

(1982) 08 KL CK 0003
In the High Court Of Kerala
Case No : O.P. No. 2903 of 1979-K

Dr. Mathew Thottiyil

APPELLANT

Vs

University of Kerala and Others

RESPONDENT

Date of Decision : 10-08-1982

Acts Referred:

Citation : (1982) 08 KL CK 0003

Hon'ble Judges : Kochu Thommen, J

Bench : Single Bench

Advocate : Mathai M. Paikaday, for the Appellant; V. Bhaskaran Nambiar and Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

Kochu Thommen, J.—The Petitioner challenges Exts. P-1 and P-2. By Ext. P-2 dated 2nd July 1979, Ext. P-1 order of the University, dated 17th October 1978 was confirmed. Ext. P-1 reads:

The Syndicate at its meeting held on 8th September 1978 considered the question of promotion of Dr. Mathew Thottiyil as I Grade Professor of Chemistry in your College and resolved that the appointment of Dr. Mathew Thottiyil as I Grade Professor of Chemistry in the Nirmala College Muvattupuzha be approved with effect from the date on which he completes 10 years" of teaching experience reckoned from 18th October 1965.

You are therefore requested to issue a revised promotion order to Dr. Mathew Thottiyil accordingly and to forward a copy of the same to this office.

The dispute is as to whether or not the Petitioner is entitled to have his appointment as I Grade Professor of Chemistry in Nirmala College, Muvattupuzha approved by the University of Kerala with effect from 1st September 1971 on which date he was promoted to that post by the management.

2. The date 18th October 1965 mentioned in Ext. P-1 is the date on which the

Petitioner was appointed as a Lecturer in Nirmala College. The stand taken by the University is that the Petitioner is entitled to have his teaching experience reckoned only from 18th October 1965 and that he is entitled to have his promotion as I Grade Professor recognised only on the expiry of ten years as from that date. It is contended on behalf of the University that as per G.O. Rt.4101/69/Edn., dated 29th November 1969, a person has to have 10 years of teaching experience before he can be promoted as a I Grade or II Grade Professor. It is further contended that the Petitioner's teaching experience can be reckoned only as from the date on which he was appointed in Nirmala College and not from an anterior date.

3. The Petitioner's counsel, Sri. Mathai M. Paikaday contends in his well prepared arguments that, even in terms of the G.O., dated 29th November 1969, a person is entitled to approval if he has the requisite qualifications as prescribed by the competent authority. The Petitioner's counsel points out, that he has the requisite qualifications. This is clear from the relevant provisions of the Kerala University Ordinance as well as from certain findings of this Court in O.P. No. 2912 of 1972 which was confirmed in Writ Appeal No. 430 of 1974.

4. The Government Pleader submits that unless a person has 10 years of teaching experience to his credit before his promotion as I Grade or II Grade Professor, he would not be entitled to the benefit of the revised scale of pay as provided in G.O. Rt. 26/69/Edn. dated 3rd January 1969. He submits that this is clear from the subsequent order of the Government dated 29th November 1969.

5. In O.P. No. 2912 of 1972, this Court after considering the submissions of the present Petitioner who was Respondent No. 2 and the Vice Chancellor of the Kerala University who was Respondent No. 3 as well as of the Petitioner in that O.P. categorically found that the present Petitioner had all the requisite qualifications for appointment as I Grade Professor. It was found that the Petitioner had the necessary academic degrees as well as 7 years and one month of teaching experience at degree level as on 1st September 1971.

6. It is not disputed that the Petitioner has the necessary academic qualifications in terms of the Kerala University Ordinance. It is also not disputed that the Petitioner has been teaching in Nirmala College since 18th October 1965. What is disputed by the University is as to the total length of teaching experience at degree level which the Petitioner has had on 1st September 1971 as well as his right to have his promotion approved on the basis of that experience.

7. That the Petitioner has had 7 years and one month of teaching experience at degree level on 1st September 1971 is no longer open to dispute. The University cannot be heard to contend to the contrary, for the Vice Chancellor was a party to the earlier proceedings in which it was categorically found that as on 1st September 1971 the Petitioner had 7 years and one month of teaching experience at degree level.

8. Counsel for the University submits that as far as the University is concerned,

the observations made by this Court in the earlier proceedings, where the University as such was not a party, but only the Vice Chancellor as the appellate authority was a party, are not binding. It is stated that the Vice Chancellor, in disposing of the appeal filed against the present Petitioner by the Petitioner in O.P. No. 2912 of 1972, upheld the present Petitioner's contentions as regards his qualifications. But that decision is not binding on the University, although the Vice Chancellor is Head of the University. This is an argument which I find extremely difficult to understand. The Vice Chancellor as the appellate authority considered the question judicially and upheld the present Petitioner's contention regarding his qualifications. It should indeed be a sad state of affairs for the University to now contend that those observations of the Vice Chancellor are not binding upon it. Be that as it may, I am glad to note that there is no whisper in the counter-affidavit filed on behalf of the University to such effect. I would, therefore, take it that the ingenious argument advanced at the bar does not have the support of the 1st Respondent, the University.

9. Chapter 15 of the Kerala University Ordinance prescribes the qualifications of teachers. It reads:

5. (b) Teachers of affiliated non-professional colleges.

* * * *

(2) Professor and Heads of A first or second class post-graduate Post-graduate degree in the subject concerned Departments with a minimum of seven years" teaching experience at the degree level and preferably some evidence of research work up to the Ph.D. standard or published work of high quality. (emphasis applied)

It cannot be disputed that the qualifications prescribed by the competent authority postulate seven years of teaching experience and not ten years as contended by the Respondents. That the Petitioner has had seven years and more of teaching experience on 1st September 1971 cannot be disputed, not only because of the observations of this Court in the earlier proceeding, but also because, despite the strenuous argument urged to the contrary at the bar on behalf of the University, there is no statement in their counter-affidavit questioning the Petitioner's categoric contentions on the point. Accordingly it is to be concluded that as on 1st September 1971 the Petitioner admittedly had 7 years of teaching experience. Counsel for the University fairly admits that it must in law be so in view of the various averments on the point.

10. Such being the position, the Petitioner has the requisite qualifications as per the provisions of the Kerala University Ordinance which I have extracted above. If that is the position, I do not understand why in Ext. P-1 the Syndicate refused to grant approval for the Petitioner's promotion as I Grade Professor as from 1st September 1971. The reason for such refusal that is now stated at the bar as well as in the counter-affidavit is the order dated, 29th November 1969. I shall read that order:

In Rule 20A of the Grant-in-aid Code for the private Arts and Science and Training Colleges, the following will be added as Notes VIII and IX:--

"VIII. Teachers who do not possess the minimum qualifications prescribed for appointment to the respective posts to which they are appointed shall not be considered eligible for the revised scales of pay unless they are exempted from the requisite qualifications by Government. The exemption if granted by Government, will take effect from the date of appointment of the teacher to the post concerned."

"IX. Professors Grade I and Grade II shall have teaching experience for a minimum period of 10 years before their promotion or appointment as Professor Grade 1 or Grade II as the case may be in order to be eligible for the revised scales of pay".

* * * *

(emphasis applied)

11. This order is not easy to understand, for the latter paragraph contradicts the earlier paragraph. Paragraph 8 says that a person who does not have the minimum qualifications prescribed for appointment will not be entitled to the revised scales of pay. (The revised scales are those which are provided in G.O. Rt. 26/69/Edn., dated 3rd January 1969.) The prescribed qualifications must necessarily be those qualifications which are prescribed in the Kerala University Ordinance in regard to the post of I Grade Professor. The Ordinance having prescribed seven years of teaching experience, there cannot be any doubt as to the qualifications of the Petitioner. He has those qualifications. But then paragraph 9 of the order says that 10 years of teaching experience is required to be eligible for the revised scales of pay. This conflicts with the earlier paragraph, and goes beyond the scope of the Ordinance. In the circumstances, paragraph 9 of G.O. Rt. No. 4101/69/ Edn., dated 29th November 1969 cannot override what is provided in paragraph 8. Paragraph 9 must, therefore be read consistently with paragraph 8. That being the position, the period of 10 years mentioned in paragraph 9 in so far as I Grade or II Grade Professors are concerned must be understood as 7 years as provided under the Ordinance. This is so declared.

12. I am indeed surprised that the University contends that the petition is belated. The impugned order Ext. P-1 was made on 17th October 1978 against which the Petitioner filed an application for review dated 12th December 1978. That application was rejected by a peremptory order on 2nd July 1979 (Ext. P-2). It took almost 8 months for the University to dispose of that application. A month later, that is, on 20th August 1979, this original petition was filed. I do not understand how such a petition can be considered to be belated. Of course, the University's counsel submits that the review application was not maintainable under the relevant provisions of the Act. That may be so. But the review application was not rejected on that ground. There is no whisper in Ext. P-2 as to the non-maintainability of the application for review. Even in the counter-affidavit

it is not stated that the application for review was not maintainable under the relevant provisions of the law. I am indeed surprised that this contention should have been urged by the University in the circumstances of this case, especially when no interests of third parties are involved. [See Dilbagh Rai Jarry Vs. Union of India (UOI) and Others, at 135].

13. In the circumstances, I hold that the Petitioner is entitled to be recognised as I Grade Professor as from 1st September 1971. I direct the 1st Respondent to pass appropriate order to approve the appointment of the Petitioner as I Grade Professor as aforesaid and I direct the other Respondents to pass consequential orders. Exts. P-1 and P-2 are quashed for the reasons stated above. The original petition is allowed in the above terms. No costs.