

(2016) 02 KAR CK 0017

In the Karnataka High Court

Case No : Writ Petition No. 38499 of 2014 (GM-KLA)

Shivaraj B.

APPELLANT

Vs

The State of Karnataka and Others

RESPONDENT

Date of Decision : 02-02-2016

Acts Referred:

Citation : (2016) 02 KAR CK 0017

Hon'ble Judges : Mohan M. Shantana Goudar and K.N. Phaneendra, JJ.

Bench : Division Bench

Advocate : B.B. Bajentri, Advocate, for the Appellant;

Final Decision : Dismissed

Judgement

Mohan M. Shantana Goudar, J.—1. The order dated 26th June 2014 passed by the University of Mysore, issuing charge memo against the petitioner is called in question in this writ petition.

2. Averments of the petition reveal that the petitioner herein is working as a Senior Professor in Business Administration in the Bahadur Institute of Management Science, Manasagangotri, Mysore.

3. It is not in dispute that the Bahadur Institute of Management of Science is a part of the Mysore University. Consequently, it is clear that the petitioner is a professor working in Mysore University.

4. Two charges are framed against the petitioner. The first charge reveals that the petitioner attended central valuation work of Karnataka State Open University during working hours from 9.30 a.m. to 6 p.m. on various dates. As many as more than 2500 answer scripts are valued by the petitioner and he has received remuneration for the aforesaid work. Though the petitioner has signed the attendance register maintained by the Mysore University indicating that the petitioner was working in University on those days, he allegedly worked in Karnataka State Open University during the relevant point of time and received

remuneration from Karnataka State Open University, petitioner is shown as having been present in Mysore University also and drew salary as usual.

5. The second charge states that the petitioner attended examination work of Mangalore University in Mangalore and received remuneration from Mangalore University after evaluating answer scripts. He has attended work at Mangalore University at Mangalore for about 24 days during the year 2008-2010, though he marked his presence in Mysore University.

6. The sum and substance of the allegations against the petitioner is that though he marked his presence in the attendance register of Mysore University on certain dates; he worked in different universities during the relevant point of time and drew the remuneration from those Universities. The University having found the action of the petitioner as unbecoming of a teacher of the University and has committed grave misconduct punishable after following Statutes 9 & 10 of Mysore University Employees (CCA) Statutes, 1983, issued the charge memo as per Annexure - N dated 26th June 2014, which is impugned in this writ petition.

7. In the very charge memo which is impugned in the writ petition, the University has mentioned about the report of Lokayuktha dated 20.2.2014, wherein it is held that the Prof. Shivaraj is prima facie guilty of having signed the attendance register of his department and simultaneously worked in other Universities in connection with examinations and received remuneration. The Lokayuktha has recommended the State Government to conduct Departmental Enquiry against the petitioner and to submit a report to the Government. Accordingly, the Mysore University has issued Statement of Imputations as mentioned supra.

8. Shri Bajentri, learned counsel for the petitioner submits that Lokayuktha has no jurisdiction to enquire into the allegations found against the petitioner inasmuch as the petitioner, if has committed any fault, is liable to be enquired into by the University as per the provisions of the Karnataka Universities Act, 2000, as per the Mysore University Statutes. In other words, he submits that the report of the Lokayuktha is void ab initio and it cannot be looked into at all. He relies on the judgment of this Court in the case of Prof. S.N. Hegde and Another vs. The Lokayuktha, Bangalore and Others, reported in ILR 2994 KAR 3892, to contend that the report submitted by the Lokayuktha is without jurisdiction, void ab initio and a nullity. Thus, according to him, the charge memo issued against the petitioner by the Mysore University based on the Lokayuktha report is also liable to be quashed.

9. The said submissions are opposed by Sri Shivaramu, learned counsel appearing on behalf of the University contending that the charge memo is issued by the University independently may be based on Lokayuktha report dated 20.2.2014, at the most it can be stated that the University has got information about the illegality committed by the petitioner from Lokayuktha report.

According to him, the report of the Lokayuktha is not the basis for framing of charges.

10. It is no doubt true that the impugned order dated 20.6.2014 issued by the University of Mysore vide Annexure-M which is impugned in this writ petition states that on the basis of the documents enclosed to the report of the Lokayuktha, charges are framed by the University which means that the University has taken the assistance of the Lokayuktha report also. But that does not mean that the University has no jurisdiction to proceed against the petitioner to consider the charges levelled against him. While issuing the order dated 26th June 2014, the University of Mysore has referred to the proceedings of the Syndicate Meeting dated 30th May 2014 and 23.6.2014 at the time of framing of charges. The impugned order also refers to the report of the Lokayuktha. In the similar circumstances this court in the afore mentioned case has stated that the Lokayuktha has no jurisdiction to investigate into the allegations found against the professors and Vice Chancellor and consequently the report of Lokayuktha is without jurisdiction, void, ab initio and a nullity. The very judgment of the learned single Judge was carried before the Division Bench in W.A. Nos. 1510-1511/2014 which came to be disposed of on 9th June 2011 with the following observations:

"In view of the statement advanced at the hands of the learned counsel for the rival parties, we are satisfied in disposing of the instant writ appeals by permitting the appellants to treat the report received from the Karnataka Lokayukta, as an information against respondent No. 1; and in case, on examining the same, the appellants feel that any action is called for, it shall be open to the appellants to initiate the same in accordance with law."

(Emphasis Supplied)

11. The conclusion reached by the Division Bench in W.A. Nos. 1510-1511/2004 as found supra, makes it clear that the report of Lokayuktha can be treated as an information against the petitioner herein. Therefore, in view of the clear dictum laid down by the Division Bench of this Court in W.A. Nos. 1510-1511/2004, it can be safely concluded by us that the report adverted to by the University of Mysore in the statement of imputations can be treated as the source of information and nothing more.

12. We further make it clear that the report of Lokayuktha should not be taken as the basis for conducting enquiry.

13. The enquiry should be conducted based on the charge memo dated 16.4.2014 independently and the conclusion shall be arrived at by the University based on the materials to be collected during the course of enquiry to be conducted by the University. The University shall not be influenced by the report of the Lokayuktha in whatsoever manner. In other words, the report of the Lokayuktha should be ignored for all purposes except that it can be treated as an information to initiate proceedings and not for any other purpose.

14. We further make it clear that the report of the Lokayuktha dated 20.2.2014 submitted to the State Government should be ignored by the Mysore University while conducting the enquiry against the petitioner. The enquiry should be conducted in unbiased manner and without being influenced by the Lokayuktha report. The conclusion should be reached by the enquiry officer and the disciplinary authority based on the materials to be collected by the enquiry officer and not based on the information of the Lokayuktha. There is no need to send the enquiry report to the Lokayuktha after completion of the enquiry.

The petitioner is permitted to submit his written statement to the imputation of charges within 15 days from the date of receipt of a copy of this order before the enquiry officer.

15. With the aforesaid observations, the writ petition stands dismissed.