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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of judgement: 23.04.2014

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W.P.(C) 4068/2013

SATPAL

..... Petitioner

versus

JAMIA MILLIA ISLAMIA UNIVERSITY & ORS.

..... Respondents

Advocates who appeared in this case:

For the petitioner: Ms Indrani Ghosh, Advocate.

For the respondents: Ms Jaya Goyal, Advocate.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

RAJIV SHAKDHER, J

1. This is a writ petition whereby challenge is laid to the following:
 - (a) Orders dated 19/21.03.2013 and 20.05.2013;
 - (b) Minutes of meeting dated 25.02.2013 and 26.04.2013 of the Executive Council (in short EC), i.e., respondent no.3; and
 - (c) Inquiry report dated 14.11.2012.
2. The challenge to the aforesaid orders arises in the background of the following brief facts which, according to me, are relevant for dealing with the issue at hand.
 - 2.1 The petitioner was appointed, in February, 1996, in the sanitation department of respondent no.1 university as a *safai karamchari*.
 - 2.2 On 28.12.2011, the petitioner, was served with a chargesheet. The Imputation against the petitioner, as per the article of charge, was broadly

that, several complaints had been received against him regarding unsatisfactory work and misbehaviour. The article of charge went on to state that, though based on the complaints filed against the petitioner several memos had been issued to him from time to time, there was no improvement in his work and conduct and, therefore, it was clear that the petitioner had ignored the memos and not taken his work seriously. The allegation was thus, that the petitioner, had repeatedly violated Clause (VI) (32) (1) of the Code of Conduct. The said article of charge is set out in Annexure-I of the memorandum dated 28.12.2011. The said memorandum was accompanied by the details of complaints and memos filed and issued against the petitioner. To be noted, the complaints spanned a period between November, 1999 and September, 2011.

2.3 The petitioner, undisputedly, filed his response to the charge sheet, whereupon an inquiry into the charge was conducted by respondent no.4, i.e., the Registrar. In his report dated 14.11.2012, Registrar concluded that the charge framed against the petitioner stood proved. The said report was placed before, respondent no.2, i.e., the Vice Chancellor (in short VC). Though, the date when the inquiry report was placed before the VC is not known, the VC, upon deliberation, proposed imposition of penalty of removal from service.

2.4 This proposal of the VC was duly endorsed by respondent no.3, i.e. Executive Council (in short E.C.), at its meeting held on 25.02.2013.

2.5 Upon receipt of the endorsement of the EC an order dated 19/21.03.2013 was passed. By virtue of the said order the petitioner was given an opportunity to submit a representation against the proposed penalty for due consideration by the competent authority. The said representation was required to be made by the petitioner, within three weeks of the date of

the receipt of the order dated 19/21.03.2013. It is not disputed that the petitioner did make a representation on 05.04.2013.

2.6 The petitioner's representation dated 05.04.2013 was placed before the EC, at its meeting held on 26.04.2013. At the said meeting, the EC vide resolution no. 12, confirmed the proposed penalty of removal of service qua the petitioner. Resultantly, an order dated 20.05.2013 came to be passed, whereby the petitioner stood removed from service w.e.f. 26.04.2013, in terms of the resolution number 12 of the EC, which required imposition of penalty with immediate effect.

3. It is the aforesaid two orders, as noted above, which are impugned in the writ petition, as well as, the minutes of meeting dated 25.02.2013 and 26.04.2013, passed by the EC.

4. Ms Ghosh, who appears for the petitioner, has assailed the impugned orders, the two minutes of meeting of the EC referred to above, and the inquiry report, broadly, on the following grounds:

(i)(a) Statute 5 (4)(i) of the Statutes of the University provides that, in case qua an employee of the University (who is not a teacher or an academic staff), disciplinary action is taken by the Registrar, and if, during the course of the inquiry it is revealed that punishment beyond the powers of the Registrar is called for, then upon conclusion of the inquiry a report is to be made to the VC along with the recommendation of the Registrar. Admittedly, Registrar had no power to impose a punishment of removal from service, on an employee. Consequently, qua the petitioner, the punishment of removal from service could, therefore, only be imposed by the VC, and that too upon consideration of the representation made in that behalf. An appeal against such a decision of the VC would lie to the EC, as per the proviso to Statute 5(4)(iii).

(i)(b) In the given case the EC, as a matter of fact, had considered the proposal of the VC, at its meeting held on 25.02.2013 (even before a representation could be filed by the petitioner) and, at that meeting, endorsed the said proposal. The procedure adopted was contrary to the provisions of Statute 5(4)(i) and (iii).

(i)(c) The respondents by adopting such a procedure had deprived the petitioner, effectively, of his right of appeal to the EC as the EC had by its endorsement on 25.02.2013, prejudged the issue. In support of this submission reliance was placed on the provisions of the Ordinance (VI), particularly, clauses 40, 42 (i), (ii), (iii) to (ix) as also clauses 43 (i) and (ii).

(ii) The stand taken in counter affidavit of respondent no.1, in particular, in paragraph 22, that since the power to impose penalty of removal from service was beyond the powers of the VC, the matter had to be referred to the EC for its endorsement was contrary to the provisions of clause 43 read with clause 42 of the Ordinance (VI).

(iii) A bare reading of clause 50 of the Ordinance (VI) would show that the representation dated 05.04.2013 preferred by the petitioner could only have been considered by the VC.

(iv) A perusal of the inquiry report would show that there has been no appreciation of evidence. The inquiry officer, in his report, after recording submissions of parties, proceeds straight way to conclusions without adverting to reasons which impelled him to reach the conclusions, which he did in the matter.

(v) Respondent no.1 University, has failed to prove its case. Therefore, even on merits the impugned orders deserved to be set aside.

5. As against this, Ms Jaya Goyal, who appears for the respondents, contended that, the EC being the appointing authority, it was necessarily

invested with the power to direct removal from service. Reliance in this behalf was placed upon Statute 25 and 38.

5.1 Pertinently, under Statute 25, EC is conferred with the power to constitute a permanent selection committee for appointment of administrative staff.

5.2 No specific provision has been shown to me, which would indicate the authority to whom the selection committee, was required to make its recommendation for appointment of administrative staff. Upon this query being put, the learned counsel for the respondents drew my attention to Statute 14(3) which speaks, inter alia, of the power of the EC to create administrative, ministerial and other necessary posts, and to, make appointments thereto in the manner prescribed by the Ordinance.

5.3 The learned counsel for the respondents, based on the provisions contained in Statute 38, contended that the power to removal from service, also lay with the EC.

5.4 Thus, on the construction of the provisions referred to hereinabove, Ms Goyal submitted that the impugned orders ought to be sustained as the final order of removal dated 20.05.2013, had the imprimatur of the EC.

5.5 In so far as the merits of the matter are concerned, Ms Goyal stated that this court cannot examine the merits of the matter as its jurisdiction would be restricted to allegation, if any, of breach of principles of natural justice or to a case where a conclusion was reached without any evidence. Since, the case did not fall in either of the two categories, no enquiry on merits could be made by the court. Ms Goyal submitted that this was a case of repeated dereliction of duty by the petitioner, which had been proved consequent to a legally held enquiry.

REASONS

6. I have heard the learned counsel for the parties and examined the record. The facts set out above are not in dispute. What is at issue is: as to whether the impugned orders, accord with the provisions of the Statute and the Ordinance applicable to respondent no.1. For this purpose the relevant provisions of the Statute and Ordinance (VI) would have to be extracted. Accordingly, the same, to the extent necessary, are set out below:

Statute 5.

5. The Musajjil (Registrar):

(1) xxxx

(2) xxxx

(3) xxxx

(4) (i) The Musajjil (Registrar) shall have power to take disciplinary action against such of the employees of the University, excluding teachers and academic staff, as may be specified in the orders of the Majlis-i-Muntazimah (Executive Council) and to suspend them pending inquiry, to administer warnings to them or to impose on them the penalty of censure or the withholding of increment:

Provided that no such penalty shall be imposed unless the person concerned has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him.

(ii) An appeal shall lie to the Shaikh-ul-Jamia (Vice-Chancellor) against any order of the Musajjil (Registrar) imposing any of the penalties specified in sub-clause (i);

(iii) In a case where the inquiry discloses that a punishment beyond the powers of the Musajjil (Registrar) is called for, the Musajjil (Registrar) shall, upon conclusion of the

inquiry make a report to the Shaikh-ul-Jamia (Vice-Chancellor) along with his recommendations.

Provided that an appeal shall lie to the Majlis-i-Muntazimah (Executive Council) against an order of the Shaikh-ul-Jaima (Vice-Chancellor) imposing any penalty....”

ORDINANCE 6 (VI).

SECTION-I

“40. Interpretation:

In this chapter unless the context otherwise requires:

- (a) Appointing Authority means the authority empowered to make appointments.
- (b) Disciplinary Authority in relation to the imposition of penalty of any employee: means the authority competent under these rules to impose on an employee any of the penalties specified in rule 42....”

Section – III: PENALTIES AND DISCIPLINARY AUTHORITIES

“....42. Penalties:

The following penalties may, for good and sufficient reasons as hereinafter provided, be imposed on an employee namely:

Minor Penalties:

- (i) Censure;
- (ii) With-holding of increment of pay;

Major Penalties:

- (iii) With-holding of promotion;
- (iv) Recovery from pay of the whole or part of any pecuniary loss caused by him to the University by negligence or breach of rules of the University or directions of superior authorities;
- (v) With-holding of more than one increment of pay;
- (vi) Reduction to a lower stage in the time scale of pay for a period not exceeding three years, without cumulative effect and not adversely affecting his pension;
- (vii) Compulsory retirement;
- (viii) Removal from service;
- (ix) Dismissal from service....”

43. Disciplinary Authorities:

- (i) The Registrar may impose on an employee any of the penalties specified in Clause (i) and (ii) of the Rule 42.
- (ii) The Vice-Chancellor may impose any of the penalties specified in Clause (iii) to (ix) of the Rule 42.

Provided further that where the Vice-Chancellor imposes the penalty of removal of employee from the University, the said penalty shall not be implemented unless a Resolution to that effect is passed by the Majlis-I- Muntazimah (Executive Council) by a majority of 2/3 of its members present and voting in terms of Statute 38.....

.....50. Procedure for Imposing Penalties:

- (i) On completion of the enquiry, the Enquiry Officer will submit his report and his findings on each article of the charges to the Musajjil (Registrar).

In a case where the enquiry discloses that a punishment beyond the powers of the Musajjil (Registrar) is called for, the Musajjil (Registrar) shall make a report to the Shaikhul-Jamia (Vice-Chancellor) alongwith his recommendations.

(ii) The Disciplinary Authority shall forward a copy of the report to the punishing authority before imposing any penalty and shall also call for a representation from the said employee against the said findings. The representation, if any, submitted by the employee shall be considered by the punishing authority before passing final orders.....”

SECTION – V: APPEALS

“51. Any employee prejudiced by a decision of the Disciplinary Authority may prefer an appeal in accordance with the JMI Act, Statutes and the Ordinances framed thereunder.

The appeal shall be presented to the Competent Appellate Authority....”

7. A harmonious reading of the provisions would show that the Registrar has the power to take disciplinary action against employees of respondent no.1 University, except teachers and academic staff. If an inquiry conducted in that behalf discloses that punishment beyond the powers of the Registrar is called for, then, the Registrar, is required to, upon conclusion of the inquiry, to make a report to the VC, along with his recommendation. This procedure accords with the provisions of Statue 5(4) (i) and (iii).

7.1 Under clause 40(b) read with clause 42 of Ordinance (VI), the concerned disciplinary authority has been given the powers to impose minor and major penalties. Clause 43 (i) and (ii) of Ordinance (VI) clearly provide

that the Registrar is empowered to impose only minor penalties, whereas the VC, is empowered to impose major penalties referred to in clause 42(iii) to (ix). The only caveat to the power of the VC, which is provided for in clause 43(ii) of Ordinance (VI), is that, the penalty imposed by the VC cannot be implemented unless a resolution to that effect is passed by the EC, by a majority of 2/3rd of its members, present and voting in terms of Statute 38.

7.2 Clauses 50(i) and (ii) of Ordinance (VI), in consonance with the provisions of 5(4)(i) and (iii) provide that if, the inquiry discloses to the disciplinary authority, i.e., the Registrar, that the punishment beyond his power is called for, then, he is required to make a report to the VC along with his recommendations. The punishing authority thereafter, before imposing the penalty, will call for a representation of the delinquent employee against the findings. The punishing authority, before passing final orders in the matter, is required to, consider the representation of the delinquent employee.

7.3. Clause 51 provides for an appeal from the decision of the disciplinary authority in accordance with the provisions of the JMI Act, Statute and Ordinance framed thereunder. The appeal, is required to be presented to the competent authority.

7.4 A conjoint reading of the provisions of Statute 14, 25 and 38 (though not happily worded) are indicative of the fact that the EC has the power to constitute a selection committee for appointment of administrative staff and, thereafter, to appoint the administrative staff. The power of removal, though, which is adverted to in Statute 38 is, clearly vested in the EC. However, these provisions by themselves would not shore up the case of respondents.

8. The reasons for this is that, in the present case, what clearly occurred is as follows: the disciplinary authority, i.e., the Registrar, during the course of inquiry appears to have come to the conclusion that the petitioner ought to be mulcted with the penalty of removal from service. The punishment being beyond his remit, he made a proposal to the VC. As noted above, the date when that proposal was made, is not apparent from the record. What is, however, apparent is that, the EC at its meeting held on 25.02.2013, endorsed the proposal of the VC, which recommended punishment of removal from service qua the petitioner. The representation of the petitioner was called for vide order dated 19/21.03.2013. The petitioner, undoubtedly, made a representation on 05.04.2013, whereupon the EC considered the representation at its meeting held on 26.04.2013. The second impugned order dated 20.05.2013, was passed, pursuant to the decision taken at the EC meeting held on 26.04.2013.

8.1 This procedure, in my opinion, is clearly in violation of the provisions of the Statute 5(4)(i) and (iii) and the relevant provisions of Ordinance (VI) referred to above. The reason for this is that, upon the disciplinary authority coming to the conclusion that the removal from service was called for, it was duty bound to place the matter for imposition of penalty before the VC. On the matter being placed before the VC, the VC, in terms of clause 50 of Ordinance (VI), was required to call for a representation and take a decision in the matter as regards the punishment, which had to be imposed in terms of the powers conferred on him under clause 42 (iii) to (ix) of the Ordinance (VI).

8.2 Instead, what happened, was that, the VC placed the proposal before the EC for its endorsement. The VC could not have done that. The VC ought to have taken a decision as to what penalty ought to be imposed on the

petitioner as the representation was required to be considered by the VC in terms of clause 50(ii) of the Ordinance (VI). It is only after a decision was taken by the VC as to the penalty which had to be imposed (which in this case was removal from service), that the role of EC would come into play.

8.3 The EC, both under the proviso to Statute, 5(4)(iii), as also, under clause 51 of Ordinance (VI) had the power to entertain an appeal. The learned counsel for the petitioner is right in her submission that, if an endorsement was made by the EC on 25.02.2013, even before a decision was taken by the VC on the penalty to be imposed, the appeal, if any filed before the EC, would be an exercise in futility. Quite clearly, procedural fairness is completely compromised. The VC, has abdicated his power to decide on the penalty to be imposed.

8.4 In this case, however, no appeal has been filed and the petitioner has approached this court directly under Article 226 of the Constitution. Be that as it may, as noted above, the EC could not have given its endorsement prior to the decision which the VC was required to take under the Statutes. It is, however, clear upon reading of proviso to clause 43(ii) of the Ordinance (VI) that the decision of the VC cannot be implemented till such time a resolution is passed by the EC by a 2/3rd majority of the members present and voting.

9. The argument of learned counsel for the respondents that the EC had the power to both appoint and remove an administrative staff, and that, it was the EC which had considered the representation of the delinquent employee and, in that sense, ratified the action of the VC, cannot be accepted. The procedure adopted by the EC militates against the provisions of the Statute and the Ordinance. The EC steps in, whether on merits, or as regards implementation of the punishment, only after an independent

decision is taken by the VC in the matter. The VC, in this behalf, is independent of the EC. The VC cannot look to the EC for guidance in the matter as has been done in this case. Therefore, I have no hesitation in setting aside the impugned orders dated 19/21.03.2013 and 20.05.2013, as these are unsustainable in law. It is ordered accordingly. The consequential effect of this would be that the resolution passed qua the petitioner in the EC's meeting dated 25.02.2013 and 26.04.2013, will also have to be set aside. It is ordered accordingly.

10. The net result will be that, there is, as of today, no order prescribing punishment qua the petitioner. Consequently, status quo ante will prevail vis-a-vis the petitioner. In so far as the merits of the case are concerned, they would perhaps become relevant only after the VC takes a decision in the matter.

11. The petition is, accordingly, disposed of in the above terms. There shall, however, be no orders as to costs.

RAJIV SHAKDHER, J

APRIL 23, 2014

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