
(2015) 01 KAR CK 0174
In the Karnataka High Court
Case No : Writ Petition No. 8574 of 2012 (S-RES)

J. Ishwara Bhat

APPELLANT

Vs

The Mangalore University and Others

RESPONDENT

Date of Decision : 16-01-2015

Acts Referred:

Karnataka State Universities Act, 2000 — Section 73, 74

Citation : (2015) 01 KAR CK 0174

Hon'ble Judges : P.B. Bajanthri, J.

Bench : Single Bench

Advocate : S.G. Pandit, for the Appellant; Y.D. Harsha, AGA, Advocates for the Respondent

Final Decision : Disposed off

Judgement

P.B. Bajanthri, J.—The petitioner has questioned the validity of the order dated 09.01.2012 vide Annexure-A by which the respondents have kept the petitioner away from assigning the post of Chairman of the Department of Post Graduate Studies in Chemistry, Board of Studies (BOS) and Board of Examiners (BOE) for a period of three years and further by way of amendment questioned the order dated 31.3.2012 vide Annexure-U by which the earlier order dated 9.1.2012 was modified and the period of three years was reduced to two years as a measure of penalty.

2. The petitioner is in the cadre of Professor of Chemistry in the Mangalore University. In the year 2004, one Sri. Shyama Prasad. T.S. (research scholar) (Phd.) gave a complaint for change of guideship from the petitioner who was guide to Sri. Shyama Prasad. T.S. Sri. Shyama Prasad T.S. and his wife Smt. Jayashree P. happened to be students under the petitioner. Sri. Sri. Shyama Prasad T.S., made serious allegations against the petitioner to the effect that he was not co-ordinating as a model guide to a student-research scholar. The respondent-University while examining the allegations made by Sri. Shyama Prasad. T.S., appointed a committee consisting of two members for the purpose

of preliminary enquiry. After receipt of the preliminary enquiry report, Syndicate took a decision to issue show-cause notice to the petitioner seeking his explanation. Accordingly, a show-cause notice was issued on 2.12.2011. In the meanwhile, on 26.3.2011 name of the petitioner as a member of the examination Board was dropped. The petitioner submitted his explanation to the show-cause notice on 16.12.2011 in which virtually he admitted the guilt and sought for excuse, which is to the following effect:--

After taking into consideration the explanation of the petitioner, the respondent proceeded to pass an order and while warning the petitioner a prohibitory order has been passed to the extent that the petitioner would not be assigned the post of Chairman of the Department of Post Graduate Studies in Chemistry, Board of Studies(BOS) and Board of Examiners(BOE) for a period of three years, vide Annexure-"A" on 9.1.2012. Aggrieved by the said order, the petitioner has presented this writ petition. Simultaneously, the petitioner submitted a representation on 30.1.2012, vide Annexure-R1, produced by the respondents and sought for reconsideration of the matter and to withdraw all the punishment imposed on him. However, the petitioner failed to disclose the request for reconsideration of the punishment in the petition. During pendency of the above writ petition, the representation of the petitioner dated 30.1.2012 was examined by the respondents and the order dated 9.1.2012 was modified reducing the period of punishment from three years to that of two years on 31.3.2012 vide Annexure-"U".

3. The main contention of the petitioner is that he has not been given an opportunity before passing Annexures-A and U and further contended that before imposing punishment, the procedure laid down in the statute namely Classification, Control and Appeal Rules of the Employees of the Mangalore University(for short, "CCA Rules of Mangalore University") has not been complied with. Further, the allegations made by Sri. Shyama Prasad T.S. student-scholar (Phd.) have been denied. It was also contended that there is no provision of law to impose the penalty which is impugned herein.

4. Counsel for the University submitted that the impugned action is in pursuance of Sections 73 and 74 of the Karnataka State Universities Act, 2000 i.e., how the teacher/teacher faculty member should conduct himself while discharging duties of the post. However, the counsel for the University did not point out under which provision of law, the petitioner is prevented from being appointed as Chairman of Department of Post Graduate Studies in Chemistry, Board of Studies and Board of Examiners for a period of three years and subsequent modification of the same for a period of two years. At this juncture, it is relevant to note that employees of the Mangalore University are governed by statute governing Classification, Control and Appeal Rules of employees of Mangalore University, which is relating to taking disciplinary action against the university employee. Rule 7 relates to nature of penalties, which provides for imposition of fine in the case of Group "D" employees; censure to dismissal from service. However, the

penalty imposed on 9.1.2012 read with 31.3.2012 would not fall within the scope of Rule 7. Consequently, source of power to impose penalty which has been imposed on the petitioner is not forthcoming. In this regard, the petitioner has relied on two decisions of the Apex Court reported in *Sur Enamel and Stamping Works (P) Ltd. Vs. Their Workmen*, in relation to imposition of penalty without initiation of enquiry and *Vijay Singh Vs. State of U.P. and Others*, in the absence of provision for imposing particular penalty) which is extracted as under:--

"21. Undoubtedly, in a civilized society governed by the Rule of Law, the punishment not prescribed under the statutory rules cannot be imposed. Principle enshrined in criminal jurisprudence to this effect is prescribed in the legal maxim *nulla poena sine lege* which means that a person should not be made to suffer penalty except for a clear breach of existing law." 5. The principle of natural justice has twin ingredients, firstly, the person who is likely to be adversely affected by the action of the authorities should be given notice to show cause thereof and granted an opportunity of hearing and secondly, the order so passed by the authorities should assign reason for arriving at any conclusion showing proper application of mind with reference to the relevant provisions which are applicable. Violation of either of them could in the given facts and circumstances of the case, vitiate the order itself. Such rule being applicable to the administrative authorities.

6. Having regard to the aforesaid decisions of the Apex Court, it is necessary to initiate disciplinary proceedings against the petitioner under the CCA Rules of Employees of Mangalore University with reference to the serious allegations made against the petitioner. In other words, the respondent-University imposed the penalty on the petitioner which is not existing in the statute and further it was without holding an enquiry. Since the impugned order of penalty is stigmatic order, the University is bound to give ample opportunity before taking any action on the petitioner. Moreover, the penalty imposed on the petitioner is not forthcoming from any of the provisions of law, consequently, imposition of such penalty is highly arbitrary. Therefore, the impugned order dated 9.1.2012 (Annexure-A) read with order dated 31.3.2012 (Annexure-U) are hereby quashed.

7. However, this order will not come in the way of University to take necessary action under the statute governing CCA Rules of Employees of Mangalore University. It may further be noted that the petitioner is due for retirement some where in the year 2016. Therefore necessary action be taken in accordance with law at the earliest.

8. With the aforesaid direction, the petition filed by the petitioner is disposed of. There shall be no order as to costs.