
(2016) 08 KL CK 0031
In the High Court Of Kerala
Case No : WP(C). No. 4688 of 2013

Dr. M. Madhusoodana Kurup

APPELLANT

Vs

Cochin University of Science and Technology

RESPONDENT

Date of Decision : 18-08-2016

Acts Referred:

Cochin University of Science and Technology First Statute, 1975 — Statute 7

Citation : (2016) 4 KLT 229

Hon'ble Judges : Mr. A.K. Jayasankaran Nambiar, J.

Bench : Single Bench

Advocate : Sri. O.V. Radhakrishnan (Sr.), Smt. K. Radhamani Amma and Sri. Antony Mukkath, Advocates, for the Petitioner; Sri. M.R. Hariraj, SC, Cochin University of Science, for the Respondent Nos. 1, 2 and 3; Sri. V.A. Muhammed, Advocate and Sri. P.M.A. Kalam, SC,

Final Decision : Allowed

Judgement

Mr. A.K. Jayasankaran Nambiar, J.—The petitioner, who was working as Professor in the respondent University, was appointed as the first Vice Chancellor of the Kerala University of Fisheries and Ocean Studies for a period of five years from the date of entry in office, or till the attainment of 56 years, whichever is earlier. Ext.P1 is the appointment order issued to the petitioner in this connection. It is stated that, pursuant to Ext.P1 order, the petitioner was relieved from the respondent University by Ext.P2 order dated 01.03.2011, and sanction was granted to him to relieve his duties at the respondent University with effect from 01.03.2011, by Ext.P3 order dated 09.03.2011. Thereafter, by Ext.P4 order dated 27.06.2011, the petitioner was granted sanction to go on deputation for the period from 01.03.2011 to 30.04.2015. It would appear that thereafter, by Ext.P10 charge sheet and statement of allegations that was served on the petitioner, disciplinary proceedings were initiated against him by the 3rd respondent, who is the Registrar of the respondent University. In the writ petition, the challenge is to Ext.P10 memo of charges and statement of allegations served on the petitioner principally, on the ground of jurisdiction. It is

the specific contention of the petitioner that as per the statutory provisions of the Cochin University of Science and Technology Act, 1986 read with the Cochin University of Science and Technology First Statute 1991 and the Cochin University of Science and Technology First Statute 1975, disciplinary proceedings against a Professor of the University could have been initiated only by the Vice Chancellor, in the event of the proposal being for imposition of minor penalty, or by the Syndicate, in the event of the proposal being for the imposition of a major penalty. It is contended that, inasmuch as Ext.P10 was issued by the Registrar of the University, the same could not be legally sustained. Reliance is also placed on the decisions in *Lekhraj Sathramdas Lalvani v. N.M. Shah, Deputy Custodian-cum-Managing Officer, Bombay and Others* [AIR 1966 334], *Government of Andra Pradesh and Others v. V.K.Brahmanandam and Others* (2008 (5) SCC 241), *Chandra Singh and Others v. State of Rajasthan and Another* (2003 (6) SCC 545) and *Union of India and Others v. Anil Kumar Sarkar* 2013 (4) SCC 161 in support of the contention.

2. A counter affidavit had been filed on behalf of the respondent, wherein it is stated that, although the charge sheet and statement of allegations is signed by the Registrar of the respondent University, the draft of the said document, after vetting by the legal adviser, was placed before the Pro-Vice Chancellor, and thereafter the Vice Chancellor of the University, and the said draft was approved by the said authority. It was only thereafter that it was served on the petitioner. It is also stated, by placing reliance on Exts.R1(h) and R1(j) produced along with the counter affidavit, that the Syndicate of the respondent University had resolved to initiate steps to terminate the services of the petitioner and the Syndicate had, by resolution dated 28.02.2013 ratified the action of the Registrar in issuing the charge memo pursuant to the orders of the Vice Chancellor. On the basis of the said averments in the counter affidavit, it is contended that there is no jurisdictional irregularity in the matter of issuance of Ext.P10 charge sheet and statement of allegations to the petitioner and hence, there is no merit in the writ petition.

3. I have heard the learned senior counsel Sri. O.V. Radhakrishnan, duly assisted by Sri. Antony Mukkath for the petitioners, and Sri. V.A. Mohammed, the learned Standing Counsel for the respondent University.

4. On a consideration of the facts and circumstances of the case as also the submissions made across the bar, I find that this is a case where, disciplinary proceedings have been initiated against the petitioner, who was functioning as a Professor, under the respondent University. The provisions of the Cochin University of Science and Technology First Statute 1991 and in particular, Statute 4 therein, clearly indicate that teachers of the University are to be appointed by the Syndicate after advertisements in leading dailies inviting applications. Statute 10, which deals with disciplinary control of the Syndicate, clearly mandates that all teachers of the University shall be subject to the disciplinary control of the Vice Chancellor in the case of minor penalty and the Syndicate with one of major

penalty. Chapter III of the Cochin University of Science and Technology First Statute 1975, which deals with duties of the Registrar, inter alia, stipulates that it shall be the duty of the Registrar to conduct official correspondence on behalf of the University. A perusal of the duties specified in Statute 7 of Chapter III of the aforementioned First Statute, 1975, do not indicate a power in the Registrar to initiate disciplinary proceedings against the Professors of the University. It is trite that the disciplinary power is an adjunct to the power of appointment itself and, unless there is a specific provision authorising a lower authority to be the disciplinary authority in particular cases, it is normally the appointing authority, who has to function as the disciplinary authority in cases of disciplinary proceeding initiated against teachers of the University. In the instant case, as already noted above, the specific statutory provision provides for the Syndicate of the University to be the controlling authority in disciplinary matters against teachers, where the proposal is one for imposing a major penalty. The charge sheet, which marks the commencement of disciplinary proceedings, has to be issued by the Syndicate in such cases. A perusal of the documents produced along with the writ petition and the counter affidavit clearly indicates that there was no application of mind by the Syndicate of the respondent University to the contents of the charge sheet and statement of allegations, prior to the said documents being served on the petitioner. In fact, the case of the respondent University is that a draft of the charge sheet and the statement of allegations was placed before the Pro-Vice Chancellor, and thereafter the Vice Chancellor of University, and it was as per their direction that the said document was served on the petitioner. Although it is the further case of the respondent University that the action of the Vice Chancellor, in causing the charge sheet and statement of allegations to be served on the petitioner, was subsequently ratified by the Syndicate of the respondent University, I am of the view that the said contention advanced on behalf of the respondent University cannot be of any assistance to it while clarifying the jurisdictional issue that is raised in connection with the service of notice. It is trite that the initiation of disciplinary proceedings against an employee has to be in the manner prescribed under the Statutory Provisions. In the instant case, the initiation of disciplinary proceedings by the issuance of charge memo and statement of allegations ought to have been done at the instance of the Syndicate of the University. Since the Syndicate had no role to play in the framing of charges or preparing the statement of allegations, the subsequent ratification by the Syndicate, of the documents prepared at the instance of another authority, who had no role to play under the statutory scheme, cannot be of any legal consequence, since a ratification cannot be of an act which is void ab initio. The illegality committed by the respondent University, in causing the charge memo and statement of allegations to be issued to the petitioner through the Registrar, who had no role to play under the Statutory Scheme, is an illegality that affected the jurisdiction in the matter of initiation of disciplinary proceedings, and such an illegality could not have been ratified by the Syndicate of the respondent University. The decisions referred to by the learned counsel for the petitioner are authorities for the said proposition.

Accordingly, I allow the writ petition by quashing Ext.P10 memo of charges and statement of allegations, issued to the petitioner. It is made clear however that, nothing in this judgment shall stand in the way of the respondent University initiating disciplinary proceedings in accordance with law against the petitioner, if they are so advised.