

(2003) 07 RAJ CK 0088

In the Rajasthan High Court

Case No : Civil Writ Petition No. 2974 of 2003

Kamal Kapoor (Dr.)

APPELLANT

Vs

Mohanlal Sukhadia University and Another

RESPONDENT

Date of Decision : 25-07-2003

Acts Referred:

Mohan Lal Sukhadia University Act, 1962 — Section 12(4), 12(6)
Udaipur University Teachers (Conditions of Service) Rules, 1976 — Rule 4, 86

Citation : (2004) 1 RLW 271 : (2003) 4 WLC 599

Hon'ble Judges : Sunil Kumar Garg, J

Bench : Single Bench

Advocate : Govind Mathur, for the Appellant; V.D. Vyas, for the Respondent

Final Decision : Dismissed

Judgement

Garg, J.—This writ petition under Article 226 of the Constitution of India has been filed by the petitioner on 26.6.2003 against the respondents with the prayer that by an appropriate writ, order or direction, the memorandum of charges dated 11.2.2003 (Annex. 1) issued by the respondent No. 2 Registrar, Mohanlal Sukhadia University, Udaipur (for short "the University") against the petitioner in respect of an enquiry, be quashed and set aside and the respondents be restrained from holding disciplinary proceedings against the petitioner in pursuance of memorandum of charges Annex. 1.

2. The case of the petitioner as put forward by him in this writ petition is as follows:-

The petitioner is holding the post of Professor in the Department of Botany in the respondent University.

A complainant Annex. R/4 was received by the office of the Vice-Chancellor of respondent University from students of Science College, Udaipur on 7.12.2002 against the petitioner and on the basis of that complaint Annex. R/4, a preliminary enquiry was got conducted and, thereafter, a memorandum of

charges Annex. 1 dated 11.2.2003 was served upon the petitioner alleging therein that the petition, while working as Professor in the Department of Botany during the period commencing from 5.10.2002 to 24.10.2002 physically harassed and victimised Kumari Shipi Bisaria daughter of his subordinate Lab. Technician Shri P.P. Bisaria.

The further case of the petitioner is that after receipt of the memorandum of charges Annex. 1, he submitted an application dated 18.2.2003 (Annex. 2) to the respondent No. 2 Registrar of University making a demand for certain documents and information and the respondent No. 2 Registrar of University through letter Annex. 3 dated 21.2.2003 permitted the petitioner to inspect certain documents.

The further case of the petitioner is that thereafter, on 4.3.2003, he submitted an explanation to the allegations levelled against him through memorandum of charges Annex. 1 dated 11.2.2003 and a copy of the explanation submitted by the petitioner is marked as Annex. 4.

The further case of the petitioner is that vide order Annex. 5 dated 30.4.2003, the respondent No. 2 Registrar of University appointed Shri Vijay Raj Garg, a retired RAS Officer as Enquiry Officer to adjudicate the allegations levelled against the petitioner through memorandum Annex. 1 dated 11.2.2003.

The further case of the petitioner is that a meeting of the Board of Management was held on 21.4.2003 at 11.00 AM at the University Administrative Office, Udaipur wherein a decision was taken to authorise the Vice Chancellor of the university to appoint an Enquiry Officer and to do the needful in the matter. A copy of the minutes of the meeting of the Board of Management held on 21.4.2003 is marked as Annex. 6.

The further case of the petitioner is that he served a notice Annex. 7 dated 17.5.2003 upon the respondent No. 2 Registrar of University through counsel by which he demanded information to the effect under whose instructions the charges were framed against the petitioner and a reply to that notice Annex. 7 was given by the respondent No. 2 Registrar of the University through letter Annex. 8 dated 23/24.5.2003 and according to the petitioner, that reply of the respondent No. 2 was vague.

In this writ petition, the petitioner has assailed the competency of issuance of memorandum of charges Annex. 1 dated 11.2.2003 against him by the respondent No. 2 Registrar of University as according to the petitioner, the same was not issued by the competent authority and it was without jurisdiction because of the following reasons:-

(i) That the respondent University is proceeding against the petitioner under Statute 76 of the First Statutes of the University of Udaipur, Udaipur (hereinafter referred to as "the Statute") which clearly prescribes that definite charges are required to be framed by the Disciplinary Authority himself and in the case of the

petitioner, the Disciplinary Authority is appointing authority i.e. University and thus, University can take decision for initiating disciplinary proceedings against the petitioner and the matter is required to be placed before the Board of Management and since it has not happened in the present case, therefore, issuance of memorandum of charges Annex. 1 is without jurisdiction.

(ii) That there are University of Udaipur Teachers (Conditions of Service) Rules, 1976 (hereinafter referred to as "the Rules of 1976") and Sub-rule (vii) of Rule 4 of the Rules of 1976 defines the term "Disciplinary Authority" and the Disciplinary Authority in the case of teacher is the Executive Committee, which is the Appointing Authority of the teachers and in view of thus, the Board of Management, which is the Executive Committee, is the Disciplinary Authority of the petitioner and as per Rule 86 of the Rules of 1976, the Disciplinary Authority is competent to frame definite charges for initiating disciplinary proceedings and since in this case, it has not happened, therefore, from this point of view also, the issuance of memorandum of charges Annex. 1 by the respondent No. 2 Registrar of University is without jurisdiction.

(iii) That the matter came before the Board of Management only with regard to appointment of the Enquiry Officer and the Board of Management delegated its power to the Vice-Chancellor of the respondent University for appointment of Enquiry Officer, but the charges had never been framed by the competent authority i.e. Board of Management and thus, the issuance of memorandum of charges Annex. 1 by the respondent No. 2 Registrar of University is without jurisdiction.

(iv) That there was no occasion for the Vice-Chancellor to treat the present case as of emergency and, therefore, from this point of view, if the Vice-Chancellor has exercised the powers u/s 12(24) & (6) of the Mohanlal Sukhadia University Act, 1962 (hereinafter referred to as "the Act of 1962"), he has acted without jurisdiction.

A reply to the writ petition was filed by the respondents and their case is that whatever action was being taken against the petitioner, the same was being taken as per the orders issued by the Vice-Chancellor of the respondent University, who is the Principal Executive and Academic Officer of the University. According to the respondents, the disciplinary proceedings against the petitioner were not initiated by the Registrar of University, but such proceedings have been initiated by the competent authority i.e. Vice-Chancellor upon the recommendations of the Council of Deans dated 5.2.2003 in a legal and proper manner.

The further case of the respondents is that since there was serious complaint Annex. R/4 against the petitioner involving moral turpitude, therefore, a report of the Committee headed by the Dean of Students Welfare was sought and thereafter, it was placed before the Council of Deans in the meeting held on 10.1.2003 and in that meeting, it was resolved to refer the matter to the

Convenor of the meeting to take statements of the affected candidate. Thus, on the basis of preliminary enquiry, it was decided by the Council of Deans on 5.2.2003 to initiate disciplinary proceedings against the petitioner and show cause notice was issued to him. The relevant portions of the minutes of the meetings of the Council of Deans held on 10.1.2003 and 5.2.2003 are marked as Annex. R/1 and Annex. R/2 respectively.

The further case of the respondents is that these Resolutions of the Council of Deans Annex. R/1 and Annex. R/2 were placed before the Vice-Chancellor of the university for necessary action and since at that time, meeting of the Board of Management was not going to be held soon, therefore, the Vice-Chancellor of the University treating the matter as urgent one, he in exercise of power conferred u/s 12(4) read with Section 12(6) of the Act of 1962 passed necessary orders on the recommendations of the Council of Deans to initiate disciplinary proceedings against the petitioner and asked the respondent No. 2 Registrar of the university to issue memorandum of charges Annex. 1 against the petitioner. In this view of the matter, the disciplinary proceedings were initiated against the petitioner within the legal framework.

The further case of the respondents is that on 21.4.2003, the matter was placed before the Board of Management and the Board of Management in its meeting held on 21.4.2003 passed the resolution in the following manner:-

"Pursuant to COD decision No. 2 dated 5.2.2003 of the Council of Deans giving show cause notice to Prof. Kamal Kapoor, Deptt. of Botany, College of Science, Udaipur regarding a complaint against him, considered for appointment of an Enquiry Officer for Departmental Enquiry and further necessary action in the matter.

RESOLVED to authorise the Vice-Chancellor to appoint an Enquiry Officer and to do the needful in the matter."

Thus, the action of the Vice-Chancellor was approved by the Board of Management and therefore, from every point of view, since Board of Management authorised the Vice Chancellor to appoint Enquiry Officer and to do the needful in the matter, therefore, the action which has been taken by the Vice Chancellor, the same was taken as per the rules and regulations of the University. Hence, the writ petition filed by the petitioner be dismissed.

3. I have heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondents and gone through the materials available on record.

4. There is no dispute on the point that a complaint was made against the petitioner by the students of Science College, Udaipur and the same is Annex. R/4 and on the basis of that complaint Annex. R/4, a preliminary enquiry was got conducted first and, thereafter, a memorandum of charges Annex. I was issued against the petitioner.

5. A bare perusal of Annex. R/1 shows that report of the Committee was considered by the Council of Deans in its meeting held on 10.1.2003 regarding the complaint Annex. R/4 made against the petitioner and it was decided in that meeting that the statement of affected candidate be taken in camera,

6. A bare perusal of Annex. R/2 reveals that a meeting of the Council of Deans was held on 5.2.2003 and on the basis of the preliminary enquiry conducted by the Committee under the Convernorship of Prof. P.S. Ranawat, it was decided that action be taken against the petitioner.

7. Sub-sections (4) and (6) of Section 12 of the Act of 1962 are quoted here:- "Section 12. Power and duties of the Vice-Chancellor:-

(4) The Vice Chancellor shall exercise general control over the affairs of the University and shall be responsible for the due maintenance of discipline in the university.

(6) In any emergency, which in the opinion of the Vice- Chancellor requires immediate action to be taken, he shall take such action as he deems necessary and shall at the earliest opportunity report the action taken to the officer, authority or other body who or which in the ordinary course would have dealt with the matter."

8. Thus, from perusing Sub-sections (4) and (6) of Section 12 of the Act of 1962 it is evident that the Vice Chancellor is the controlling authority of all the affairs of the university and he is responsible for the due maintenance of discipline in the University. Furthermore, in case of any emergency, the Vice- Chancellor is empowered to take immediate action and that action can be subject to further approval of the competent authority.

9. Thus, if under the powers conferred by Sub-section (4) and (6) of Section 12 of the Act of 1962, the Vice-Chancellor passed necessary orders on the recommendations of the Council of Deans to initiate disciplinary action against the petitioner treating the case of emergency and asked the respondent No. 2 Registrar of University to issue memorandum of charges Annex. 1 against the petitioner, by doing so, he has committed no illegality or irregularity and it cannot be said that the action of the Vice Chancellor was without jurisdiction. Whether there was emergency or not, the discretion of the Vice-Chancellor should prevail and this Court under Article 226 of the Constitution of India would not like to interfere with the discretion exercised by the Vice- Chancellor. Therefore, the argument that there was no emergency carries no weight.

10. The argument that Section 12(4) & (6) of the Act of 1962 does not authorise the Vice-Chancellor to initiate disciplinary action is concerned, it carries no weight as when the Vice- Chancellor is controlling authority of all the affairs of the University and he is responsible for the due maintenance of discipline in the University, he has implied power, if occasion arises, to take disciplinary action against any of the Professor of the University. The word "discipline" means

maintenance of a proper subordination in the University and it includes all matters respecting the conduct of the Teachers. Furthermore, "discipline" is the reflection of the character of a society, nation or country. It is the backbone for the advancement and development of a modern nation. Similarly, the Vice-Chancellor being Head of the Institution is responsible for maintaining discipline in the University and for that, if he takes any action against any Professor of the University against whom allegations of misconduct have been made, then from that point of view, it should be deemed that he has implied powers and if such powers are not given to him explicitly, then it should be taken for granted that he has such powers otherwise there will be a chaos in the University. Apart from this, the word "discipline" used in Sub-section (4) of Section 12 of the Act of 1962 means that the Vice-Chancellor has power to take disciplinary proceedings against the person against whom allegations of misconduct have been made. Thus, if the Vice-Chancellor in exercise of power u/s 12(4) & (6) of the Act of 1962 has taken action against the petitioner against whom allegations of misconduct were made, he has committed no illegality in doing so.

11. Not only this, in the present case, the action taken by the Vice-Chancellor in exercise of the powers conferred by Sections 12(4) and (6) on the basis of the recommendations of the Council of Deans was placed before the Board of Management in its meeting held on 21.4.2003 and in that meeting; the action taken by the Vice Chancellor was approved and furthermore, the Vice-Chancellor was authorised to appoint Enquiry Officer and to do the needful in the matter.

12. The learned counsel for the petitioner has argued that at the most if that resolution should be taken for granted, was passed, it does not travel beyond the appointment of Enquiry Officer, but it does not authorise the Enquiry Officer to hold enquiry in a regular manner.

13. In my considered opinion, this argument has no force. When the Vice-Chancellor was authorised to appoint Enquiry Officer, its natural meaning would be that Enquiry Officer was competent to proceed in respect of enquiry against the petitioner.

14. There is also no dispute on the point that through order Annex. 5 dated 30.4.2003, Shri Vijay Raj Garg, a retired RAS Officer was appointed as Enquiry Officer to adjudicate the allegations levelled against the petitioner through memorandum Annex. 1 dated 11.2.2003 and in view of this, if the Enquiry "Officer has proceeded to hold enquiry against the petitioner, it cannot be said that it was without jurisdiction.

15. Furthermore, the sum and substance of the argument of the learned counsel for the petitioner is that the Board of Management, which is Executive Committee, is the only authority to take action against the petitioner. In this case, when the actions taken by the Vice-Chancellor have been approved by the Board of Management in its meeting held on 21.4.2003, therefore, to say that the Vice-Chancellor was not competent to take action against the petitioner

cannot be accepted.

16. The argument that the Disciplinary Authority was the only competent authority to frame definite charges as defined in Rule 86 of the Rules of 1976 is concerned, it may be stated here that there is no difference in the word "Enquiry Officer" and "Disciplinary Authority" and when the Vice-Chancellor was empowered to appoint Enquiry Officer meaning thereby Shri Vijay Raj Garg, who was appointed as Enquiry Officer through order Annex. 5 dated 30.4.2003, would be the Disciplinary Authority so far as the enquiry of the petitioner is concerned and his appointment cannot be said to be without jurisdiction.

17. Similarly, if the memorandum of charges Annex. 1 was issued by the respondent No. 2 Registrar of the University under the orders of the Vice Chancellor, it cannot be said that it was without jurisdiction.

18. Thus, from every point of view, at this stage, it cannot be said that the enquiry which is going to be conducted against the petitioner is without jurisdiction.

19. Before concluding, the position of law with respect to interference under writ jurisdiction of the High Court against the autonomous body like University may be seen.

Position of law with respect to interference under writ jurisdiction of the High Court against the autonomous body like University.

20. The Educational Authorities should be left without interference from the Court and other outside agencies in administering their disciplinary jurisdiction over the matters of examinations and appointments.

21. The interference in matters of University through writ jurisdiction should be made only when:-

(1) That where is a patent and undoubted violation of a provision in the statute or regulation or ordinance governing the particular subject;

(2) That this non-compliance or violation should have directly resulted in a substantial restriction of the service or benefit which a citizen is entitled to get from the University; and

(3) That the direction or relief sought should be such that it should not add to the inconvenience suffered by the public at large, disproportionate to the injustice or inconvenience that is sought to be remedied.

22. Apart from that, the High Court is not a court of appeal over the actions and deeds done by the University and its powers are confined only to seeing that the hedges of law are not over- stepped.

23. In the present case, looking to the averments made in the writ petition and after going through the reply of the respondents, it does not appear that the respondents have acted arbitrarily and in an illegal manner in initiating

disciplinary proceedings against the petitioner. It also cannot be said that the respondents have violated any rules & regulations of the University while ordering initiation of enquiry against the petitioner. The action of the respondents in initiating disciplinary proceedings against the petitioner is within the framework of law.

24. Thus, for the reasons stated above, all the submissions raised by the learned counsel for the petitioner stand rejected and this writ petition deserves to be dismissed.

Accordingly, this writ petition filed by the petitioner is dismissed. No order as to costs.