

(2010) 10 KL CK 0188

In the High Court Of Kerala

Case No : Writ Petition (C) . No. 12787 of 2010 (W)

Calicut University Teachers' Association and P. Mohanan

APPELLANT

Vs

The Chancellor/The Governor and Others

RESPONDENT

Date of Decision : 29-10-2010

Acts Referred:

Citation : (2010) 10 KL CK 0188

Hon'ble Judges : T.R. Ramachandran Nair, J

Bench : Single Bench

Advocate : P.K. Ibrahim, for the Appellant; P.C. Sasidharan, SC, for the Respondent

Final Decision : Dismissed

Judgement

T.R. Ramachandran Nair, J.—This writ petition is filed by the petitioners seeking to issue a writ of Quo Warranto directing the fifth respondent to show under what authority he is holding the post of Professor in Sanskrit in the University of Calicut and also the post of Registrar-in-charge and directing him to vacate the post forthwith. The first petitioner is the Calicut University Teachers' Association represented by its General Secretary and the second petitioner is the President of the Calicut University Teachers' Association.

2. Heard the learned Counsel for the petitioner Shri P.K. Ibrahim, learned Standing Counsel for the University Shri P.C. Sasidharan and Shri N. Sugathan appearing for the fifth respondent. The history of the dispute begins from the year 1987. The University issued a notification Ext.P1 dated 17/10/1987 inviting application for various posts including the post of Professor in Sanskrit. The fifth respondent was a member of the Syndicate at that point of time, he was also a Lecturer in the Department of Sanskrit of the University. He was an applicant to the post of Professor, apart from one Dr. B. Karunakaran. Shri B. Karunakaran was selected and recommended for appointment. The matter came for consideration of the Syndicate on 19/08/1989 and, there were 2 resolutions, one for and the other against his appointment. The resolution moved by one Shri K.

Damodaran to reject the recommendation of the Selection Committee on the reason that the expert members were not qualified was carried and the other resolution was defeated. This is evident from Ext.P2 minutes of the meeting. It is the allegation of the petitioner that the fifth respondent had also participated as a Member of the Syndicate and voted in favour of the motion and the resolution was also instigated by him.

3. Dr. Karunakaran, it appears, moved the Chancellor of the University in the matter and, ultimately, the Chancellor issued a show cause notice as per Ext.P4 proposing to cancel the resolution and after hearing the University, the fifth respondent and the complainant Dr. Karunakaran, Ext.P5 order was issued by the Chancellor rejecting the decision taken by the Syndicate and directing the University to take a fresh decision. This was under challenge in O.P. No. 11229/1990 at the instance of the fifth respondent. During the pendency of the writ petition, on 24/12/1997, the University issued a fresh notification to fill up various posts including that of Professor in Sanskrit and Ext.P6 is the copy of the notification. The fifth respondent was an applicant and he was appointed after the Selection Committee favoured him in the vacancy which was reserved for Ezhava/Thiyya/Billava as per Ext.P7 resolution.

4. Exts.P6 and P7 were under challenge before this Court in O.P. No. 24633/1998 at the instance of Shri B. Karunakaran. O.P. No. 11229/1990 filed by the fifth respondent was dismissed as infructuous and Ext.P8 is the copy of the Judgment. O.P. No. 24633/1998 filed by Shri Karunakaran was disposed of by Ext.P9 Judgment dated 24/11/2009 wherein this Court directed the Chancellor to pass appropriate orders after noticing that Shri B. Karunakaran would have attained superannuation sometime back. Accordingly, it was directed to consider whether he is entitled to notional benefits. The Chancellor as per Ext.P10 directed to grant him notional appointment as Professor of Sanskrit with effect from 19/08/1989 with admissible allowances and consequential pensionary benefits.

5. Ext.P11 is the proceedings whereby the fifth respondent has been placed on temporary charge of Registrar of the University.

6. The learned Counsel for the petitioner, Shri P.K. Ibrahim submitted that in the light of the proceedings Ext.P10, it can be seen that Shri B. Karunakaran was notionally appointed as Professor and, therefore, the fifth respondent is an usurper to the said post and he cannot continue. My attention was invited to the resolutions taken by the Syndicate as per Ext.P2 to contend for the position that a reading of the resolution will show that every attempt was made by the fifth respondent to scuttle the selection and appointment of Shri B. Karunakaran. It is argued that in the light of the order passed by the Chancellor as per Ext.P5, the resolution Ext.P2 of the Syndicate will no longer survive. It is therefore pointed out that the decision taken to re-notify the post as per Ext.P6 and consequential filling up of the post as per Ext.P7 are not correct. Further, since the writ petition, O.P. No. 11229/1990 filed by the fifth respondent was also dismissed as infructuous, Ext.P5 has become final, as his appointment itself was subject to the

result of the said writ petition. Once the writ petition stood dismissed, he cannot continue in that post. It is further pointed out that in the Judgment Ext.P9, this Court in paragraph (2) held that the constitution of the Selection Committee which recommended Shri B. Karunakaran was valid and this Court was of the view that "the petitioner is entitled to the reliefs prayed for in the writ petition" and, therefore, the selection and appointment of the fifth respondent as per Exts.P6 and P7 cannot be recognised in law. My attention was invited to the principles stated by the Apex Court in *The University of Mysore and Another Vs. C.D. Govinda Rao and Another*, and that of the Division Bench of this Court in *George Joseph, General Secretary Vs. S. Chandramohan Nair, Member, The Secretary to Government and State of Kerala*, with regard to the circumstances in which this Court can issue a writ of Quo Warranto.

7. Per contra, Shri P.C. Sasidharan and Shri N. Sugathan appearing for the respondents submitted that the petitioners have no locus standi at all to challenge the appointment. It is pointed out that the first petitioner is not a recognised Association and Dr. Lazar whose appointment in another post of the University was terminated, has got a grievance against the fifth respondent and therefore, the writ petition is itself ill- motivated. With regard to the matters leading to the decision of the Syndicate as per Ext.P2, it is explained in the counter affidavit of the University that the post of Professor in Sanksrit became vacant on the retirement of Dr. M. Sreedhara Menon. It was notified by the University on 18/04/1986 and three candidates applied for the post including Shri B. Karunakaran. Shri B. Karunakaran did not possess the minimum qualification as prescribed by the Academic Council and the Regulations, and the remaining two applicants were called for the interview. Challenging the rejection of his application, Shri B. Karunakaran filed O.P. No. 1604/1987 which was dismissed on 24/02/1987. The other two applicants even though invited for interview, they did not attend the same. Thereafter, the Syndicate resolved to re-notify the post reserving the same to Ezhava/Thiyya/Billava community. The fresh notification was issued on 17/10/1987 and Dr. T.K. Narayanan (5th respondent) and Dr. B. Karunakaran applied and after referring to the qualification fixed by the Academic Council for the post it is contended in the counter affidavit that Shri B. Karunakaran was lacking one of the minimum qualifications, namely, experience in Guiding Research. Two of the experts, namely, Shri T.A. Dhanapalan and Shri C.S. Poornamodan were also not qualified for the post of Reader and were therefore not entitled to be in the Selection Committee. The Selection Committee also awarded marks against the norms in favour of Dr. B. Karunakaran and details of the marks have been explained in paragraphs (16) and (17) of the counter affidavit. Two other outside experts of the Selection Committee did not agree with the recommendation in favour of Dr. Karunakaran. It is pointed out that it is in these circumstances, the Syndicate resolved to reject the recommendation of the Selection Committee.

8. It is further pointed out that the decision of the Chancellor in Ext.P5 was not to appoint Dr. Karunakaran but the Syndicate was given freedom to reconsider

the matter afresh in terms of the relevant provisions of the Act and the Statutes. This was under challenge in O.P. No. 11229/1990 by the fifth respondent. Meanwhile, the UGC Scheme was implemented in the University and the qualification of the Teachers were changed in accordance with the Guidelines of the UGC Scheme. The Syndicate under the Chairmanship of Vice Chancellor Dr T.K. Ravindran, who was the Chairman of the Selection Committee for the post of Professor in Sanskrit, resolved that all the existing posts in the teaching departments be advertised with UGC qualification immediately. After referring to various aspects, it is pointed out that the new qualifications prescribed by the UGC was adopted by the Academic Council on 14/05/1992 and laid in the Senate on 30/07/1992 which was given effect from 01/04/1990. Thereafter, the Syndicate as per item No. 97.625 dated 26/11/1997 considered the question of filling up the vacant teaching posts in the various teaching departments of the University and it was resolved that the notification calling for the application be issued before 15/12/1997. On the basis of this decision, the vacant posts including the post of Professor in Sanskrit was notified as per notification dated 24/12/1997 incorporating the UGC qualification applicable for each category posts. This notification was issued subsequent to the decision in O.P. No. 11229/1990 filed by the fifth respondent. There were only 2 applications, one by the fifth respondent and one by Dr. Chidambaram. When fresh notification was issued Shri B. Karunakaran did not apply to the post as he was not qualified. Shri T.K. Narayanan's writ petition was dismissed as infructuous evidently, since he was appointed. It is further pointed out that against Ext.P9 Judgment, the University has filed an appeal as per W.A. No. 504/2010. The fifth respondent was put in charge of Registrar when Dr. P.P. Mohammed who was holding the post of Registrar was charge sheeted based on serious misconduct and was kept under suspension and, ultimately, an order of compulsory retirement was passed against him by the Syndicate. Even though the suspension was challenged before this Court, the same was not interfered with. The fifth respondent Dr. T.K. Narayanan is only holding the post of Registrar by way of temporary arrangement.

9. Therefore, the contention raised by the University as well as the fifth respondent is that his appointment pursuant to Exts.P6 and P7 is a fresh one and has no connection with the notification issued in the year 1987. The appointment is in tune with the relevant UGC Scheme, the decision of the Academic Council etc. and there are no statutory violations also. In that view of the matter, it is pointed out that the prayer to issue a writ of Quo Warranto cannot be sustained.

10. The fifth respondent also in his counter affidavit points out that appointment of Dr. Lazar, who is representing the first petitioner herein, as Reader in Zoology has been terminated as per Ext.R5(a) and the fifth respondent has signed the order as Registrar-in-charge which has provoked him to file the writ petition. It is contended that a public interest litigation cannot be entertained in respect of a service matter. The contention raised by the fifth respondent is that his appointment pursuant to Ext.P6 notification is valid. Dr. Karunakaran was not an

applicant. In Ext.P9 Judgment his appointment has not been set aside by this Court also. O.P. No. 11229/1990 was dismissed as infructuous as he was appointed as Professor in Sanskrit on the basis of the selection made pursuant to Ext.P6 notification and dismissal of the writ petition as infructuous will not automatically lead to the conclusion that Ext.P5 has been accepted by this Court as valid. It is pointed out that he has got all the qualifications provided in Ext.P6 notification; it is a fresh appointment as the vacancy was notified afresh and, Dr. Karunakaran was not an applicant at all and, therefore, his appointment cannot be said to be illegal on any ground.

11. On an examination of the various aspects argued by the learned Counsel for the petitioners, learned Standing Counsel for the University and the learned Counsel for the fifth respondent, it can be seen that the appointment is only pursuant to a fresh selection based on Ext.P6 notification and Dr. B. Karunakaran was not an applicant when the post was notified after the UGC norms were adopted by the University. The petitioners' contentions are mainly centered on Ext.P5 proceedings of the Chancellor and Ext.P9 Judgment of this Court. The relevant facts will have to be analysed to find out whether the contention that in the light of Exts.P5 and P9, the appointment of the fifth respondent has become illegal is sustainable.

12. In Ext.P2, the Syndicate adopted a resolution against the report of the Selection Committee. A reading of Ext.P4 show cause notice and Ext.P5 order passed by the Chancellor show that the view taken therein is that going by proviso to Statute 4(4) of Chapter III of the Calicut University First Statutes, 1977 in case the Syndicate proposes to make the appointment otherwise than in accordance with the provisions of the statute or against the recommendations of the Selection Committee, the course open is to submit the proposals for the sanction of the Chancellor stating the reasons for not making appointments in accordance with the provisions of the statute or against the recommendations of the selection committee. The same is the only violation pointed out by the Chancellor in Exts.P4 and P5. Even though Shri Ibrahim argued that Ext.P5 will show that the Syndicate's decision with regard to the illegality in the constitution of the Selection Committee which led to the selection of Dr. B. Karunakaran has been interfered with, a close reading of the show cause notice Ext.P4 and Ext.P5 will show that no such decision has been taken by the Chancellor. In Ext.P5 after referring to various arguments, the Chancellor has again considered the effect of Statute 4(4) and the proviso. Going by Statute 4(4) and the proviso if the Syndicate takes a decision contrary to that of the Selection Committee, it shall record its reasons and submit its proposals for the sanction of the Chancellor and after getting which alone an appointment can be made. Accordingly, the Chancellor was of the view that Ext.P2 has to be annulled. Significantly the following finding was rendered therein: "though the Syndicate might have been prompted to take such an action in the best interests of upholding the Academic standards in the University, that authority has not acted strictly in conformity with the statutory provisions as laid down in Statute 4(4)". Accordingly, the

decision of the Syndicate reflected in Ext.P2 has been annulled making it clear that "it is open to the Syndicate to reconsider the matter afresh and take appropriate decisions in accordance with the relevant provisions in the Act and Statutes". Therefore, the Chancellor has not rendered any decision with regard to the issue i.e. regarding the constitution of the Selection Committee which selected Dr. B. Karunakaran. Therefore, the learned Counsel for the petitioners is not right in submitting that Ext.P5 will reflect a decision with regard to the acceptance of the report of the Selection Committee.

13. The next aspect is with regard to the effect of Judgments Exts.P8 and P9. Ext.P8 shows that O.P. No. 11229/1990 filed by the fifth respondent was dismissed as infructuous. Obviously, the matter has not been considered on merits. As rightly explained by the learned Counsel for the fifth respondent, it was obviously dismissed as infructuous, as the fifth respondent was appointed pursuant to a fresh selection as per Ext.P6 notification and Ext.P7 resolution. Therefore, the contention raised by the learned Counsel for the petitioners that the said Judgment will have any reflection on Ext.P5 and its validity etc. cannot be accepted.

14. A reading of Ext.P9 Judgment shows that therein Dr. B. Karunakaran had sought for a Writ of Certiorari to quash Exts.P9 and P10, namely, the notification and the proceedings appointing the fifth respondent (produced as Exts.P6 and P7 herein) and a consequential direction to appoint him as Professor of Sanskrit. The writ petition was disposed of in the absence of a counter affidavit of the University also. This Court noticed that the petitioner has long past the age of Superannuation and, therefore, it was observed that the only question to be considered is whether the petitioner is entitled to notional benefits of such selection. Accordingly, a direction was issued to the Chancellor to consider the question as to what reliefs the petitioner is entitled to for illegally denying him the benefit of selection. Even though it is seen that this Court accepted the contention of the petitioner therein that his selection is valid, it is further evident that the prayer to quash the subsequent notification Ext.P6 and Ext.P7 proceedings appointing the fifth respondent, has not been granted. This Court was appraised of the fact that Shri B. Karunakaran had attained the superannuation long past. Even though the learned Counsel for the petitioners vehemently contended that the result of the findings in the Judgment will be that the appointment pursuant to Exts.P6 and P7 stands annulled, I cannot agree with the said contention since no such relief has been granted by this Court even though it was sought for by the petitioner in that writ petition. Therefore, I reject the contention of Shri Ibrahim that Ext.P9 Judgment will render the selection and appointment of fifth respondent pursuant to Exts.P6 and P7 illegal and invalid.

15. In Ext.P10 proceedings the Chancellor has also not set aside the selection and appointment of fifth respondent pursuant to Exts.P6 and P7. A reading of Ext.P10 will throw some more light on to the happenings between Ext.P5 and the subsequent selection. A reading of paragraphs (2) and (3) of the order will show

that after Ext.P5 order was passed by the Chancellor, the Syndicate of the University which was directed to take a fresh decision in accordance with the provisions of the Act and Statutes took a resolution on 21/11/1990 to refer the matter to Chancellor for his decision. In O.P. No. 11229/1990 C.M.P. No. 2605/1992 was filed by Dr. B. Karunakaran to direct the Chancellor to take a decision based on the said decision of the Syndicate pending the writ petition and this Court had clarified that pendency of the writ petition will not stand in the way of Chancellor taking a decision. Paragraph (3) shows that the Chancellor had thereafter taken a decision that "it is open to the Syndicate to consider the matter afresh and take appropriate decision in accordance with the relevant provisions in the Act and Statutes". This is important while considering the validity of Exts.P6 and P7.

16. As already noticed in the operative portion of Ext.P5, the Chancellor had directed the Syndicate to reconsider the matter afresh and take appropriate decision in accordance with the relevant provisions of the Act and Statutes which was reiterated after the Syndicate again referred the matter to the Chancellor by their resolution dated 21/11/1990 as evident from the quoted observations above from Ext.P10. The same has to be read along with the earlier paragraphs which will reveal the reasons for such a direction, as noted already.

17. The facts leading to the appointment of the fifth respondent pursuant to Exts.P6 and P7 as explained by the respondents in their counter affidavits evidence various aspects including the requirement to issue a fresh notification. Evidently, the UGC Scheme was implemented and the qualification of Teaching faculty was changed pursuant to the same. The Syndicate in its meeting held on 16/10/1990 and 19/06/1991 resolved that all the existing posts in teaching departments be advertised with UGC qualification immediately. The Academic Council also in their meeting dated 29/06/1991 resolved to adopt UGC qualifications for appointment of Professors, Readers, Lecturers and other teaching posts in the University teaching departments. The new qualification were adopted by the Academic Council on 14/05/1992 and laid in the Senate on 30/07/1992 which was given effect from 01/04/1990 as evident from paragraph (18) of the counter affidavit of the University. Thereafter, the Syndicate as per item No. 97.625 dated 26/11/1997 resolved to issue a fresh notification which is mentioned in Ext.P6 notification. These facts are not controverted by the petitioners in the reply affidavit. Therefore, evidently, the fifth respondent who responded to Ext.P6 notification was selected after satisfying that he had the required qualification. The petitioners have no contention that the fifth respondent is not qualified as per the qualifications prescribed in Ext.P6 notification or in the first Statutes. Therefore, it is not a case where the fifth respondent's appointment is challenged on the ground of want of qualification or violations of the statutory provisions. Dr. B. Karunakaran was not an applicant when a fresh notification was issued.

18. Therefore, evidently, the fresh selection and appointment of fifth respondent

which was made on 10/09/1998 was never challenged by the petitioners also. The appointment is sought to be challenged after 12 years of the notification and selection. Evidently, there is long delay in the matter.

19. Shri Ibrahim submitted that even though W.A. No. 504/2010 has been filed, it has not been admitted so far and the delay petition is pending consideration. This aspect is not disputed. Whatever that be, as I have already found that in Ext.P9 Judgment, the appointment of fifth respondent was never quashed and the relief granted to Shri B. Karunakaran is by way of notional benefits. The consequential order passed by the Chancellor as per Ext.P10 also has not set aside the appointment of the fifth respondent. Therefore, the appointment as per Exts.P6 and P7 stands independent of the other controversies. Hence, it cannot be said that the fifth respondent is an usurper and his continuance as Professor is illegal and is against the Judgments of this Court.

20. The principles for issuance of a writ of Quo Warranto have been elaborated in various decisions. I shall refer to the principles laid down by the Apex Court in *N. Kannadasan v. Ajoy Khose and Ors.* (2009) 7 SCC 1 and a recent decision in *Hari Bunsh Lal v. Sahodar Prasad Mahto and Ors.* AIR 2010 SCW 5567. In the former case with regard to the principles relevant it was held in paragraph 129 that "a writ of Quo Warranto can be issued when the holder of a public office has been appointed in violation of constitutional or statutory provisions". After referring to various authorities and the decisions of the Apex Court it was further held in paragraph (135) as follows:

Issuance of writ of Quo Warranto is a discretionary remedy. Authority of a person to hold a high public office can be questioned inter alia in the event an appointment is violative of any statutory provisions. There concededly exists a distinction in regard to issuance of a writ of Quo Warranto and issuance of a writ of certiorari. The scope and ambit of these two writs are different and distinct. Whereas, a writ of Quo Warranto can be issued on limited ground, the considerations for issuance of a writ of certiorari are wholly different.

Therefore, it is evident that the appointment should be one in violation of constitutional or statutory provision, for issuing a writ of Quo Warranto. After detailed consideration of the principles in the recent Judgment in *Hari Bunsh Lal's* case AIR 2010 SCW 5567 also the position was reiterated as follows:

writ of Quo Warranto lies only when an appointment is contrary to statutory provisions.

Their Lordships relied upon various decisions of the Apex Court while reiterating the above principle. It was also held in paragraph (15) that "it is clear from above decisions, suitability or otherwise of a candidate for appointment to a post is the function of the appointing authority and not of the court unless the appointment is contrary to statutory provisions/rules."

21. Therefore, the only question to be examined is whether there is any violation

of the statutory rules in the matter of appointment of the fifth respondent. Evidently that is not the case of the petitioners also. No violation of the first statutes, the qualification prescribed under the notification or the UGC have been alleged against him. No such grounds have been raised in the writ petition, or argued. In that view of the matter, the principles which have been reiterated by the Apex Court in the various decisions would go against the contentions of the petitioners.

22. Vehement arguments have been raised by the learned Counsel for the respondents with regard to the maintainability of the writ petition itself. It is pointed out that the writ petition is highly belated and it is actuated by various ill-motives etc. I am not finally pronouncing on the said contentions in the light of the conclusion that the appointment of the fifth respondent as Professor pursuant to Exts.P6 and P7 is not against the Statute and the notification and has not been annulled by this Court in Ext.P9 Judgment, and hence no illegality is there.

23. The University has explained that the fifth respondent has only been given temporary charge of Registrar as disciplinary action was taken against the former Registrar. It is only by way of a temporary arrangement. It is explained in paragraph (22) of the counter affidavit by the University that as far as the University is concerned till a regular recruitment is made it has to go on with the temporary arrangement already made since the post cannot be kept vacant as it is a statutory post. Therefore, there is no illegality in the temporary charge given as Registrar and no violation of the statutory provisions have been pointed out in the writ petition with regard to the said arrangement also.

For all these reasons, the writ petition fails and the same is dismissed. No costs.