

(2007) 08 KAR CK 0056

In the Karnataka High Court

Case No : Writ Petition No's. 24631 and 3360 of 2002

G.S. Krishnamurthy and M.S. Muralidhara

APPELLANT

Vs

The Chancellor, University of Mysore and her Excellency the
Governor of Karnataka, The Vice-Chancellor and Disciplinary
Authority, University of Mysore, The Syndicate, University of
Mysore and The Registrar, University of Mysore

RESPONDENT

Date of Decision : 16-08-2007

Acts Referred:

Karnataka State Universities Act, 2000 — Section 56 (4)
Mysore University Employees (Classification, Control and Appeal) Statutes, 1983 —
Statute 18

Citation : (2008) 1 KarLJ 594

Hon'ble Judges : K. Bhakthavatsala, J

Bench : Single Bench

Advocate : N. Devadass, for the Appellant; R.K. Hatti, HCGP for R-1 and S.G. Bhagawan, for R-2 to R-4, for the Respondent

Judgement

K. Bhakthavatsala, J.—The short question that arises for consideration is:

Whether the Chancellor is the Appellate Authority as per Statute 18 of the Mysore University Employees" (Classification, Control and Appeal) Statutes?

2. My answer to the above point is in the affirmative for the following reasons;

The University of Mysore initiated domestic enquiry against the petitioners, who belong to Group-C category, on the ground that there was a mal-practice in the November 1998 examinations. The Vice Chancellor, as Disciplinary Authority, accepted the enquiry report and by order dated 20.9.2000 imposed punishment of dismissal from service, which shall be a dis-qualification for future employment as per Rule 5(1)(x) of the Mysore University Employees" (Classification, Control and Appeal) Statutes (in short, "the Statutes") with immediate effect and the period of suspension with effect from 17.5.1999 till the date of dismissal from service shall be treated as the period

spent on duty. The petitioners, feeling aggrieved by the order of the Disciplinary Authority, preferred Appeal before the Chancellor of the University. The Office of the Chancellor, by letter dated 23.6.2001, returned the Appeals filed by the petitioners to the Vice Chancellor of the University stating that the Syndicate is the Appellate Authority. Thereafter, the Registrar of University issued an endorsement stating that the Syndicate considered and rejected their Appeal. Therefore, the petitioners are before this Court.

3. The Chancellor of the University has filed statement of objections contending that appeal lies to the Syndicate, who is the immediate superior authority to the Vice-Chancellor and therefore the Chancellor is justified in returning the Appeal by order dated 23.6.2001.

4. The Registrar of the University has filed statement of objections contending that since the Vice Chancellor is an ex-officio Chairman of the Syndicate, the Syndicate cannot be construed as an authority immediate superior to the Vice-Chancellor.

5. Sri N. Devadass, learned Senior counsel for the petitioners, submits that the Chancellor is the Appellate Authority, according to Statute 18(3) of the Statutes and therefore a writ of mandamus may be issued to consider the petitioners' Appeal.

6. The learned Government Pleader submits that the Chancellor is not the Appellate Authority under Statute 18(3) of the Statutes.

7. Sri S.G. Bhagawan, learned Counsel appearing for the University, submits that according to Statute 18(3) of the Statutes, the Chancellor is the immediate superior to the Vice Chancellor. He has cited a decision reported in T.K. Koshy Vs. Chancellor, Calicut University and Another, on the point that Syndicate, as an authority subordinate to the Chancellor.

8. For the purpose of immediate reference. Statute 18 of the Statutes, is excerpted hereunder:

18. Appeals against orders imposing penalties(1) Every employee shall be entitled to appeal to the extent and to the authorities, as hereinafter provided and not otherwise, from an order by any authority-

(a) imposing any of the penalties specified in Statute 5 whether made by the disciplinary authority or by an appellate authority or revising authority;

(b) reducing or withholding pension admissible to him under the Statutes governing pension;

(c) placing him under suspension under Statute 7.

(2) An employee belonging to Group "A" in the schedule may appeal to the Chancellor, against an order made by any other authority imposing upon him any of the penalties specified in Statute 5 or from an order referred to in Sub-clauses

(a), (b) and (c) of Clause (1).

(3) An employee belonging to Group "B" or "C" of the schedule may appeal against the orders passed in exercise of the powers conferred by Statute 6 to the authority immediately superior to the authority passing the order;

(emphasis supplied)

Provided that in the case of posts not specified in the schedule, the holder or holders of posts may appeal against the orders passed in exercise of the powers conferred by Statute 6 to the authority immediately superior to the authority passing the order.

(4) Notwithstanding anything contained in Clauses (1) to (3)-

(a) where a person, who made the order appealed against becomes by virtue of his subsequent appointment or otherwise, the appellate authority in respect of such order, an appeal against such order shall be to the authority to which such person is immediately subordinate;

(b) an appeal against an order in a common proceeding held under Statute 13 shall lie to the authority to which the authority functioning as the disciplinary authority for the purpose of that proceeding is immediately subordinate.

9. The Karnataka State Universities Act, 1976 was repealed and a new enactment viz., Karnataka State Universities Act, 2000 (Act 29/2001) (in short, "the Act") has been enacted. According to Section 12 of the Act, the Governor of Karnataka shall, by virtue of his Office, be the Chancellor and head of the University. According to Section 15(2) of the Act, the Vice - Chancellor shall be the ex-officio Chairman of the Syndicate and other authorities.

10. The learned Counsel for the University submitted that as per Section 83 of the Act, Statutes made under the repealed Act are applicable.

11. It is useful to refer to the decision of the Kerala High Court rendered in the case of V. Rev. Mother Provincial, Congregation of Mother of Carmel, Carmelite Provincial House, Kovilvattam Road, Ernakulam, Cochin and Others Vs. State of Kerala and Others, in which case a Full Bench of the Kerala High Court, while dealing with Section 56(4) of the Kerala University Act, 1969, has observed that the Syndicate which, being a large body comprising as many as 17 members, will be subject to pulls and pressures and was not a body which could be entrusted with a judicial function. Again the Kerala High Court in Rev. Sr. Mary Angela v. State of Kerala (1981 Lab IC 148 (DB) with reference to Section 7(6) of the Calicut University Act, 1975 held that the Chancellor is the Appellate Authority against any order of dismissal passed by the Syndicate or the Vice-Chancellor against any person in the service of the University.

12. According to the Act, the Chancellor is an Officer of the University; whereas the Syndicate is an authority comprising of 20 members. (Vide Sections 11, 27 and 28 of the Act). The Syndicate is the highest policy making body. Since the

Vice-Chancellor is the ex-officio Chairman of the University and Disciplinary Authority under the Statutes, the Syndicate cannot be superior to the Vice Chancellor. As per Statute 25, Part-V (Review) of the Statutes notwithstanding anything contained in the Statutes, the Chancellor may, on his own motion or otherwise, after calling for records of the case, review any order which is made or is appealable under the Statutes or the Statutes repealed by Statute 30 and, (a) confirm, modify or set aside the order; (b) impose any penalty or set aside, reduce, confirm or enhance the penalty imposed by the order, etc. Under such circumstances, it is the statutory duty of the Chancellor to entertain the Appeal and dispose of the same, in accordance with law. Therefore, it is a fit case to quash the impugned order made by the Syndicate as well as the letter of the Chancellor.

13. In the result, the Writ Petitions are partly allowed and the order at Annexure-J dated 28/31.12.2001 bearing No. ET 5/60/99/2000 and letter of the Chancellor at Annexure-H1 dated 23.6.2001 bearing No. GS 2 MUM 2001 are quashed. The petitioners are directed to re-present their Appeals before the Registrar, along with the copy of this order within a month, from the date of receipt copy of this order, which shall be submitted to the Chancellor for disposal of the Appeals, in accordance with law. No costs.