

(2021) 09 KL CK 0072

In the High Court Of Kerala

Case No : CRP(UTY) NO. 2 Of 2021

Manager, Ansar Arabic College Valavannur, Valavannur P.O.,
Malappuram District - 675 551

APPELLANT

Vs

P.Shamsudheen

RESPONDENT

Date of Decision : 14-09-2021

Acts Referred:

Code of Criminal Procedure, 1973 — Section 482
Indian Penal Code, 1860 — Section 366, 376
Calicut University Act, 1975 — Section 60(9)

Citation : (2021) 09 KL CK 0072

Hon'ble Judges : A.K.Jayasankaran Nambiar, J;Mohammed Nias C.P., J

Bench : Division Bench

Advocate : V.A.Muhammed, K.A.Manzoor Ali, S.P.Aravindakshan Pillay, N.Santha V.Varghese , Peter Jose Christo, S.A.Anand, K.N.Remya L.Annapoorana, Vishnu V.K., Abhirami K. Uday, Kuruvilla Sabu Christy, Premchand R Nair, V Varghese

Final Decision : Dismissed

Judgement

Mohammed Nias,C.P. J

1. The above revision, under Section 60(9) of the Calicut University Act, 1975, is preferred by the Manager of Ansar Arabic College, Valavannur, Malappuram District, an aided college, challenging the order of the Calicut University Appellate Tribunal, Thiruvananthapuram, allowing the appeal filed by the delinquent teacher questioning his removal from service. The Tribunal directed reinstatement with full pay and allowances and treating the period of suspension as duty.

2. The brief facts leading to the case are as follows:

The delinquent, the 1st respondent herein, a lecturer in Arabic, was served with two sets of charges. The first set of charges dated 4.2.2013 (evident from Ext.E6) were (i) that the teacher applied for Leave Without Allowance for five years from 2.6.2011 for seeking employment abroad entered on leave without

getting permission from the authorities concerned and (ii) that a Crime No.1123 of 2012 was registered against him by Tirur Police alleging offences under Sections 366 and 376 of Indian Penal Code, based on a complaint lodged by one Kadheeja, a student of the college.

3. The second set of charges framed on 14.04.2013 (evident from Ext.E8) were (i) on the basis that the registration of the crime and the subsequent events tarnished the credibility and image of the college and defamed the reputation of the college and (ii) that he conducted second marriage without obtaining permission from the Government which is against the conditions of service.

4. The Manager of the College passed an order for formal enquiry and appointed Adv. Sri.C.Anil Kumar as the Enquiry Officer. The 1st respondent herein appeared before the enquiry officer and the copies of records were served on him. On the side of the Manager of the college, MWs 1 to 4 and Exhibits M1 to M22 were marked. The Manager appeared as DW1 and the witness cited by him was examined as DW2. On their side, Exhibits D1 to D3 were marked. The documents relied on by the enquiry officer were marked as Exhibits E1 to E12. On completion of the enquiry, a report was submitted to the Manager stating that the 1st charge in Ext.E6 as well as 1st charge in Ext.E8 was proved and that the 2nd charge in Ext.E6 and the 4th charge in Ext.E8 was not proved (the 2nd and the 4th charges were not proved and that the 1st and 3rd charges were proved).

5. This report was accepted by the Management and show cause notice was issued to the 1st respondent herein calling upon him to state why the penalty of dismissal from service should not be imposed on him. The delinquent teacher replied to the same and after consideration, the Manager passed an order imposing a penalty of dismissal from service on the appellant.

6. Challenging the said order, the delinquent preferred appeal under Section 60(7) of the Calicut University Act, mainly contending that the Manager had already imposed a penalty of censure on him on the very same charge namely, that he availed leave without seeking permission, and therefore, the subsequent charge levelled on the basis of the very same allegation amounts to double jeopardy. His further contention was that he had not committed the offences alleged in the 2nd charge in Ext.E6 and that the Honourable High Court had quashed the FIR in Crime No.1123 of 2012 of Tirur Police Station, and therefore, the allegations raised in the said FIR cannot be made the basis for any charge/disciplinary proceeding. He also had a ground that the newspaper reports relied against him had no evidentiary value at all and he could not have been held responsible for the same. Thus, he prayed for setting aside the order of dismissal made against him.

7. The Tribunal considered the issues framed as follows:-

"(1) Whether the appellant has succeeded in showing that he had been punished twice for the offence of misconduct in the charge under the first head of Ext.E6 memo of charges?

(2) Whether the findings of the Inquiring Authority regarding the charge under the 1st and 3rd heads suffer from any illegality or infirmity?

8. After considering the above points, the Tribunal concluded that regards in charge No.1, namely, he availed leave without permission, there was already disciplinary proceedings initiated, as is evident from Ext.M12, and that it had culminated in imposing the penalty of warning and this is admitted by MW4 during his cross-examination. The Management after administering punishment of censure, reported the same to the Government by Ext.D2. Since, there was nothing on record to suggest that the Government had refused to accept the said report, the proceedings covered by Exhibits D1 and D2, and the charge under the first head of Ext.E6 was initiated on the basis of the very same cause of action, and thus it was found that the first charge in Ext.E6 cannot be made the basis for imposing a penalty on the teacher as it amounts to double jeopardy. In coming to the said conclusion the Tribunal had relied on the judgments of the Hon'ble Supreme Court in Nand Kumar Verma v. State of Jharkhand and others [(2012) 3 SCC 580] and Radhika Kapur and others v. DLF Universal Ltd. [(2004) 13 SCC 343] as well as the judgment of this Court in Suresh V. v. Kerala Small Industries Corporation and others [2020 (6) KHC 741]. However, the Tribunal did not accept the contention of the delinquent that the Rules contained in Appendix 12 A of the Kerala Service Rules (for short 'the KSR') Part I, did not apply to the teachers of the aided colleges. Feeling aggrieved by the decision of the Tribunal as aforesaid, the Manager and the Principal of the college have come up in this revision petition.

9. Heard the learned counsel for the revision petitioners, the learned counsel for the first respondent - delinquent teacher, and the learned Government Pleader.

10. Regarding the third charge, namely (first charge in Ext.E8 additional memo of charges), the Tribunal found that the delinquent teacher had moved the Honourable High Court invoking Section 482 of the Code of Criminal Procedure to quash the proceedings referred to in Ext.M15 (FIR in Crime No.1123 of 2012 of Tirur Police Station). In the said proceedings Ext.D3, an affidavit was filed by the defacto complainant therein, suggesting that the allegations raised against the delinquent were false. By Ext.M21 judgment, the Honourable High Court had quashed the aforesaid FIR. On that basis, the Tribunal held that since the Management did not take any steps to independently prove the allegation regarding the commission of offences alleged in the charge under the first head of Ext.E8, the same cannot be made a ground for proceeding against him. The Tribunal also found that Exhibits M1 to M5 are inadequate and inadmissible in evidence in so far as the testimonies of MWs 1 to 4 are based on hearsay and not on any direct knowledge and resultantly held that the findings of the Enquiry Officer, on the charge under the first head of Ext.E8 memo of charges, to be unacceptable and untenable. The Tribunal found that even according to the disciplinary authority the remaining charges in Exhibits E6 and E8 were not proved and the report holding so was accepted by the Management. In that view

of the matter, the Tribunal allowed the appeal holding that the delinquent is entitled to get reinstatement and treating the period of suspension as a period spent on duty and directed to full pay and allowances for the said period.

11. Learned counsel for the revision petitioners argued that the order of the appellate Tribunal is erroneous as the Tribunal mistook the earlier action of censure meted out to the 1st respondent herein as a formal disciplinary action whereas it was just an administrative action, and therefore, the finding of double jeopardy was clearly an error of law. As regards the interference by the Tribunal on the 3rd charge (first charge in Ext.E8 additional memo of charges), the Tribunal exceeded its jurisdiction by resorting and examining the evidence as though it was a criminal trial and did not notice the fact that the yardstick is different in a disciplinary proceeding. The learned counsel also argued that the culmination of the criminal proceedings was concerning the wrong committed to the society, whereas, in the disciplinary proceeding, the conduct of the delinquent is adjudged by the authority to test whether such conduct would come under the parameters of misconduct specified in the Service Rules. It is his further submission that the disciplinary proceeding being independent of the criminal proceedings, the finding of the enquiry officer had to be upheld. The last of the submission was that even if there is any lacuna in the enquiry, the Tribunal ought to have ordered a de novo enquiry instead of reinstating him.

12. The learned counsel for the respondent countering the submissions of the revision petitioners submitted that the charge under the first head in Ext.E6 cannot be maintained at all, as on the basis of the very same allegation proceedings were initiated on the basis of Ext.M12 containing directions for initiating disciplinary action and the same had culminated in imposing a penalty of censure and the said fact being admitted in cross-examination by MW4, which proved that Ext.D1 show cause notice dated 3.5.2012 to the delinquent was issued in which he had given Ext.M13 reply. The Management after the culmination of the said proceedings, administered warning which was evident from Ext.D2, and the said report was submitted to the Government. Exhibits E6 and E8 memos were issued only in the year 2013, much after the submission of Ext.D2 report, and since the basis of both Ext.M12 as well as the charge in Ext.E6 being the same, there is no warrant at all for maintaining a charge levelled as one noted above. Learned counsel for the respondent also argued that the crime registered against him having been quashed, the same cannot be used or made the basis for any action much less a disciplinary proceeding.

13. It is trite that there can be only one enquiry in respect of a charge for particular misconduct and the only exception is when due to some technical or other reason, the 1st enquiry or punishment or exoneration is found bad in law, can a 2nd enquiry be initiated. In other words, only when a completed enquiry proceedings are set aside by a competent forum on a technical ground or on the ground of procedural infirmity, can a fresh proceeding on the same charge be maintained. In the instant case, admittedly, the allegations which found part of

the first charge were very much the same as in the earlier one which culminated in administering a warning to the delinquent. The second penalty based on the same charge would tantamount to double jeopardy. We are in agreement with the finding of the tribunal as regards punishment meted out on charge No.1 in Ext.E6 and we confirm the said findings.

14. Coming to the second contention, the learned counsel for the revision petitioners submits that in the third head (first charge in Ext.E8), there has been no honourable acquittal therefore, quashing of FIR in Crime No.1123 of 2012 of Tirur Police Station itself will not help the delinquent and that the same can form basis for action in a disciplinary proceedings. We cannot accept this contention as Ext.D3, the affidavit filed by the defacto complainant in Crime No.1123 of 2012 suggested that the allegations raised against the delinquent were false and that the enquiry officer's finding that quashing of the FIR cannot mean that the incident alleged in the FIR had not occurred. The Tribunal on appeal found that the defacto complainant was not cited as a witness in the disciplinary proceedings nor has she given any evidence in support of the allegation mentioned in the FIR. The Tribunal had further held that the disciplinary authority, the Management had not taken any steps to prove the allegation independently regarding the commission of the offence alleged in the charge in the first head of Ext.E8. These findings of the Tribunal according to us are in support of the facts obtaining in this case and we see no error in the said findings based on sound reasoning. We, therefore, repel the argument of the revision petitioners. As stated above, the enquiry officer had only found that the first charge in Ext.E6 and the first charge in Ext.E8 were proved and the same was accepted by the Management. In that view of the matter, the Tribunal as discussed above allowed the appeal of the delinquent. Nothing more remains to be considered in this revision.

15. We find no infirmity at all in the Tribunal holding that the delinquent is entitled to get reinstatement as per Rules and that the period of suspension be treated as a period spent on duty for entitlement to get full pay and allowances.

In view of the above discussion, we find no merit in the Civil Revision Petition, and the same is hereby dismissed. No order as to costs.