



2024:DHC:10135



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

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Date of Decision: 17th December, 2024

+ W.P.(C) 1943/2016 & CM APPL. 58181/2024

M.G. HUSAIN

.....Petitioner

Through: Mr. Anil Nauriya, Ms. Sumita Hazarika and Ms. Mansi Mehta, Advocates.

versus

JAMIA MILLIA ISLAMIA & ORS

.....Respondents

Through: Mr. Pritish Sabharwal, Standing Counsel with Ms. Shweta Singh, Advocate for JMI.

CORAM:**HON'BLE MS. JUSTICE JYOTI SINGH****JUDGEMENT****JYOTI SINGH, J. (ORAL)**

1. This writ petition has been preferred on behalf of the Petitioner under Article 226 of the Constitution of India laying a challenge to a decision dated 07.05.2015 of the Executive Council ('EC') of the Respondent University to the extent of imposing penalty of compulsory retirement on the Petitioner with effect from the date of his suspension i.e. 05.09.2011 instead of the penalty of removal from service imposed by the Vice Chancellor of the University vide order dated 09.07.2013. A direction is sought to reinstate the Petitioner with consequential benefits.

2. To the extent necessary and relevant, the facts as averred in the writ petition are that Petitioner joined Jamia Millia Islamia University ('University') as a Reader in 1980 and was awarded the prestigious



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Commonwealth Academic Staff Fellowship and taught at the London School of Economics in 1984-85. Petitioner became the Head of Department of the Psychology in 1986 and continued in that capacity till 2007 except for a break in between for 05 years. He was also the Proctor of the University during 1989-90. Petitioner has also served as a Member of the EC in 1999 as also Member of the Academic Council for 22 years as HoD, Dean of Faculty, apart from other laurels to his credit.

3. It is averred that on a false complaint of a clerk, who nursed a grievance against the Petitioner, disciplinary proceeding was initiated on 05.09.2011 and Petitioner was placed under suspension. On 15.11.2011, charge sheet was issued without the approval of the EC, which is the appointing authority of the Petitioner. On 23.03.2012, Inquiry Officer ('IO') was appointed by the Vice Chancellor and not the EC. IO gave his report on 14.03.2013 concluding that charges No. 2, 3 and 4 were proved while charge No. 1 was partially proved. Articles of charge are as follows:-

**"STATEMENT OF ARTICLE OF CHARGES FRAMED
AGAINST PROF. M.G. HUSAIN (UNDER SUSPENSION),
DEPARTMENT OF PSYCHOLOGY**

ARTICLE-I

While discharging duties as the Hony. Director, Centre for Coaching and Career Planning (between 12.12.2007 to 30.7.2009), Prof. M.G. Husain (Charged Officer) committed grave misconducts of financial irregularities, laxity in administration, lack of devotion and commitment to the important task of achieving the focal object of the Centre for Coaching and Career Planning to provide adequate skills and conscientiously impart knowledge to the underprivileged sections of society as also to prepare them to face competitions. The sheer lack of concern, negligence, financial bungling and casual approach on the part of the Charged Officer is unbecoming of a teacher of an institution of higher learning and is culpable under Statute 37 of the Jamia Millia Islamia Act, 1988.

ARTICLE-II

While holding the statutory position of the Head, Department of



Psychology (between 01.7.1998 to 31.06.2001) the Charged Officer (Prof. M.G. Husain) indulged in financial misdemeanour by submitting wrongful Bills to the Finance and Accounts Department of the Jamia (bearing Nos. P002567, P002566, P002568, P002519 dated 31.3.2007) for a total amount of Rs. 10,86,860.00 (Rupees Ten Lakhs Eighty Six Thousand Eighty Hundred and Sixty only). Vide letter bearing No. Bill I/AO/JMI/2007 dated 3.4.2007, the Accounts Officer returned the said bills requiring the Charged Officer to provide relevant documents in support of the sought payment. The Charged Officer maliciously did not respond to the same. However, later on realizing that the purchase of equipment would not materialize with pending serious objections from the Finance and Accounts Department, gave up the plan of buying the said items.

The attempt to defraud, and financially dupe the University of public funds, by the Charged Officer is a misconduct cognisable under Statute 37 of the Jamia Millia Islamia Act, 1988.

ARTICLE-III

The Vice Chancellor, Jamia Millia Islamia in his capacity as the principal academic and executive Officer of the University, and duly empowered by an enactment of the Parliament of India to exercise due supervision and control over the affairs of the University had directed the Vigilance Officer of the University (vide Notification No. F. No. 1337(MGH)/RO/Estt/2011/10/497 dated 4.4.2011) to inquire into the factum of complaints in the expenditure of funds for the XIth International and 42nd National Conference of IAAP on Applied Psychology for a Peaceful World. The Charged Officer, in his response, submitted a letter addressed to the Vigilance Officer which lacked clarity and the contents communicated shrewd intent to evade the queries so addressed. The non-co-operation of the Charged Officer is evident of his complicity in financial irregularities/bungling during the Conference (held when he was the Head, Department of Psychology).

The Charged Officer's lack, and wilful intent to elude and block rightful investigation in financial misdemeanours, amount to insubordination which is culpable under Statute 37 of the Jamia Millia Islamia Act, 1988 read with Para 6 (a) (ii) of the Agreement of Service.

ARTICLE-IV

Prof. M.G. Husain (the Charged Officer) was sanctioned extraordinary leave (w.e.f 2.9.1996) to work in International Islamic University, Malaysia. He re-joined the Jamia on 1.7.1998. It has been revealed that the Charged Officer secured payment of his salary from his foreign employers till 10.7.1998. With intent to secure double



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payment, the said fact was not revealed to the Jamia authorities and resultantly, the Charged Officer with intent to cheat secured payments of salary for the said period from both, the Jamia Millia Islamia and the International Islamic University, Malaysia.

The misconduct of the Charged Officer is cognizable under Statute 37 of the Jamia Millia Islamia Act, 1988.”

4. Report of the IO was accepted by the EC vide Resolution dated 26.04.2013 and based on this, the Vice Chancellor passed an order on 09.07.2013 imposing the penalty of removal from service. Against the said penalty, Petitioner filed an appeal but when the same was not disposed of, he approached this Court and filed W.P. (C) 6/2014. During the pendency of the petition, University assured that the appeal would be heard by the EC at the earliest and the writ petition was withdrawn. On 23.03.2015, Petitioner was informed that his appeal would be placed before the forthcoming EC for consideration. Petitioner retired on superannuation on 30.04.2014. The EC disposed of the appeal vide order dated 07.05.2015.
5. Pursuant to the decision dated 07.05.2015, Registrar of the University passed a further order on 10.06.2015 directing that retirement benefits of the Petitioner, if any, will be subjected to adjustment of subsistence allowance already received and an amount of Rs.5,77,163/- was remitted by the University to the Ministry of Social Justice and Empowerment.
6. Learned counsel for the Petitioner *inter alia* contends that a bare reading of the inquiry report would show that the IO has not considered the defence evidence at all and observed that the testimonies of the defence witnesses are of no consequence as they have stated nothing relevant to the charges. This is contrary to the depositions of the defence witnesses and not taking cognizance of their testimony has resulted in grave prejudice to the Petitioner. Demonstrably, it is argued that Charge 1(b) of the Memorandum



of Charges is based on statement of one Tamkin Ahmed, who was called as DW-8 and disproved the charge levelled against the Petitioner. This vital piece of evidence has been ignored by the IO and the charge has been upheld. Petitioner had produced 11 defence witnesses some of whom were cross-examined by the Presenting Officer ('PO') but the IO has totally ignored the defence evidence.

7. It is further argued that the IO has completely erred in proceeding with the inquiry without the documents tendered by the PO being proved by witnesses on a mere plea that in such like inquiries question of proof of documents does not arise as the documents are records maintained in official capacity and were produced in original which constitutes primary evidence and moreover, the documents were received by the IO from the official source through the PO and their genuineness cannot be doubted. The IO also observed and erroneously, that once a document is taken on record by the IO without any objection to its genuineness, no independent proof is required about its contents. This course of action in the inquiry proceedings is completely contrary to the settled law that mere production of documents is not sufficient and unless proved by witnesses, the documents tendered cannot be taken in evidence.

8. Mr. Prithish, learned Standing Counsel appearing on behalf of the Respondents, on the other hand, submits that a detailed report was rendered by the IO holding charges No. 2, 3 and 4 to be proved and charge No. 1 to be partially proved, after examining the entire evidence on record. Basis this report, the EC in its meeting held on 28.06.2013 after due deliberation on the Articles of Charges and finding of the IO as also the representation given by the Petitioner resolved to impose a penalty of removal from service.



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However, the Appellate Authority was indulgent and fair and converted the penalty to compulsory retirement.

9. Insofar as the proof of documents tendered by the PO is concerned, Mr. Sabharwal submits that no infirmity can be found with the observation of the IO inasmuch as all the documents tendered were from the official records and were original and their genuineness and authenticity was beyond question and thus there was no requirement of witnesses proving the documents. On the aspect of the observation of the IO that the testimonies of defence witnesses were of no consequence, Mr. Sabharwal submits, on instructions, that the EC, which is the highest decision making body of the University, is ready and willing to revisit the matter limited to this issue.

10. Learned counsel for the Petitioner in rejoinder, reiterates the legal arguments put forth and additionally on the offer of Mr. Sabharwal to place the matter before the EC to the limited extent of the observations of the IO with respect to defence witnesses, submits that nearly 10 years ago, by order dated 10.07.2014, this Court had directed the EC to decide the statutory appeal filed by the Petitioner and look into the grievances raised, but this grievance was not redressed and therefore, remitting the matter back to EC will be a futile exercise and that too at this stage, when the Petitioner is 75 years of age and has spent over a decade in litigating.

11. Heard learned counsels appearing on behalf of the parties and examined their submissions.

12. Two important legal issues have been flagged by the Petitioner in the present writ petition which are eloquently canvassed by the learned counsel appearing on his behalf. The first issue that requires consideration is whether an IO can overlook defence evidence by observing that '*the testimonies of*



defence witnesses have no consequence and they have not stated anything relevant to the charges’. The second issue is whether the documents tendered by the PO can be taken into evidence without being proved by relevant witnesses.

13. This Court is conscious of the scope and ambit of exercise of power of judicial review by the High Courts under Article 226 of the Constitution of India while examining departmental inquiries and consequential penalty orders. To avoid prolixity, I may only allude to the celebrated judgment by the three-Judge Bench of the Supreme Court in ***B.C. Chaturvedi v. Union of India and Others, (1995) 6 SCC 749***, relevant paragraphs of which are as follows:-

“12. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to reappraise the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case.



13. The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has coextensive power to reappreciate the evidence or the nature of punishment. In a disciplinary inquiry, the strict proof of legal evidence and findings on that evidence are not relevant. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal. In Union of India v. H.C. Goel [(1964) 4 SCR 718 : AIR 1964 SC 364 : (1964) 1 LLJ 38] this Court held at p. 728 that if the conclusion, upon consideration of the evidence reached by the disciplinary authority, is perverse or suffers from patent error on the face of the record or based on no evidence at all, a writ of certiorari could be issued."

14. It is well-settled that departmental proceedings are quasi-judicial proceedings and the IO performs quasi-judicial function. It is the duty of the IO to ensure transparent, fair and just hearing to the parties as also to follow the laid down procedures for conducting the inquiry and abide by the principles of natural justice. It needs no reiteration that a charged officer has a vested right to lead evidence in his defence and prove his innocence and the only manner, in which this can be done, is through the deposition of witnesses and documentary evidence. This is not only a rule of procedure but also a facet of principles of natural justice. IO can hardly be heard to say that the testimonies of defence witnesses are of no consequence. This, in my view, is enough to vitiate any departmental inquiry. In the present case, Petitioner produced 11 witnesses, who deposed in his favour to establish his innocence and some of them were cross-examined by the PO. The defence witnesses have in their own wisdom deposed with respect to the different Articles of charges as a matter of record, however, perusal of the inquiry report shows that the IO first recorded that the charged officer examined 11 witnesses and thereafter encapsulated the allegations in his own words. This was followed by noting the depositions of prosecution witnesses against each of the charge without any reference to the defence witnesses and finally



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after simply recording that testimonies of the defence witnesses were of no consequence and they had not stated anything relevant to the charges, rendered a finding that charges No. 2, 3 and 4 proved while charge No. 1 was partially proved. The procedure adopted by the IO is completely contrary to the well-known procedure of departmental inquiries and thus the conclusion is flawed. It was the obligation of the IO to refer to the defence evidence *albeit* he may or may not have finally concluded that the defence evidence was not enough to exonerate the Petitioner. But the course of action followed is wholly untenable in law and enough to vitiate the inquiry.

15. Mr. Sabharwal fairly states, on instructions, that to this extent the matter be remitted for a reconsideration to the EC. Learned counsel for the Petitioner submits that in 2014 this Court had directed the Appellate Authority to look into the appeal of the Petitioner taking cognizance of the illegalities pointed out by him in the inquiry proceedings but this issue was not addressed. Petitioner is now 75 years of age and has already suffered the inquiry from 15.11.2011 when the charge memorandum was issued. It is no doubt true that where technical infirmities are found in an inquiry, ordinarily, Courts remit the matter to the departments for course correction from the stage the error or flaw occurs but in my view, the error here is not merely technical but goes to the root of the inquiry as Petitioner's defence evidence has not been considered. Therefore, the course of action suggested by the counsel for the University does not commend in the facts of this case.

16. There is yet another legal infirmity in the inquiry proceedings. As rightly flagged by counsel for the Petitioner, it was not open to the IO to take the documents tendered by the University in evidence without their proof by witnesses, only on the ground that they were obtained from official



records and received through the PO and/or they were taken on record without any objection to their genuineness. This would set at naught the settled law that documents not proved through oral evidence cannot be relied upon by the IO. In this context, I may refer to a recent judgment of the Division Bench of this Court in ***Punjab National Bank and Others v. S.K. Jain, 2024 SCC OnLine Del 8916***, holding that it is a settled principle of law that documents placed in disciplinary proceedings must be proved through oral evidence. The Division Bench has placed reliance on the landmark judgments of the Supreme Court on this issue in ***Moni Shankar v. Union of India and Another, (2008) 3 SCC 484***; ***Roop Singh Negi v. Punjab National Bank and Others, (2009) 2 SCC 570***; and ***State of Uttar Pradesh and Others v. Saroj Kumar Sinha, (2010) 2 SCC 772***. In this context, I may also allude to the earlier judgments of the Division Benches of this Court in ***Union of India v. Shameem Akhtar, W.P.(C) 8726/2015***, decided on 11.09.2015; ***A.K. Saxena v. Union of India & Ors., W.P.(C) 3127/2014***, decided on 10.08.2016; and ***Union of India and Others v. Ritu Chaudhary, 2019 SCC OnLine Del 12063***.

17. In ***State Bank of India and Others v. Narendra Kumar Pandey, (2013) 2 SCC 740***, the Supreme Court held that only where the documents are uncontroverted, it is open to the IO to accept the same to hold the employee guilty even without witnesses but where documents are not admitted by the delinquent employee, the same have to be proved by the management by leading oral evidence and in absence of any witness, they cannot be relied upon by the IO to arrive at a finding in respect of the charges. In ***Life Insurance Corporation of India and Another v. Ram Pal Singh Bisen, (2010) 4 SCC 491***, the Supreme Court held that even an



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admission of document in evidence does not amount to its proof. Mere marking of exhibits on documents does not dispense with their proof. In view of the wealth of judicial precedents, this Court is unable to sustain the observation of the IO that merely because the documents are from the official records of the University and produced through the PO, they must be accepted as genuine and correct and their proof through oral evidence can be dispensed with.

18. For both the above reasons, Petitioner has made out a case for quashing the inquiry proceedings. Accordingly, this writ petition is allowed and the charge sheet together with the inquiry proceedings as well as the order dated 07.05.2015, whereby penalty of compulsory retirement was imposed on the Petitioner as well as orders dated 10.06.2015 read with corrigendum dated 07.09.2015 are hereby set aside. Petitioner will be entitled to notional reinstatement upto the date of superannuation on reaching the age of retirement with all consequential benefits.

19. Writ petition stands disposed of along with pending application.

JYOTI SINGH, J

DECEMBER 17, 2024/shivam