

**(2007) 04 KAR CK 0024**

**In the Karnataka High Court**

**Case No : Writ Petition No. 15397 of 2006**

Sri S.M. Honnappa Gowda

APPELLANT

Vs

The Bangalore University

RESPONDENT

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**Date of Decision : 11-04-2007**

**Acts Referred:**

Bangalore University Statutes — Statute 28.5 (1) (vi)

**Citation :** (2007) ILR (Kar) 2414 : (2007) 6 KarLJ 104 : (2007) 4 KCCR 224 SN

**Hon'ble Judges :** N.K. Patil, J

**Bench :** Single Bench

**Advocate :** H. Subramanya Jois for D. Aswathappa, for the Appellant; M.G. Javeedahmed Khan, for the Respondent

**Final Decision :** Allowed

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## **Judgement**

N.K. Patil, J.—The petitioner questioning the legality and validity of the impugned order dated 1-2-2006 bearing No. EST-1/E2/Per/377/94 passed by the first respondent and the order dated 11-10-2006 bearing No. G.S.1 BUM 2006 passed by the second respondent vide Annexures "H" & "L" respectively, further the petitioner seeking a direction directing the first respondent to reinstate the petitioner with all consequential benefits retrospectively, has presented the instant writ petition.

2. The petitioner has joined the first respondent University in the year 1977 as a Publication Assistant by direct recruitment. Having regard to his seniority, requisite qualification and eligibility, he was promoted to the post of Assistant Director, Prasara and later on he was placed as Director in-charge to the first respondent University in Printing Press. For the academic year 1999-2000 the Audit Department had conducted audit in respect of the accounts of the Printing Press. On the basis of the audit report, after lapse of two years the petitioner was kept under suspension pending enquiry in the year 2002. Thereafter after issuing the articles of charges, the enquiry was conducted with respect to the alleged 12 charges. The Enquiry Officer has conducted the enquiry. Out of 12

charges, charge No. 2 was proved partly and charge No. 9 was proved fully and remaining 10 charges were not established and accordingly the Enquiry Officer submitted the report to the Disciplinary Authority for taking necessary action as deemed fit along with all the necessary records. The Disciplinary Authority has issued a show cause notice to the petitioner calling for the reply. The petitioner has submitted his detailed reply on 27-12-2005. It runs about six pages. The matter was placed before the Syndicate being a Disciplinary Authority, as provided under the Bangalore University Statute. After verification of the report submitted by the inquiry Officer and other relevant material, the Syndicate of the first respondent passed the resolution on 18-1-2006. After obtaining necessary approval from the Vice Chancellor in that regard, the Registrar of the first respondent University, has issued the impugned order dated 1-2-2006 vide Annexure "H" stating that in exercise of the powers vested under Statute 28.5 (1) (vi) of Bangalore University, the petitioner is Compulsorily Retired from service with immediate effect for having violated Statute 27.3(1)(ii) of Bangalore University for the failure to maintain devotion to duty. Assailing the correctness of the order passed and the communication dated 1-2-2006 passed by the first respondent University, the petitioner has filed the appeal as provided under the relevant Statute of the Bangalore University before the second respondent. The second respondent in turn in its proceedings dated 11-10-2006 has opined that the Officer who was entrusted with the responsibility did not discharge his duties with due care. Once the Officer of that rank is given the responsibility at in-charge, he is fully in-charge and no casual approach can be adopted and considerable financial loss has been caused to the University by an Officer of the rank of the Assistant Director. Therefore he opined that the Syndicate has taken the right decision which should instill a sense of responsibility to others also and he will not think proper or fair to intervene in the case. The decision of the Syndicate to compulsorily retire the petitioner, the Assistant Director, for gross negligence of the responsibility leading to severe loss to the University, is upheld and he does not find much substantial merit in the grounds urged by the petitioner and dismissed the appeal upholding the disciplinary orders of the University. Being aggrieved by the impugned order passed by the Disciplinary Authority, and the Appellate Authority, the second respondent, the petitioner herein felt necessitated to present the writ petition for appropriate relief at stated supra.

3. I have heard the learned Counsel for the petitioner and the learned Counsel appearing for respondents 1 and 2. The principal submission canvassed by the learned Counsel appearing for the petitioner is that the impugned order passed by the Disciplinary Authority and also the Appellate Authority are liable to be vitiated in view of the non-compliance of the mandatory provisions of Statute No. 28.5(1)(vi) of the Bangalore University Statute. To substantiate his submission he pointed out and has taken through the evidence of the petitioner and specifically pointed out at page 88 of the report, the further cross-examination which goes to show that there was leakage of water in the press building due to rains and at that time some stock of paper got wet but it was not damaged and

the paper was used for Press work. When there is no loss as such has been caused to the University, the question of imposing compulsory retirement that too without considering the oral and documentary evidence on the file, neither by the Disciplinary Authority nor the Appellate Authority does not arise and further vehemently submitted that the penalty imposed to the petitioner compulsorily retiring the petitioner from service, is dis-proportionate to the gravity of the offence. If Where is loss caused, it rightly pointed out by the Enquiry Officer as per charge No. 9, they might have recovered the said amount with reasonable interest or imposed withholding the increments, but not by punishing the petitioner by compulsorily retiring from service and the said act is not at all justifiable. He specifically pointed out Statute 28.5 (1) (iii)(b), which deals with recovery from the pay of any part or whole of any pecuniary loss caused by negligence or breach of orders. In the instant case, the report submitted by the Enquiry Officer out of 12 charges, 10 charges have been exonerated as not proved and charge No. 2 and charge No. 9 are partially proved. Therefore the Disciplinary Authority and the Appellate Authority have committed a grave error and proceeded to impose the dis-proportionate punishment to the petitioner which cannot be sustainable. To substantiate his submission he placed reliance on the judgment of the Apex Court regarding mis-conduct in the case of State of Punjab and Others Vs. Ram Singh Ex. Constable, and further he placed reliance on another judgment of the Apex Court in the case of Ranjit Thakur Vs. Union of India (UOI) and Others, and submitted that the judicial review generally speaking, is not directed against a decision, but is directed against the "decision making process". The question of the choice and quantum of punishment is within the jurisdiction and discretion of the Court-Martial. The doctrine of proportionality, as a part of concept of judicial review, would ensure that even on an aspect which is, otherwise, within the exclusive province of the Court-Martial, if the decision of the Court even at to sentence is an outrageous defence of logic, then the sentence would not be immune from correction. Irrationality and perversity are recognised grounds of judicial review. In the present case, the punishment is so strikingly dis-proportionate as to call for and justify interference and it could not be allowed to remain uncorrected in judicial review. Therefore, he submitted that the impugned order passed by both the authorities are liable to be set aside and the matter requires re-appreciation and reconsideration by the Disciplinary Authority afresh.

4. Per contra, the learned Counsel appearing for respondents 1 and 2, inter alia, contended and substantiated the impugned orders passed by both the parties are within the parameters and within the Statute of the Bangalore University and no error nor material irregularity as such committed and that it has been proved beyond reasonable doubt partially charge No. 2 and charge No. 9 fully proved regarding dereliction of duty and he being Head of the first respondent Institution, no damage or loss should be caused to the property of the University having regard to the length of service and taking total number of service and the family back ground, the Syndicate took a lenient view and imposed compulsory

retirement instead of dismissal from service. Therefore, be submitted that the impugned order passed by both the authorities are in accordance with law and interference by this Court is not justifiable nor the petitioner has not made out any ground to interfere with the well founded orders passed by both the authorities.

5. I have heard the learned Counsel appearing for the petitioner and the learned Counsel appearing for the respondents and after careful evaluation of the entire relevant material available on record and after considering the submissions made by the counsel appearing for both the parties, the points that arise for consideration in the instant case are as follows:

(i) Whether the impugned orders passed by the Disciplinary Authority and the Appellate Authority are sustainable in law?

(ii) Whether the orders passed by the Disciplinary Authority and the Appellate Authority are in strict compliance of the mandatory provisions of the Bangalore University Statute which governs the case on hand?

6. After careful perusal of this order passed by the Disciplinary Authority vide Annexure-A and the Appellate Authority vide Annexure "L" it is manifest on the face of the under passed by both the authorities that they have committed an error of law much less material irregularity and proceeded to pass the impugned orders contrary to the provisions of the Statute. The Disciplinary Authority has failed to consider the oral and documentary evidence and proceeded to accept the report submitted by the Enquiry Officer to the effect that charge No. 2 was partly proved and charge No. 9 was fully proved and other 10 charges were not established. On charge No. 2 the inquiry Officer held that though the loss to the tune of RS. 3,19,500/- has not been established, the Delinquent Officer was found guilty of omission in not taking action against the supplier for replacing of cut papers. Whereas charge No. 9 was that the Delinquent Officer had charged 200 reams of paper on 27-1-2000 as damaged due to rain water without obtaining prior permission of the higher authorities, the loss to the extent of 74,302/-. The Enquiry Officer held that this charge was proved. The Disciplinary Authority has issued the show-cause notice to the petitioner. After receipt of the show-cause notice, the petitioner has filed detailed reply vide Annexure-"G" dated 27-12-2005 explaining the charge No. 2 and 9 and submitted with cogent reasons that he is not responsible for the same and there is no loss as such, caused to the University. The said detailed reply given has not been considered properly by the Disciplinary Authority except stating that the matter was placed before the Syndicate at the meeting held on 18-1-2006 and the Syndicate examined the Enquiry Report and the explanation of the petitioner and after discussion accepted the Enquiry Report and rejected the explanation of the petitioner and came to the conclusion that the petitioner is guilty of articles of charges 2 and 9 and taking a lenient view resolved to impose punishment of Compulsory Retirement under Statute 28.5(1)(vi) of the Bangalore University Statutes. The said reasoning given for accepting the report of the Enquiry Officer

in toto and rejecting the submission of the petitioner in a starlight jacket, cannot appreciable. It is significant to note that the Enquiry Officer has specifically notified that due to dereliction of duty of the head of the unit, it is his responsibility to see that no property is lost or caused damage and recorded a finding that there to loss of Rs. 74/302/- caused to the University. When that is the finding in respect of charge No. 9, the Enquiry Officer and the Disciplinary Authority ought to have applied relevant Statute which is governing the facts and circumstances of the case. As per Statute 28.5 nature of penalties to be imposed, Sub-clause (1)(iii)(b) is applicable. Instead of applying the relevant provisions of the Statute they have referred Statute 28.5(1)(vi) compulsory retirement that too without considering the documentary evidence proceeded to impose the punishment dis-proportionately and that too without considering the explanation submitted by the petitioner nor taken into consideration service rendered by the petitioner. It is not the case of the University that the petitioner has made any loss or dereliction of duties earlier when he was holding different posts in the respondent University. Therefore, in view of non-conducting of proper enquiry as envisaged in the Bangalore University Statutes, I am of the considered view that the impugned order passed by both the authorities cannot be sustainable. Hence, it is liable to be set aside.

7. As per the service jurisprudence, regarding service law, compulsory retirement the formation of opinion regarding compulsory retirement considered by the Apex Court in the case of State of U.P. and Another Vs. Lalsa Ram, wherein it is observed that the principle of natural justice have no place in the context of any order of compulsory retirement. This does not mean that judicial scrutiny is excluded altogether. While High Court or this Court would not examine the matter as an Appellate Court, they may interfere if they are satisfied that the order is passed (a) mala fide, or (b) that is based on no evidences, or (c) that it is arbitrary- in the sense that no reasonable person would form the requisite opinion on the given material, in short, it is to be found to be perverse order. In the instant case, as rightly pointed out in that proceeding paragraphs the Disciplinary Authority has not considered properly the oral and documentary evidence. It has been proved in the cross-examination as recorded by the Enquiry Officer that no damage has been caused as such. The only portion out of 200 reams of paper about 20 to 30 reams of papers have been partially damaged due to rains. But further it is recorded in the Enquiry Report by the Enquiry Officer that after damaged portion of the paper has been cut as wasted, remaining paper has been utilised by the press. This aspect of the matter has not been looked into by both the authorities. It is proved beyond reasonable doubt, that the authority is unreasonably harsh in proceeding to pass the order imposing the penalty of compulsory retirement which to dis-proportionate to the gravity of the offence. If the petitioner to found responsible for his dereliction of duty he is liable to be punished within the parameters of the Statute and not behind. It emanates that, from the relevant materiel available before the Court, the Court can make scrutiny of the same. It is difficult to note that the ratio of

the well settled proposition of law laid down by the Apex Court with regard to Developments in judicial review of administrative action, wherein the Supreme Court has held with reference to the application of doctrine of proportionality in case of *The Commissioner of Police and Others Vs. Syed Hussain*, which reads thus:

"Even assuming that a time has come where the Supreme Court can development "administrative law" by following recent decisions of the House of Lords, it is not one of such case where the doctrine of proportionality should be invoked. As held in *ex parte Daly* case (2001)3 All ER 433(HL), the depth of judicial review and the deference due to the administrative discretion vary with the subject matter: for it may well be that the law can never be satisfied in any administrative field merely by a finding that the decision under review is not capricious or absurd and thereafter the doctrine of proportionality has to be applied in appropriate case is the depth of judicial review will depend upon the facts and circumstances of each case.

Further in the case of *Union of India v. Dwarka Prasad (sic)Tivrai*'s case reported in AIR 2006 SCW 5185, has held that in view of what has been stated in the *Wednesbury*'s case the Court would not go into the correctness of the choice made by the administrator open to him and the Court should not substitute its decision to that of the administrator and the scope of judicial review is limited to the deficiency in decision making process and not the decision". To put differently, unless the punishment imposed by the Disciplinary Authority or the Appellate Authority shocks the conscience of the Court or the Tribunal, there is no scope for interference. Further, to shorten litigation it may, in exceptional and rare cases impose appropriate punishment by recording cogent reasons in support thereof. In a normal course if the punishment imposed to shockingly disproportionate, it would be appropriate to direct the Disciplinary Authority or the Appellate Authority to reconsider the penalty imposed. The said decision has been recently followed and reiterated by the Apex Court in *Union of India and Anr. v. K.G. Soni* reported in 2006(6) SC 389 following the decision in the case of *Damoh Panna Sagar Rural Regional Bank and Another Vs. Munna Lal Jain*, . After the ratio of the law laid down by the Apex Court, applied to the facts and circumstances of the case on hand, I am of the considered view that the penalty imposed by the Disciplinary Authority confirmed by the Appellate Authority is not appropriate, having regard to the nature and gravity of the charges and the dereliction of duty of the petitioner. In view of non-appreciation of the oral and documentary evidence and report submitted by the Enquiry Officer and the proceedings contrary to the relevant provisions of the Statutes which governs the impugned order passed by both the authorities, the same cannot be sustainable and liable to be set aside.

8. Having regard to the facts and circumstances of the case, the impugned punishment and taking into consideration the factual and legal aspect of the matter, the instant writ petition is liable to be succeeded for the following

reasons:

The writ petition is allowed. The impugned order passed by the Disciplinary authority vide Annexure-H dated 1-2-2006 and the order passed by the Appellate Authority vide Annexure-"L" dated 11-10-2006 are hereby set aside. The matter stands remitted back to the Disciplinary Authority for reconsideration afresh and taking appropriate decision in strict compliances of the mandatory provisions of the University Statute and after considering oral and documentary evidence on record and to dispose of the same as expeditiously as possible within three months from the date of receipt of a copy of this Order.