

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

MONDAY, THE 28TH DAY OF SEPTEMBER 2015/6TH ASWINA, 1937

WP(C).No. 7962 of 2015 (U)

PETITIONER(S):

1. JITHIN B.K., AGED 24 YEARS,
S/O.MOHANAN, VILAKKU MADAM, KUNIYIL,
ONCHIYAM AMSOM DESAM, (VIA),CHOMBALA, VADAKARA TALUK,
KOZHIKODE-673 308.
2. LEGIN FELIX, S/O.FELIX JOSEPH, AGED 26 YEARS,
MADACHAMPALLY HOUSE, CHAVARA SOUTH P.O., THEKKUMBHAGAM,
KARUNAGAPPALLY TALUK, KOLLAM-691 584.
3. SANTHOSH, S/O.RAMAKRISHNAN, AGED 27 YEARS,
VELITHOLI COLONY, PANAYIL AMSOM, PAKKAM DESAM,
PAKKAM P.O., HOSDURG, KASARGOD-671 316.
4. BIJILESH P.T., S/O.BHASKARAN, AGED 26 YEARS,
PADINJARE VILAKATH, MAVILAYI P.O.,
KANNUR DISTRICT-670 622.

BY ADV. SRI.J.S.AJITHKUMAR

RESPONDENT(S):

1. KANNUR UNIVERSITY,
REPRESENTED BY ITS REGISTRAR,
THEVAKKARA CIVIL STATION P.O., KANNUR DISTRICT,
PIN-670 002.
2. VICE CHANCELLOR, KANNUR UNIVERSITY,
THEVAKKARA CIVIL STATION P.O., KANNUR DISTRICT,
PIN-670 002.
3. THE CONTROLLER OF EXAMINATION,
KANNUR UNIVERSITY, KANNUR, PIN-670 002.
4. KAVITHA BALACHANDRAN,
HEAD OF THE DEPARTMENT, SCHOOL OF LEGAL STUDIES,
KANNUR UNIVERSITY, KANNUR-670 002.

R1-R3 BY ADV. SRI.V.A.MUHAMMED, SC

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 06-08-2015
THE COURT ON 28-09-2015, DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER(S)' EXHIBITS

- EXT.P1: TRUE COPY OF THE EXTRACT OF E-GRANTS REGARDING GENERAL INSTRUCTIONS OF GOVT. OF KERALA.
- EXT.P2: TRUE COPY OF THE CERTIFICATE ISSUED TO 1ST PETITIONER.
- EXT.P3: TRUE COPY OF THE CERTIFICATE ISSUED TO 3RD PETITIONER.
- EXT.P4: TRUE COPY OF THE CERTIFICATE ISSUED TO 4TH PETITIONER.
- EXT.P5: TRUE COPY OF MEMO DATED 29.07.2013 OF THE 3RD RESPONDENT.
- EXT.P6: TRUE COPY OF REPLY TO THE MEMO DATED 29.07.2013 OF THE 3RD PETITIONER.
- EXT.P7: TRUE COPY OF MEMO DATED 22.11.2013 OF THE 3RD RESPONDENT.
- EXT.P8: TRUE COPY OF THE REPRESENTATION OF THE 3RD PETITIONER TO THE 3RD RESPONDENTS DATED 26.11.2013.
- EXT.P9: TRUE COPY OF THE RESULT OF SIXTH SEMESTER LL.B EXAMINATION OF 1ST PETITIONER.
- EXT.P10: TRUE COPY OF THE MEMO DATED 21.02.2014 OF THE 3RD RESPONDENT.
- EXT.P11: TRUE COPY OF THE REPRESENTATION OF THE 3RD PETITIONER TO THE 3RD RESPONDENT DATED 10.03.2014.
- EXT.P12: TRUE COPY OF THE HALL TICKET TO SECOND PETITIONER FROM THE 3RD RESPONDENT.
- EXT.P13: TRUE COPY OF THE ABSTRACTS OF KANNUR UNIVERSITY REGULATIONS CONTAINING PUNISHMENT OF MAL PRACTICES DATED 20.10.2012.
- EXT.P14: TRUE COPY OF THE INTIMATION OF THE 3RD RESPONDENT TO THE PETITIONERS.

RESPONDENT(S)' EXHIBITS

NIL.

/ TRUE COPY /

P.S. TO JUDGE

A.V.RAMAKRISHNA PILLAI, J

WPC No.7962 of 2015

Dated this the 28th day of September, 2015

JUDGMENT

Exts.P5, P7 and P10 issued by the respondents are under challenge in this writ petition.

2. The petitioners have completed LL.B. Examination in the academic year 2014. On 14.2.2013, the 4th respondent refused to give hall ticket to the petitioners for the 9th semester examinations held on 15.2.2013 onwards alleging lack of attendance in the sixth semester examination scheduled from 15.2.2013 onwards ignoring Exts.P1 to P4. The petitioner alleges that as a matter of fact regular examinations of semesters at School of Legal Studies, Kannur University are conducted simultaneously without giving sufficient time to the students and the petitioners and other students submitted representations to the 4th respondent to

ensure sufficient time gap between the regular examinations of each semesters. The petitioners allege that it was due to that vengeance that the 4th respondent refused to issue hall tickets to the petitioners on 14.2.2013 on the eve of the sixth semester LL.B. Examination. However, the 4th respondent allowed the petitioners to write the examination from 15.2.2013 without issuing hall tickets to them. The petitioners point out that after the examinations, the third respondent issued Ext.P5 and without holding any enquiry and without giving an opportunity of being heard issued Ext.P7 alleging examination malpractices against the petitioners which, according to them, is contrary to Exts.P12 and P13 and Kannur University Regulations. According to the petitioners, there is no element or proof of malpractice, misbehaviour or misconduct against the petitioners and without conducting any valid/legal enquiry, respondents 1 to 3 imposed penalty of ₹16,000/- each against the petitioners contrary to the

Kannur University Regulations as well as Exts.P12 and P13. The petitioners are aggrieved by Exts.P5, P7 and P10 and manifest injustice has been caused to them by ignoring Ext.P11 and similar other petitions submitted by petitioners 1, 2 and 4 by the third respondent. It is with this background the petitioner has come up before this Court.

3. In the statement filed by respondents 1 to 3, it was contended as follows:

The petitioners were served with Memo No.EX-IX/2/SMP/BA.LLB/600/2013 dated 29.7.2013 (Ext.P5) asking them to furnish reply on the charges leveled against them. As per the Rules/Office Procedure, on receiving report on malpractice case, the candidates are served with charge memo directing them to submit their explanations within 10 days. Only on receiving the explanation on the charges, the decision as to whether any enquiry has to be conducted or not would be taken.

It is contended that the enquiry would be

conducted only if the candidate expressly denies the charges leveled against him. In this case, the petitioners have not categorically denied the charges (Ext.P6) and requested to forgive him considering his studies and future prospects. After going through the details of the case and reply received from the candidates, it is up to the standing committee on Examinations and Discipline to suggest recommendations on the nature of punishment and which thereafter is approved by the Vice Chancellor. It may be noted that the punishments were imposed as per clause (15) of the SMP Rules which is as follows:

1. *To cancel the performance of the candidate in all papers of IX Semester BA.LLB (Hons) Degree Examinations, 2011.*
2. *To impose a fine of ₹15,000/-*
3. *Not to permit him to appear for examination of the cancelled paper for next two consecutive chances.*

This was intimated vide Memo No.EX.IX/2/SMP/BA.LLB/600/2013 dated 22.11.2013 (Ext.P7).

It is contended that as per the Rules of SMP, processing fee of ₹1000/- is charged. The reply received from all other petitioners was identical and hence, similar memos were issued to all. As the petitioners pleaded ignorance and requested for reconsideration of the decision intimated as per Ext.P7, the whole matter was reconsidered in the next standing committee on Examinations and Discipline on 13.1.2014. The Committee in view of the discussion with the Head, School of Legal Studies, Palayad and on humanitarian consideration, resolved to freeze and mitigate the punishments imposed earlier and the students were imposed with only a fine of ₹15,000/- and further resolved to publish the results of the candidates if they satisfy all other conditions. The decision was intimated to them as per punishment Memo No.EX/IX-2/SMP/BA.LLB(H)/600/2013 dated 21.2.2014 (Ext.P10).

It is further contended that the malpractice

report received from the Head, School of Legal Studies states that the petitioners have threatened her on 14.2.2013 that they would disrupt the conduct of the examination if they are not allowed to attend the examinations and she was forced to do so to avoid serious law and order situation. The statement that the respondents were not served with the copy of the complaint any point of time is baseless. The memo dated 29.7.2013 marked as Ext.P5 itself is the proof of communication made from this office on the basis of the complaint received. SMP reports from various centres/valuation camps containing false numbers and the details are of confidential nature and hence, no copy of such letters is forwarded to the students. Instead memos prepared on the basis of such reports were served.

According to the Rules, results of such candidates who resort to malpractice of any nature remains withheld until final orders are issued. The

results would have been published if the students had accepted the punishment and had remitted the fine amount of ₹15,000/- and the processing fee of ₹1000/- as decided by the standing committee on 13.1.2014 as per punishment memo dated 21.2.2014. All actions taken against the candidates are as per the Rules and Regulations of the University and following the principles of natural justice.

4. Arguments have been heard.

5. According to the petitioners, there is only one permanent teacher in the school of Legal Studies of Kannur University other than the Principal and due to the non-availability of sufficient teachers, the duration of course/semester system has been extended beyond the scheduled duration of LL.B course. It was pointed out that the extension of duration of the course and the failure of the teachers in completing the course within the scheduled time as well as the delay in conducting

the examination and publication of result caused inconvenience and hardship to the students of School of Legal Studies including the petitioner. Petitioners 1, 3 and 4 are availing grants from the Government based on the requisition of the Head of the Department in accordance with the statutory formalities of the Government. It was pointed out that as a matter of fact those who have not less than 75% of attendance in each academic year are not eligible to get education concession/grant from the Government as could be seen from Ext.P1 which is the extract of e-grants regarding the general instructions of Government of Kerala. Exts.P2, P3 and P4 are the certificates issued to the petitioners 1, 3 and 4. The issue arose when the 4th respondent refused to issue hall ticket to the petitioners on 14.2.2013 i.e. on the eve of 9th semester examination scheduled to be held from 15.2.2013 alleging want of attendance to the petitioners which, according to the petitioners, is contrary to Exts.P1 to

P4. According to the petitioners, they made a request to the 4th respondent to permit them to write 9th semester examination indicating that the attendance were not being regularly marked by the teachers in the college due to want of sufficient teachers. According to the petitioners, they were allowed to write all the regular examinations of 9th semester even without hall tickets. However, on 6.8.2013 a memo dated 29.7.2013 was served to them alleging misconduct on their part against the 4th respondent.

6. The definite case of the petitioner is that the respondents have not conducted any enquiry, examine any witness and perused any document including Exts.P1 to P4 to substantiate the allegations said to have been caused by the petitioners to the 4th respondent.

7. As rightly pointed out by the learned counsel for the petitioners, the respondents ought to have conducted an enquiry on the allegations by

examining the witnesses and perusing the document including Exts.P1 to P4 before proceeding against the petitioner. However, the third respondent issued Ext.P5 at the instance of the 4th respondent. On the basis of Ext.P5 the Syndicate of the University recommended the second respondent to impose the punishments made mention of in the counter affidavit which were stated in paragraph-3 above.

8. The petitioners were further directed to remit an amount of ₹1,000/- as processing fee in addition to the fine within 7 days vide order dated 22.11.2013 and the third respondent directed the petitioners to remit ₹16,000/- to the University and communicated punishment imposed against them. Ext.P7 is the copy of the memo. The petitioners submitted representations before the third respondent and pleaded their ignorance and sought for reconsideration of the decision. Later, the third respondent intimated the petitioners that the

second respondent resolved to freeze the punishment in accordance with the recommendations of the standing committee dated 13.1.2014. However, the first respondent ordered to impose fine of ₹16,000/- each against the petitioners and to publish result of the candidate subject to other requirements alleging malpractices. Representations were submitted by the petitioners against the same.

9. The material question that has to be considered is whether the petitioners have committed any malpractice as alleged. The petitioners have produced Ext.P13 which is the copy of the abstracts of Kannur University Regulations containing procedure for imposition of punishment for malpractices.

10. As per Ext.P13, '*malpractice*' shall mean *misconduct* in relation to the conduct of any examination conducted by the University and includes any acts of omission or commission

mentioned in the said regulations.

11. It is crucial to note that none of the allegations levelled against the petitioners relate to the conduct of any examination by the University. As per Ext.P13, the following are the acts of Commission and Omission/unfair means amounting to malpractice:

- 1) Bringing in or being in possession of any document, written paper, book, photocopy, or any other material including electronic devices such as cell phones, digital diary, programmable calculator, pen scanner, bluetooth equipment etc., other than those permitted by the University, in the examination hall, at any time during the examination or copying from the same.
- 2) Taking or giving or attempting to take or give, any help from, or to any person or from any material, written, recorded, typed, printed or electronic or in any other form whatsoever.
- 3) Removing original sheets of an answer book and/or inserting new ones, or taking outside the examination hall, any answer book issued at the examination hall.
- 4) Writing answers in any form in the question paper or admission/hall ticket.
- 5) Copying answers of another candidate, or assisting any other candidate in copying answers either from his own answer book or from common or different sources.
- 6) Possession of another candidate's answer book/answer sheet.

7) Being a party to mass copying, that is to say, where, barring minor or insignificant deviations; the questions chosen for answering, his/her answers and answers of two or more students appearing simultaneously for the examination in the same centre are almost identical in content, sequence, or pattern, or having such other revealing features in common.

8) Using impersonation techniques in any form to appear or to write answers in answer books.

9) The presence of unusual marks, folding, creases, wrinkles or soiled appearances in one or more answer scripts or any other attempt to disclose identity; or writing on the question paper or any other paper some answers to the questions set in the question paper. Writing the names and register number, in any place other than indicated.

10) Altering, defacing, tampering with the answer book, identity card, or admission ticket or any other relevant documents or handing over or parting with his identity card or admission ticket to a third party during the examination period.

11) In case of apprehension by authorised persons or authority for any suspected act of malpractice, offering resistance to such apprehension or escaping or attempting to escape or disobeying instructions, or declining to give written explanation when asked to do so, or destroying or substantially altering any material evidence seized, or about to be seized.

12) Re-entering or attempting to re-enter examination hall, during the hours of examination, after he had left the same earlier, without permission or without proper escort.

11) Being in possession of answer book

outside the examination hall.

12) Using abusive or obscene language, or behaving in a disorderly or unruly manner or using physical violence, in or around the examination hall.

13) Using any means to communicate or attempting to communicate with the examiners, or officers of the examination directly or indirectly with requests, threat, inducement, appeal or undue influence upon them, for favour in the examination or for award of marks.

14) Using or attempting to use any other unfair means to deceive, mislead or induce the authorities.

15) Communicating with any candidate or any other person in or outside the examination hall by any means of communication, with a view to take unfair assistance or aid to answer the questions.

16) Writing the name of the candidate, signature or register number in any place other than indicated.

17) Marking of invocation to Gods or any other marks of religious identification/personal identification in the answer book.

12. The respondents do not have a case that the petitioners have committed any of these acts or omissions. It appears from Ext.P13, the enquiry into any malpractice, misconduct or lapses committed by the students during University examinations should be conducted by an enquiry committee appointed

by the Vice Chancellor. It is also crucial to note that the 4th respondent has lodged the complaint against the petitioners on 4.4.2013 as evident from Ext.P7. The respondents have no case that they have served a copy of the complaint to the petitioners at any point of time and they have conducted any valid enquiry to find the petitioners guilty. It cannot be said that there was any element of malpractice, misbehaviour and misconduct against the petitioners and there is proof against the said allegation.

13. The definite case of the petitioners is that the case was charged against them for the mere reason that the students in the college including the petitioners demanded that at least six months time should be there between the semester examinations. According to the petitioners, the 4th respondent got infuriated and therefore, proceeded against the petitioners with the complaint which resulted in the imposition of penalties.

14. It is here one should be reminded of the words of the Apex Court ***Commissioner of Police & Others v Sandeep Kumar*** (2011 (4) SCC 644) that young people often commit indiscretions and the approach should be to condone such indiscretions rather than branding them as criminals for the rest of their lives.

Therefore, this Court is of the view that the petitioners are entitled to get the relief as prayed for.

In the result this writ petition is allowed. Exts.P5, P7 and P10 are quashed. The third respondent is directed to publish the 9th semester examination held on February 2013 as well as all other examinations taken by the petitioners thereafter, without any further delay at any rate within a period of two weeks from today.

sd/- A.V.RAMAKRISHNA PILLAI
JUDGE

CSS/

true copy

P.S.TO JUDGE