be gone into, unless it is shockingly disproportionate. Thus, would contend that there are no grounds to interfere with the order of the Disciplinary Authority. Hence, prayed to dismiss this writ petition.

7. I have given my anxious consideration to either side submissions.

8. The first charge emanates from the letter dated 07.10.2017 authored by the petitioner, and such authorship not in dispute. According to the Management, the said letter contained unfounded, highly defamatory, malicious and reckless allegations against Dr.Danis Ponniah, Dr.J.Merline Shyla and some members of Loyola College. The second charge is that, the

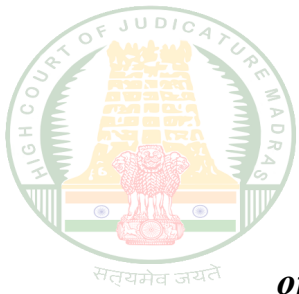


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petitioner had spoken about the letter with others and it's contents. Both the charges were stoutly denied by the petitioner. The Enquiry Officer relied certain allegations made in the said letter and found that the same are defamatory in nature and was made to malign and denigrate the reputation of Dr.Danis Ponniah and Dr.J.Merline Shyla. He has also held that, though there are no probable evidence to show that the delinquent himself posted the letter in WhatsApp, still there is a probable evidence to indicate that the delinquent has caused the alleged letter be posted on WhatsApp.

9. At this juncture, it is appropriate to refer the order of the learned Single Judge passed in WP.Nos.9493, 9494 and 16975/2019 dated 14.10.2019. The above writ petition was filed by the petitioner against the order of suspension, and against the charge memorandum, wherein, this Court in paragraph 5 has observed as follows:-

“5.Considering the limited request made by the petitioner, I am inclined to grant permission to the petitioner to make his explanation to the show cause notice within a period of two weeks. Thereafter the disciplinary authority has to pass appropriate orders after considering his past service and his previous conduct within a period of four weeks from the date



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*of receipt of copy of this order.”**(Emphasis supplied by this Court)*

10. It is apparent from the above order, that there was an overt direction against the Management to consider the past service and previous conduct of the petitioner before passing final order. However, the Disciplinary Authority, passed the impugned order of dismissal in utter disregard to the above order, wherein there is no reference as to the consideration of the past service and previous conduct of the petitioner. It is pertinent to mention here that the petitioner had been in service for more than 27 years since 1990. It is also an admitted fact that in these 27 years, he did not come in the adverse notice of the Management. It is equally important to refer that, on the date of passing of the order of dismissal, he had only an year of remaining service.

11. As a matter of fact, the petitioner would submit that he has given subject letter dated 07.10.2017 to the Rector [PW1] privately on 15.10.2017. As far as the letter submitted before the Rector [PW1] privately, no one can have any grievance. But, issue turned to become serious on account of it's circulation in the Social Media. In such view of the matter, the gravity of charge metamorphed to serious one. The Management examined a witness to prove the discussion about the subject letter, before it was submitted to the



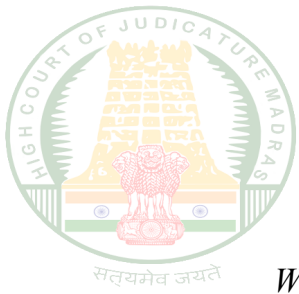
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Rector. Even such private confabulation cannot be a serious charge. It turned to become serious only after it's circulation in Social Media.

12. Here the authorship of the letter is not in dispute. Therefore, the only issue revolves around whether, the petitioner was responsible and instrumental in circulating his letter. But, absolutely there is no proof for the same. But the Enquiry Officer found that there is a probable evidence for the same, as the subject letter dated 07.10.2017, was already in circulation prior to, it was submitted before Rector on 15.10.2017.

13. At this juncture, it is appropriate to extract the order of the Enquiry Officer dated 07.06.2018, wherein the Enquiry Officer has found that there was no imputation against the delinquent for circulation of letter in WhatsApp message. For ready reference, the order dated 07.06.2018 is extracted hereunder:-

“Dr.S.John William, delinquent, has filed a memo in the form of a letter seeking to defer the domestic enquiry unless until the actual culprit is identified through the supply of screenshots and the current Presenting Officer is replaced. The grievance of the delinquent is that Mr.Eugene, the Presenting Officer was the retired professor of Loyola College and according to law no retired professor from the same institution is made Presenting Officer and the screenshots of the



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*Whatsapp message was not supplied to him by the management. In the common reply filed by the management inter alia, it has been stated that the delinquent has no right to object or dictate terms to the management as who has to be appointed as Presenting Officer and that the discretion is entirely vested with the management. The delinquent has neither produced any authority nor cited any rule to the effect that the retired professor of the Loyola College cannot be appointed as Presenting Officer by the management. **Further, there is no imputation against the delinquent that he circulated the whatsapp message.** I find no substance in the relief sought for by the delinquent.*

In the result the relief sought for by the delinquent to defer the enquiry is dismissed.”

(Emphasis supplied by this Court)

14. Though there is a finding that the letter was in the circulation in WhatsApp, the circulation by itself cannot be charged, unless the petitioner was instrumental for the same. Here, there are no proof as to on which date it was first noticed in Social Media to say that letter was in circulation even prior to the submission before PW1 Rector.

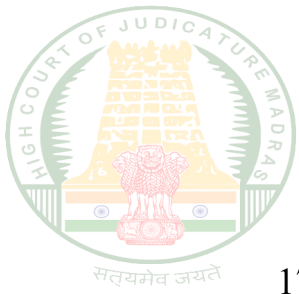
15. It is pertinent to mention here that when there is no imputation as found by the Enquiry Officer order dated 07.06.2018, the question of finding



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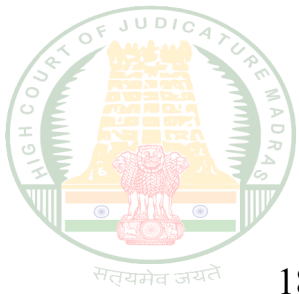
him that he caused the letter to be posted on WhatsApp is against the principles of natural justice, as the petitioner was admittedly not put on notice about the allegation. On reading the impugned order, it is obvious that, the delinquency viewed seriously on the reason of it's circulation through WhatsApp. But, curiously there is no charge for the same.

16. There is also another angle to look at the impugned order. The learned Single Judge vide order dated 14.10.2019, directed the respondent to consider the past service and previous conduct of the petitioner. On careful reading of the impugned order, there is no iota of reference as to his past service and previous conduct, which is nothing but total disregard to the order of this Court. This by itself is sufficient to interfere with the impugned order. Accordingly, the order of the Disciplinary Authority is liable to be interfered on the ground of non adherence to the direction of the learned Single Judge. On close reading of the imputation, the petitioner was informed about the circulation of his letter in Social media. On the other hand, there are no imputation as to his responsibility for said circulation in social media. In such a view of the matter, the finding of the Enquiry Officer that he was responsible for circulation, is liable to be interfered with.



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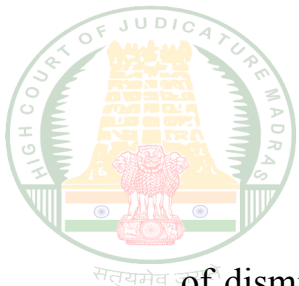
17. No doubt, his choice of language in the letter, that too without substantiating the same must be dealt appropriately. Here, in view of absence of imputation against the petitioner for the social media circulation, the charge can be segregated in two parts, (i) writing a slandering letter without any material and (ii) circulating it in WhatsApp. As far as the first part of the charge is concerned, as it is private communication between the management and the petitioner, and a private deliberation between a co-staff and the petitioner, the same is not as serious as in the case of circulation in WhatsApp. If we dealt this solitary unsubstantiated letter of the petitioner, as a grave and unpardonable crime, the same would usher the despot, and emasculate *bona fide* complaints. While saying so, I am conscious of the poignancy of the affected person. But, the point which I bring home is the remedy should not be worse than the disease. It has long been settled that the punishment should commensurate with gravity of guilt. Under the service jurisprudence before imposing any punishment the Disciplinary Authority must consider the factors like the long and spotless service, number and nature of promotions, the encomia awarded to the delinquent and the shortness of the period remaining for superannuation. Here, all those factors were left unnoticed and constricted.



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18. At this juncture, it is relevant to refer the case reported in **(2009) 12 SCC 267** in the case of ***D.M.Premkumari Vs.Divisional Commissioner, Mysore***, wherein, the Hon'ble Supreme Court eloquently explained that, many a times people mistakenly think that the Courts are separated from the feelings and righteousness; There is also general misunderstanding that the Court should not express such emotions of indignation, sorrow and compassion, but the reality is that the judiciary has very strong sense of justice and it works to maintain social justice and fairness. The above proposition squarely applies to the instant case, and there is a scope to permeate the above principle to the present case.

19. Here, the action of the petitioner in giving a complaint to the Rector overtly exhibits obstinate and obfuscate opinion towards the institution, which resulted in hyperbolic allegation, which would definitely be poignant against the persons alleged. But, one fact which to be mentioned is, the charge do not impute the petitioner for browbeating. Every individual has got right to complain of certain misdeeds, provided it must be supported with verifiable materials. Merely because, the complaint is not proved or not substantiated with materials, will in no way entail dismissal from service. Further, the order



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of dismissal at the fag end of the career of the petitioner will definitely have cascading effect, not only against him and also others. It is in this background, I am of the view that the order of dismissal for mere giving of complaint is shockingly disproportionate. That too in a case where he served for the institution unblemishly for more than 207 years, and was having only a short tenure of one year remaining service. As such, this Court is of the indubitable view that the order of the Disciplinary Authority is liable to be interfered with.

20. At this juncture, I am conscious of the fact that while exercising the power of judicial review, the Court should not substitute the punishment. But, in the case in hand, when there was a direction to the Disciplinary Authority to consider the past service and previous conduct, the Disciplinary Authority ignored the same and imposed a capital punishment of dismissal on the verge of his retirement. In such view of the matter, I am of the view that no purpose would be served by remitting the matter back to the Disciplinary Authority to reconsider the quantum of punishment. Therefore, considering the nature of allegation and charge, the extreme punishment of dismissal needs to be trimmed down by way of compulsory retirement and such punishment would



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do justice to all the quarters. While forming this opinion as to the reduction of punishment, I am not oblivious to the law that ordinarily awarding of punishment to the delinquent pertains to the domain of the Disciplinary Authority.

21. In view of the above detailed discussion, this writ petition is partly allowed by modifying the punishment of dismissal from service to compulsory retirement. Since the petitioner has attained the age of superannuation, the respondent is directed to pay all the monetary benefits and other attendant benefits in accordance with this order, within a period of four (4) weeks from the date of receipt of a copy of this order. No costs.

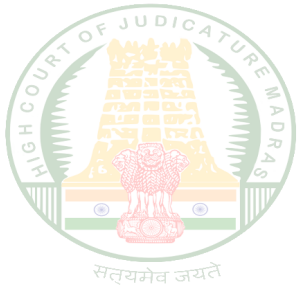
07.01.2025*kmi*

Index : Yes

Speaking Order

NCC : Yes

To
The Secretary and Correspondent,
Loyala College (Autonomous)
Nungambakkam,
Chennai-34.



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VERDICTUM.IN



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C.KUMARAPPAN, J

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