

(2023) 04 KL CK 0064
In the High Court Of Kerala
Case No : Writ Petition (C) No. 2118 Of 2023

Adharsh R.S.

APPELLANT

Vs

University Of Kerala

RESPONDENT

Date of Decision : 10-04-2023

Acts Referred:

Citation : (2023) 04 KL CK 0064

Hon'ble Judges : Sathish Ninan, J

Bench : Single Bench

Advocate : S.P.Aravindakshan Pillay, N.Santha, V.Varghese, Peter Jose Christo, S.A.Anand, K.N.Remya, L.Annapoorna, Vishnu V.K., Abhirami K. Uday, Thomas Abraham

Final Decision : Allowed

Judgement

Sathish Ninan, J

1. The petitioner is a Police Officer in the Police Department of the State. He is doing his 3 year Unitary LLB (evening) Degree course. He is implicated with a suspected malpractice in the sixth semester examination, April 2022. The detection was by the Malpractice Prevention Squad of the University.
2. The Enquiry Committee, as per Ext.P10, found the petitioner guilty. The Committee recommended debarring the petitioner for three chances from appearing for any University examinations. The Syndicate, in its meeting held on 29.07.2022, resolved to accept the report of the Committee and to impose the punishment as recommended by the Committee.
3. The petitioner challenged the said order before this Court, in W.P.(C) No.29523/2022. This Court, as per Ext.P15 judgment dated 28.10.2022, disposed of the writ petition with directions for disposal de novo.
4. In compliance with the directions of this Court, the Enquiry Committee proceeded afresh and prepared Ext.P19 report. The Enquiry Committee again

held the petitioner guilty of malpractice. However, the recommendation for punishment was modified, limiting debarment from 3 years to 2 years. As per Ext.P20, the Syndicate in its meeting held on 08.12.2022, on consideration of the report, resolved to accept the recommendations of the Enquiry Committee regarding guilt and punishment. The decision was communicated to the petitioner as per Ext.P21 memo. In this Writ Petition, the petitioner challenges Exts.P19, 20 and 21.

5. Heard Sri.S.P.Aravindakshan Pillai on behalf of the petitioner and Sri.Thomas Abraham, learned Standing Counsel for the University.

6. The learned counsel on both sides addressed this Court on the facts and evidence. While the petitioner challenged the conclusions arrived at by the disciplinary committee as accepted by the Syndicate, the learned Standing Counsel for the University defended the same. Since I find that order of the Syndicate (Ext.P20) accepting the report and recommendations of the disciplinary authority is liable to be interfered with on issues of law, I do not propose to go into the merits of the allegation of malpractice.

7. It is not in dispute that the report of the Enquiry Committee was not made available to the petitioner prior to its consideration and acceptance by the Syndicate. Therefore, the petitioner did not get opportunity to demonstrate before the Syndicate that the findings entered into by the Enquiry Committee are not correct. He has, since obtained a copy of the report under the Right to Information Act. However, by that time the Syndicate had resolved to accept the report and recommended the punishment.

8. So also, it is not in dispute that the members of the disciplinary committee are members of the Syndicate. The members of the Enquiry Committee had participated in the Syndicate meeting in which Ext.P20 was resolved to be accepted. This fact is not disputed by the respondent.

9. In *Cantonment Executive Officer and Another v. Vijay D. Wani and Another* (2008 12 SCC 230), the Apex Court held that, when the members of the Enquiry Committee was part of the Council which considered and accepted the report of the Enquiry Committee, the decision making process of the Council is vitiated. It would be appropriate to refer to certain observations of the Apex Court:-

"..... The very fact that these three persons who conducted inquiry were also the members of the Board and that Board was to take a decision in the matter whether the report submitted by the Enquiry Committee should be accepted or not. Therefore, the participation of these three members in the committee is given a real apprehension in the mind of the respondent that he will not get a fair justice in the matter because of the three members who submitted the report would be interested to see that their report should be accepted. This bias in this case cannot be said to be unreal it is very much real and substantial one that the respondent is not likely to get a fair deal by such disciplinary committee.

6. In this connection a reference may be made to the decision in the case of Institute of Chartered Accountants of India (Supra) in which a member, accused of misconduct is entitled to a hearing by the Council. In this case Enquiry Committee composed of the President and the Vice-President and three other members of the council who constituted as members of the disciplinary committee, was also members. Their Lordships held as under:

"Accordingly, the finding of the council holding the respondent members guilty of misconduct was vitiated by the participation of the members of the Disciplinary Committee."

..... Their Lordships observed in the case of Manek Lal v. Prem Chand reported in AIR 1957 Sc 425 wherein it was observed :

It is well settled that every member of a tribunal that is called upon to try issue in judicial or quasi-judicial proceedings must be able to act judicially; and it is of the essence of judicial decisions and judicial administration that judges should be able to act impartially, objectively and without any bias. In such cases the test is not whether in fact a bias has affected the judgment the test always is and must be whether a litigant could reasonably apprehend that a bias attributable to a member of the Tribunal might have operated against him in the final decision of the tribunal. It is in this sense that it is often said that justice must not only be done but must also appear to be done,

Similarly in the judicial review of the administrative action by Professor S.A. De Smith has also observed:

"a report will normally include a statement of findings and recommendations, which may be controverted before the parent body, and in such a case, the participation of members of the sub-committee in the final decision may be of dubious validity. The problem is not merely one of strict law; it is also one of public policy."

..... Therefore, the ratio of all these cases is that a person cannot be a Judge in his own case. Once the disciplinary committee finds the incumbent guilty; they cannot sit in the judgment to punish the man on the basis of the opinion formed by them. The objectivity is the hallmark of a judicial system in our country. The very fact is that the disciplinary committee who found the respondent (herein) guilty participated in decision making process for finding the respondent (herein) guilty and to dismiss him from service is bias which is apparent & real."

The presence of the members of the Enquiry Committee in the Syndicate meeting held on 08.12.2022 which resolved to accept the report of the disciplinary committee, in the light of the judgment of the Apex Court above, vitiates Ext.P20 decision.

10. In the light of the findings, Exts.P20 and P21 are liable to be interfered with. Now that the petitioner is already in receipt of a copy of the Enquiry Report, the proceedings are to commence from the stage of, granting of hearing to the

petitioner by the Syndicate on the report.

Resultantly, the writ petition is allowed. Exts.P20 and P21 are quashed. The Syndicate is permitted to proceed from the stage of hearing of the petitioner on the acceptability of the enquiry report (Ext.P19) and punishment. Let the proceedings be completed as expeditiously as possible and at any rate within a period of two months from the date of receipt of a copy of this judgment. It is made clear that the challenge against Ext.P19 report is left open and has not been considered in this judgment.