

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE ANTONY DOMINIC

&

THE HONOURABLE SMT. JUSTICE P.V.ASHA

THURSDAY, THE 10TH DAY OF DECEMBER 2015/19TH AGRAHAYANA, 1937

WA.No. 754 of 2015 () IN WP(C).26296/2013

AGAINST THE JUDGMENT IN WP(C) 26296/2013 of HIGH COURT OF KERALA
DATED 20-03-2015

APPELLANT:3rd RESPONDENT IN WPC.NO.26296/2013

THE BOARD OF TRUSTEES, DR.PADIAR MEMORIAL
HOMOEOPATHIC MEDICAL COLLEGE,
REPRESENTED BY ITS SECRETARY
CHOTTANIKKARA, ERNAKULAM, KOCHI-682312.

BY ADV. SMT.R.RANJINI

RESPONDENT(S)/PETITIONER AND RESPONDENTS 1 NS 2 IN WP:

1. DR. R.JANARDANAN, AGED 52 YEARS
S/O.RAMACHANDRA SHENOY, PRINCIPAL (UNDER SUSPENSION)
DR.PADIAR MEMORIAL HOMEOPATHIC MEDICAL COLLEGE
CHOTTANIKKARA PO, ERNAKULAM 682312.

2. STATE OF KERALA REP. BY THE SECRETARY TO THE GOVERNMENT,
HEALTH AND FAMILY WELFARE DEPARTMENT,
GOVERNMENT SECRETARIAT, TRIVANDRUM 695001.

3. THE PRINCIPAL AND CONTROLLING OFFICER,
GOVT. HOMEOPATHIC MEDICAL COLLEGE, MACADE PO
TRIVNADRUM 695 009.

Addl.4. KERALA UNIVERSITY OF HEALTH SCIENCES
MEDICAL COLLEGE PO., THRISSUR - 680 596.

Addl.5. THE VICE CHANCELLOR,
KERALA UNIVERSITY OF HEALTH SCIENCES,
MEDICAL COLLEGE PO., THRISSUR - 680 596.

(ADDL.R4 AND R5 ARE SUO MOTU IMPLEADED AS PER ORDER
DATED 06.04.2015)

R. BY ADV. SRI.P.SREEKUMAR, SC, KERALA UTY.HEALTH & SCIENCES
R1 BY ADV. SRI.C.P.SUDHAKARA PRASAD (SR.)
R1 BY ADV. SRI.K.C.ELDHO
R BY SR.GOVERNMENT PLEADER SHRI M.A.FAYAZ

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 10-12-2015,
ALONG WITH WA. 784/2015, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

APPELLANT'S EXHIBITS

Annexure A-1: The true copy of the letter dated 8.1.2014 issued to the V.C of the Kerala University of Health Sciences.

Annexure A-2: The true copy of the letter dated 28.1.2014, issued by the Registrar of the Kerala University of Health Sciences.

Annexure A-3: The true copy of letter dated 21.3.2014 issued by the appellant college to the University.

Annexure A-4: The true copy of the letter dated 21.5.2014 issued by the Registrar of the University.

Annexure A-5: The true copy of the letter dt.31.3.2015 issued to the V.C of the Kerala University of Health Sciences.

Annexure A-6: The true copy of the relevant pages of the minutes of the meeting of Governing Council of the University.

1ST RESPONDENTS' EXHIBITS

Annexure R1(a) - True copy of the application dated 1-4-2015 submitted under the RTI Act.

Annexure R1(b) - True copy of the reply dated 21-4-2015 issued by the State Public Information Officer, Kerala University of Health Sciences.

Annexure R1(c) - True copy of the application dated 1-4-2015 submitted under the RTI Act.

Annexure R1(d) - True copy of the reply dated 21-4-2015 issued by the State Public Information Officer, Kerala University of Health Sciences.

Annexure R1(e) - True copy of the application dated 1-4-2015 submitted under the RTI Act.

Annexure R1(f) - True copy of the reply dated 21-4-2015 issued by the State Public Information Officer, Kerala University of Health Sciences.

/true copy/

P.S to Judge

ANTONY DOMINIC & P.V ASHA, JJ.

W.A Nos.754 and 784 of 2015

Dated this the 10th day of December, 2015

JUDGMENT

Asha, J.

The Board of Trustees of Dr. Padiyar Memorial Homoeopathic Medical College (hereinafter referred to as the 'Management') - the 3rd respondent in the writ petition, as well as the Principal (under suspension) - the petitioner in the Writ Petition, are the appellants in W.A. 754 of 2015 and 784 of 2015 respectively, who are challenging the very same judgment. The parties are referred to herein, as described in the Writ Petition.

2. Petitioner who is the Principal of the College was arrested consequent to registration of a crime against him in the Police Station at Sakleshpur in Karnataka, under Section 420 of IPC. Consequent to this and on account of his unauthorized absence, he was placed under suspension by Ext.P4 order dated 12.4.2013. The writ petition was filed on 24.10.2013, challenging the order of suspension. Subsequent to the filing of the writ petition, Ext.P8 memo of charges dated 24.10.2013, was issued to him, which was also challenged. The suspension is challenged

on the ground that it is in violation of Section 60(2) of the Kerala University Act, which provides that a private teacher shall not be placed under suspension except when disciplinary proceedings are initiated. The disciplinary proceedings are challenged on the ground that there is no permission obtained from the Vice Chancellor for continuance of the same beyond the period of 3 months as stipulated in Section 60(4) of the Kerala University Act.

3. The learned Single Judge upheld the suspension on the ground that it is an inherent power of the appointing authority. Regarding disciplinary action, the management was directed to finalise it after getting permission from the Vice Chancellor. In the meanwhile, the petitioner is directed to be reinstated, but without permitting him to discharge the duties and responsibilities of Principal.

4. The fact that the petitioner was arrested by the Sakleshpur Police in Karnataka is not disputed. The petitioner also admitted that he was enlarged on bail and subsequently the case was compounded, on the basis of petitions filed by all the 3 accused jointly. The petitioner was arrested along with 2 others on allegations as to his involvement in marketing of rice puller

and cheating.

5. The issue arising for consideration in both the appeals are : (1) whether the petitioner could have been kept under suspension before disciplinary action was initiated against him i.e before memo of charges was issued to him, in the light of Section 60(2) of the Kerala University Act, 1974 and whether the learned Single Judge was right in upholding the suspension;

(2) whether the disciplinary action can be continued beyond the 3 months stipulated under Section 60(4) of the Kerala University Act, in the absence of permission from the Vice Chancellor; and whether the direction to the management not to impose punishment before getting permission from Vice Chancellor is correct;

(3) whether the judgment of the learned Single Judge in directing re-instatement of the petitioner, with restrictions against discharging his duties and functions of Principal, can be sustained.

6. It is admitted by both sides that the 3rd respondent Medical College is governed by the Kerala University of Health Sciences (KUHS) Act, 2010 and that there is no specific

provision therein, regarding the suspension or the procedure to be followed in disciplinary proceedings against teachers or other staff of the private aided colleges. Section 58 of the KUHS Act provides that, the provisions of Sections 51 to 68 of the Kerala University Act, 1974 shall apply in the case of private aided colleges affiliated to the University, unless provided otherwise.

Section 60 of the Kerala University Act reads as follows:

"Section 60.

1. Notwithstanding anything contained in any law or in any contract or other document, the conditions of service of teachers of private colleges, whether appointed before or after the commencement of this Act, including conditions relating to pay pension, provident fund, gratuity, insurance and age of retirement, shall be such as may be prescribed by the Statues.
2. No teacher of a private college shall be kept under suspension by the educational agency except when disciplinary proceedings are initiated against him.
3. When a teacher of a private college is suspended for a period exceeding fifteen days, the matter, together with the reasons for the suspension, shall be reported to the Vice-Chancellor.
4. Any disciplinary proceedings initiated under sub-s.(2) shall be completed within a period of three months or within such further period as may be allowed by the Vice-Chancellor after hearing the parties concerned.
5. Any person aggrieved by an order of the Vice Chancellor under sub-s.(4) may, within a period of thirty days from the date of receipt of the order by him, appeal to the Appellate Tribunal.
6. No disciplinary action shall be taken against a teacher without giving him a reasonable opportunity of showing cause against the action proposed to be taken against him.
7. Any teacher aggrieved by an order passed after the commencement of this Act in any disciplinary proceedings taken against him may, within sixty days from the date on which a copy of such order is served on him or within sixty days after the Appellate Tribunal has been constituted under this Act, whichever period expires later, appeal to the Appellate

Tribunal and the Appellate Tribunal may, after giving the parties an opportunity of being heard^ and after such further inquiry as may be necessary, pass such order thereon as it may deem fit, including an order of reinstatement of the teacher concerned:

Provided that the Appellate Tribunal may admit an appeal presented after the expiration of the said period if it is satisfied that the appellant had sufficient cause for not presenting the appeal within the said period.

8. Any order passed by the Appellate Tribunal under sub-s.(7) may be executed through the Subordinate Judge's Court having jurisdiction over the area in which the private college is situate as if it were a decree passed by that Court.

9. Any person who objects to an order passed by the Appellate Tribunal under sub-s.(7) may, within sixty days from the date on which a copy of such order is served on him, prefer a petition accompanied by court fee stamps of hie value of ten rupees to the High Court on the ground that the Appellate Tribunal has either decided erroneously, or failed to decide any question of law".

7. Thus as per Subsection 2 of Section 60 of the Act, a teacher of a Private College can be placed under suspension only on initiation of disciplinary proceedings, that is, only after memo of charges is issued to him, ie. there cannot be any suspension when disciplinary proceedings are in contemplation. It does not also provide for suspension on account of registration of crime or for involvement in a criminal case. Sub section 3 provides that a teacher of a private college cannot be retained under suspension except after reporting the same to the Vice Chancellor together with the reasons for suspension.

8. In this case, the petitioner was placed under suspension as per Ext.P4 on 12.4.2013 "in view of the criminal

offences known to have been levelled against him in Sakaleshpur Police Station and also on account of unauthorised absence from duty from 10.04.2013". Memo of charges was issued to the petitioner on 24.10.2013 as per Ext.P8, ie. after a period of more than 6 months from the date of order of suspension.

9. The learned Single Judge upheld the suspension observing that it is the inherent power of the employer. But we have in our judgment dated 16.11.2015 in W.A No.2155 of 2015, considered the validity of the suspension ordered in the case of a non-teaching staff in the very same college, who are also governed by the very same provisions and held that an order of suspension issued in violation of Section 60(2) of the Kerala University Act, 1974, i.e before issuing memo of charges, is illegal. Therefore, we are unable to agree with the learned Single Judge in upholding the order of suspension Ext.P4, by virtue of inherent power.

10. The next question to be examined is whether the disciplinary proceedings can be allowed to be continued beyond the stipulated period of 3 months, in the absence of permission from the Vice Chancellor. In this case, the learned Single Judge has, in the impugned judgment, referred to the interim orders

passed in the Writ Petition, which show that, on 08.01.2014, the undertaking of the counsel appearing for the management to the effect that the proceedings will not be concluded without obtaining orders from this Court, was recorded. Further on 3.3.2015, when the respondent sought permission to conclude the proceedings, it was directed that no penalty shall be imposed on the petitioner without obtaining orders from this Court. The learned Single Judge, rightly found that the time limit stipulated in subsection 4 of the Act is only directory and the non-completion of the same will not render the proceedings null and void, as held in the **Raveendran v. Manager Sree Narayana College**, [2005(1) KLT 960]. At the same time, the learned Single Judge observed that the management shirked its responsibility to seek permission from the Vice Chancellor, observing that there is a right of hearing to the parties before the Vice Chancellor before granting permission. Therefore, it was directed that the management shall get permission from the Vice Chancellor before imposing punishment.

11. The learned counsel appearing for the management submitted that, the petitioner has submitted his explanation to the inquiry report and the disciplinary proceedings can be

finalised within a period of three weeks. It is pointed out that they were unable to finalise the proceedings on account of the interim orders passed by this Court in the Writ Petition and also due to the non-co-operation of the petitioner. Referring to Exts.R3(g) to (m) produced along with the counter affidavit and additional counter affidavits, and Annexures A1 to A4 produced along with this Writ Appeal, Sri. Lakshmi Narayanan, the learned Counsel for the Management, asserted that report on suspension and progress on inquiry was being duly reported to the Vice Chancellor and the Registrar from time to time and permission was also sought from the Vice Chancellor for continuing the disciplinary action. It was also pointed out that the Registrar of the University was sending replies to their letters addressed to the Vice Chancellor and therefore they have furnished information as to the progress of the disciplinary action in the letters addressed to the Registrar as well as Vice Chancellor.

12. At the same time, the learned Senior Counsel Shri C.P.Sudhakara Prasad argued that the letters addressed to the Registrar or the University will not serve the purpose when subsection 4 of Section 60 requires permission from the Vice Chancellor. Moreover, there is a right of hearing to the parties

before the Vice Chancellor, at the stage of seeking permission for extension of time for completing the disciplinary action. Apart from that, there is a right of appeal available to the aggrieved party, against the order of the Vice chancellor also. Those rights cannot be taken away at the instance of management, in violation of the statutory provisions.

13. But we find that the respondents had been furnishing the reports regarding the disciplinary proceedings to the Registrar of the University. From Ext.R3(g) letter, it is seen that the order of suspension was communicated to the Registrar, KUHS, Central Council of Homoeopathy and Vice Chancellor, M.G. University on 16.04.2013 itself. Annexure A1 letter shows that the management addressed the Vice Chancellor on 8.1.2014 reporting the retention of the petitioner under suspension and pendency of inquiry against the petitioner pursuant to the memo of charges issued to petitioner on 24.10.2013. In this letter they sought his approval on it and confirmation. In reply to Annexure A1 letter, it was the Registrar who issued Annexure A2/R3(i) letter dated 28.1.2014 informing that, the University has received and noted the order of suspension. It is after the receipt of Annexure A2 letter from the Registrar that, the Management

addressed the Registrar on 24.2.2014 in Ext R3(k) letter, seeking permission to retain the petitioner under suspension till the criminal case and disciplinary proceedings are over. In reply to this letter the Registrar in Ext.R3(l) letter dated 4.3.2014, informed the 3rd respondent that the Governing Council has noted the suspension of the petitioner and that permission was granted to extend the suspension till completion of the enquiry of the criminal and civil cases levelled against him. Thereafter, the management, by Ext.R3(m) letter dated 13.03.2014, requested the Vice Chancellor to grant them extension of the period of enquiry by six months, on two reasons (i) pendency of W.P© No.2629 of 2013 filed by the petitioner and the interim order therein not to culminate the enquiry and (ii) non co-operation of the petitioner in the enquiry proceedings by seeking adjournment on all posting dates. In addition to that, Annexure A3 letter was sent to the Registrar on 21.3.2014 with the very same request, referring to the letter Ext.R3(m) addressed to the Vice Chancellor on 13.3.2014, Ext.R3(l) letter and the decision no. 17.14 of 7th governing council held on 19.2.2014, as referred to in Ext.R3 (l) letter. The Registrar thereupon, referring to Ext.R3(m) letter, addressed to the Vice Chancellor, and the order

of suspension of petitioner, issued Annexure A4 letter dated 21.5.2014 by which extension was granted by 6 months for conducting the inquiry against the petitioner. In these circumstances, we are of the view that the finding of the learned Single Judge that the management shirked their responsibility to approach the Vice Chancellor, is not correct. It can be utmost be said that they were misguided by the Registrar through the letters sent by him in answer to the letters to the Vice Chancellor. It is also pertinent to note that the Registrar had referred to the Governing Council's decision No.17.1.4 taken in its meeting held on 19.2.2014, which took note of the suspension of the petitioner based on the letters from the management. Therefore, it was incumbent on the University to place the request of the management for time for completing the disciplinary proceedings, before the Governing Council for necessary orders, in case there was no such permission.

14. In this context, it is relevant to note that according to Section 23(xi) of the KUHS Act, it is the Governing Council which is empowered to exercise supervision and control over the discipline of the staff and students of affiliated colleges. The University has already placed the report as to the suspension of

the petitioner before the Governing Council, as evident from Ext.R3(l). Therefore, when extension of time was sought, it was incumbent on the University to place the matter before the Governing Council. At any rate, Annexure A4 letter shows that the request for extension of time has already been granted. In these factual scenario, we are of the view that a further permission from the Vice Chancellor is not necessary for finalizing the disciplinary proceedings, just for the reason that there is an opportunity of hearing provided in Section 60(4) of the Act. The 3rd respondent was restrained from finalizing the proceedings by orders passed by this Court at the instance of the petitioner. Moreover, it is seen that the petitioner has also contributed much for the delay in completion of the disciplinary proceedings, by absenting himself and by seeking adjournments. The request of the petitioner for extension of time is made on the said reasons. It is to be noted that there is no provision in the Act or statute as to the procedure to be followed by the Governing Council in exercising supervision over the disciplinary proceedings against the staff or students.

15. The purpose behind fixing the time limit, providing for hearing and further appellate remedy are to see that the

disciplinary action is not protracted and at the same time, the inquiry is held consistent with the principles of natural justice adopting a just and fair procedure, as per rules. The petitioner as well as the 3rd respondent had sufficient opportunities for being heard before this Court. Therefore, we find that the learned Single Judge was not right in directing the 3rd respondent that punishment shall be imposed only after getting permission from the Vice Chancellor.

16. The further question to be examined is as to the reinstatement of the petitioner without permitting him to perform the duties and functions of the Principal.

17. We have already found that the suspension of the petitioner, even before initiation of disciplinary action, is bad. The normal consequence of an illegal suspension demands reinstatement of the suspended employee. It is pertinent to note the charges leveled against the petitioner which read as follows:

“1. To have involved, engaged and associated yourself in trade, avocation or business outside the scope of your duties without the permission of the Management.

2. To have conducted in a manner unbecoming of a head of an educational institution.

3. To have failed to maintain absolute integrity and devotion to duty as the Principal of the college.

4. To have acted prejudicial to the interests of the college.

5. To have harmed the reputation of the college as also the office of the Principal of the college occupied by you.

6. To have made false representations and availed leave on the false rounds.

7. To have unauthorisedly absented from duty without obtaining sanction of leave.

8. To have left headquarters station without permission from the management and without affording details or address as to whereabouts and availability as also without making due alternate arrangements for conduct of due fairs of the college.

9. To have borrowed money from, or otherwise placed yourself under pecuniary obligation to or in pecuniary relations with, persons subordinate to you.

10.To have unduly induced subordinates in standing as sureties for loans and borrowals.

11. To have committed acts of fraud and dishonesty towards your subordinates in the college and

12. To have unauthorisedly taken off and removed the official records from the college.”

18. Now that it is stated that it is a question of only less

than 3 weeks which is required for finalizing the disciplinary action, and having regard to the nature of duties and responsibilities of a Principal, who is the academic head of the institution and having regard to the nature of allegations leveled against him, we are perfectly in agreement with the learned Single Judge that he should not be assigned the duties and responsibilities of the Principal till finalization of the disciplinary proceedings. At the same time, we make it clear that we are not expressing any opinion on the correctness or otherwise of the allegations.

19. Before concluding it is relevant to deal with the contention of the learned counsel for the management that “Principal” is not a teacher and therefore the provisions contained in Sections 58 to 61 of the Kerala University Act will not apply in this case. It was argued that “teacher” is defined under Section 2(27) of the Kerala University Act. But KUHS Act does not contain any provision defining “Teacher” and the definition of teacher under Section 2(27) of the Kerala University Act to mean Principal also is not made applicable by the KUHS Act. Section 58 of the KUHS Act provides for application of Sections 58 to 61 of the Kerala University Act alone. But the

respondents do not have a case that the “Principal” of the college is not performing the duty of teaching at all or that he is not a teaching staff. As per the provisions contained in all the University Acts as well as the regulations of the UGC, AICTE, etc., “Principal” is included among the teaching staff. At any rate, it cannot be said that a Principal is not a member of the staff of the College. Section 63 of the Kerala University Act provides that provisions of Chapter VIII of the Act applies to non-teaching staff also. The provisions under Section 60 alone are applicable in the case of teachers as well as the members of non-teaching staff. The judgments relied on by the learned counsel for the 3rd respondent, i.e **Lahidhi Multipurpose Higher Secondary School, Chirmiri V Vidyavati Chaturvedi** [CDJ 2005 Ch HC 032], **University of Kerala and another V K.K.Sankaran Namboothiri & another** [CDJ 2005 Ker HC 063], etc. rendered in entirely different factual circumstances, do not apply in the circumstances of this case. Therefore, we are unable to accept the contention that Sections 58 to 61 of the Kerala University Act will not apply in the case of “Principal”. At the same time, we find force in the contention that it is for the Governing Council to supervise that disciplinary action is correct in view of

Section 23(xi) of the KUHS Act. However the procedure for supervision is not provided anywhere.

20. In the above circumstances, we dispose of the appeals with the following directions:

(i) Ext.P4 order of suspension is illegal, as contrary to Section 60(2) of the Kerala University Act; the pay and allowances for the period during which petitioner was kept under suspension shall be disbursed to him after deducting the subsistence allowance (if any) paid to him;

(ii) Petitioner shall be re-instated but shall not be assigned the duties and responsibilities of Principal till the disciplinary action is finalized;

(iii) The 3rd respondent is permitted to finalise the disciplinary action against the petitioner, within a period of 3 weeks from the date of this judgment.

Sd/-
ANTONY DOMINIC
Judge

Sd/-
P.VASHA
Judge

rtr/

/true copy/

P.S to Judge