

(1997) 08 KL CK 0046
In the High Court Of Kerala
Case No : O.P. 8881 of 1996 etc.

Dr. Joseph Kachappilly

APPELLANT

Vs

Director of Collegiate Education and Others

RESPONDENT

Date of Decision : 08-08-1997

Acts Referred:

Constitution of India, 1950 — Article 19(1), 30(1), 31

Mahatma Gandhi University Act, 1985 — Section 53(7), 59 , 59(1) , 59(2) , 59(4)

Citation : (1997) 08 KL CK 0046

Hon'ble Judges : P. Shanmugam, J

Bench : Single Bench

Advocate : Babu Varghese, for the Appellant; Molly Jacob, and Thomas Mathew Nellimmootil, for the Respondent

Final Decision : Allowed

Judgement

P. Shanmugam, J.—These Original Petitions are filed by the managements of private colleges challenging the Order of the Government in G.O. (Ms.) No. 15/94/H. Edn., dated 31st January 1994 directing the constitution of a Screening Committee for giving placement to Lecturers. In O.P. No. 9942/96 Petitioner had challenged Clause 4 of the Ordinance prescribing the workload and staff pattern of the teaching staff. In O.P. No. 4884 of 1997 the Petitioners Lecturers seek for directions to regularise their promotions effected by the management. In O.P. No. 8881 of 1996 Petitioner/Lecturer challenges the order of the Screening Committee of the Government deferring the promotion to Readership. The University Grants Commission had formulated a scheme for revision of pay scales of teachers of all the Universities and colleges and offered to bear the 80 per cent of the expenditure incurred for a period of five years. The Government while accepting the scheme of the University Grants Commission issued orders in G.O. (P) No. 79/90/H. Edn., dated 27th March 1990. In paragraph 3 of the order it is stated that the Government of Kerala after examining the U.G.C. Scheme including revision of scales of pay has decided to implement the same in the State. In paragraph 4 of the order, the Government approved the scheme

appended as Annexure-I and ordered that the same will be implemented in the State with effect from 1st January 1986. Annexure-I deals with the scheme of revision of pay scales of teachers in the Universities and affiliated colleges in Kerala for maintenance of standards in higher education. Annexure-I, Clause 3.02 deals with the Principals of colleges. Clause IV deals with the recruitments and qualifications to the posts of Lecturer, Reader and Professor, and that selection shall be on the basis of merit. It further states that the Lecturers who fulfill the criteria prescribed in the Scheme will be eligible for further promotion. Explanation to the said clause is relevant which is extracted below:

Explanation. - The selection of candidates will be done by the Kerala Public Service Commission in the case of Government Colleges and by the Educational Agencies as prescribed in the statutes of the Universities in the case of private colleges.

Clause V deals with the Career Advancement. Sub-clause 5.04 is the clause under challenge. The relevant portion of Sub-clause 5.04 is extracted:

Promotion to the post of Reader will be through a process of selection by a Selection Committee to be set up under the Statutes/Ordinances of the University concerned or other similar committee set up by the appointing authorities in accordance with the guidelines laid down by the U.G.C. from time to time.

In purported exercise of implementation of the scheme the Government by the impugned order in G.O. (Ms.) No. 15/94/H. Edn., dated 31st January 1994 ordered the constitution of a Screening Committee for the affiliated private colleges in the State with the officials of the Government and the University as members of the Committee for giving placement to Lecturers. Challenging this constitution of Screening Committee, the above Original Petitions have been filed.

2. In O.P. No. 8881/96 the order of the Screening Committee constituted by the Government deferring of promotion to the post of Reader to the Petitioner is under challenge. The Government has constituted a Screening Committee for giving placement to Lecturers in the affiliated private colleges in the State. The Government has interpreted this provision of placement to Lecturers as to include promotion to the post of Readers in paragraph 6 of the counter. Thus the Government has understood that the implementation of U.G.C. Scheme enables them to constitute a Screening Committee for selection of Readers from among the Lecturers and Selection Grade Lectures from among the Lecturers. After a careful consideration of the whole matter, it is clear that neither the U.G.C. Scheme nor the Acts of the University or the Statutes or Ordinance made thereunder enable the Government to constitute a Screening Committee. Besides, such a constitution of a Screening Committee by the Government would be clearly against the fundamental rights of management guaranteed under Article 30(1) of the Constitution of India. The position regarding the right of management has been well settled by a Full Bench decision of this Court in

Mother Provincial v. State of Kerala 1969 KLT 749 (F.B). In The Ahmedabad St. Xavier's College Society and Another Vs. State of Gujarat and Another, a Constitution Bench of the Supreme Court held that the choice in the personnel management is part of the administration. His Lordship Khanna, J. has observed in the judgment that the selection and appointment of teachers for an educational institution is one of the essential ingredients of the right to manage an educational institution and the minority institution can plainly not be denied such a selection and appointment without infringing Article 30(1) of the Constitution. A Full Bench of the Kerala High Court in Mother Provincial v. State of Kerala 1969 KLT 749 held that the imposition of any trammel excepting the prescription of qualification and experience in the appointment of a Headmaster cannot but be considered as a violation of the right guaranteed under Article 31 of the Constitution and by Article 19(1)(f). The Supreme Court in State of Kerala, etc. Vs. Very Rev. Mother Provincial, etc., while upholding the judgment of the Full Bench held that Article 30(1) contemplates two rights, viz., right to establish minority's choice and the next is administration of such institution. In The Ahmedabad St. Xavier's College Society and Another Vs. State of Gujarat and Another, a Constitution Bench of the Supreme Court held that the choice in the personnel management is a part of administration for the State and its educational authorities and to prescribe the qualifications of teachers. But once the teachers possessing the requisite qualifications are selected by the minorities for their educational institutions, the State would have no right to veto the selection of teachers. Selection and appointment of teachers for educational institution is one of the essential ingredients of the right to manage an educational institution under the minorities, and they can have no right of appointment without infringing Article 30(1) of the Constitution.

3. In Benedict Mar Gregarious v. State of Kerala 1976 KLT 458 (F.B.) a Full Bench of this Court held that in the case of the post of Principal there cannot be any fetter on the rights of management to choose the Principal whether by direct recruitment or by promotion.

4. Thus the constitutional guarantee as interpreted by this Court makes no room for any doubt that it is the right of the minority colleges to choose their personnel including for promotions to the posts of Lecturer and Reader. The selection cannot be done by an outside agency. The scheme as framed by the Government in G.O. (Ms) No. 79/90/H. Edn., dated 27th March 1990 in Annexure I provides for appointment of Principals and promotion of Senior Grade Lecturer to the post of Reader. Clause IV of Annexure I deals with the recruitment to the posts of Lecturer, Reader and Professor. The selection will be done by Educational Agencies and as prescribed in the Statutes of the Universities in the case of private colleges. The minimum qualifications have been prescribed. Similarly, under Clause 5.03 promotion to the post of Reader from the post of Lecturer is set out. Clause 5.04 States that the promotion to the post of Reader shall be by a process of selection by a Selection Committee set up by the appointing authorities in accordance with the guidelines laid down by the U.G.C. But in

reference to Lecturers, there is a provision for making promotion to the cost of Selection Grade Lecturer through a process of screening/selection. Interpreting these provisions, for appointment to the post of Reader the Government thought it fit that the process of screening/selection are to be made by a selection committee constituted by the Government themselves and accordingly they have passed the impugned Government Order. In my view, the Annexure I to implementation of scheme made by the Government clearly recognises the right of educational agencies regarding the recruitment and appointment of Principals and other members of the staff. In reference to the recruitment to the post of Lecturer, Reader and Professor it is specifically stated that the selection shall be by the Educational Agencies as prescribed by the statute. Therefore there is no scope for interpreting the subsequent paragraph to mean that the Screening Committee/selection committee contemplated under the scheme is a different committee constituted by the Government. That apart when there is no scope for interpreting the implementation scheme of the Government in G.O. (P) No. 79/90/H. Edn., dated 27th March 1990, any other interpretation as claimed by the Government would clearly go against the constitutional guarantee conferred on the minority institutions under Article 30(1) of the Constitution of India.

5. It is rather surprising that the Education Department which should be familiar with the series of decisions relating to the minority rights in Kerala referred above thought it fit that they can constitute a Screening Committee for placement of Lecturers and appointment of Readers. As per the clear mandates laid down by the Supreme Court, referred above, such Government Order is clearly unconstitutional and illegal. Whether it is the placement of Lecturers to the post of Selection Grade Lecturers or appointment of Readers from the post of Lecturers, it is a clear case of promotion. Senior Grade Lecturers are in the scale of pay of Rs. 3,000-5,000 whereas the Lecturer is in the scale of pay of Rs. 2,200-4,000. Therefore, the Government cannot be permitted to say that this is only a placement so that they can constitute a Screening Committee of their own.

6. Such an interpretation is not only beyond the scope of the Government Order but also contrary to the various Sections of the Kerala, Calicut and Mahatma Gandhi Universities Acts. These Acts contain a provision dealing with the appointment of teachers in private colleges. For instance, Section 59 of Mahatma Gandhi University Act says that appointment of teachers in each department of a private college shall be made by Educational Agency. Sub-section (2) says that the appointment of Principal shall be by Educational Agency by promotion. Sub-section (4) which is relevant specifically states that appointment to the posts other than those referred to in Sub-sections (1) and (2) shall be by Educational Agency by promotion from among the teachers of the colleges. Therefore, other than the teachers who are recruited by direct recruitment, and the Principals appointed by Educational Agency all other appointments shall be made by promotion from among the teachers. The Ordinances and the Statutes made by some of the Universities enable the private colleges themselves to make appointments. In view of this specific statutory protection to the educational

agencies of the private colleges, it is idle to contend that the Government is left with the power of constituting a Screening Committee for selecting a Selection Grade Lecturer and Reader.

7. I am rather amazed that the Government have overlooked these statutory provisions and the Government Orders and the constitutional guarantee. It is very difficult to believe that the Education Department is not aware of such provisions standing in the way of the Government constituting a committee of their own for promoting the Lecturers in private colleges. The result is that from the year 1996 onwards, there is no promotion to the post of Selection Grade Lecturers. Therefore, in my view, the Government is fully responsible for not promoting the Lecturers who are eligible to be promoted to the post of Selection Grade Lecturers and Readers in their respective places by the management and themselves. By this method of deliberate reading down the provisions the Educational Agencies have been deprived of their right of making promotions of their staff and the staff are deprived of their placements.

8. For all these reasons, I am of the view that the impugned order of the Government constituting a Screening Committee is clearly illegal, arbitrary and unconstitutional. The orders made thereunder are also to be declared as illegal. Accordingly, Ext. P-2 order in O.P. No. 8881 of 1996 is quashed.

9. In O.P. No. 9942 of 1996 Petitioner had challenged the Mahatma Gandhi University Ordinance regarding the workload and staff pattern of teaching staff dated 21st November 1995. Under Clause 4 it is ordered that Head of Department, if available, the seniormost Reader shall be the Head of Postgraduate Department.

10. Head of the Department is not a separate post. The definition clauses of "teachers" do not include Head of the Department as one of them. Therefore, Head of Department cannot be one of the posts that can be brought under the "appointments" or "promotions" within the purview of Section 59 of M.G. Act and corresponding provisions of allied Acts.

11. The provision for making the seniormost Lecturers as Head of the Department is in my view to maintain the excellence of standards of education. The Readers or Professors as the case may be who are the seniormost must be permitted to be the Head of the Department. This is not only the interest of the recognition of the services of the concerned Professor or the Reader as the case may be, but also would be the best interest of the concerned Department. The Supreme Court while referring to the right under Article 30(1) of the Constitution in *The Ahmedabad St. Xavier's College Society and Another Vs. State of Gujarat and Another*, Khanna, J. has observed as follows:

The right of the minorities to administer educational institutions does not, however, prevent the making of reasonable regulations in respect of those institutions. The regulations have necessarily to be made in the interest of the institution as a minority educational institution. They have to be so designed as

to make it an effective vehicle for imparting education.

* * *

The State can prescribe regulations to ensure the excellence of the institution. Prescription of standards for educational institutions does not militate against the right of the minority to administer the institutions. Regulations made in the true interests of efficiency of instruction, discipline...and the like may undoubtedly be imposed.

12. In *Mother Provincial v. State of Kerala* 1969 KLT 749 (F.B.) the Full Bench while dealing with Section 53(7) of the Act recognises the right of the management to appoint teaching staff including Head of the Department by promotion. The Full Bench upheld this provision as necessary to prevent favouritism and secure fair prospects of advancement for the teaching staff.

13. Following the above decisions, in my view, the Head of the Department is not a separate post open for consideration for promotion. While fixing the staff pattern for the Post graduate Course the Syndicate has decided that Head of the Department shall be the seniormost Reader. I do not find any violation of the rights of the management in such a prescription. In the counter-affidavit on behalf of Respondents 3 and 4 it is stated that to make the seniormost Reader as the Head of the Department it is to improve the quality of higher education in the spirit of U.G.C. guidelines. According to them, the Syndicate is well within its powers to make and to amend the Statutes and Ordinances. Therefore, Ext. P-3 notification in O.P. No. 9942 of 1996 is valid. In all other respects, the Original Petitions are allowed as prayed for.