



WEB COPY



W.P.Nos.12768 & 12769 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	10.01.2022
Pronounced On	01.04.2022

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.Nos.12768 & 12769 of 2018
and
W.M.P.Nos.14980 to 14983 of 2018

(Through Video Conferencing)

Dr.P.Vijayan

... Petitioner in
both W.Ps.

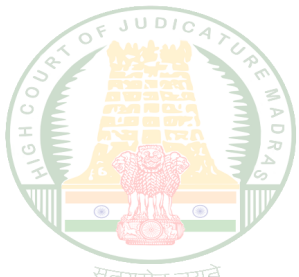
Vs.

1.The Union of India
rep. by its Secretary to Government,
Department of Shipping,
Transport Bhavan,
No.1, Parliament Street,
New Delhi – 110 001.

2.The Executive Council,
Indian Maritime University,
East Coast Road, Uttandi,
Chennai – 600 119.

3.Indian Maritime University,
Represented by its Vice Chancellor,
East Coast Road, Uttandi,
Chennai – 600 119.

... Respondents



W.P.Nos.12768 & 12769 of 2018

in both W.Ps.

Prayer in W.P.No.12768 of 2018:- Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, to quash the impugned order passed by the second respondent communicated by the Vice Chancellor (Incharge), IMU, Chennai in its order bearing No.IMU-HQ/V/11/1/VC/2018(v) dated 26.04.2018 and consequently direct the respondents to reinstate the petitioner as Campus Director of Indian Maritime University, Chennai Campus with continuity of service and with all other monetary benefits.

Prayer in W.P.No.12769 of 2018:- Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, to call for the records and quash the impugned order passed by the second respondent communicated by the Vice Chancellor (Incharge), IMU, Chennai in its order bearing No.IMU-HQ/V/11/1/VC Sect/2018(iii) dated 20.04.2018.

For Petitioner : Mr.R.Abdul Mubeen in both W.Ps.
For R1 : Mr.C.Kulanthaivel,
Senior Panel Counsel in both W.Ps.
For R2 & R3 : Mr.A.R.L.Sundaresan Senior Counsel
for Mr.K.R.Tamilmani in both W.Ps.

COMMON ORDER

By this common order, both Writ Petitions are being disposed. In



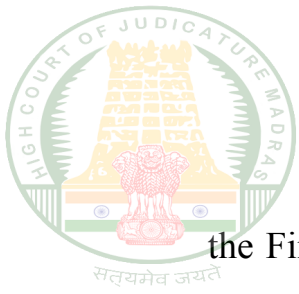
W.P.Nos.12768 & 12769 of 2018

these Writ Petitions, the petitioner has challenged the impugned orders dated 20.04.2018 and 26.04.2018 passed by the second respondent.

2. In W.P.No.12768 of 2018, the petitioner has challenged impugned order dated 26.04.2018 of the second respondent dismissing the petitioner from services and has therefore prayed for a consequential direction to the respondents to reinstate the petitioner as the Campus Director of the third respondent Indian Maritime University, Chennai with continuity of service, with all monetary benefits.

3. In W.P.No.12769 of 2018, the petitioner has challenged the impugned order dated 20.04.2018 of the second respondent imposing a penalty of Rs.22,65,469.42 and prayed for such other incidental relief.

4. The petitioner was formerly employed with the National Institute of Industrial Engineering (NITIE). He was thereafter appointed as the Director of the National Maritime Academy (NMA) on 28.05.2008. On 14.11.2008, National Maritime Academy (NMA) got merged with Indian Maritime University (IMU). The petitioner was thereafter appointed as



W.P.Nos.12768 & 12769 of 2018

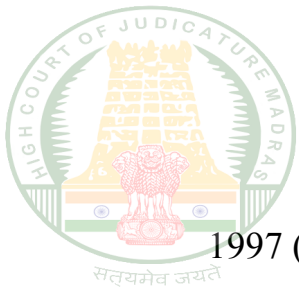
the First Vice Chancellor of the Indian Maritime University (IMU) for a tenure of 3 years on 20.11.2008.

WEB COPY

5. At the expiry of 3 years tenure as the First Vice Chancellor of the Indian Maritime University (IMU), the petitioner was posted as the Director of the Indian Maritime University (IMU).

6. As a former Vice Chancellor of the Indian Maritime University (IMU), the petitioner continued to avail the same perks and facilities that were given to him as the Vice Chancellor of the Indian Maritime University (IMU) after he was appointed as its Director. This led to issue of charge memos/ initiation of disciplinary proceedings which has ultimately led to filing of the present Writ Petitions.

7. While in service of the National Institute of Industrial Engineering (NITIE), the petitioner had reportedly amassed wealth beyond his known source of income and had therefore made a voluntary declaration of income under the Voluntary Disclosure of Income Scheme,



W.P.Nos.12768 & 12769 of 2018

1997 (VDIS) under Income Tax Act, 1961.

WEB COPY

8. Meanwhile, the Central Bureau of Investigation registered a FIR on 12.01.2011 against the petitioner for possession of assets disproportionate to his income. A Charge Sheet was also filed against the petitioner on 23.09.2014.

9. While so, the Registrar of the Indian Maritime University (IMU) issued a Letter dated 11.08.2014 to show cause as to how the petitioner was entitled to enjoy the facilities afforded to the office of the Vice Chancellor. The petitioner replied along with all documents as Annexure to the reply letter dated 12.08.2014.

10. The then Vice Chancellor sought for clarification from the Ministry of Shipping by a letter dated 09.03.2015, wherein, in paragraph 4, it was stated as follows:-

“A thorough scrutiny of the CBI report sent in the reference first cited reveals that all the transactions of sale and purchase of immovable properties and huge borrowings by Dr. P. Vijayan were prior to 29.05.2008 i.e., before he was



WEB COPY



W.P.Nos.12768 & 12769 of 2018

*appointed as Director of the erstwhile National Maritime Academy(NMA) which was merged into the Indian Maritime University on 14.11.2008. Further, the voluntary disclosure of Income Scheme came into effect with effect from 1.07.1997 and was closed on 31.12.1998 itself. IMU is competent to initiate disciplinary action against Dr.P. Vijayan for the lapses, if any, committed while he worked in NMA or in IMU. **But I do not think IMU is competent to initiate disciplinary action against Dr. P. Vijayan for the lapses committed by him during the periods when he was working in NITIE, Mumbai or TNITIE, Chennai. While there is no bar against any criminal action, I feel that RDA for major penalty against Dr. P. Vijayan for the 2 lapses pointed out by the CBI, viz.,cannot be initiated by IMU because these lapses were committed when he was working in NITIE, Mumbai and TNITIE, Chennai.***

- i. Non-intimation of larger number of transactions of sale and purchase of immovable properties and huge borrowings, and*
- ii. Non- intimation of his declaring income under Voluntary Disclosure of Income Scheme(VDIS)*

cannot be initiated by IMU because these lapses were committed when he was working in NITIE, Mumbai and TNITIE, Chennai.”

11. However, later on 16.09.2015, the first Memorandum of Statement of Charges and Substance of Imputation of Charges were served upon the petitioner. The petitioner gave an interim response on



W.P.Nos.12768 & 12769 of 2018

12.10.2015 and specifically denied each and every charge along with the documents to substantiate the denial of charges and further sought for certain copies of the documents related to the alleged charges to enable him to give a detailed reply. Two Memorandum of Statement of Charges and Substance of Imputation of Charges dated 28.01.2016 were served upon the petitioner.

12. The first Memorandum of Charges dated 16.09.2015 relates to the allegations that the petitioner had not intimated about the large number of transactions of sale and purchase of immovable properties and huge borrowings and that the petitioner had not intimated about the declaration made under the Voluntary Disclosure of Income Scheme prior to his appointment as the Director of National Maritime Academy, i.e., before 29.05.2008.

13. The second Memorandum of Charge dated 28.01.2016 relates to the alleged unauthorized deployment of services of menial staff and the alleged misuse of official vehicles and for the alleged loss caused to the tune of Rs.22.56 lakhs to the Indian Maritime University.



W.P.Nos.12768 & 12769 of 2018

14. The petitioner also gave an interim reply to the Second Memorandum of Charges by a letter dated 20.03.2016 and also sought for the copies of documents relating to the alleged Charges to enable him to reply in detail. It appears that the respondents however did not furnish the documents sought for by the petitioner vide letter dated 12.10.2015 and 20.03.2016 respectively.

15. An Enquiry Officer appointed to enquire into the alleged misconduct in his report however refrained from analyzing or concluding on the first charge of the Memorandum of Charges dated 16.09.2015 on the ground that the Special Court for CBI cases has already seized of the matter.

16. In respect of the second charge, the Enquiry Officer concluded that the charge of falsification of records framed against the petitioner cannot be sustained. The second respondent (Executive Council) however passed an order dated 26.04.2018 bearing reference No.IMU-HQ/V/11/1/VC Sect/2018(v) disagreeing with the findings of the Enquiry



W.P.Nos.12768 & 12769 of 2018

Authority and held that the petitioner was guilty of both Charges. Thus, the second respondent imposed the punishment of “Removal of service” from the post of Director of Indian Maritime University.

17. The second respondent has also passed another order dated 20.04.2018 bearing reference No.IMU-HQ/V/11/1/VC Sect/2018 (iii) on the two imputations in the Memorandum of Charges dated 20.04.2018 for imposition of minor penalty and held that the petitioner was liable to repay a sum of Rs.22,65,469.42 to the Indian Maritime University (IMU) towards the pecuniary loss caused to it by the petitioner.

18. It is in this background, the orders dated 26.04.2018 and 20.04.2018 passed by the second respondent have been challenged in these Writ Petitions.

19. It is submitted that the impugned order dated 26.04.2018 was passed by the second respondent after disagreeing with the findings of the Enquiry Officer which was in violation of principles of natural justice as the petitioner was not afforded an opportunity by the second



W.P.Nos.12768 & 12769 of 2018

respondent before disagreeing with the findings given in the Enquiry Report of the Enquiry Officer.

20. In this connection, the decision of the Hon'ble Supreme Court in **State Bank of India and others Vs. K.P. Narayanan Kutty**, (2003) 2 SCC 449 was invited to state that an opportunity should be afforded to the delinquent employee irrespective of whether or not some prejudice is shown to have been caused by denial of such opportunity.

21. It is further submitted that the Hon'ble Supreme Court in **Punjab National Bank and Others Vs. Kunj Behari Misra**, (1998) 7 SCC 84 followed the principles of natural justice enunciated in **Managing Director, ECIL, Hyderabad and Others Vs. B.Karunakar and Others**, (1993) 4 SCC 727 and held that the principles of natural justice require the authority, which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file a representation before the Disciplinary Authority records its findings on the charges framed against a delinquent officer.



W.P.Nos.12768 & 12769 of 2018

WEB COPY 22. It is submitted that the impugned order dated 26.04.2018 was passed by the second respondent for an act of misconduct alleged to have been committed by the petitioner during his earlier employment and therefore the second respondent had no authority to initiate action against the petitioner for the alleged misconduct committed during earlier employment which was not connected with the present employment of the petitioner with the Indian Maritime University and therefore the impugned order is liable to be set aside.

23. In this connection, a reference was made to the decision of the Punjab and Haryana Court, Chandigarh in **Civil Writ Petition No.15257 of 1989 (O & M)** vide its Judgment dated 23.03.2011, wherein, it was held that the alleged misconduct during an earlier employment which was not in any way connected with the subsequent employment could not become a subject of disciplinary proceeding against an employee when admittedly the delinquent was not guilty of any such misconduct during his employment with his employer, unless a past misconduct of an



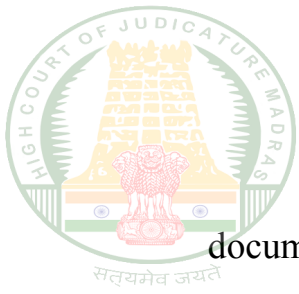
W.P.Nos.12768 & 12769 of 2018

employee with some other employer is itself as an enumerated misconduct under the relevant conduct rules.

24. It is therefore submitted that the impugned order dated 26.04.2018 of the second respondent is liable to be set aside as the petitioner was not furnished with the documents sought for in his interim reply letter dated 12.10.2015 and further the Enquiry Officer and the second respondent herein have failed to assign any reason for not furnishing the documents sought for by the petitioner and further have issued neither any letter nor communication refusing to furnish the same.

25. As far as the impugned order dated 20.04.2018 relating to the alleged misuse of the facilities of Indian Maritime University (IMU) after demitting the office of Vice Chancellor in Indian Maritime University (IMU) is concerned, it is submitted that it suffers from patent illegality and therefore same is liable to be set aside.

26. It is submitted that the second respondent has not considered the interim reply dated 20.03.2016 and further has failed to furnish the



W.P.Nos.12768 & 12769 of 2018

documents sought for by the petitioner and also has failed to issue any reply with reasons for their refusal to furnish the said documents sought for by the petitioner.

27. It is submitted that the impugned order dated 20.04.2018 of the second respondent was liable to be set aside as the second respondent has given credence to the Statement of witnesses who were the contractual driver staffs of the University. It is further submitted that the said contract drivers who were witnesses and who have deposed before the Enquiry Officer were dismissed from service on the grave charges of illegality and irregularities for their acts.

28. It is further submitted that the second respondent has failed to consider the CAG Audit report during the annual auditing and further there was no objection in the audit report. It is further submitted that the facilities that were provided to all the erstwhile Directors of the National Maritime Academy were afforded to the petitioner and there was no irregularity.



W.P.Nos.12768 & 12769 of 2018

29. It is further submitted that a reading of Section 49 of the Indian

Maritime University Act would clearly reveal that all employees of the National Maritime Academy, Chennai were transferred to the Indian Maritime University and subsequent to the transfer, the employees had option to continue on the same terms and conditions of their respective institutes till their retirement or opt for the new condition. It is submitted that the petitioner had not exercised option of being governed by the terms and conditions of the National Maritime Academy.

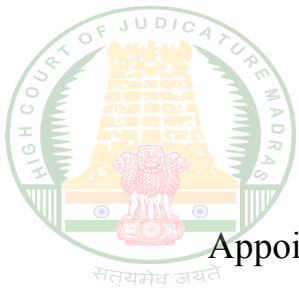
30. It is submitted that confusion prevailed in implementing of Section 49 of the Indian Maritime University Act and the same was placed before the second respondent herein. The second respondent in proceeding bearing reference ITEM No.EC09-05 in its 9th Meeting held on 28.10.2011 had passed a resolution and decided that options are given only for the pay and perks of the erstwhile Institutions and for all other matter, the employees shall be governed under the service conditions of Indian Maritime University and thus, the petitioner was drawing the salary as applicable to Port Officers under the National Maritime Academy and therefore, there was no irregularity.



W.P.Nos.12768 & 12769 of 2018

WEB COPY 31. It is further submitted that the petitioner was originally appointed as the Director of National Maritime Academy on 28.05.2008 by Direct Recruitment and the appointment was approved by the Appointments of Cabinet Committee (ACC). It is further submitted that the Indian Maritime University (IMU) was established on 14.11.2008 and the four Directors of the Government Institutions viz., National Maritime Academy, Chennai, National Ship Design Research Centre, Vizag, Indian Institute of Maritime Studies, Mumbai and Indian Institute of Port Management, Kolkata were posted as Directors of the respective Indian Maritime University Campuses and the Executive Council of Indian Maritime University and therefore, the second respondent allowed them to continue the service till the age of 65 years.

32. It is further submitted that the letter dated 02.01.2020 issued by the Ministry of Shipping has put to rest all doubts that were lingering in the mind of the petitioner and further clarified that the petitioner was an employee of Indian Maritime University (IMU) and that the latter was the



W.P.Nos.12768 & 12769 of 2018

Appointing Authority. It is therefore submitted that this itself clearly

establishes that the petitioner was an employee of the Indian Maritime University and the retirement age of the employee is 65 years as per the Indian Maritime University, University Teaching and Non- Teaching Employees (Terms and Conditions of Service) Rules.

33. It is further submitted that subsequent to the Act coming into force in the year 2008, the Executive Council, the second respondent in its 1st Meeting, in ITEM NO.11 discussed regarding the appointment and eligibility of the Campus Director and the Council resolved that the maximum age will be 65 years in case of a Director being an academician with Ph.D. qualification. It is also submitted that the petitioner being a Ph.D. holder and an academician was entitled to remain in office till he attained the age of 65 years.

34. It is further submitted that the Statute No.46 of the Statutes of Indian Maritime University Act clearly states that the post of a Campus Director was equivalent to the post of Professor and the age of superannuation for the Professors was 65 years. Thus, it is submitted that



W.P.Nos.12768 & 12769 of 2018

either way, the petitioner was entitled to remain in office till he attained the age of 65 years. It is submitted that as on date, the age of the petitioner is 63 years and 5 months.

35. It is further submitted that the charges framed against the petitioner which culminated in the impugned orders dated 20.04.2018 and 26.04.2018 of the second respondent, were not proved by leading any evidence in a duly constituted enquiry. The Enquiry Officer dissociated himself to render a finding on the charges as the matter was seized by the Special Court for CBI cases.

36. It is further submitted there was no material evidence to establish that the petitioner has caused any pecuniary loss to the Indian Maritime University. It is also submitted that being the First Vice Chancellor of the Indian Maritime University, the petitioner has toiled hard to qualitatively increase the strength of the University and further there was an increase of 27.44 % in the income which was also tabled in the finance committee meeting held on 19.07.2011.



W.P.Nos.12768 & 12769 of 2018

37. The petitioner was instrumental in various infrastructural developments during the transition period and there was a lot of works which required the petitioner to travel extensively and therefore, it is prayed for quashing the impugned order and allowing these Writ Petitions.

38. It is submitted that the petitioner has challenged the two disciplinary proceedings which have culminated in the dismissal of the petitioner from service and the imposition of penalty on the ground that the so called financial irregularities and settling the case on the Voluntary Disclosure of Income Scheme (VDIS) were not relevant to the service conditions of the petitioner as the first Vice Chancellor of the Indian Maritime University or later as its Director after the completion of the three years tenure of the Vice Chancellor of Indian Maritime University.

39. It is therefore submitted that the dismissal of the petitioner from the services of the Indian Maritime University was bad in law. As far as recovery of a sum of Rs.22,65,469.62 is concerned, it is submitted that the entire disciplinary initiated by the respondents were vitiated



W.P.Nos.12768 & 12769 of 2018

inasmuch as the petitioner was not given an opportunity to defend himself in the aforesaid proceedings.

40. These disciplinary proceedings and the suspension of the petitioner were purportedly under the provisions of the University Teaching and Non-Teaching Employees (Conditions of Service) Rules. These disciplinary proceedings have culminated in the respective orders which have been impugned in these Writ Petitions.

41. The learned counsel for the petitioner referred to the following decisions:-

- i. **State Bank of India and Others Vs. K.P.Narayana Kutty**, (2003) 2 SCC 449.
- ii. **Punjab National Bank and Others Vs. Kunj Behari Misra**, (1987) 7 SCC 84.
- iii. **R.T.B.Rai, Junior Engineer PWD, Punjab Vs. The State of Punjab and Others**, order dated 23.03.2011 passed by the Punjab and Haryana at Chandigarh in Civil Writ Petition No.15257 of 1989 (O & M).



W.P.Nos.12768 & 12769 of 2018

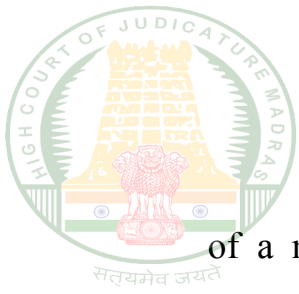
42. Defending the impugned decisions of the second respondent

Vice Chancellor of the Indian Maritime University, the learned Senior Counsel for the second respondent submits that the scope of review under Article 226 of the Constitution of India is limited.

43. The learned Senior Counsel for the respondent submits that the scope of interference under Article 226 of the Constitution of India is permitted only where there is a procedural irregularity resulting in a wrong order being passed by the disciplinary authority.

44. The learned Senior Counsel for the second respondent submits that the Court is not concerned with the decision but only with the decision making process. It is submitted that unless there is perversity, there cannot be any review under Article 226 of the Constitution of India.

45. The learned Senior Counsel for the second respondent further submits that there is no material irregularity pointed out by the petitioner as far as removal of the petitioner from service of the Indian Maritime University (IMU) vide impugned order dated 26.04.2018 and imposition



W.P.Nos.12768 & 12769 of 2018

of a minor penalty of Rs.22,65,469.62 on the petitioner vide another impugned order dated 20.04.2018.

46. The learned Senior Counsel further submits that the imposition of procedure for imposing minor penalty under Rule 10 of Indian Maritime University (Control and Appeal) Rules, 2008 was in accordance with the procedure prescribed therein and therefore the learned Senior Counsel submits that the imposition of minor penalty cannot be interfered. The learned Senior Counsel further submits that the Writ Petition is devoid of merits and is liable to be dismissed.

47. I have considered the submission of the learned counsel for the petitioner and the learned Senior Counsel for the second and third respondents and learned Senior Panel Counsel for the first respondent.

48. It is noticed that the petitioner was not an Academic Staff before he joined National Maritime Academy in 2008. Prior to that, the petitioner was working as a Director of Tamil Nadu Institute of Industrial Engineering (TNITIE), Chennai. He was selected as Director of National



W.P.Nos.12768 & 12769 of 2018

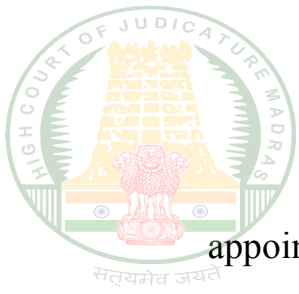
Maritime Academy, Chennai. The petitioner was thereafter appointed as a Director of National Maritime Academy by direct recruitment vide Communication/Order dated 28.05.2008.

49. The terms of employment as the Director of National Maritime Academy, Chennai is spelt out in letter dated 25.07.2008. Clause 7 reads as under:-

(7) You will be superannuating on completion of 60 years of age as per Rules and Regulations of NMA.

50. After the National Maritime Academy (NMA) was merged with the Indian Maritime University (IMU) on 14.11.2008, the petitioner was appointed as the First Vice Chancellor of Indian Maritime University (IMU) by the President of India in her capacity as the Visitor of the University under Section 46 of the Act vide an appointment order dated 20.11.2008 for a period of three years.

51. Thereafter, on completion of petitioner's tenure as First Vice Chancellor of the Indian Maritime University, the petitioner was



W.P.Nos.12768 & 12769 of 2018

appointed as a Director, Chennai Campus of Indian Maritime University (IMC), by the Under Secretary to the Government of India by an order dated 18.11.2011 with effect from 19.11.2011 (A.N.).

52. The appointment of the petitioner vide Appointment Order dated 18.11.2011 is also silent about the duration of the term. The relevant portion of the said appointment letter reads as under:-

O R D E R

Dr.P.Vijayan on completion of his tenure as Vice Chancellor, Indian Maritime University on 19/11/2011 is posted as Director, Chennai Campus of IMU. This order will take effect from 19/11/2011 (A.N.).

53. In 2014, vide letter dated 11.08.2014, the respondents initiated disciplinary proceedings under Indian Maritime University (Control and Appeal) Rules read with Chapter VII of the Indian Maritime University Teaching and Non-Teaching Employees (Terms and Conditions of Services) Rules.

54. A decision was taken by Under Secretary to the Government of



W.P.Nos.12768 & 12769 of 2018

India, Ministry of Shipping, New Delhi-1 vide Letter No.C-

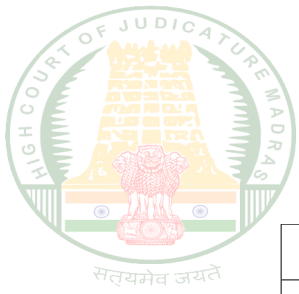
13021/2/2011-vig dated 16.10.2014 for the following offence:-

- i. *Non-intimation of large number of transactions of sale and purchase of immovable properties and huge borrowings;*
- ii. *Non-intimation of his declaring income under Voluntary Disclosure of Income Scheme (VDIS).*

55. The petitioner was thereafter suspended vide order dated 31.10.2014 in the wake of criminal proceedings initiated against him in FIR.No.RC/MA/1/2011/A/0003 dated 12.01.2011 by the Central Bureau of Investigation – Anti Corruption Bureau, Chennai under Section 13(2) read with Section 13(1)(e) of the Prevention of Corruption Act, 1988 for corruption and possession of assets disproportionate to his known sources of income.

56. Therefore, pursuant to the aforesaid letter of the Under Secretary, the Vice Chancellor directed to initiate disciplinary proceedings against petitioner vide order dated 09.03.2015. Thus, the following three Charge Memos came to be issued by the Registrar of the Indian Maritime University to the petitioner:-

<i>Sl.</i>	<i>Reference No.</i>	<i>Dated</i>
------------	----------------------	--------------



WEB COPY

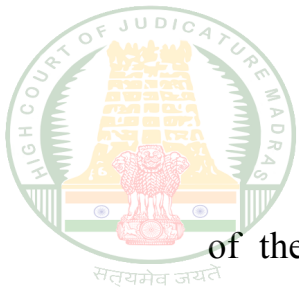


W.P.Nos.12768 & 12769 of 2018

No		
1	IMU/Registrar/133/RDA/2015	16.09.2015
2	IMU/REGR/2014	28.01.2016
3	IMU/ADMN/AFFLN-FEES/RDA/2015	28.01.2016

57. The first Charge Memo dated 16.09.2015 relates to the past misconduct of the petitioner when the petitioner was an employee of Tamil Nadu Institute of Industrial Engineering (TNITIE), Chennai.

58. The first Charge Memo dated 16.09.2015 culminated in the impugned order dated 26.04.2018 bearing reference No.IMU-HQ/V/11/1/VC Sect/2018(v) (impugned in W.P.No.12768 of 2018). It was initiated under Rule 9 of Indian Maritime University (Control and Appeal) Rules, 2008 on the allegation that the petitioner had allegedly violated provision of Rule 15 [Private Trade or Employment] and Rule 18 [Movable, Immovable and Valuable Property] of National Institute of Industrial Engineering (Conduct) Rules, 1988 read with Rule xvii. [Private Trade or Employment], xxi. [Investment, Lending and Borrowing] and xxii [Movable, Immovable and Valuable Property] of Chapter 9 of the Conduct and Discipline Rules of Rules and Regulations



W.P.Nos.12768 & 12769 of 2018

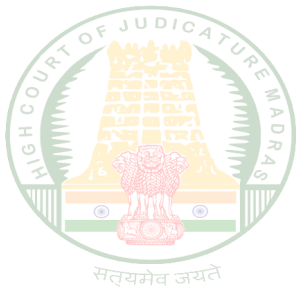
of the erstwhile National Maritime Academy. These are prior to his becoming the employee of National Maritime Academy.

59. The allegation against petitioner was as under:-

It is noticed that even after you reversion from the post of Vice Chancellor to the post of Campus Director, IMU Chennai Campus on 19.11.2011 you have continued to use the service of two security guards, two housekeeping staff and one gardener at your private residence from 20-11-2011 till date. This has resulted in an expenditure of Rs.15.13 lakhs to the University during this period (Copies of statements enclosed). There is no resolution of the Executive Council of IMU permitting a campus Director to engage two security guards, two housekeeping staff and one gardener at his private residence nor was any such perk allowed by the erstwhile National Maritime Academy.

60. Thereafter, on 16.09.2015, the Executive Council of Indian Maritime University resolved to initiate Regular Departmental Action (RDA) against the petitioner who was under suspension for:-

- i. Non-intimation of large number of transactions of sale and purchase of immovable properties and huge borrowings; and*



WEB COPY



W.P.Nos.12768 & 12769 of 2018

- ii. *Non-intimation of his declaring income under Voluntary Disclosure of Income Scheme(VDIS).*

61. The Executive Council discussed as below:-

Article 1

The Executive Council noted that the Inquiring Authority (IA) dissociated himself from inquiring into the charge because, according to it the matter was under trial in a criminal court.

The Article of charge is different from the charge sheet filed by CBI under Section 19 of the Prevention of Corruption Act on possession of disproportionate income. So much so the subject matter is different in the disciplinary proceedings. The IA therefore ought to have inquired into the charge. The Executive Council therefore disagreed with the IA and proceeded to arrive at a decision on its own.

The questions to be considered are whether he failed to report transactions and if so whether such failure violated rules on private trade or employment, investment, lending and borrowing and transactions in movable, immovable property. Neither the charge nor the imputations of misconduct discussed as to how and in which manner he engaged himself in private trade or employment or what investment lending or borrowing he had. Such engagement, investment, lending and borrowing, if any, during a period he was not in public employment is not the



WEB COPY



W.P.Nos.12768 & 12769 of 2018

concern of NITIE, NMA and INDIAN MARITIME UNIVERSITY. The evidence on transaction of movable and immovable properties is the 2 lists (Page 11-13 and page 14-19 of this charge sheet) not contested by the CO in his reply to charge sheet. For example, the list of 2008 had 10 number of immovable properties. Whereas, in the list of 2011, the same had increased to 26. In the interim reply, the CO attempts to explain only a part of the list. In the absence of contestation of this discrepancy in the interim reply, the Executive Council was constrained to proceed with available documentary evidence against CO. Thus, part of the charge concerning non-reporting of transactions stands proved as the CO has not led any evidence as required by the clause 9(11)(iii), 12 and 13 of Indian Maritime University (Control and Appeal) Rules of the employees of the University read with clause 17 thereof reconciling the huge difference in value of property between the two lists. The CO by not reporting the transactions at the time of appointment or during the course of appointment with NITIE, NMA and Indian Maritime University, while not furnishing an adequate explanation in response to Charge Sheet, prevented taking appropriate action as envisaged by the Vigilance Manual.

Taking into account the huge difference in the value of properties between the periods specified and the report of CBI, the Executive Council was of the unanimous opinion that the CO is guilty of the charges for Major Penalty.

Article 2

The Executive Council disagreed with the IA



WEB COPY



W.P.Nos.12768 & 12769 of 2018

because it could not satisfy itself of any rule requiring a Government Servant to declare his opportunity given by the tax authorities to declare the income no disclosed earlier. The employee had the option to declare or not to declare the income for tad deduction at source but was not under any compulsion to declare the same with the department. Rule 18 of NITIE (Conduct) Rules extracted in Annexure II at page 8 does not contain any requirement to report one's income from other sources to the Institute. Therefore, the charge fails.

62. As far as the imposition of minor penalty vide impugned order dated 20.04.2018 challenged in W.P.No.12769 of 2018 is concerned, the charges against the petitioner were as follows:-

- i. Engagement of two Security Guards, two House Keeping Staff and one Gardener deployed unauthorisedly at the private residence of Dr.P.Vijayan, Director of IMU, Chenna Campus causing a loss of revenue of Rs.15.56 lakhs to IMU between 20.11.2011 and 14.08.2014.*
- ii. Misuse of official vehicles for private use by Dr.P.Vijayan which caused a loss of revenue to the tune of Rs.7.09 lakhs to IMU.*

63. The allegation against the petitioner was that the petitioner's residence is only 11 kilometers from the University and he needs to make only minimal official trips because the office of the Vice Chancellor is in



W.P.Nos.12768 & 12769 of 2018

the same Campus and that the petitioner should not be consuming more than 100 liters of petrol per month and that running a distance cannot exceed 1000 kilometers per month, even by the most liberal estimates. It is further alleged that the petitioner had indulged in brazen misuse of the vehicles for private purpose by using up 236 liters of petrol per month on an average for the Honda City vehicle and 152 liters of petrol per month on an average for the Maruti SX4 vehicle or a total of 388 liters of petrol per month for both the vehicles put together a figure nearly 4 times greater than what is normal since 19.11.2011 when he demitted the office of Vice Chancellor.

64. The consumption of such a huge quantity of fuel was held to be exorbitant and unconscionable and nearly 4 time greater than what was justified and the loss of revenue to Indian Maritime University comes to Rs.7.09 lakhs between December 2011 and July 2014. According to the respondent, a gross misuse of the official vehicles for private trips was stated to have been clearly established given the nature of work of a Director of Chennai Campus which requires minimal official trips. The testimonies of his ex-drivers corroborate this point. The log books of the



W.P.Nos.12768 & 12769 of 2018

two vehicles had not been written for the extended periods and the

WEB COPY

veracity of the log books is suspect even for the portions written.

65. The reasons given are as under:-

Dr.P.Vijayan was given a show cause notice by the Registrar of IMU on 05.08.2014 to explain under what authority he was keeping two official cars and to produce proof about his so-called “entitlement to two vehicles as per Port scales right from the very beginning” failing which it will be construed that he had made an unsubstantiated claim. But apart from threatening the Registrar with a “criminal defamation suit” Dr.P.Vijayan failed to produce any resolution of the erstwhile NMA or of the IMU’s Executive Council in support of his claim. It is a fact that there are no such resolutions. Dr.P.Vijayan was also asked to justify how and why 100 liters of petrol for his care in a month would not be adequate given the nature of his official duties and the distance of his house from IMU. Again, he failed to give any justification. Dr.P.Vijayan’s claim to being entitled to two official cars was clearly untenable and was rejected. There is absolutely no justification for a second vehicle for the Director, IMU Chennai Campus. The loss of revenue cause by Dr.P.Vijayan to IMU due to his mis-use of official vehicles was about Rs.7.09 lakhs. A working sheet for the same may be seen in Annexure III. Copies of the statements given by his former drivers Shri.Arumugam and Shri.Ravichandran are enclosed as Annexure IV.



W.P.Nos.12768 & 12769 of 2018

WEB COPY 66. Thus, the question that arises for consideration is whether for the alleged past misconduct of the petitioner prior to his employment with National Maritime Academy, the petitioner can be imposed with major penalty from removal of service under the provisions of the Indian Maritime University Act, 2008 read with Rules, Statutes, Ordinances and Regulations.

67. As far as the second Charge Memo dated 28.01.2016 which has culminated in the impugned order dated 20.04.2018 (impugned in W.P.No.12769 of 2018) imposing the penalty of Rs.22,65,469.42 is concerned, the question that also arises for consideration is whether the Disciplinary Authority was justified in imposing such a drastic punishment by stating that the aforesaid punishment was only a minor penalty within the meaning of Chapter VII – The Conduct of the Employees of the University of the University Teaching and Non-Teaching Employees (Terms and Conditions of Service) Rules of the Indian Maritime University.



W.P.Nos.12768 & 12769 of 2018

68. As per Section 9 of the Act, the President of India is the Visitor of the University. As per Section 10 of the Act, the following members

shall be the officers of the University:-

- (1) The Chancellor;
- (2) **The Vice-Chancellor;**
- (3) The Pro-Vice-Chancellor;
- (4) The Deans of Schools;
- (5) The Directors;
- (6) The Registrars;
- (7) The Finance Officer; and
- (8) Such other officers as may be declared by the Statutes to be officers of the University.

69. As per Section 12 of the Act, the Vice Chancellor shall be appointed by the Visitor (President of India as per Section 9 of the Act) in such manner as may be prescribed by the Statutes. The tenure of the First Chancellor and Vice Chancellor is three years as per Section 46(a) of the Act. Such appointments are notwithstanding anything contained in the Act and the Statutes.

70. Section 2(z) of the Act defines the expression “Statutes”, “Ordinances” and “Regulations” which reads as under:-

Section 2(z): “Statutes”, “Ordinances” and “Regulations” mean, respectively, the Statutes,



WEB COPY



W.P.Nos.12768 & 12769 of 2018

*the Ordinances and the Regulations made under
this Act;*

71. Under Section 5 of the Act, the University has powers to make such Statutes, Ordinances and Regulations. As far as the appointment of Directors, Principals, Teachers, other members and etc. is concerned, Section 5(x) is relevant which reads as under:-

Section 5: The University shall have the following powers, namely:—

(i).....

(ii).....

.....

(x) to provide for the terms and conditions of service of—

- i. **Directors**, Principals and teachers and other members of the academic staff appointed by the University;*
- ii. teachers and other members of the academic staff appointed by any college or institution; and*
- iii. any other employee of recognised college or institution, whether appointed by the University or such college or institution;*

72. The first Statute under the Act is set out in the Schedule to Section 29 of the Act. The power to make Statutes is prescribed in Section 28 of the Act. In this Connection, the following clauses from



W.P.Nos.12768 & 12769 of 2018

Section 28 of the Act are relevant:-

WEB COPY

- (a) the constitution, powers and functions of the authorities and other bodies of the University, as may be constituted from time to time;*
- (b) the election and continuance in office of the members of the said authorities and bodies, the filling up of vacancies of members, and all other matters relating to those authorities and other bodies for which it may be necessary or desirable to provide;*
- (c) the manner of appointment of the officers of the University, terms and conditions of service, their powers and duties and emoluments;***
- (d) the manner of appointment of teachers, academic staff and other employees of the University and their emoluments;*
- (e) the manner of appointment of teachers and academic staff working in any other University or organisation for a specific period for undertaking a joint project, their terms and conditions of service and emoluments;*
- (f) the conditions of service of employees including provision for pension, insurance and provident fund, the manner of termination of service and disciplinary action;***
- (g) the principles governing the seniority of service of the employees of the University;*
- (h) the procedure for arbitration in cases of dispute between employees or students and the University;*
- (i) the procedure for appeal to the Executive Council by any employee or student against the action of any officer or authority of the University;*
- (j) the conferment of autonomous status on a college or an institution or a Department;*



WEB COPY



W.P.Nos.12768 & 12769 of 2018

- (k) the establishment and abolition of Schools, Departments, Centres, Halls, colleges and institutions;*
- (l) the conferment of honorary degrees;*
- (m) the withdrawal of degrees, diplomas, certificates and other academic distinctions;*
- (n) the conditions under which colleges and institutions may be admitted to the privileges of the University and the withdrawal of such privileges;*
- (o) the institution of fellowships, scholarships, studentships, assistantships, medals and prizes;*
- (p) the delegation of powers vested in the authorities or officers of the University;*
- (q) the maintenance of the discipline among the employees and students; and*
- (r) all other matters which by this Act are to be or may be provided for by the Statutes.*

73. As per Rule 11 of the University Teaching and Non-Teaching Employees (Terms & Condition of Service) Rules, the posts of Vice Chancellor, Campus Director and Professor and Associate Professor are approved posts.

74. As per Section 49 of the Indian Maritime Act, 2008, an employee of the National Maritime Academy, the Indian Institute of Port Management, Kolkata and the National Ship Design and Research Centre



W.P.Nos.12768 & 12769 of 2018

Visakhapatnam had an option to continue on the same terms and conditions of service in the parent institutes till their retirement or opt for new conditions of the Indian Maritime University. Section 49 of the aforesaid Act reads as under:

Section 49: Notwithstanding anything contained in this Act, or in the Statues or the Ordinances, consequent upon merger of the Training Ship Chanakay, Mumbai, the Marine Engineering and Research Institute, Mumbai, the Marine Engineering and Research Institute, Kolkata, Lal Bahadur Shastri College of Advance Maritime Studies, Mumbai, the National Maritime Academy, Chennai, Indian Institute of Port Management, Kolkata and the National Ship Design and Research Centre, Visakhapatnam into the Indian Maritime University, all the assets and employees shall stand transferred to the University and such employees shall have the following options:

- i. ***The employees of the four training institutes under Indian Institute of Maritime Studies who shall stand transferred to Indian Maritime University shall have the option to continue on deemed deputation in Indian Maritime University on the terms and conditions in force of the Central Government and also continue to retain or to be allotted government residential accomodation on turn and avail of the Central Government Health Scheme facilities till their retirement;***
- ii. ***The employees of the National Maritime Academy, Chennai, Indian Institute of Port***



WEB COPY



W.P.Nos.12768 & 12769 of 2018

Management, Kolkata and the National Ship Design and Research Centre, Visakhapatnam shall have the option to continue on the terms and conditions of their respective institutes till their retirement; and

iii. all employees shall have the option to join University as per the service conditions of the University.

75. Sub Clause (ii) & (iii) to Section 49(a) of the Act make it clear that employees shall have option to join the University as per the service conditions of this University. The appointment of petitioner as Director could have been for a period of three years as per Chapter III of the Indian Maritime University-University Teaching and Non-Teaching Employees (Terms and Conditions of Service) Rules.

76. As per Section 34(1) of the Indian Maritime University Act, 2008, employees of the University are bound by a written contract of service to be signed with the University when they are appointed on regular basis or otherwise.

77. The terms and conditions of the contract of employment cannot be inconsistent with the provisions of the Act, the Statutes and the Ordinances. Section 34(1) of the Act reads as under:-



WEB COPY



W.P.Nos.12768 & 12769 of 2018

*34. (1) The University shall enter into written contract of service with **every employee** of the University appointed on regular basis or otherwise and the terms and conditions of the contract shall not be inconsistent with the provisions of this Act, the Statutes and the Ordinances.*

(2) A copy of the contract referred to in subsection (1) shall be kept with the University and a copy thereof shall also be furnished to the employee concerned.

78. When the petitioner was first appointed as the First Vice Chancellor of the University, he was not appointed as a new employee of University. The appointment of the petitioner as the First Vice Chancellor was not as an “employee” as defined in Section 2(m) of the Act. The petitioner's appointment was as an “officer” of the University. The petitioner was already a Director of National Maritime Academy (NMA) from 28.05.2008. The appointment of the petitioner as the First Vice Chancellor on 20.11.2008 or its Director was not under Section 34 of the Act. The appointment of the petitioner as the First Vice-Chancellor by the President was in terms of the Sections 12, 28 & 29 of the Act read with Rule 2 of the Statute. The petitioner has also not signed any contract with the University on his appointment as the First Vice Chancellor of the

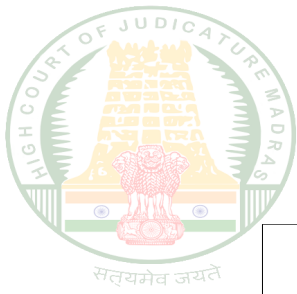


W.P.Nos.12768 & 12769 of 2018

University. Likewise, when the petitioner was appointed as a Director of Indian Maritime University (IMU) on 18.11.2011, he was not appointed as an employee of Indian Maritime University (IMU).

79. The appointment of the petitioner as the Campus Director of the Indian Maritime University ought to have been by operation of law under Section 49 of the Act. As a former employee i.e. Director of National Maritime Academy (NMA), Chennai, the petitioner was to be absorbed as an employee of Indian Maritime University as defined in Section 2(m) of the Act.

80. However, the petitioner was appointed as the Campus Director of the Indian Maritime University (IMU) under Chapter III of the Indian Maritime University – University Teaching and Non-Teaching Employees (Terms and Conditions of Services) Rules. It deals with the Recruitment Rules for both Academic and Administrative Service. Table 9 deals with Campus Director (Director of the Indian Maritime University, Chennai campus). It is reproduced below:-



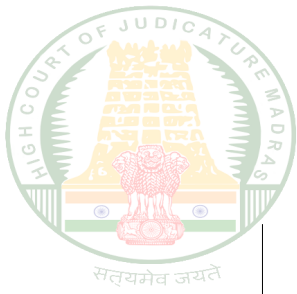
WEB COPY



W.P.Nos.12768 & 12769 of 2018

9. CAMPUS DIRECTOR

1	Name of Post	Campus Director
2	Number of Posts	04 (for Chennai, Mumbai, Vizag and Kolkata Campus)
3	Classification	Class I Service
4	Scale of Pay	Pre revised scale 18400-500-22400 As per VIth Pay Commission Pay Band of Rs.37400-67000 with AGP Rs.10000 (or as per the rules prescribed by UGC / GOI)
5	Whether selection post or non selection post	Selection and promotion post
6	Age limit for direct recruitment	Age not more than 55 years (relax able by Vice Chancellor in deserving cases)
7	Education and other qualifications required for direct recruitment	<ul style="list-style-type: none">i. Shall be an eminent scholar with published work of high quality actively engaged in research.ii. Ten years experience in cadre of Professor with a Ph.D. degree and experience of having guided research at Doctoral level.iii. The appointee must have a minimum period of 2 years of service after appointment.
8	Whether age and educational qualifications prescribed in case of promotees	Age : Not applicable Essential qualification : As prescribed by the IMU
9	Period of probation, if any	Not applicable
10	Method of recruitment, whether by direct recruitment or by	<ul style="list-style-type: none">i. Direct and Promotion based.ii. Nomination basis.



WEB COPY



W.P.Nos.12768 & 12769 of 2018

	promotion or by deputation / transfer and percentage of vacancies to be filled by various methods	
11	In case of recruitment by promotion / deputation / transfer, grades for which promotion / deputation / transfer to be made	Promotion : Eligible Professor with educational qualifications and experience as prescribed in column 7. Deputation : Professors holding analogous post on regular basis in any recognized University / Autonomous bodies / Central / State Government Undertaking possessing qualification as prescribed in column 7
12	If a departmental promotion committee / recruitment committee exists, what is its composition?	i. To experts as recommended by Vice Chancellor. ii. Nominee of Executive Council.
13	Remarks	i. The appointment to the post of director will be made for a period of 3 years on the recommendation of Selection Committee. ii. Maximum age will be 65 years in case of Director being academic staff, otherwise 60 years extendable up to 2 years, on case to case basis

81. The appointment of the petitioner as the Director of the Indian Maritime University (IMU), Chennai Campus vide order dated



W.P.Nos.12768 & 12769 of 2018

18.11.2011 on completion of three years tenure as the First Vice Chancellor was a fresh appointment. It was not as an employee of erstwhile National Maritime Academy (NMA). The petitioner had an option to continue in service either on terms and conditions of the National Maritime Academy till retirement or by opting for terms under Section 49 of the Act.

82. If the petitioner had exercised the option under Section 49(ii) of the Act, the petitioner would have attained the age of superannuation at 60 years. The petitioner had also an option to join as per the terms of the University in Section 49(iii) of the Indian Maritime University Act, 2008. In this case, the petitioner appears to have neither opted under Section 49(ii) of the Act nor under Section 49(iii) of the Indian Maritime University Act, 2008.

83. The post of Director under Indian Maritime University Teaching and Non-Teaching Employees (Terms and Conditions of Services) Rules is a 3 year tenural post. The minimum age is 55 years and



W.P.Nos.12768 & 12769 of 2018

the maximum age is 65 years. The tenure of a Director who is an Academic Staff is alone extendable by two years.

84. It is noticed that the petitioner was not an Academic Staff before he joined National Maritime Academy in 2008. Prior to that, the petitioner was working as a Director of Tamil Nadu Institute of Industrial Engineering (TNITIE), Chennai. He was selected as Director of National Maritime Academy, Chennai and joined as its Director on 29.05.2008. The terms of employment as the Director of National Maritime Academy, Chennai was spelt out in letter dated 25.07.2008. Clause 7 reads as under:-

(7) You will be superannuating on completion of 60 years of age as per Rules and Regulations of NMA.

85. Since the petitioner had not opted under Section 49(ii) of the Act, on completion of three years, the petitioner would have demitted the office as per Indian Maritime University Teaching and Non-Teaching Employees (Terms and Conditions of Services) Rules.

86. From a reading of the Chapter VI of the Rules, it is noticed that



W.P.Nos.12768 & 12769 of 2018

there is nothing to suggest the previous misadventure of the petitioner in

WEB COPY

1997 which lead to his opting to disclose income under Voluntary Disclosure Income Scheme, 1997 warranted any major or minor penalty under Chapter -VII of University Teaching and Non-Teaching Employees (Terms and Condition of Service) Rules. In fact, the petitioner also could not have been proceeded under chapter VII of University Teaching and Non-Teaching Employees (Terms and Condition of Service) Rules.

87. Therefore, the decision of the Executive Council while deciding to deviate from the report of Inquiry Officer dated 31.05.2017 was contrary to Chapter VI of the Maritime University Teaching and Non-Teaching Employees (Terms and Conditions of Services) Rules. It does not empower the authority to dig into the past conduct of the petitioner for the alleged violation of Rule 18 of the National Institute of Industrial Engineering (Conduct) Rules, 1998. Since the petitioner was appointed as director of Indian Maritime University (IMU), he could remain in office only for a period of three years as per Chapter III of Indian Maritime University- University Teaching and Non-Teaching Employees (Terms and Conditions of Service) Rules.



W.P.Nos.12768 & 12769 of 2018

WEB COPY 88. Therefore, the imposing of major penalty of removal of the petitioner from service vide order dated 26.04.2018 for the alleged past misconduct prior to the petitioner joining National Maritime Academy (NMA) is unsustainable.

89. Therefore, W.P.No.12768 of 2018 challenging the impugned order dated 26.04.2018 deserves to be allowed with consequential relief.

90. As a Vice Chancellor, the petitioner had access to two cars. However, he continued to have two cars. The allegation against the petitioner was that after the petitioner's Vice Chancellore tenure got over on 19.11.2011, he should have retained only one official car and surrendered the another one, but continued to keep both official cars unauthorisedly and misused them for the private trips of his family and since neither the Executive Council of the Indian Maritime University nor the erstwhile Governing Body of National Maritime Academy had sanctioned two official cars to him and when even the Vice Chancellor and the Registrar have been sanctioned only one official car, it was

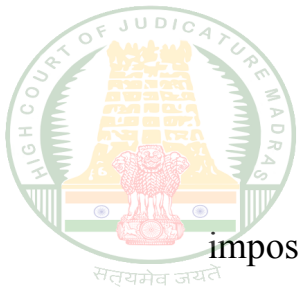


W.P.Nos.12768 & 12769 of 2018

improper on the part of a subordinate officer like the petitioner to be using two official cars.

91. As mentioned above, the petitioner is not an employee of the Indian Maritime University within the meaning of Section 2(m) of the Indian Maritime Act to be dealt under the provisions of the Chapter VII - The Conduct of the Employees of the University Teaching and Non-Teaching Employees (Terms and Conditions of Service) Rules. Chapter VII only applies to “employee” of the University. The post of Campus Director is also a tenure post of three years. A Director is an approved officer of the University. If the petitioner was not entitled to additional perks at the end of tenure as a Vice Chancellor when he was appointed as the Campus Director of the Indian Maritime University (IMU), it was open for the Indian Maritime University to withdraw such facility from the petitioner.

92. Therefore, the perks and privileges which the petitioner ended up allegedly using unauthorizedly cannot be recovered from the petitioner. There was no scope for either suspending the petitioner or



W.P.Nos.12768 & 12769 of 2018

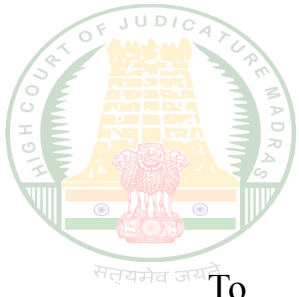
imposing the minor penalty on the petitioner under the provisions of Chapter VII - The Conduct of the Employees of the University Teaching and Non-Teaching Employees (Terms and Conditions of Service) Rules. Therefore, suspension of the petitioner and imposition of minor penalty are therefore unsustainable.

93. Therefore, the impugned order dated 20.04.2018 of the second respondent imposing a penalty of Rs.22,65,469.42 on the petitioner challenged in W.P.No.12769 of 2018 is set aside. W.P.No.12769 of 2018 deserves to be allowed.

94. In the light of the above discussion, both Writ Petitions are allowed with consequential relief to the petitioner. No cost.

01.04.2022

Internet : Yes/No
Index : Yes / No
jen

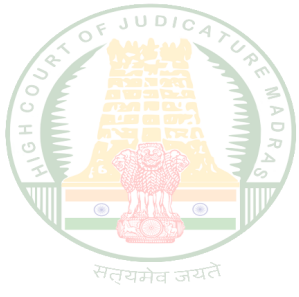


W.P.Nos.12768 & 12769 of 2018

To

WEB COPY

1. The Secretary,,
Department of Shipping,
Government of India,
Transport Bhavan,
No.1, Parliament Street,
New Delhi – 110 001.
2. The Executive Council,
Indian Maritime University,
East Coast Road, Uttandi,
Chennai – 600 119.
3. The Vice Chancellor,
Indian Maritime University,
East Coast Road, Uttandi,
Chennai – 600 119.



WEB COPY



W.P.Nos.12768 & 12769 of 2018

C.SARAVANAN, J.

jen

Pre-Delivery Common Order made
in
W.P.Nos.12768 & 12769 of 2018 and
W.M.P.Nos.14980 to 14983 of 2018

01.04.2022