
(2001) 04 KL CK 0031
In the High Court Of Kerala
Case No : W.A. No. 2176 of 2685 of 2000

Babu Sunder

APPELLANT

Vs

Cochin University

RESPONDENT

Date of Decision : 10-04-2001

Acts Referred:

Cochin University Act, 1971 — Section 31(1)
Cochin University of Science and Technology Act, 1986 — Section 18, 38(2), 39(1), 39(4), 47
Kerala Government Servants (Conduct) Rules, 1960 — Rule 94

Citation : (2001) 04 KL CK 0031

Hon'ble Judges : M.R. Hariharan Nair, J;K.S. Radhakrishnan, J

Bench : Division Bench

Advocate : S. Radhakrishnan, for the Appellant; G.S. Reghunath and E. Subramani, for the Respondent

Judgement

K.S. Radhakrishnan, J.—These appeals arise out of O.P. 21478 of 2000. O.P. 21478 of 2000 was preferred by appellant in W.A. 2176 of 2000 challenging Ext. P5 order dated 17.7.2000 passed by the Cochin University of Science and Technology (herein after called the University) imposing certain punishment, details of which we shall deal with later. He also challenges some of the findings of the Enquiry Officer. He has also sought for a direction to reinstate him as Professor and Head of the Department of Computer Applications with effect from 6.9.1999. Learned Single Judge partially allowed the Writ Petition. University is also aggrieved by some of the findings of the learned single Judge. Hence these Writ Appeals, one preferred by Dr. Babu Sunder and the other preferred by the Cochin University. We are only narrating the essential facts which are necessary for disposal of both these appeals.

2. Dr. Babu Sunder, petitioner in O.P. 21478/2000 was functioning as the Professor and Head of the Department of Computer Application. While so, he was served with show cause notice dated 4.8.1999 raising certain allegations against him, to which he filed reply dated 17.8.1999. He was later placed under

suspension vide memo dated 6.9.1999. Syndicate in the meantime, constituted a committee of four members to go into the various allegations raised against him. Petitioner challenged the order of suspension as well as decision of the University to constitute a committee to go into the allegations raised against him by filing O.P. No. 23246 of 1999. Learned Single Judge did not interfere with the proceedings initiated by the University and directed the University to complete the enquiry within a period of four month from the date of receipt of copy of the judgment. Petitioner aggrieved by the said judgment filed W.A. 2287/99. A Bench of this Court disposed of the Writ Appeal on 6.11.1999 appointing Justice K.A. Nayar, Retired Judge of the Kerala High Court as an enquiry officer to go into the charges levelled against Dr. Babu Sunder instead of the committee constituted by the Syndicate. Counsel on either side had agreed for the said proposal. University after the dismissal of the Original Petition 23246 of 1999 had issued a memo of charges dated 4th October, 1999, produced as Ext. P1 in the Writ Petition. We may extract the memo of charges hereunder:

"1. That you while holding the post of Head of the Department of Computer Applications have illegally admitted four students to Ph.D. programme of the year 1996 in the Department of Computer Applications and that in giving admission to four students mentioned above, you have violated the specific provisions in the regulations No. Ac.B4/2940/2/95(i) dated 31.10.1995 issued by the University. As per Clause 3(ii) of the aforesaid regulations "candidates shall have passed in the entrance test conducted by the University through the Department concerned which consists of one paper carrying the maximum of 100 marks." You gave admission to M/s. James K.N. Sreekumar A., and Sambasivan K. and without conducting the entrance test as required by the aforesaid regulations. It is further seen that for Sri Sambasivan mentioned above no test or interview has been conducted before giving admission to him for the Ph.D. programme of the respondent.

2. As per Regulation 4(ii) "applications for admission shall be submitted along with the counsel of the supervising guide to the Head of the University Department concerned in the prescribed application form on payment of the prescribed fees". It is seen that you have received the application for admission from M/s. Sambasivan K. and Sreekumar A without complying with the aforesaid mandatory provision thereby you have violated the regulations of the University.

3. As per Regulation 8(1) "In all departments where there are less than three recognised guides the Vice-Chancellor may, on the recommendation of the Dean of the concerned Faculty nominate additional members from other relevant departments or recognised institutions to the Research Committee." You have not complied with the aforesaid mandatory provisions of the regulations and you with the object of misleading the University created records to the effect that the admission procedure as contemplated under the regulations are complied with. With the aforesaid object you invited Dr. Paulose Jacob as a special invitee for the admission procedures by you in the case of M/s. James K.N., Sreekumar A.

and Jaison Joseph. It is revealed that you with the aforesaid object took the admission procedures by yourself. In the case of Sri. Sambasivan K., you have arbitrarily and unauthorisedly given admission in a secret and surreptitious manner. With the aforesaid object you have manipulated records and fabricated dates in the admission applications by inserting dates of your choice in the application form of M/s. James K.N., Sreekumar A and Sambasivan K.

4. That you have failed to furnish statement of internal assessment marks of various semester examinations of MCA viz., I semester examination March 98, II Semester Examination March 98, IV Semester examination March 98, II Semester Examinations August 98, III Semester examination August 98, V Semester examination August 98 conducted by the University in the stipulated time inspite of the University notification requiring you to submit these marks at least one week before the commencement of the examinations and subsequent reminders and communication dated 13.5.99 of the Pro-Vice-Chancellor. You had forwarded the internal assessment of all six semesters only on 21.5.99 causing 9 to 14 months delay which in turn has affected the reputation of the University and created unrest and agitation among the students. The aforesaid action amounts to misconduct as contemplated under S.8 of CUSAT First Statutes 1991 in respect of the appointment and other service conditions of the teachers of the University.

5. That you have handed over a pamphlet to Dr. Shahul Hameed, Member of the Syndicate on 18.9.98 for transmission to other members of the Syndicate. The pamphlet contained meticulous details regarding undue preference and favouritism shown to the members of Christian Community overlooking the legitimate claims of other members of different communities. The pamphlet concludes with the following sentence. "From the above facts it is evident that Dr. K. Babu Joseph as the Vice Chancellor had misused his office for the good of his community alone and this is matter of concern for all others. In fact Dr. Babu Joseph has proved that he cannot be unbiased and balanced." This was deliberately intended by you to arouse communal passions among employees of various communities in the University. This act amounts to misconduct as envisaged in S.8 of First Statutes 1991.

6. That you had sent a petition dated 15.4.98 to the Hon"ble Chancellor stating that you intend to initiate legal proceeding against Dr. K.G. Balakrishnan, the then Registrar of the University. Eventhough the letter to Chancellor contained the wording "through proper channel/given advance copy" it was seen that the University was not approached with a proper channel request. This was against the instructions issued by the University and in violation of R.94 of the Kerala Government Servants Conduct Rules. You are asked to explain why you have violated the University's instructions and conduct Rules. In your reply you made allegations against the Vice-Chancellor and stated that the letter was forwarded to the University on 15.4.99 through mail bag. Verifications in the University records revealed that no such letter with the number and date shown by you was

received in the University.

7. It is further revealed from the copies of documents produced by you in the proceedings in OP9888/98 before the Hon"ble High Court of Kerala that you have manipulated records against the original documents in the case of Sri. K. Sambasivan and fabricated documents to cover up your irregular and illegal activities.

8. That various complaints against you levelled by the various Students Organisations of CUSAT (Students Federation of India, Cochin University Union) have been received by the University alleging irregularities and delay in the conduct of examination and delay in declaration of results, giving marks in a partisan manner without conducting classes and examinations misutilisation of University Funds, allowing private Computer institutions to conduct courses using Departmental facilities and without the permission of the University and harassing the students without any reason etc. The complaints referred above reveals grave irregularity, illegality and misconduct on your part. These allegations and omissions on your part constitute violation of S.6 of the Cochin University First Statutes, 1981. You were, therefore, required to show cause why you should not be proceeded against legally for the irregular and illegal activities stated therein. You were allowed 14 days" time to submit your reply. In your reply you have not chosen to deny any of the allegations levelled against you. You are now allowed 15 days time from the date of receipt of this communication to submit your written statement of defence. If your written statement is not received within the specified time, the matter will be proceeded with on the presumption that you have no explanations to offer. You can peruse the relevant records and take down extracts from them if so desired by you on submitted a written application for the same and in the presence of the Registrar on any date prior to the due date for submission of your written statement of defence which will be fixed in advance at your request and should be on a working day between 10 a.m. and 1 p.m."

On the basis of the above mentioned memo of charges Justice K.A. Nayar conducted a detailed enquiry and submitted Ext P3 Enquiry Report. The Commission reached the following conclusion:

"Regarding Charge Nos. 1 and 2, Dr. Babu Sunder is not guilty of the charges. Regarding Charge No. 3, Dr. Babu Sunder is guilty of violation of Regulation 8(i) in conducting interview regarding admission of 4 students to the Ph.D. Programme with One Man Research Committee and a special invitee. He also failed to conduct the interview with the newly constituted Research Committee and to regularise and report. Regarding Charge No. 4, Dr. Babu Sunder is not guilty for it is not proved that he has failed to assess or delayed in submitting the internal assessment marks of the 6 Semesters for MCA course. It was not proved that the delay was due to his failure in making the assessment, but he is guilty of disobeying the order of the University not to issue the hall ticket before getting the internal assessment marks. For this there is no specific charge. Regarding

Charge No. 5, I find that Dr. Babu Sunder handed over the pamphlet to Dr. Shahul Hameed for transmission to the other members of the Syndicate and the act intended to arouse communal passion. But nevertheless the charge under Statute 8 failed because there was no averment relating to the intention to use the above consideration for improvement of his prospects. Regarding charge No. 6 there is violation of R.94 of Kerala Government Servants' Conduct Rules in so far as he sent advance copy to the Governor directly and I find him guilty. Regarding charge No. 7, I find that the copy of the application of Sambasivan K. produced in O.P. No. 9888/98 is not a true copy of the original application of Mr. Sambasivan, viz., Ext. M4, in that the dates in the column dealing with the consent of the Supervising Guide differs. To that extent he is guilty of indiscretion. Regarding charge No. 8 I find that Dr. Babu Sunder allowed private Computer Institution to conduct courses using the Departmental facilities without the permission of the University. Only to that extent charge No. 8 is proved."

3. The report was placed before Syndicate meeting held on 25.4.2000 which took the following decision:

"The Syndicate then considered the report submitted by the Hon'ble Justice K.A. Nayar, who enquired into the allegations against Dr. Babu Sunder, Professor, Department of Computer Applications. The Vice Chancellor abstained from the meeting when this item was discussed.

Resolved that-

- (i) the report of Justice K.A. Nayar be accepted.
- (ii) in the light of the findings by Justice K.A. Nayar on the charges levelled against Dr. Babu Sunder, came to the conclusion that a major penalty be imposed on him.

It was further resolved that Dr. Babu Sunder be reverted to the Post of Reader in Computer Applications and be not considered for nomination on a permanent basis to any of the statutory bodies of the University such as Board of Studies, Faculty, Senate, Academic Council."

The above mentioned decision of the Syndicate was communicated to the petitioner vide dated 10.5.2000 in purported compliance of R.37(1)(a) and (b) along with the copy of the report. Petitioner was therefore called upon to submit his representation if any against the proposal of Syndicate. He filed detailed reply to the show cause notice on 30.5.2000 vide Ext. P4. Petitioner challenged the various findings of the Enquiry Officer. Syndicate of the University then met on 1.7.2000 and considered the representation made by petitioner in reply to the notice issued as part of the disciplinary proceedings under statute 37(b) of the Cochin University First Statute and found that he had no satisfactory explanation to offer as to why disciplinary action proposed against him shall not be taken. Syndicate therefore resolved to impose the following punishment:

"Item No. 425.25: Disciplinary proceedings against Dr. Babu Sunder, Professor,

Department of Computer Applications - Intimation of proposed punishment - Reply thereto - Consideration of - Regarding.

The Syndicate considered the representation submitted by Dr. S. Babu Sunder in reply to the notice issued to him as part of the disciplinary proceedings against him under Statutes 37(b) of Cochin University First Statutes, 1981 and found that he had no satisfactory explanation to offer as to why disciplinary action proposed shall not be taken. The Syndicate noted that the explanation submitted by him were also considered in the enquiry proceedings by the Inquiry Officer and came to the conclusion that the same were identical in nature.

Resolved that the following discipline action,

"Dr. Babu Sunder be reverted to the post of Reader in Computer Applications, and he be not considered for nomination on a permanent basis to any of the statutory bodies of the University such as Board of Studies, Faculty, Senate, Academic Council and Syndicate and to posts such as Head of the Department/Director of School and Chairman, Board of Examinations by the University".

Proposed by the Syndicate at its meeting held on 25.4.2000 vide Item No. 5 of item outside the agenda, in the matter be confirmed."

4. On the basis of the Syndicate decision University issued on order dated 17.7.2000 implementing the Syndicate decision. The operative portion of the same is extracted below:

"In the circumstances, orders are issued reverting Dr. S. Babu Sunder, Professor, Department of Computer Applications to the post of Reader in Computer Applications in the University with effect from the A.N. of 6.9.1999 i.e., the date of his suspension from service. Dr. Babu Sunder will not be considered for nomination on a permanent basis to any of the statutory bodies of the University such as Board of Studies, Faculty, Senate, Academic Council and Syndicate and to posts such as Head of the Department/Director of School and Chairman, Board of Examinations by the University.

Dr. Babu Sunder is reinstated into the University service as Reader in Computer Applications and he is directed to report for duty forthwith, but not later than 1.8.2000.

Orders as to how the period of suspension is treated will be issued separately."

The above mentioned proceedings were challenged in the Writ Petition. Learned Single Judge did not interfere with the decision of Syndicate debarring the petitioner in associating with any of the bodies of the University or preventing him from holding any post such as Head of the Department etc. The learned Single Judge however, felt that 1981 Statute would govern the case of disciplinary proceedings and therefore reversion of the petitioner to the post of Reader can only be for a period of six months. Aggrieved by the decision of the learned Single Judge the petitioner as well as the University filed appeals.

5. When the matter came up for hearing we heard counsel appearing for the petitioner Shri. S. Radhakrishnan as well as the counsel for the University Sri. G.S. Reghunath. Counsel appearing for the petitioner submitted some of the findings of the Enquiry Officer are contrary to the various rules and regulations applicable to teachers. Counsel submitted even though eight charges were levelled against him, Enquiry Officer in fact found him guilty of only three charges. Counsel submitted finding of the Enquiry Officer regarding charge No. 3 that the petitioner is guilty of violation of Ph.D. regulation 8(1) cannot be sustained. According to him, the Ph.D. regulation does not stipulate that the full Research Committee will have to interview the candidates and that the candidates will have to obtain a minimum marks in the interview. According to him, there is no minimum marks prescribed. Counsel submitted that since petitioner did not get any reply from the Vice Chancellor with regard to the nomination of additional members to the Research Committee he had to go ahead with the admission taking the help of two other Head of the Department of the School, namely, Dr. Poulse Jacob and Dr. S. Sasikumar. According to him, this is the practice followed in various departments as well and the purpose behind his action was only to protect the interest of the students and the Department. With regard to charge No. 6, counsel submitted that the charge would not come within the preview of R.94 of Government Servants Conduct Rules since he had not made representation before the Government through the official channel. According to him, his request to Chancellor was seeking permission to legally proceed against the then Registrar and the advance copy was addressed to the Chancellor. Counsel also made reference to Circular No. Ad.A4/Lab/A#/2000 dated 10.5.2000 and submitted that the said circular would reveal that it was not a misconduct. With regard to charge No. 8 counsel submitted that the petitioner had permitted the students to avail the facilities of department without affecting regular classes. It is pointed out the students had arranged an expert from the I.T. industry to deliver lectures on ORACLE. Such activities are often conducted by various department like Department of Computer Science and Department of Instrumentation for the best interest of the students and also for the academic excellence.

6. Counsel for the petitioner submitted that the University has committed a gross illegality in initiating action either on the basis of Cochin University First Statutes, 1981 or 1991 statute. Counsel submitted Statute 8 of the Cochin University First Statutes, 1991 would not take in any of the charges levelled against the petitioner. Further, it was pointed out that if the University was intended to proceed against him under statute 1981 by imposing a major penalty under Statute 20(V) the period of reduction shall not be less than six months and not more than five years. If the period is not specified in the order the period of education shall be deemed to be six months. In the order impugned no period was fixed. Therefore, the period of reduction to the post of Reader cannot be more than six months. The said period is already over, therefore the petitioner is to be reinstated in service as Professor and Head of the Department of Computer

Applications. Counsel submitted debarring him being a member of various statutory bodies of the University such as Board of Studies. Faculty, Senate, Syndicate, Academic Council and the posts such as Head of the Department, etc. are illegal and without jurisdiction.

7. Counsel appearing for the University Sri. G.S. Reghunath on the other hand, submitted that the charges levelled against the petitioner are very serious and therefore Syndicate has got legal right to take appropriate steps against the petitioner for maintaining discipline and decorum in the University. According to him, various charges levelled against the petitioner was proved in the enquiry and therefore Syndicate has imposed the major penalty of reduction in rank to the post of Reader permanently and debarred him from holding any official post or bodies of the University. Counsel took us exhaustively through the enquiry report and laid emphasis on some of the findings rendered by him, especially, with regard to charge No. 5, which according to the counsel would warrant major penalty. Counsel submitted that though ultimately enquiry officer found that charge No. 5 was not proved on technical grounds, all the findings are against petitioner. Counsel referred to the following passages of the Commission Report:

"I am inclined to believe from the demeanor, assertion and by the manner of the deposition Dr. Shahul Hameed and hold that Dr. Bahu Sunder handed over copies of the letter addressed to the Chancellor Ext. M14(d) to Dr. Shahul Hameed for distribution to Dr. Damodaran and Dr. Arvindakshan. Ext.W44 produced by Dr. Babu Sunder alleges that the letter distributed by Dr. Babu Sunder contained several statement of the defamatory to the Vice Chancellor as well as the persons mentioned in Ext. M14(d) which is the enclosure to Ext. W44. Dr. Babu Sunder has a case that in so far as Dr. Shahul Hameed has not read the pamphlet before distribution Ext. M14(d) cannot be stated to be the letter he distributed. This is belied by the enclosure to W44 produced by Dr. Babu Sunder. Ext. M14(d) and the enclosure to W44 are identical in contents.....

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Regarding Charge No. 51 find that Dr. Babu Sunder handed over the pamphlet to Dr. Shahul Hameed for transmission to the other members of the Syndicate and the act intended to arouse communal passion. But nevertheless the charge under Statute 8 failed because there was no averment relating to the intention to use the above consideration for improvement of his prospects."

Counsel submitted though the commission found that petitioner was not guilty under Statute 8(4) of 1991 Statute various other findings of the Commissioner are sufficient to impose major punishment.

8. We have gone through the Commission Report at length. The Commissioner was appointed on counsel of parties. When an enquiry is conducted on charges of misconduct, the court is concerned to determine whether the enquiry was held by a competent officer or whether rules of natural justice are complied with. If the findings of the enquiry officer is supported by some evidence and the

authority has jurisdiction, power and authority to reach such a finding or conclusions the court be slow to interfere with those conclusions. As held by the Apex Court in *B.C. Chaturvedi Vs. Union of India and others*, the adequacy of evidence or reliability of evidence cannot be permitted to be canvassed. When the authority accepts the evidence and the conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court 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 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 may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of that case. We have gone through the enquiry report in detail. In the facts and circumstances of the case we do not find any reason to hold that the conclusion is perverse or that the conclusion is not supported by any evidence. Under such circumstance the challenge against the enquiry report fails.

9. We may however examine whether the University has got the power to impose the punishment on the basis of some of the findings recorded by the Commissioner and whether University is justified in imposing punishment and also whether punishment imposed is disproportionate to the gravity of the charges proved. The memo of charges, in one place University refers to Statute 8 of the Cochin University of Science and Technology Statutes, 1991 and in another place it refers to statute 6 of the Cochin University First Statute, 1981.

10. University in its memo dated 10.5.2000 refers to Statute 37(b) of the Cochin University First Statute, 1981. As per the said memo petitioner was called upon to file objection to the resolution dated 25.4.2000. Copy of the Commissioner Report was also made available to the petitioner in accordance with Statute 37(a) of the Cochin University First Statutes, 1981. Syndicate while imposing punishment vide in its meeting held on 1.7.2000 referred to Statute 37(b) of Cochin University First Statute, 1981. University while issuing its order on the strength of the Syndicate decision on 17.7.2000 referred to Statute 37(b) of the Cochin University First Statutes, 1981. There is controversy between the parties as to which Statute, whether 1981 Statute or 1991 Statute confers power on the University to initiate disciplinary proceedings against petitioner and to impose penalty on the basis of the report submitted by the enquiry officer. In the wake of this controversy we have to examine the source of power in imposing punishment.

11. The Cochin University First Statute, 1981 was framed by the Government of Kerala in exercise of powers conferred by sub-s.(1) of S.31 of the Cochin

University Act, 1971 (Act 30 of 1971). The Cochin University Act, 1971 was repealed by the Cochin University of Science and Technology Act, 1986. S.55(2) of Act 31 of 1986 states that the Statutes, Ordinances, Regulations, Rules, Bye-laws and Orders in force immediately before the commencement of this Act shall, in so far as they are not inconsistent with the provisions of this Act, continue to be in force until they are replaced by the Statutes, Ordinances, Regulations, Rules, Bye-laws or Orders framed under that Act. Government of Kerala by virtue of the powers conferred under S.39(1) of Act 31 of 1986 framed the Cochin University of Science and Technology First Statutes, 1991. On coming into force of Cochin University of Science and Technology First Statutes, 1991, the Cochin University First Statutes, 1981 has no legal effect. Therefore University has necessarily to proceed only on the basis of 1991 Statute and not on the basis of 1981 Statute. It is concerned by the counsel appearing for the University that the reference made to 1981 Statute in various proceedings of the University is a mistake. Statute 10 of 1991 Statute states that all teachers of the University shall be subject to disciplinary control of the Vice Chancellor in the case of minor penalties and the Syndicate with one of major penalties.

12. Statute 16(5) of 1991 Statute deals with disciplinary proceedings which we may extract below for easy reference:

"The provisions relating to disciplinary procedure contained in Part III of Chapter IV shall mutatis mutandis apply in the case of disciplinary action against the teachers of the University:

Provided that the disciplinary authority for imposing minor penalties on teachers of the University shall be the Vice Chancellor and for imposing major penalties in the Syndicate."

When the matter came up for hearing counsel appearing for the University was not in a position to explain as to which Part III of Chapter IV which finds a place in Statute 16(5). University was therefore directed to explain the said position. Additional counter affidavit was filed on behalf of the University before this Court. It was pointed out that the reference to Part III of Chapter IV in Statute 16(5) is a mistake. It was pointed out that the University later found out the said mistake and the matter was placed before the Syndicate on 20.10.1995 and Syndicate passed a resolution stating that the following be provide as Statute 10(b):

"10(b) Disciplinary procedure - The provisions relating to disciplinary procedure contained in Part II of Chapter III of the Cochin University First Statutes, 1981 shall mutatis mutandis apply in the case of disciplinary action against the teachers of the University."

The above mentioned resolution of the Syndicate was later forwarded to Chancellor for his assent as per S.39(4) of the Cochin University of Science and Technology Act, 1986. University is yet to get assent of the Chancellor, with the result that the said amended provision has no legal effect and therefore could not be invoked to initiate disciplinary proceedings or for imposing penalty on the

petitioner.

13. Counsel for the University tried to base his claim on Statute 8 of 1991 Statute and contended that the teachers of the University could be punished for various lapses referred to therein. We may extract the said provision for easy reference.

"8. Certain lapses of University teachers to be punishable - The following lapses on the part of teachers in the University shall constitute improper conduct inviting disciplinary action; namely:-

(1) Failure to perform his academic duties such as, coming to the class without preparation for conducting lecture classes, demonstration, assessment, guidance, invigilation, etc.

(2) Gross partiality in the assessment of students such as overmarking/undertaking or attempt at victimisation on any ground whatsoever.

(3) Inciting students against other students colleagues, or against the University or the State Government or the Central Government, provided that a teacher may express his differences on principles in Seminars or other places, where students are present.

(4) Raising questions of politics, caste, creed, religion, race or sect in relationship with his colleagues and trying to use the above considerations for the improvement of his prospects.

(5) Refusal to carry out the decisions taken by appropriate administrative and academic bodies and/or functionaries of the University subject to the condition that they are not against the provisions of any law for the time being in force."

Counsel for the University attempted to bring in Charge No. 5 on Statute 8(4). We are of the view the proceedings initiated by the University on the basis of 1981 Statute or 1991 Statute would not hold good due to the repeal of 1981 Statute as well as due to the delay in getting assent of the Chancellor to the amendment proposed. Faced with the above situation counsel for the University submitted that the Syndicate has got power under S.18(xii) of the Cochin University of Science and Technology Act, 1986 to take appropriate action against the teachers. We may extract the said provision for easy reference.

"18(xii) to suspend, discharge, dismiss or otherwise take disciplinary action against teachers and other employees of the University of and above the rank of Assistant Registrar."

Counsel appearing for the petitioner however, submitted that in the absence of any statute framed under S.38(2) of Act 31 of 1986 University has no power to take disciplinary action against teachers.

14. We are of the view said contention cannot be accepted. S.18(xii) specifically says that Syndicate has got power to suspend, discharge, dismiss or otherwise

take disciplinary action against teachers and other employees of the University of and above the rank of Assistant Registrar. The power to suspend, dismiss and discharge has been statutorily provided in the Act itself. Question may arise as to whether Syndicate is competent to award major punishment in the absence of any statute framed thereunder and in the absence of any procedure laid down for imposing those punishments.

15. We are of the view it cannot be presumed in the absence of any statute framed to that effect University is powerless or helpless and keep off and suffer any indiscipline or misconduct or illegality committed by the teachers of the University. It is always open to the University to take appropriate steps in accordance with natural justice and equity and goods conscience so as to maintain discipline in the University in the larger public interest. The interests of the students and imparting education is of paramount importance constitutionally recognised as a fundamental right. We have therefore necessarily to lean in favour of an interpretation which advances the remedy and suppress the mischief. S.47 of Act 31 of 1986 protects all acts and orders duly and in good faith done or passed by the University or any of its authorities, bodies or officers. Therefore if any decision is taken by the authorities of the University such as Syndicate in good faith cannot be characterised as arbitrary or illegal. Therefore we are of the view that power could be traced to S.18(xii) read with S.47 of Act 31 of 1986 so as to initiate disciplinary proceedings against teachers after complying with the principles of natural justice.

16. We therefore reject the contention of the counsel for the petitioner that University has no power to take disciplinary action against the petitioner.

17. We have to examine the charges levelled against the petitioner, finding of the enquiry officer as well as the punishment imposed. The Apex Court in Indian Oil Corporation Ltd. and another Vs. Ashok Kumar Arora, held that the High Court in cases of departmental enquiries and the findings recorded therein does not exercise the powers of appellate Court/Authority. The jurisdiction of the High Court in such cases is very limited for instance where it is found that the domestic enquiry is vitiated because of non-observance of principles of natural justice, denial or reasonable opportunity; findings are based on no evidence, and or the punishment is totally disproportionate to the proved misconduct of an employee.

18. We also notice by the impugned order the Syndicate has debarred the petitioner on a permanent basis from functioning as a member of various statutory bodies of the University such as Board of Studies, Faculty, Senate, Syndicate, Academic Council and the posts such as Head of the Department etc. We are of the view this punishment is grossly disproportionate to the proved misconduct. We may also in this connection refer to the Syndicate decision dated 21st October, 1995 wherein the Syndicate has decided to adopt provisions relating to discipline, the provision contained in Part II of Chapter III of the Cochin University First Statutes 1981. In that Statute it was stated that teachers

could be reverted to maximum period of six months if no time limit is fixed in the order and that the maximum time limit that could be fixed for reversion is five years. In the instant case we notice that the petitioner has been reverted to the post of Reader permanently, which punishment is not supported by any statutory provision.

19. In the above mentioned circumstances we have no hesitation to set aside the impugned order. We have already held that the University has got power under S.18(xii) read with S.47 of Act 31 of 1986 to initiate disciplinary proceedings against teachers in conformity with the principles of natural justice. We are therefore of the view the matter has to be reconsidered by the Syndicate and pass appropriate orders commensurate with the guilt established and also on the basis of findings recorded by the Commissioner. We have hasten to add that we do not find any reason to interfere with the factual findings of the Enquiry Commission.

20. The Syndicate has also got the power to differ from the Commission report or to accept the findings or reasoning of the Commissioner so as to pass appropriate orders which they think necessary to maintain discipline and decorum in the University. We also make it clear we cannot approve the finding of the Commissioner with regard to charge No. 5 that the University is helpless even though the act of Dr. Babu Sunder intended to arouse communal passion since there is no charge that it was intended to advance his prospects under Statute 8(4). If inquiry report is accepted to that extent it would mean that teachers could raise question of politics, caste, creed, religion, race or sect in relationship with his colleagues provided he could not advance their prospects. We are of the view this reasoning is not acceptable to us. However, we leave it to the University to take appropriate decision in the circumstances of the case.

21. We also find yet another infirmity in the impugned Syndicate resolution No. 425.25. Syndicate of the University in its meeting held on 25.4.2000 resolved to impose punishment on the petitioner. He was then served a show cause notice dated 10.5.2000. Petitioner submitted his detailed reply to the show cause notice on 30.5.2000. Reply was considered by the Syndicate on 1.7.2000 and rejected the representation and imposed the punishment already proposed. While so, the Syndicate held as follows:

"The Syndicate considered the representation submitted by Dr. Babu Sunder in reply to the notice issued to him as part of the disciplinary proceedings against him under Statutes 37(b) of Cochin University First Statutes, 1981 and found that he had no satisfactory explanation to offer as to why disciplinary action proposed shall not be taken. The Syndicate noted that the explanation submitted by him were also considered in the inquiry proceedings by the Inquiry Officer and came to the conclusion that the same were identical in nature."

We cannot support the above approach of the University. We also find that there is total non-application of mind by the Syndicate in passing the above mentioned

order. Explanation offered by the petitioner has not been adverted to or considered. Syndicate proceeded on the basis that the explanations submitted by the petitioner were also considered in the enquiry proceedings by the Inquiry Officer and came to the conclusion that the same were identical in nature. We are of the view that Syndicate has to independently consider the objections raised by the petitioner. The mere fact that those objections were considered by the Inquiry Officer is of no consequence and that cannot be the criterion followed by the University in calling upon explanation against their proposed punishment. This approach of the University cannot be sustained.

22. We therefore aside Ext. P5 order dated 17.7.2000, the Syndicate decision dated 25.4.2000 and 1.7.2000. We make it clear it is open to the University to reconsider the entire matter in accordance with the observations contained hereinbefore and pass appropriate orders at the earliest, at any rate within a period of two months from the date of receipt of copy of this judgment. Till a decision is taken by the Syndicate as ordered above status quo would be maintained.

Appeals are disposed of accordingly.