

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC
&
THE HONOURABLE MR. JUSTICE SHAJI P. CHALY

THURSDAY, THE 25TH DAY OF JUNE 2015/4TH ASHADHA, 1937

W.A.No. 1277 of 2015 () IN WP(C).12054/2015

AGAINST THE ORDER DATED 10.06.2015 IN I.A.NO.6349/2015 IN WP.(C)NO.12054/2015

APPELLANT(S)/PETITIONER/3RD RESPONDENT:

MANAGER, SHREE VIDYADHIRAJA HOMOEOPATHIC MEDICAL COLLEGE
AND SECRETARY, SHREE VIDYADHIRAJA VIDYA SAMAJAM,
ASWATHY, HINDU MISSION ROAD, BEHIND SECRETARIAT,
THIRUVANANTHAPURAM - 695 001.

BY ADVS. SRI. N. NANDAKUMARA MENON (SR.)
SRI. SANTHAN V. NAIR

RESPONDENT(S)/PETITIONER/RESPONDENTS 1, 4 & 5:

1. DR. SHYLAJA K. NAIR,
LECTURER AND DRAWING AND DISBURSING OFFICER,
SHREE VIDYADHIRAJA HOMOEOPATHIC MEDICAL COLLEGE,
NEMOM P.O., TRIVANDRUM - 695 020.
2. STATE OF KERALA,
REPRESENTED BY THE CHIEF SECRETARY TO GOVERNMENT OF KERALA,
GOVERNMENT SECRETARIAT, STATUE, TRIVANDRUM - 695 001.
3. THE PRINCIPAL AND CONTROLLING OFFICER,
GOVERNMENT HOMOEOPATHIC MEDICAL COLLEGE, IRANIMUTTOM,
MANACCAUD P.O., TRIVANDRUM.
4. M. RADHAKRISHNAN NAIR,
ENQUIRY OFFICER, UTHARA, ASWATHY GARDENS,
AMBALATHARA, THIRUVANANTHAPURAM - 695 026.

R1 BY ADV. SRI. S. PRASANTH (AYYAPPANKAVU)
R2 BY SENIOR GOVERNMENT PLEADER, SR. M. A. FAYAZ
R3 BY SRI. P. SREEKUMAR, SC, KERALA UT. OF HEALTH SCIENCES.

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 25-06-2015, ALONG
WITH W.P.(C)NO. 12054/2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

P.T.O.

**ANTONY DOMINIC
&
SHAJI P. CHALY, JJ.**

**W.A. No.1277 of 2015
&
W.P.(C) No.12054 of 2015**

Dated this the 25th day of June, 2015

JUDGMENT

Antony Dominic, J.

When the writ appeal was heard, the learned counsel appearing for both the sides suggested that having regard to the nature of the controversy involved, the writ petition itself could also be heard and accordingly, the writ petition was also called to this Bench and both matters were heard together.

2. W.P.(C) No.12054 of 2015 was filed challenging Exts.P4, P6, P13 and P14. These are the memo of charges issued to the petitioner, order of the disciplinary authority appointing an Inquiring Officer, memo proposing punishment, and the report of the enquiry officer, respectively. In the writ petition, interim order dated 09.04.2015, staying all further proceedings pursuant to Exts.P13 and P14 was passed. Subsequently, considering the application made by the Management for vacating the interim order, the learned Single

Judge passed order dated 10.06.2015, declining to vacate the interim order and directing that the writ petitioner shall be re-instated in service withdrawing the order imposing the punishment of compulsory retirement. Writ Appeal No.1277 of 2015 is filed by the 3rd Respondent in the writ petition, the Manager of the Medical College, challenging the order dated 10.06.2015.

3. The writ petitioner was a Lecturer and Drawing & Disbursing Officer in the Sree Vidyadhiraja Homeopathic Medical College, Nemom, Thiruvananthapuram, the Manager of which is the appellant in the Writ Appeal. On allegations of misconduct, Ext.P4 memo of charges was issued to her. Her explanation was not accepted and by Ext.P6, the 5th Respondent in the writ petition was appointed as the Enquiry Officer. Inquiry was completed and Ext.P14 report finding the writ petitioner guilty of the misconducts, was submitted. On receipt of the enquiry report, the disciplinary authority forwarded a copy of the enquiry report along with Ext.P13 memo, where punishment was proposed. It was at that stage, the writ petition was filed, in which, interim orders were passed.

4. The main contentions raised by the learned counsel for the writ petitioner are that the charges levelled against the delinquent were the repetition of a previous set of charges, and that she was denied access to the documents that were relied on against her and was thus denied reasonable opportunity of filing a proper explanation to the memo of charges and also a reasonable opportunity to defend the charges. According to the petitioner, her request for appointment of an Advocate to defend her in the enquiry was illegally denied. It is stated that such denial was in violation of the provisions contained in Chapter 4 of Statute 71(6) of the Kerala University First Statutes and the principles laid down by the Hon'ble Apex Court in '**Ramesh Chandra v. University of Delhi & Others**' [ILR 2015 (1) Ker. 677]. The learned counsel also referred us to various judgments of the Hon'ble Apex Court and contended that the initiation of the proceedings against the petitioner itself being illegal, every subsequent action against her also were illegal. According to the counsel, since the memo of charges itself was illegal, all further proceedings of enquiry were vitiated. He also referred various other factual issues, which, according to him,

invalidated the enquiry.

5. However, all these contentions were refuted by the learned Senior Counsel appearing for the Management. According to him, the writ petition itself is premature and was not maintainable as it was filed against the memo of charges and a report of enquiry, which have not culminated in any final order. In support of his contention, the learned counsel relied on the principles laid down by the Hon'ble Apex Court in "**Secretary, Ministry of Defence & Others v. Prabhash Chandra Mirdha**" [(2012) 11 SCC 565]. Learned Senior Counsel also submitted that the memo of charges were not a repetition, as contended by the petitioner, but were totally unrelated to and independent of the previous proceedings. According to him, the delinquent was given every opportunity to defend herself in the enquiry and also for perusal of the documents that were relied on against her.

6. Having considered the rival submissions made, we are of the view that, at this stage, it is not necessary for this Court to deal with any one of these contentions. We take this view for the reason that after receipt of the enquiry report, the disciplinary authority has not taken any final decision in this

matter. According to us, all the contentions that are urged by the counsel for the petitioner are to be urged before the disciplinary authority availing of the opportunity when she is called upon to make her representation against the findings of the Enquiry Officer. Only after that stage and a decision is taken, can the delinquent have a cause of action and that too, if the order that the disciplinary authority is to pass, is prejudicial to her. That stage has not reached so far. However, one vitiating factor in the procedure adopted by the disciplinary authority is required to be noted and corrected. Ext.P14 is the enquiry report. On receipt of the report, that was forwarded to the delinquent along with Ext.P13 memo. In this memo, after extracting each of the charges and the findings thereon in the report, the disciplinary authority has stated thus:

"Having arrived at the finding (on the basis of the report of the Inquiring Authority and the items of evidence annexed thereto) that Smt. Shylaja K. Nair is guilty of all the charges framed against her, and having the previous career and history of Smt. Shylaja K. Nair in mind, and having lost faith or confidence that Smt. Shylaja K. Nair is willing to improve her attitude conduct and behaviour, the Disciplinary Authority has reached the

provisional conclusion that the service of Smt. Shylaja K. Nair will have to be terminated forthwith in the interest of SVHM College and the Staff of the College. The charges proved are weighty serious and grievous enough to impose the highest penalty of dismissal from service against Smt. Shylaja K. Nair. However, the Management (Disciplinary Authority) does not wish to see that Smt. Shylaja K. Nair loses the opportunity to receive pension and other terminal benefits for the total service rendered by her. Therefore, taking a lenient view, the Management proposes to award the lesser penalty of COMPULSORY RETIREMENT FROM SERVICE to Smt. Shylaja K. Nair.

If you, Shylaja K. Nair, wish to make any submission to the Management (Disciplinary Authority) as to why the penalty of Compulsory Retirement should not be imposed on you, you may make a written submission to the Management before 11 A.M. on 13th April, 2015. If no such submission from you is received by the Management before 11 A.M. on 13.04.2015, it will be presumed that you have nothing to submit with regard to this matter and final decision will be arrived at and orders issued on that basis."

7. Reading of the above extracted portion of Ext.P13 memo shows that on receipt of the enquiry report, the disciplinary authority has accepted the findings of the enquiry officer and on that basis, proposed a punishment on the

delinquent. This, according to the learned Senior Counsel, is in compliance of the procedure laid down in Statute 71(12) of Chapter 4 of the Kerala University (Conditions of Service of Teachers and Members of Non-Teaching Staff) First Statutes, 1979. This contention of the learned Senior Counsel will have to be appreciated in the light of Statute 71(11) and (12) of Chapter 4 of the University First Statute and the relevant principles laid down by the Hon'ble Apex Court in its judgment in '**Managing Director ECIL, Hyderabad, etc. etc. v. B. Karunakar, etc. etc.** [AIR 1994 SC 1074].

8. Statute 71 (11) and (12) reads thus:

"(11) The disciplinary authority where it is not the inquiring authority shall consider the record of the inquiry and record its findings on each charge.

(12) If the disciplinary authority, having regard to the findings on the charges is of the opinion that any of the penalties specified in items (iv) to (vii) of statute 69 shall be imposed, it shall--

(a) furnish to the teacher of the private college, a copy of the report of the inquiring authority and where the disciplinary authority is not the inquiring authority a statement of its findings together with brief reasons for disagreement, if any with the findings of the inquiring

authority; and

- (b) give him a notice stating the action proposed to be taken in regard to him and calling upon him to submit within a specified time which may not exceed one month, such representation as he may wish to make against the proposed action."*

9. Reading of these provisions show that the disciplinary authority where it is not the enquiry authority, as in this case, shall consider record of enquiry and record its findings on each charge. The provisions of Statute 71(10) show that record of inquiry include, among others, the report of the inquiry officer as well. As per clause (12), extracted above, if the disciplinary authority having regard to the findings on the charges is of the opinion that any of the major penalties specified in items (iv) to (vii) of Statute 69 shall be imposed, it shall furnish to the delinquent, a copy of the report and give him notice stating the action proposed to be taken. According to the learned Senior Counsel, it was in compliance with the above provisions, inquiry report was furnished along with Ext.P13 memo stating the punishment that is proposed to be imposed.

10. This contention urged by the learned Senior Counsel cannot be accepted in the light of the principles laid down by

the Hon'ble Apex Court in the '**ECIL**' case (*supra*), where it has been, inter alia, held thus:

"Hence it has to be held that when the Inquiry Officer is not the disciplinary authority, the delinquent employee has right to receive a copy of the Inquiry Officer's report before the disciplinary authority arrives at its conclusions with regard to the guilt or innocence of the employee with regard to the charges levelled against him. That right is a part of the employee's right to defend himself against the charges levelled against him. A denial of the Inquiry Officer's report before the disciplinary authority takes its decision on the charges is a denial of reasonable opportunity to the employee to prove his innocence and is a breach of the principles of natural justice.

x x x x x x x

Since the denial of the report of the Inquiry Officer is a denial of reasonable opportunity and a breach of the principles of natural justice, it follows that the statutory rules, if any, which deny the report to the employee are against the principles of natural justice and, therefore, invalid. The delinquent employee will, therefore, be entitled to a copy of the report even if the statutory rules do not permit the furnishing of the report or are silent on the subject."

11. Reading of the above principles laid down by the Hon'ble Apex Court, which binds every authority in this

country, show that where disciplinary authority is not the inquiring authority, before the findings of the inquiry authority are accepted by the disciplinary authority, the delinquent is entitled to be supplied copy of the enquiry report and also an opportunity to make his representations against the findings in the enquiry report. This, as held by the Hon'ble Apex Court, is a part of the employee's right to defend himself against the charges levelled against him and is also a part of the principles of natural justice. The Hon'ble Apex Court has further clarified that if any statutory rule denies such an opportunity to the delinquent, such rule shall be invalid, it being against the principles of natural justice.

12. The law thus categorically declared by the Hon'ble Apex Court should govern the instant case also. If it that be so, if as contended by the learned Senior Counsel, the rule denies an opportunity to the delinquent to make her representation against the findings of the enquiry officer, before its acceptance by the disciplinary authority, the provisions of the University Statute will have to be held invalid. On the other hand, according to us, such an opportunity is implicit in Statute 71(11).

13. In this case, as we have already stated above, on receipt of Ext.P14 enquiry report, without furnishing a copy thereof, or affording an opportunity to the writ petitioner to make her representations against the findings of the enquiry officer, the findings in the report were accepted by the disciplinary authority. On that basis, punishment was also proposed in Ext.P13 memo. Such a procedure adopted by the disciplinary authority is violative of the principles laid down by the Hon'ble Apex Court in '**ECIL**' case (*supra*). Therefore, Ext.P13 memo and any further action that was taken is totally invalid and illegal. However, that does not mean that the delinquent will stand absolved of the charges and the disciplinary authority is entitled to continue the proceedings from the stage where it has erred. In such continued proceedings, it is for the writ petitioner to urge all her contentions that were urged before us and it is for the disciplinary authority to deal with those contentions and arrive at his conclusions.

14. In the above view that we have taken, we dispose of this writ petition setting aside Ext.P13 memo issued by the disciplinary authority and directing that *status quo* as at the

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stage when Ext.P13 was issued be restored. The disciplinary authority having already furnished enquiry report to the delinquent will issue fresh memo/notice to the writ petitioner, affording her an opportunity to make her representations against the findings in Ext.P14 enquiry report. On receipt of such notice, it will be open to the petitioner to urge all her contentions including the one regarding the alleged invalidity of the memo of charges, and the disciplinary authority will consider each of those contentions and take a decision in the matter and pass appropriate fresh orders, finalizing the disciplinary action.

15. Since we have disposed of the writ petition itself, it is not necessary for us to deal with W.A.No.1277 of 2015.

The writ petition and the writ appeal are disposed of accordingly.

Sd/-

**ANTONY DOMINIC
JUDGE**

Sd/-

**SHAJI P. CHALY
JUDGE**

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P.S. to Judge

St/-