

(1966) 10 KL CK 0013
In the High Court Of Kerala

Chandukutty (M.P.)

APPELLANT

Vs

Administrative Officer, Government Medical College

RESPONDENT

Date of Decision : 28-10-1966

Acts Referred:

Citation : (1967) 1 LLJ 787

Hon'ble Judges : P. Govindan Nair, J

Bench : Single Bench

Judgement

P. Govindan Nair, J.—The petitioner who was an attender in the Medical College at Calicut was dismissed from service by the administrative officer of the medical college by Ex. P. 9 order dated 22 December 1965.

2. The order Ex. P. 9 is Impugned before me mainly on two grounds. The first is that the order has been passed by a person Incompetent to do so, as the administrative officer is not the appointing authority and the second is that the procedure adopted in finding the petitioner guilty of the misconduct alleged against him is not only violative of the rules framed and applicable but also violative of the principles of natural justice.

3. The first of these points cannot stand, for Rule 9 of the Kerala Civil Services (Classification, Control and Appeal) Rules, 1960, enables the Government by general or special orders and subject to conditions to delegate to any authority the power to make appointments in the State and Subordinate Service. The Government Pleader has brought to my notice a Government Order, G.O. Ms. No. 264/52/Health, dated 20 March 1962, from Health and Labour Department (Health B), Government of Kerala, Trivandrum. It is clear from that order that the administrative officer of the Calicut Medical College will have the authority to appoint a person similar to the petitioner.

4. As far as the second point urged by counsel for the petitioner is concerned, it is clear that Rule 15 (7) of the Kerala Civil Services (Classification, Control and Appeal) Rules, 1960, has been violated. Sub-rule (7; of Rule 15 is in these terms:

15. (7) The inquiring authority shall, in the course of the inquiry, consider such documentary evidence and take such oral evidence as may be relevant or material in regard to the charges. The Government servant shall be entitled to cross-examine witnesses examined in support of the charges and to give evidence in person and to have such witnesses, as may be produced, examined in his defence. The person presenting the case in support of the charges shall be entitled to cross-examine the Government servant and the witnesses examined in his defence. If the inquiring authority declines to examine any witnesses on the ground that his evidence is not relevant or material, it shall record its reasons in writing.

At the time of the enquiry all that has been done is to question the petitioner. This was called a personal hearing and the record of the hearing is Ex. R.1. After considering the statements made by the petitioner as well as various other matters, the show-cause notice Ex. P. 7 was issued to the petitioner. A reference to Ex. P. 7 makes it clear that reliance has been placed on statements made by various persons for coming to the conclusion that the charges levelled against the petitioner have been made out. Those persons were admittedly not examined at the time of the personal hearing. It is also not seen that the statements given by those persons were made available to the petitioner at the time of the personal hearing. Sub-rule (7) of Rule 15 Indicates that the inquiring authority must consider such documentary evidence and take such oral evidence as may be relevant or material in regard to the charges. It appears to me that the same must be considered or taken in the presence of the Government servant charged with the misconduct. At least the statements given by those who were not examined at the time of the enquiry must be made available to the petitioner. Then only will the principles of natural justice be satisfied and then only will the person charged get reasonable opportunity of contesting the case against him. The note to Sub-rule (7) makes this clear. Even if the note has not the force of the rule and even if the infringement of the note as such is not justiciable, embodying as it does a fundamental rule of the principals of natural justice when the violation of what is stated in the note involves the violation of the principles of natural justice as well, this Court can Interfere. I feel that there has been such a violation in this case. On that short ground, I set aside the dismissal order, Ex. P. 9, and all proceedings except the issue of the charge-sheet and the receipt of the explanation. The enquiry will be proceeded with afresh from that stage.

5. I make it clear that I express no opinion whatever as to whether the petitioner is guilty or not of any of the charges that have been levelled against him.

6. The only further clarification that I wish to make is that the setting aside of the order of dismissal should not be understood as obliging the administrative officer to take back the petitioner even before the enquiry is completed and fresh orders are passed. Whether he should be kept under suspension or whether he should be allowed to rejoin duty is a matter for the administrative officer to decide. If he is to be kept under suspension, an order of suspension pending

enquiry will have to be passed.

7. The enquiry will also be expedited. This writ application is ordered on the above terms. There will be no direction regarding costs.