

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

&

THE HONOURABLE MR. JUSTICE SHAJI P. CHALY

FRIDAY, THE 31ST DAY OF JULY 2015/9TH SRAVANA, 1937

WA.No. 1352 of 2015 () IN WP(C).10047/2015

AGAINST THE JUDGMENT IN W.P(C) 10047/2015 of HIGH COURT OF KERALA DATED 10-04-2015.

APPELLANT(S)/RESPONDENTS 1 TO 3:

1. UNIVERSITY OF CALICUT,
REPRESENTED BY ITS REGISTRAR, UNIVERSITY CAMPUS,
CALICUT UNIVERSITY P.O., THENJIPPALAM,
MALAPPURAM DISTRICT.
2. THE VICE CHANCELLOR,
UNIVERSITY OF CALICUT,
UNIVERSITY CAMPUS, CALICUT UNIVERSITY P.O.,
MALAPPURAM DISTRICT.
3. THE PRO-VICE CHANCELLOR,
UNIVERSITY OF CALICUT, UNIVERSITY CAMPUS,
CALICUT UNIVERSITY P.O. THENJIPPALAM,
MALAPPURAM DISTRICT.

BY ADV. SRI.SANTHOSH MATHEW, SC, CALICUT UNIVERSITY

RESPONDENT(S)/PETITIONER AND 4TH RESPONDENT:

1. OMPRAKASH V.,
PUBLICATION OFFICER, UNIVERSITY OF CALICUT,
UNIVERSITY CAMPUS, CALICUT UNIVERSITY P.O.,
THENJIPPALAM, MALAPPURAM DISTRICT.
2. DR.K.M. NASSER,
(MEMBER SYNDICATE OF UNIVERSITY OF CALICUT AND CHAIRMAN OF UG
BOARD OF STUDIES IN MALAYALAM) ASSISTANT PROFESSOR,
FAROOQ COLLEGE, FAROOQ COLLEGE P.O.
KOZHIKODE DISTRICT.

R1 BY ADV. SRI.P.C.SASIDHARAN

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 15-07-2015, THE COURT
ON 31.07.2015 DELIVERED THE FOLLOWING:

P.T.O.

W.A.NO.1352 OF 2015

APPENDIX

APPELLANTS' ANNEXURES:

ANNEXURE-A1	TRUE COPY OF THE UNIVERSITY ORDER NO.5217/2015/ADMN. DATED 22.05.2015.
ANNEXURE-A2	TRUE COPY OF THE UNIVERSITY ORDER NO.5662/2015/ADMN. DATED 04.06.2015.
ANNEXURE-A3	TRUE COPY OF THE W.P.(C) NO.17237/2015 FILED BY THE 1ST RESPONDENT HEREIN.

RESPONDENTS' ANNEXURES: NIL

//TRUE COPY//

P.S. TO JUDGE

St/-

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

W.A.No.1352 of 2015

Dated this the 31st day of July, 2015

JUDGMENT

Shaji P. Chaly, J.

This writ appeal is filed by Respondent Nos.1 to 3 in W.P. (C) No.10047/2015 filed by the 1st Respondent. By judgment dated 10.04.2015 the learned Single Judge has directed, to reinstate the 1st Respondent with effect from 21.05.2015, if the entire disciplinary proceedings is not completed on or before 20.05.2015, subject to the outcome of the disciplinary proceedings.

2. Brief facts for the disposal of the writ appeal are stated hereunder:

The 1st Respondent was directly recruited to the post of Publication Officer by the University on 22.07.2008. His probation was declared on 23.07.2009. The Publication Officer is assigned with specific duties as per order No.Ad.F2/4960/95 dated 09.03.2001. The duties and functions of the Publication Officer is to publish books for the students of affiliated Colleges

of the appellant University and also publish research thesis, journals etc. etc. While continuing so, the Deputy Registrar of the 1st appellant issued Ext.P1 memo dated 27.02.2015, directing the 1st Respondent to submit his explanation as to why action should not be taken against him for not publishing books for the Second Semester B.A/B.Sc. and B.Sc. alternative pattern common course, despite reminders and warnings. To the said memo, the 1st Respondent had submitted Ext.P2 submission dated 27.02.2015, refuting the allegations raised against him in Ext.P1.

3. Thereafter, on 06.03.2015, a note was placed before the Syndicate. It is seen from Ext.P3 that the 2nd Respondent who was the Chairman of the Board of Studies in Malayalam (UG) and also a Syndicate Member, had informed the Vice Chancellor that there was callous and deliberate neglect of duty by the Publication Officer in the matter of publication of text books, and thus a meeting was convened by the Vice Chancellor on the request of the Board of Studies and that in the meeting, the 1st Respondent had assured that the Publication Division would publish the books related to Second Semester Malayalam B.A./B.Sc. within two weeks and the

books for B.Sc. Non Conventional Course within one month. But, in spite of assurance, only three books of UG Common Course were published and that, not a single book for B.Sc. Non Conventional programme was published by the 1st Respondent and therefore, the Enquiry Committee has recommended to initiate disciplinary action against the 1st Respondent and also to conduct an enquiry to ascertain the financial position.

4. It is further contended that a note was put up to the Syndicate on 21.03.2015 on the very same issue and in the note, it was stated that the Pro-Vice Chancellor, alleging constant, negative and indisciplined attitude of the 1st Respondent, recommended to suspend the 1st Respondent with immediate effect and put the Superintendent of Press in charge of the Publication Officer. In the very same note, it was recommended to appoint the 2nd Respondent herein as the Enquiry Officer to enquire into the charges levelled against the 1st Respondent. Accordingly, the Syndicate resolved to suspend the 1st Respondent from service in spite of the dissent expressed by some of the Members by Ext.P4 decision taken as per the minutes of the meeting dated 21.03.2015.

Accordingly, as per Ext.P5 order dated 24.03.2015, the 1st Respondent was placed under suspension. The 1st Respondent contended that Ext.P5 suspension order has no legal backing and the same is violative of the conditions of service of non-teaching Staff of the University as governed by Chapter 4 of the University First Statute. The 1st Respondent also contended that sufficient number of books required by the students have already been published and the books remained to be published are of alternative courses, which are less than 500 in number. He further contended that the enquiry committee as per Ext.P7 dated 08.08.2014 has submitted a detailed enquiry report finding fault with the entrustment of publication of books in English to private publishers since there was suspicion of huge financial transaction prejudicial to the interest of the University. But, it was totally ignoring Ext.P7 enquiry commission report, the 2nd Respondent who was the Convenor appointed to study the report, exonerated all concerned and rejected the report of Board of Studies in English and the University issued an order exonerating the Chairman and Members of the Board of Studies and submitted Ext.P8 report dated 17.03.2015 and that the attempt of the

authorities was to entrust the publication to private agencies and that the 1st Respondent was made a scapegoat of the entire episode, and suspended him from service. Thereupon he filed the writ petition with reliefs including reinstatement in service.

5. The 1st appellant University filed a detailed statement refuting the statements and allegations made by the 1st Respondent and further contending that there was deliberate laches and negligence on the part of the 1st Respondent in the matter of publication of books required for the students of the affiliated Colleges of the University. In the statement so filed, the action initiated by the University pursuant to Ext.P5 order was justified and along with the statement series of documents were produced as Annexures-R1(1) to R1(7), explaining the circumstances under which the entire episode took place and that there was justifiable reasons on the part of the 1st appellant University to place the 1st Respondent under suspension pending enquiry initiated against him. It is also contended that in spite of providing opportunities, 1st Respondent has not cared to improve and further that, if the text books are not published in time, the

consequences are disastrous also leading to students unrest.

6. The learned Single Judge after considering the rival contentions raised by the parties, disposed of the writ petition upholding the order of suspension but directed to reinstate the 1st Respondent with effect from 21.05.2015 if the University is unable to complete the enquiry proceedings on or before 20.05.2015. It is challenging this judgment of the learned Single Judge, the appellants have preferred this writ appeal, on 25.06.2015.

7. Heard the learned Standing Counsel for the appellants and the learned counsel appearing for the 1st Respondent. Perused the pleadings of the writ appeal, writ petition and also the documents produced.

8. As ordered by the learned Single Judge since the disciplinary action could not be completed by 20.05.2015 as per Annexure A1 order, the 1st Respondent was reinstated in service, subject to continuance of the disciplinary proceedings. Thereafter, the 1st appellant University felt that since disciplinary proceedings are pending, it may not be proper to permit the 1st Respondent to function as Publication Officer and a decision was taken by the University to assign him the

charge of clearing B.Tech Revaluation work. This was conveyed to the respondent by Annexure A2 order dated 4.6.2005. This order of the University is under challenge in W.P.(C) No.17237/2015 and is pending consideration before this Court. Therefore we are not expressing any opinion with regard to the subsequent developments that took place after the impugned judgment was rendered.

9. Learned Standing Counsel for the University vehemently contended that, the reinstatement of the 1st Respondent who has refused to obey the instructions of the superior authorities to publish the syllabus text books will create lot of inconveniences to the University and further that if the books are not published in time, the student community will be put to difficulties. On the other hand, learned counsel for the 1st Respondent contends that, the books remaining to be published are only 500 Nos. and the action initiated by the University against the 1st Respondent is nothing but to wreck vengeance, since the committee consisting of the 1st Respondent had submitted Ext.P7 report with certain remarks against the Board of Studies in English. These facts may also be relevant to the subject matter of the enquiry and in view of

its pendency, we do not propose to comment upon such rival submissions made by the learned counsel.

10. Learned counsel for the 1st Respondent has filed a counter affidavit in the writ appeal along with two Annexures, mainly complaining about Annexure-A2 decision of the appellants to shift the 1st Respondent from the Publication Division. But, here also in view of the pendency of the writ petition challenging Annexure-A2, we are not making any reference to the contentions raised in the counter affidavit filed.

11. On going through the pleadings in the writ appeal and after hearing the submissions made by the learned counsel for the rival parties, we find that since the order of suspension has been upheld by the learned Single Judge and the grievance of the appellants is only regarding the time limit fixed for completing the proceedings. If the appellants were aggrieved by the time frame fixed in the judgment, that should have been challenged and if they could not complete the enquiry as stipulated in the impugned judgment on or before 20.05.2015, the appellants should have approached the learned Single Judge seeking extension of time in order to complete the

enquiry. Without adopting both these courses, the appellants have chosen to reinstate the 1st Respondent in service pending the enquiry. Having voluntarily thus reinstated the 1st Respondent, the appellants cannot thereafter maintain an appeal, complaining against the time frame fixed in the judgment to complete the enquiry.

12. On going through the facts and circumstances of the case, we do not find any illegality or infirmity in the judgment impugned, so as to warrant our interference invoking our appellate jurisdiction. We make it clear that we have not expressed any opinion with regard to Annexure-A2 order passed by the University, which is pending consideration in a writ petition before this Court and we also did not intend to express any opinion on the pending enquiry against the 1st Respondent. This judgment shall also not be of any prejudice to the appellants in seeking modification of the time frame fixed in the judgment.

Writ appeal fails and accordingly it is dismissed.

Sd/-

**ANTONY DOMINIC
JUDGE**

Sd/-

**SHAJI P. CHALY
JUDGE**

//true copy//

P.S. to Judge

St/-