

(2012) 04 DEL CK 0510

In the Delhi High Court

Case No : LPA 92 of 2012, C.M. Application 2261 of 2012 (for Stay) , C.M. Application 2262 of 2012 (for exemption) , C.M. Application 2263 of 2012 and C.M. Application 2264 of 2012 (for condonation of delay)

Dr. Deepak Kem

APPELLANT

Vs

Jamia Millia Islamia University and Others

RESPONDENT

Date of Decision : 10-04-2012

Acts Referred:

Constitution of India, 1950 — Article 311, 311(1)

Jamia Millia Islamia Act, 1988 — Section 11, 11(2), 11(3), 11(4), 11(6)

Citation : (2013) 1 AD 525

Hon'ble Judges : S.P. Garg, J;S. Ravindra Bhat, J

Bench : Division Bench

Advocate : Sandeep Sethi, with Sh. Rituraj Biswas and Sh. Ashim Chamuah, for the Appellant; Atyab Siddiqui and Ms. Jaya Goyal, for the Respondent

Judgement

Mr. Justice S. Ravindra Bhat

C.M. APPL. 2262/2012, 2263/2012 & 2264/2012

For the reasons mentioned in the applications, C.M. Appl. 2262/2012, 2263/2012 and 2264/2012 are allowed.

LPA 92/2012 & C.M. APPL. 2261/2012

1. The appellant is aggrieved by the impugned judgment of a learned Single Judge of this Court, dated 16-9-2011, in a writ petition preferred by him (W. P. (C) 4918/2011) impugning an order dated 13-6-2011, removing him from the service of the respondent, the Jamia Milia Islamia Univeristy (hereafter "Jamia"). The removal order had given effect to the resolution dated 31-05-2011 of the Executive Council ("EC") of Jamia. The petition had also challenged the disciplinary proceedings initiated pursuant to a Memorandum by the Vice Chancellor ("VC") of Jamia, dated 2nd March, 2010. The Appellant was a senior lecturer from 7th March 2002 to 4January 2007 when he was selected as a

Reader in the Centre for Culture, Media and Governance ("Centre") at the Jamia. He was awarded a Ph.D. in 2005. He claims to have authored a book titled "Democracy and Media" in 2007, which was published by Shri Publishers and Distributors, New Delhi. According to the appellant, the book

was a research compilation from various sources published mainly as a reference book for the students pursuing courses in mass media.

2. In September, 2009 one Mr Sanjay Dev, from an NGO in Ghaziabad - (according to the Appellant)-approached him enquiring about a project completed by him on HIV/AIDS which was funded by UNESCO. The Appellant claims that Dev spoke to him about his book and his views on plagiarism; it is alleged that this was all the while, secretly recorded on video by Mr Dev and his accomplice and later telecast on CNEB TV channel under the title "Chor Guru". Soon, on 16-9-2009, the Director of the Centre sought an explanation from the Appellant about that TV program. Later, on 2nd March 2010, the VC issued a Memorandum to the Appellant enclosing two articles of charge, and directed him to submit a reply within ten days. The first article of charge was that in his book titled "Democracy and Media", the Appellant had copied portions from the book titled "Media, Markets and Democracy" by C. Edwin Baker and published by the Cambridge University Press in 2001. The second article of charge was that the plagiarism-a topic of the programme "Chor Guru" telecast by CNEB had brought disrepute in public to the name of the Jamia Milia Islamia University. The Appellant replied, denying these charges. A retired judicial officer, Mr. SM Chopra, was appointed as an enquiry officer ("EO"). The Appellant participated in the enquiry. Evidence was led both by the University and the Appellant. On 20th August 2010, the EO submitted his report holding the first article of charge to be proved and the second article of charge to be not proved. A copy of the report of the EO was forwarded to the Appellant for his comments.

3. The Executive Committee, (here after the "EC", which had the powers of a disciplinary committee), met on 1st April 2011 and discussed the report of the EO. It decided that the Appellant be removed from service. The Appellant was informed of this decision, by an order dated 11th April 2011, and was asked to give his representation within three weeks. The EC again met on 31st May 2011; it was of the view that intellectual plagiarism constituted serious misconduct and that the unqualified apology offered by the Appellant was not acceptable. The EC felt that the telecast of the program titled "Chor Guru" on the TV channel CNEB had tarnished Jamia's image; it unanimously resolved to impose the punishment of removal from service on the Appellant with immediate effect. This led to the termination order dated 13-6-2011.

4. In the writ petition, the appellant had urged that the procedure adopted by Jamia, in removing him was illegal. Two arguments were made; first, that the Vice Chancellor could not have initiated the inquiry proceedings, which led to the removal order (for this purpose, the Appellant had relied on Statute 37 of the Jamia, which conferred power on the EC and relied on a decision of the Supreme

Court, in Marathwada University Vs. Seshrao Balwant Rao Chavan, ; and second, that the disagreement by Jamia, with the findings of the EO, vis-a-vis the Appellant's guilt as regards the second charge, was legally indefensible. Both the submissions were rejected. For the latter proposition, the appellant had relied on Punjab National Bank and Others Vs. Sh. Kunj Behari Misra, ; The impugned judgment rejected both contentions, holding as follows:

Section 11 (2) of the Jamia Millia Islamia Act, 1988 ("Act") states that the VC shall be the principal executive and academic officer of the University and shall exercise general supervision and control over the affairs of the University and give effect to the decision of all the authorities of the University. Section 11 (3) of the Act states that the VC may, "if he is of the opinion that immediate action is necessary on any matter, exercise any power conferred on any authority of the University by or under this Act and shall report to such authority the action taken by him...". u/s 23 (f) of the Act, the Statute of Respondent No. 1 University would provide for, inter alia, "the conditions of service of employees including provision for pension, insurance and provident fund, the manner of termination of service and disciplinary actions." Statute 3 sets out in detail the powers and duties of the VC. Statute 14 talks of the powers of the EC which includes the power to appoint Professors, Readers, Lecturers and to regulate enforcement discipline among the members of the teaching and administrative staff. Statute 37 (1) deals with the removal of teachers.

10. Statute 41 talks of delegation of powers subject to the condition that overall responsibility for the exercise of the powers so delegated shall continue to vest in the officer or authority delegating such powers.

11. The words "any matter" in Section 11 (3) of the Act are wide enough to cover the disciplinary proceedings initiated by the VC. This has to be read along with Statute 37 (1). The EC in its meeting held on 20th December 2010 endorsed the disciplinary action initiated by the VC. In the circumstances the objection to the legality of the initiation of the proceedings by the VC is without substance. The decision of the Supreme Court in Marathwada University v. Seshrao Balwant Rao Chavan was concerned with a different statute and in a different set of facts. The decision is distinguishable and not applicable to the facts of the present case.

13. As regards the submission concerning the EC having differed with the EO on the second article of charge, this Court is of the view that the first article of charge was itself a serious one and justified the imposition of the punishment of removal from service. The report of the EO clearly brings out that the Petitioner's book contained several pages which had been lifted from the book titled "Media, Markets and Democracy" written by Professor C. Edwin Baker. It is pointed out that both the content and language of pages 164 to 192, 193 to 213 and 245 to 275 of Professor Baker's book had been copied. Significantly, Professor Baker's book was not listed in the bibliography of the Petitioner's book. The sentence in the acknowledgements section of the Petitioner's book that it was a compilation of literature from authoritative publications authored by

eminent scholars/distinguished writers is not only inadequate but does not effectively dispel the impression that the book was projected as an original work authored by the Petitioner. If indeed the book was only a compilation then below the title it ought to have indicated: "compiled by". In the absence of such clear indication, the inescapable inference is that the book is an original work of the author whose name appears on the cover of the book...

5. It is contended on behalf of the Appellant that the Single Judge fell into error in distinguishing the present case from the decision of the Supreme Court in Marathwada University. Counsel submitted that the structure of the statute in question was identical and in pari materia, with Statute 37. The relevant extracts of the statutes and provisions of the Act (i.e. Section 24, outlining the power of the Executive Council and Statute 37 of the Marathwada Act, and Statutes), and the concerned discussion by the Supreme Court, in this context, was highlighted:

(Section) 24(1)(xxix): appoint officers and other employees of the University, prescribe their qualifications, fix their emoluments, define the terms and conditions of their service and discipline and where necessary, their duties.

24(1)(xli): delegate, subject to the approval of the Chancellor, any of its powers (except the power to make Ordinances), to the Vice-Chancellor, the Registrar or the Finance Officer, or such other officers or authority of the University or a committee appointed by it, thinks fit....

Sec. 37 Subject to the conditions prescribed by or under this Act, the Senate may make the Statutes to provide for all or any of the following matters namely:

(xvi): The term of office, duties and conditions of service of officers, teachers and other employees of the University, the provisions of pension, insurance and provident fund and the manner of termination of their service and other disciplinary action and their qualifications, except those of teachers.....

The express powers include among others, the duty to ensure that the provisions of the Act, Statutes, Ordinances and Regulations are observed by all concerned. (Section 11(3)). The Vice-Chancellor has a right to regulate the work and conduct of officers and teaching and other employees of the University (Section 11(6)(a)). He has also emergency powers to deal with any untoward situation (Section 11(4)). The power conferred under sec. 11(4) is indeed significant. If the Vice-Chancellor believes that a situation calls for immediate action, he can take such action as he thinks necessary though in the normal course he is not competent to take that action. He must, however, report to the concerned authority or body who would, in the ordinary course, have dealt with the matter. That is not all. His pivotal position as the principal executive officer also carries with him the implied power. It is the magisterial power which is, in our view, plainly to be inferred. This power is essential for him to maintain domestic discipline in the academic and non-academic affairs. In a wide variety of situations in the relationship of tutor and pupil, he has to act firmly and promptly to put down indiscipline and malpractice. It may not be illegitimate if he could

call to aid his implied powers and also emergency powers to deal with all such situations.

Counsel for the appellant argued that the express power of the Vice-Chancellor to regulate the work and conduct of officers of the University implies as well, the power to take disciplinary action against officers. We are unable to agree with this contention. Firstly, the power to regulate the work and conduct of officers cannot include the power to take disciplinary action for their removal. Secondly, the Act confers power to appoint officers on the Executive Council and it generally includes the power to remove. This power is located under sec. 24(1) (xxix) of the Act. It is, therefore, futile to contend that the Vice-Chancellor can exercise that power which is conferred on the Executive Council. It is a settled principle that when the Act pre-scribes a particular body to exercise a power, it must be exercised only by that body.

6. In the present case, the relevant provision under the Act, Section 11, reads as follows:

11. (1) The Shaikh-ul-Jamia (Vice-Chancellor) shall be appointed by the Visitor in such manner as may be prescribed by the Statutes.

(2) The Shaikh-ul-Jamia (Vice-Chancellor) shall be the principal executive and academic officer of the University, and shall exercise general supervision and control over the affairs of the University and give effect to the decision of all the authorities of the University.

(3) The Shaikh-ul-Jamia (Vice-Chancellor) may, if he is of opinion that immediate action is necessary on any matter, exercise any power conferred on any authority of the University by or under this Act and shall report to such authority the action taken by him on such matter.

Provided that if the authority concerned is of opinion that such action ought not to have been taken, it may refer the matter to the Visitor whose decision thereon shall be final.

Provided further that any person in the service of the University who is aggrieved by the action taken by the Shaikh-ul-Jamia (Vice-Chancellor) under this subsection shall have the right to appeal against such action to the Majlis-i-Muntazimah (Executive Council) within three months from the date on which decision on such action is communicated to him and thereupon the Majlis-i-Muntazimah (Executive Council) may confirm, modify or reverse the action taken by the Shaikh-ul-Jamia (Vice-Chancellor).

Statute 37 reads as follows:

37. REMOVAL OF TEACHERS:

(1) Where there is an allegation of misconduct against a teacher, or a member of the academic staff, the Shaikh-ul-Jamia (Vice-Chancellor) may, if he thinks fit, by order in writing, place the teacher under suspension and shall forthwith report to

the Majlis-i-Muntazimah (Executive Council) the circumstances in which the order was made:

Provided that the Majlis-i-Muntazimah (Executive Council) may, if it is of the opinion, that the circumstances of the case do not warrant the suspension of the teacher or a member of the academic staff, revoke such order.

(2) Notwithstanding anything contained in the terms of his contract of service or of his appointment, the Majlis-i-Muntazimah (Executive Council) shall be entitled to remove a teacher or a member of the academic staff on the ground of misconduct.

(3) Save as aforesaid, the Majlis-i-Muntazimah (Executive Council) shall not be entitled to remove a teacher or a member of the academic staff except for good cause and after giving three months' notice in writing or on payment of three months' salary in lieu thereof.

(4) No teacher or a member of the academic staff shall be removed under clause (2) or under clause (3) until he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him....

7. One thing becomes apparent from a bare reading of the provisions. In the Jamia Act, the power to take emergency action is similar to the power under the Act with which the Supreme Court was concerned (Section 11 (4), in the Marathwada case). However, the two provisos distinctly alter the circumstance. The first proviso empowers the concerned authority (in this case, by virtue of Statute 37, the EC) with recourse, in the event of disagreement with the Vice Chancellor (about exercise of the emergency power in a particular case, in respect to something over which it has primary power) to refer the matter to the Visitor, who has the right to take the final decision. Admittedly, the EC did not express disagreement over the decision of the Vice Chancellor to initiate enquiry, and appoint an EO, in this case. More importantly, the second proviso to Section 11 (3) enables the aggrieved person to appeal to the EC, within three months of the decision being taken by the VC, and that authority (the EC) has the right to modify, alter or reverse the decision of VC taken in the exercise of emergency power. That too did not happen here; the Appellant submitted to the enquiry and entered his defence in the matter. We notice, pertinently, that in the Marathwada University case itself, the Supreme Court held that the Vice Chancellor's emergency power extends to disciplinary control and action:

If the Vice-Chancellor believes that a situation calls for immediate action, he can take such action as he thinks necessary though in the normal course he is not competent to take that action. He must, however, report to the concerned authority or body who would, in the ordinary course, have dealt with the matter. That is not all. His pivotal position as the principal executive officer also carries with him the implied power. It is the magisterial power which is, in our view, plainly to be inferred. This power is essential for him to maintain domestic discipline in the academic and non-academic affairs.

8. The appellant's submission, arguendo, if taken as correct, would not yet result in the inquiry initiation being rendered without jurisdiction, merely because the VC invoked a power which ultimately was exercised by the EC. A similar argument was rejected by the Supreme Court, in the context of interpretation of the Article 311 safeguard that the holder of a civil post cannot be removed or dismissed by an authority lower in status than the appointing authority, in *State of Madhya Pradesh and Others Vs. Shardul Singh*, ;

This Article does not in terms require that the authority empowered under that provision to dismiss or remove an official, should itself initiate or conduct the enquiry preceding the dismissal or removal of the officer or even that enquiry should be done at its instance. The only right guaranteed to a civil servant under that provision is that he shall not be dismissed or removed by an authority subordinate to that by which he was appointed....we are unable to agree with the High Court that the guarantee given under Article 311(1) includes within itself a further guarantee that the disciplinary proceedings resulting in dismissal or removal of a civil servant should also be initiated and conducted by the authorities mentioned in that Article.

The above ruling was followed in *Transport Commissioner, Madras-5 Vs. A. Radha Krishna Moorthy*, ;; and *State of U.P. and Another Vs. Chandrapal Singh and Another*, ; This court therefore, sees no infirmity with the reasoning and conclusions of the learned Single Judge, on this score.

9. As regards the second argument, viz that the infirmity in not following the *Kunj Behari Misra* decision and giving an appropriate opportunity, the record and the impugned judgment show that the EC in its meeting held on 20th December 2010, endorsed the VC's decision. It had the benefit of the Appellant's objections dated 7th November 2010 stating his objections to the Enquiry Report. The EC, in its meeting and order dated 1st April 2011 proposed to impose a penalty of removal from service, on the basis of the Enquiry Report; this was communicated to the Appellant by office order dated 11-4-2011 seeking his response. It is not in dispute that the Appellant showed cause by order dated 3-5-2011, which was considered in the impugned meeting of 31-5-2011, when finally it was decided to remove the Appellant. The relevant discussion in *Kunj Behari* is as follows:

When the disciplinary authority differs with the view of the inquiry officer and proposes to come to a different conclusion, there is no reason as to why an opportunity of hearing should not be granted. It will be most unfair and iniquitous that where the charged officers succeed before the inquiry officer they are deprived of representing to the disciplinary authority before that authority differs with the inquiry officer's report and, while recording of guilt, imposes punishment on the officer. In our opinion, in any such situation the charged officer must have an opportunity to represent before the Disciplinary Authority before final findings on the charges are recorded and punishment imposed.

10. In this case, it would not be correct to say that the disciplinary authority disagreed with the EO; on the contrary, the record reveals that the first charge, i.e of plagiarism, was concededly established. It was on the second charge, i.e of the Appellant having brought the University to disrepute, that the EO felt that there was insufficient material to support a charge. Now, this can be a matter of perception. Saliently, the appellant did not attempt to attack the finding about his having plagiarised - a serious charge on anyone, and more so for an academic, who aspires to be a role model to students. It can arguably be said that once such a grave charge is established, the disrepute is self evident, if the deceit is known even to a few outside the University circles. Nevertheless, the EC took care to give an opportunity to the Appellant regarding its proposal to remove him. He replied to the show cause notice. The court does not therefore, find any illegality in the procedure adopted. That apart, even if the appellant's argument is accepted for a moment, there is no dispute that the first charge - plagiarism, was held to have been proved, by the EO. That charge was sufficiently grave as to warrant the penalty which Jamia chose to impose on the Appellant. As Mark Twain said of plagiarism:

Nothing is ours but our language, our phrasing. If a man takes that from me (knowingly, purposely) he is a thief.

The undeniable fact-found by the EO, and which the learned Single Judge satisfied himself to be factually correct - was the deceit practised by the Appellant in attempting to pass off others' labours as his own. Such conduct anywhere, and especially from position he held in Jamia, rendered it inexcusable; the only penalty was removal from service.

11. Our conclusions are undoubtedly dispositive of the Appeal. However, we would like to sound a note of caution. Whilst the authority of the Vice Chancellor to use emergency powers in the innumerable and unspelt circumstances cannot and ought not to be circumscribed, yet at the same time, the Court is of the opinion that when it concerns teachers, having regard to a harmonious reading of Sections 11 (3) and Statute 37, and keeping the larger interests of academic freedom and autonomy, the power should be used sparingly, and in rare circumstances, to initiate disciplinary enquiries. Recourse to this exceptional power - expressly emergency, and by necessity residual - should be justified by some unusual or unavoidable circumstances, and certainly not in a casual or ordinary way. In view of the conclusions recorded above, this Court is satisfied that the Appeal lacks in merit; it is accordingly dismissed, without any order on costs.