
(2016) 02 KL CK 0181
In the High Court Of Kerala
Case No : WP(C).No. 35775 of 2015

Bini John

APPELLANT

Vs

Regional Deputy Director of Collegiate Education

RESPONDENT

Date of Decision : 18-02-2016

Acts Referred:

Constitution of India, 1950 — Article 226
Kerala Service Rules — Rule 24A
Mahatma Gandhi University Statutes - Statute 26

Citation : (2017) 2 KLT 20

Hon'ble Judges : Mr. K. Vinod Chandran, J.

Bench : Single Bench

Advocate : Sri. M. Sasindran and Sri. S. Shyam Kumar, Advocates, for the Petitioner; Sri. M.R. Nandakumar, Advocate and Sri. Kurian George Kannanthanam, Senior Advocate, for the Respondent No. 2; Government Pleader, for the Respondent No. 5; Sri. Varughese M. Easo,

Final Decision : Dismissed

Judgement

Mr. K. Vinod Chandran, J.—The petitioner is aggrieved with the fact that the petitioner's leave application at Ext.P1 has been declined by Ext.P3.

2. The contentions of the petitioner are two fold: one, that the Management could not have rejected the application for leave by themselves and any leave which is beyond four months has to be sent to the Government for approval. The next contention is that the reason stated in Ext.P3 is not sustainable, since Ext.P4 Government Order specifically permits appointment of Guest Lecturers.

3. The learned Senior Counsel appearing for the respondent refutes both the said contentions with reference to the rules and with reference to the permission granted in Ext.P4 and contends that the discretion exercised by the Management cannot be easily interfered with by this Court.

4. The contention of prior approval is based on Statute 26 of Chapter 45 of the Mahatma Gandhi University First Statutes, 1997 (for brevity "First Statutes").

Statute 26 speaks of grant of leave and as per sub-statute (1), the authority conferred is on the Principal to grant Casual Leave and all other kinds of leave has to be granted by the educational agency on the recommendation of the Principal; under sub-statute (2). The petitioner's reliance is on the proviso which mandates previous sanction of Government to be obtained, for grant of leave without allowances, in excess of four months at a time. Hence, while the discretion is squarely conferred on the educational agency, the need for a prior approval arises only if the Management exercises the discretion in favour of the person who applies for the leave.

5. The learned Senior Counsel would also point to Statute 42 wherein sub-statute (1) specifically states that the provisions of the Kerala Service Rules would be subject to the provisions of the Act. Hence, Statute 26 has precedence and the discretion conferred on the Management cannot be lightly interfered with. To fortify the above contention, reference is also made to Rule 65 of Chapter IX of Kerala Service Rules wherein it is specifically stated that leave cannot be claimed as a matter of right and when the exigencies of public service so require, discretion to refuse or revoke leave of any description is reserved on the authority empowered to grant leave. Herein, the educational agency has considered the issue and considering the public interest; here the interest of the students, has refused to grant leave.

6. Ext.P4 is a Government Order in which the earlier prescription of not filling up vacancies of teaching and non-teaching staff in private aided colleges has been slightly modified insofar as permitting such appointments, but, however, only from the panel of Guest Lecturers maintained by the respective Deputy Directors.

7. The learned Senior Counsel would specifically point out that the panel does not assure committed service, for reason only of the temporary nature of appointment, holding out no promise of permanency. Even vacation salary is not granted to such persons appointed as guest lecturers, and it is difficult to invoke in them any commitment for reason only of the ephemeral nature of the appointments. This Court cannot shut its eyes to the said aspect, especially since continuity in teaching a subject, at least in a particular academic year, is the least, a responsible educational agency can offer its students. The employment as teachers, as in any other employment, is not a means alone of livelihood. There are certain obligations to the employer and in the case of teachers, there is an onerous responsibility and an obligation to the students too. The petitioner who has obtained appointment as a College Lecturer, definitely by virtue of her qualifications; in an impoverished nation struggling with myriad problems, foremost of which is unemployment, seeks long leave to join her husband in the United States of America for five years. In the process she also dictates that the educational agency appoints a guest lecturer to discharge her responsibilities. On such a whim she seeks to impugn the discretion exercised by the Management. This Court finds it difficult to align with the petitioner's concept of enforcing her right to long leave, against the paramount interest of education and students.

8. The petitioner could as well resign to join her husband, if that is her priority. Such claims are raised only since the archaic rules permitting long leave of five years at one instance; up to a maximum of 20 years, remain in the KSR. The provision so introduced in the 1980's was motivated by the penchant to earn foreign exchange, which was a dire necessity at that point of time. Three and a half decades from then, we have progressed, opened up our economy and made a mark in international commerce. Its time those in power have a re-look at the rules, especially in the context of the growing population we are unable to contain, despite the best efforts. An employee leaving the country for twenty years would leave a vacuum in the post, where the employer would have to have temporary appointments, putting to peril the efficiency in public employment and also the chances of another aspirant, who does not have the circumstance to go abroad.

9. Further, the freedom to make appointments, which is on the educational agency, is seriously fettered by Ext.P4 and, if at all, appointments are made by themselves to fill up the leave vacancies, then the financial liability would be cast on such Managements. This Court is of the opinion that considering the entire circumstances and the interest of the students projected, there is absolutely no fault in the discretion having been declined to be exercised by the Management in refusing the grant of leave as per Ext.P3 for the petitioner to join her spouse abroad.

10. The writ petition would stand dismissed. No Costs. The Registry shall send a copy of this Judgment to the Chief Secretary and the Law Secretary of the State of Kerala.