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Decided On: The 5 of February, 1997

Parties: Controller of Examinations Vs. Moham-

Hon'ble Judge(s): Bikash Roy Choudhury

Counsels:

The petitioners: Controller of Examinations

The respondent: Moham-

Subject:

Jurisdiction: Civil Jurisdiction

Related Acts/Rules/Orders:

Sections/Subsections:

Key words: fund, vice, unit, chancellor, respondent, professor, admission, committee, his, university

JUDGMENT

Vol. XX Mustafa Kamal, J: This petition for leave to appeal by the respondent-petitioners is from the judgment and order dated 11.1.95 passed in Writ Petition No. 456 of 1994 by a Civil Petition For Leave To Appeal No. Division Bench of the High Court Division 239 of 1995 making the Rule Nisi absolute. University of Dhaka and another... .. •• ... Vs ...Petitioners Professor A K Monwaruddin Ahmed... ..Respondent ... Date of Judgment Result The 5th of February, 1997 : Petition dismissed Constitution of Bangladesh, 1972 Article 102 A discretion once exercised without any opposition will not be interfered with simply on the ground of availability of alternative efficacious remedy especially when the decision sought to be appealed from does not suffer any infirmity of law. (Para-10) Controller of Examinations Vs. Mohammad Mahiuddin, (1992)12BLD (AD) 309— Cited. Mr. M. Nurullah, Senior Advocate (Mr. Zakir Ahmed, Senior Advocate and Fida M. Kamal, Advocate with him), instructed by Mr. Md. Aftab Hossain, Advocate-on-Record. For the Petitioner. Khandker Mahbubuddin Ahmed, Senior Advocate, instructed by Mr. Sharifuddin Mr. Sharifuddin Chaklader, Advocate-on-Record, For the respondent. 2. The respondent-petitioner Professor A.K. Monwaruddin Ahmed succeeded Professor Anwarullah Chowdhury on 31.7.93 as the Dean of the Faculty of Social Science. From 1982 applications for admission into 1st year Honours Courses were divided into four groups, viz, (1) "Ka" Unit for Science and Biological Science, (2) "Kha" Unit for Arts and Social Sciences, (3) "Ga" Unit for Commerce and (4) "Gha" Unit for transfer from one branch of study to another. The Deans of the Faculties are the Chairmen of the Admission Committees which were formed each year by the Vice Chancellor. The General Admission Committee realised fees for admission and the fund so collected by each Unit was administered and operated upon by the Chairman of each Admission Committee. The fund thus collected is the fund of the Admission Committee and was never treated as the fund of the University. The fund was never reflected in the budget of the University and no audit was ever done in respect of it. The Chairman of each Faculty was responsible for operation of the fund. He used to keep account of the fund and submitted the same to the Vice Chancellor at the end of his term. Professor Anwarullah Chowdhury was the Chairman of the Admission Committee of ! 20 BLD(AD)(2000) University of Dhaka Vs.Professor A K Monwaruddin Ahmed "Gha" Unit till he completed his term as Dean of the Faculty of Social Sciences on 29.7.93. On 30.12.93 the Vice Chancellor constituted an Admission Committee for "Gha" Unit for 1993-94 with the petitioner-respondent as Chairman. The respondent upon taking charge of the fund found irregularities in the management of the same. He requested Professor Anwarullah Chowdhury to hand over papers relating to the fund to him but he did not do so and

accordingly the respondent felt the necessity of auditing the fund by a Chartered Accountant. He verbally informed his decision to the Vice-Chancellor who consented to it and also consented to pay the auditors fees from the sum of Tk. 82,000/- which Professor Anwaruollah Chowdhury left with the Vice-Chancellor at the end of his tenure as Chairman of "Gha" Unit. The Chartered Accountant audited the accounts left by Professor Anwarullah Chowdhury and submitted reports yearwise. The last report was submitted on 6.12.93 with a bill for Tk. 27,500/- to the respondent which was submitted to the Vice Chancellor along with the audit report. The Vice Chancellor in his turn forwarded the bill with his signature thereon to the Director of Accounts on 26.12.93. On 27.12.93 a daily called "Ajker Kagaj" published a news under the heading "Corruption of Teacher of Dhaka University. Admission fee of students are not deposited in the fund" and contained a detailed criticism of the manner in which the fund was administered by Professor Anwarullah Chowdhury. 3. On the following day a meeting of the Deans of Faculties was held in the office of (Mustafa Kamal, J.) 29 the Vice Chancellor to consider publication of the said news item in which the Vice Chancellor stated that he gave consent to the respondent to have the accounts of the fund of "Gha" Unit audited by a Chartered Accountant and he also stated that he received the audit report. Thereafter the Chairman and members of the Admission Committee of "Gha" Unit for 1992-93 sent a letter to the Vice Chancellor and Chairman of the Syndicate of the University on 1.1.94 condemning the action of the respondent for having the fund audited, demanded his punishment and rejection of the illegal audit report and also demanding apology from the respondent to Professor Anwarullah Chowdhury and other Members of the Admission Committee. The letter was placed in the meeting of the Syndicate held on 1.1.94 and the Syndicate adopted a resolution that the audit of the fund has neither been done appropriately nor following legal procedure and as such it was not acceptable to the Syndicate and was not operative. The Syndicate also expressed its indignation at the action taken by the dean of the faculty of Social Sciences in auditing the fund and termed the same as "motivated and condemnable". The Syndicate resolved that it would take step in respect of irregularity in admission and other matters on the basis of the report if received. The respondent wrote a letter on 4.1.94 to the Vice Chancellor who replied to the same on 17.1.94. On 6.1.94 the respondent wrote another letter to the Vice Chancellor requesting him to inform who were the Members present in the meeting of the Syndicate held on 1.1.94. On 16.1.94 the Registrar