

(2002) 11 KL CK 0098

In the High Court Of Kerala

Case No : W.A. No's. 767 of 2000 and 890 of 2001

Sujatha, S.

APPELLANT

Vs

Controller of Examination and Others

RESPONDENT

Date of Decision : 27-11-2002

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2002) 11 KL CK 0098

Hon'ble Judges : Jawahar Lal Gupta, C.J;A.K. Basheer, J

Bench : Division Bench

Advocate : C.K. Abdul Jabbar and P.P. Thajudeen, for the Appellant; V.K. Mohammed Yousef, for Respondents 1 and 2, for the Respondent

Judgement

Jawahar Lal Gupta, C.J.—Miss. Sujatha, the writ Petitioner appeared for the second year Pre-degree Examination in April, 1998 in the subject of Zoology. During the course of the examination she was found in possession of a text book. On 21st October 1998, a show cause memo was issued to the candidate in which it was alleged that "the following charges against the candidate have been proved:

(1) Brought a text book into the examination hall.

2 Copied from it.

It was further observed that the Syndicate in consultation with the Sub Committee on Students' Welfare and Discipline had provisionally decided to:

(1) Cancel the examination taken by the candidate in April, 1998.

(2) To debar him/her from appearing for any examination of the University earlier than March, 1999.

She was called upon to "show cause within 15 days from the date of the receipt of this communication why the provisional decision should not be confirmed". A copy of the memorandum is at Ext.P-1. The Petitioner submitted her explanation

vide letter dated 30th October 1998. A copy of the letter is at Ext.P-2. On 4th November 1998, the candidate was directed to appear before the Controller of Examinations for personal hearing/oral enquiry. She was also asked to specify the names of witnesses she desired to be examined at the oral enquiry. A copy of the communication is at Ext.P-3. She had appeared for the oral enquiry on the appointed day. However, no decision was communicated. She addressed a letter dated 18th December 1998 to the Controller of Examinations for supplying her the requisite information. A copy of this communication is at Ext.P-5. This was followed by reminders dated 20th May 1999 and 4th October 1999. Copies of the communications are at Exts.P-6 and P-7. Even the postal receipts have been produced. However, the University did not move. Resultantly, the candidate approached this Court through a petition under Article 226 of the Constitution. The petition was heard by a learned Single Judge of this Court. Vide order dated 16th February 2000, the petition was disposed of. The learned Single Judge found that the University had failed to take a final decision in the matter. As a result, the student had been unable to appear in the examination. She had suffered on account of "the wilful delay in the matter...". Thus, the learned Single Judge disposed of the petition with the following observations:

In the above circumstances, if the University is not reviewing the punishment and not publishing the result of the 1998 examination, she should be compensated for the unnecessary delay and Petitioner should be paid Rs. 10,000 as compensation for long and unexplained delay which is reiterated in paragraph 7 of the counter statement itself. The matter should be placed in the next meeting of the Syndicate itself and the decision should be communicated to the Petitioner expeditiously as Petitioner had already lost about two years. If Ext.P-1 order is confirmed and decision is informed, she can at least pay fees and prepare for the next available examination without wasting further time.

2. Not satisfied with the above directions, the writ Petitioner has filed Writ Appeal No. 767 of 2000. Surprisingly, even the University has filed Writ Appeal No. 890 of 2001.

3. On behalf of the student, it has been contended that, as a result of the inaction on the part of the University she has suffered irreparable loss. Even if the result of the examination taken by the Appellant in April, 1998 was cancelled, she would have been entitled to appear for the examination held in March/April, 1999. Since the Respondent University had failed to pass the order despite the various communications sent by the Appellant, it should now be directed to declare the result of the original examination taken in April, 1998 and to compensate her for the loss of two academic years.

4. On the other hand, Mr. Mohammed Yousef appearing for the University has contended that the candidate had been found to be in possession of the book. The matter had remained pending for consideration of the Syndicate. In the year 1999, the candidate had filed O.P. No 29829 of 1999. Thereafter, the matter was not decided as it was sub judice. Soon after the Judgment was delivered, the

Syndicate had decided the matter vide order dated 24th February 2000. Thus, there was no fault on the part of the University Counsel further submits that the University is an autonomous body. The learned Single Judge has erred in awarding compensation to the candidate.

5. The conduct of the University in the present case has caused us considerable concern. Admittedly, the candidate had appeared in the examination held in April, 1998. In the examination held on 21st April 1998 the candidate was allegedly found to be in possession of a book. After that a the cause notice was issued to the candidate vide letter date October 1998. She had submitted her explanation on 30th October 1998. She had appeared for the oral enquiry on 10th November 1998. Thereafter, no action was taken by the University till 24th February 2000. In the show cause notice a penalty of cancellation of the examination held in April, 1998 and to debar her from appearing in any examination earlier than March, 1999 had been proposed. Even if the explanation furnished by the candidate was not to be accepted, she would have been entitled to appear in the examination in April, 1999 However, the failure of the University to decide the matter resulted in the loss of an academic year. Why did the University fail to decide the matter? No explanation has been given either in the memorandum of appeal or even at the hearing before this Bench. No reason for failure to take a decision for such a long lapse of time has been advanced. In fact, a perusal of the records shows that the candidate had been continuously reminding the University from 18th December 1998 to 4th October 1999 to declare her result. Despite that nothing was done. The facts as appearing on the record show that there was a culpable delay on the part of the University. No explanation for such a callous indifference has been offered. In this situation, we are clearly of the view that the University had failed to perform its duty fairly and in accordance with law.

6. Mr. Mohammed Yousef submits that the learned Single Judge has erred in directing the payment of compensation to the candidate. We are unable to accept this contention. In fact, on consideration of the matter, we are satisfied that the compensation awarded to the candidate on account of the loss of an academic year was not even proportionate to the actual damage that she had suffered in her career.

7. Mr. Yousef submits that the candidate was guilty of misconduct. The University had taken a final decision soon after the writ petition filed by her had been decided. The proposed punishment had been upheld. On the other hand, Counsel for the candidate submitted that the action of the University in cancelling the result of the examination held in April 1998 should be annulled.

8. Normally, a writ Court is reluctant to interfere with the orders passed by an academic body. This reluctance is still greater in cases where orders are passed in the exercise of disciplinary jurisdiction. However in the present case, we find that the penalty had been proposed against the Petitioner on the basis that she had not only carried a book to the examination hall but had even copied from it.

We have repeatedly asked Mr. Yousef to refer to any evidence on the file which may even remotely support the allegation of the Petitioner having copied any material from the book. In this situation it is clear that one of the grounds on which the penalty of cancellation of the examination and debarring her from appearing in any other examination till March, 1999 was proposed is non-existent. Still further, another factor which has been pointed out by the Counsel for the candidate is that whenever a student is found in possession of some material the original answer book is taken away and a fresh answer book is given. In the present case, no second answer book is even alleged to have been offered to the candidate. It also appears that the Petitioner was given a show cause notice on 21st October 1998. In this notice, it was observed that the two charges had been proved. How? When? Nothing has been pointed out from the record to show that the competent authority had recorded the finding after the grant of an adequate opportunity to the candidate. Thus, there is an inherent defect in the proceedings. Yet another and the more important aspect of the case is that on account of the inaction of the University the candidate was not only unable to appear in the examination in the year 1999 but the final order was not passed till the year 2000. Factually, we are informed that the candidate has not taken any examination till today on account of the initial inaction and the subsequent order passed by the University. The result is that for the alleged fault in carrying the book to the examination hall the candidate has lost five academic years by now.

9. There is another aspect of the matter. The decision taken by the Syndicate in its meeting held on 24th February 2000 was communicated to the candidate vide letter dated 10th March 2000. By this communication the candidate was informed as under:

1. The Syndicate at its meeting held on 24th February 2000 has resolved that the decision of the Syndicate dated 24th September 1998 to debar Kumari Sujatha, S. from appearing any examinations before March, 1999 shall not be reconsidered on the basis of her representation.

2. The examination taken by her in April, 1998 be cancelled.

3. She be debarred from appearing for any examination earlier than in April/May 1999.

A perusal of the above shows that in the show cause notice it was proposed that the candidate shall be debarred from appearing in any examination before March, 1999. This implied that she would be eligible to appear in March or April, 1999. However, the Syndicate had decided to debar her from appearing for any examination "earlier than in April/May 1999". The punishment was, thus, in excess of the penalty as had been initially proposed. This action of the Syndicate cannot be sustained.

10. Taking the totality of the circumstances into consideration, it is clear that there was an unexplained delay on the part of the University in not considering

and deciding the matter. Still further, the penalty imposed by the final order was in excess of what had been provisionally proposed in the show cause notice. As a result of the inaction on the part of the Respondent University, the candidate has lost more than four academic years of her career. How to compensate?

11. Assuming that the candidate had been negligent and careless in carrying a book to the examination hall, we are satisfied that the punishment that she has suffered is far in excess of the misconduct which was alleged to be established. Still further, it is also apparent that in the reply filed by the candidate she had given certain explanation. It does not appear to have been considered. In any event, no reasons for rejecting it has been indicated. Directing the University to reconsider the matter shall only delay the matter further. It would cause a greater loss to the candidate. In this situation, we find that the candidate has already suffered more punishment than she deserved. After this long lapse of time even syllabus etc. may have changed. Thus, we consider it appropriate to direct that the Petitioner's answer books of the Second Year Pre-Degree examination taken by her under Register No. 52245 in April, 1998 shall now be got assessed and her result shall be declared on that basis. The needful shall be done within one month from the date of receipt of a copy of this order.

In view of the above, Writ Appeal No. 767 of 2000 is allowed. Writ Appeal No. 890 of 2001 is dismissed. Since we have upheld the order of the learned Single Judge in awarding Rs. 10,000 as compensation to the candidate, we are not passing any order for payment of costs against the University.