

(2006) 01 KL CK 0006

In the High Court Of Kerala

Case No : W.A. No's. 2000 of 2006 and 25 of 2007

Dr. R. Sreekumar

APPELLANT

Vs

M. Mohan and Others

RESPONDENT

Date of Decision : 15-01-2006

Acts Referred:

Constitution of India, 1950 — Article 166(2), 166(3)
Kerala Collegiate Education Service Rules, 1994 — Rule 1(2), 5, 9
Kerala State and Subordinate Services Rules, 1958 — Rule 17A, 27, 28

Citation : (2006) 01 KL CK 0006

Hon'ble Judges : K.R. Udayabhanu, J;K.A. Abdul Gafoor, J

Bench : Division Bench

**Advocate : P.C. Sasidharan and Sandesh Raja, Govt. Pleader, for the Appellant;
P. Chandrasekhar, Public Prosecutor Jnanasekharan, T.R. Ravi, Prashanth and
Molly Jacob, for the Respondent**

Judgement

K.A. Abdul Gafoor, J.—Writ Appeal No. 25/07 is by the State. As per the impugned judgment, learned Single Judge found that 25 years of service in the Collegiate Education Department prescribed as a qualification for the purpose of appointment as Principal in an Arts and Science College includes the service put in, in aided colleges as well. The contention of the Appellant is that it can only be the service put in, in Government Colleges alone.

2. The first respondent/writ Petitioner approached this Court challenging prescription of 25 years service or in the alternate seeking a declaration that he is entitled to get his aided college service reckoned for the purpose of promotion to the post of Principal.

3. It is an admitted fact that while he was working in an aided college as a teacher, he was appointed as Professor Grade-II in a Govt. College on special recruitment under Rule 17A of the General Rules in KS & SSR. He was advised for such appointment by the Public Service Commission on 19-3-1985. This is revealed by item No. 1 referred to in Ext.P-3. He joined duty on 1-7-1985. He

approached this Court apprehending that the service he did have from 25-8-1976 to 30-6-1985 in an aided college might not be counted as service in the Collegiate Education Department, which is prescribed as a qualification for appointment to the post of Principal. That was why he challenged the provision prescribing 25 years of service as a qualification or in the alternate sought a declaration to reckon his aided college service also, towards it.

4. The learned Single Judge considered the rule in question, the explanatory note in the notification, the amendment brought in introducing that qualification to take the view that, aided college service will also come within the 25 years of service prescribed as a qualification for appointment as Principal. This is under challenge by the State in W.A. No. 25/07.

5. An incumbent who is not a party to the writ petition is also felt aggrieved by that judgment. Therefore, he has filed W. A. No. 2000/06.

6. The contention of the Government is that, the "25 years of service in the Collegiate Education Department", prescribed as item No. 2 in column 3 against entry No. 2 in Section B of the table under Rule 5 of the Special rules, for the Kerala Collegiate Education Service is the service in Government Colleges alone and it cannot, on any count, take in the service put in by a teacher in an aided private college. This is evident from the applicability clause in the Special rules as contained in Rule 1(2) which provides that the Special rules apply to educational institutions coming under the Kerala Collegiate Education Department. The Special rules apply only to Government Colleges. Therefore, the service that the writ Petitioner did have in an aided college, whatever be its length, cannot be tagged on, on his entry in Government service in a Government College, for computing his total service, for the purpose of qualification prescribed for appointment as Principal.

7. It is contended by the Appellant in W. A. No. 2000/06 that a mere possession of qualification is not sufficient for promotion. The writ Petitioner shall have to be found suitable by the DPC, as the post of Principal is a selection post. While considering the qualified hands the seniority of the respective incumbents also has to be considered. Merely because, he did have more length of service in an aided college which preceded his service in Government College, it cannot cloth him with seniority over the incumbents already in service at the time of his entry in Government service. For the purpose of seniority, Rule 27(c) of the General rules in KS & SS rules, 1958 will have application so far as the parties are concerned. Therefore, admittedly as the writ Petitioner was advised on 19-3-1985 for appointment as professor Grade-II, he cannot, reckon any date earlier than that, for the purpose of seniority. It is further submitted that periodical select list have been prepared by the DPC and persons have been included therein. The writ Petitioner had not sought to challenge such list prepared by the DPC. He is not included in any DPC list so far prepared by the Department Promotion Committee. According to him, he is the next person to be considered by the DPC for promotion. Therefore, the direction of the learned

Single Judge in the impugned judgment affects him, it is submitted.

8. First of all, I will deal with the contention of the learned Govt. Pleader. The relevant entry prescribing qualification is as follows:

should have completed a minimum period of 25 years of service in the Collegiate Education Department.

(emphasis supplied)

The submission of the learned Govt. Pleader is that the service made mention of in this provision shall be in the Collegiate Education Department. According to him, the service of the Collegiate Education Department means service in the Government colleges. He for this purpose seek emphasis on Rule 1(2) of the special rules which reads as under:

They apply to the educational institutions coming under the Kerala Collegiate Education Department and Law Colleges....

This provision is appearing in the Special rules for the Kerala Collegiate Education Service prescribed u/s 2 of the Public Service Act. Necessarily, this is in respect of public service. So, this applies to educational institutions in Public service namely the Govt, colleges. But the service to be reckoned for promotion shall also be, it is submitted, in the Collegiate Education Department.

9. It is an admitted position and accepted too, that in Kerala there are Govt, colleges and private colleges. It is also an admitted fact that Govt, exercises very deep control in several matters over the affairs of private colleges. Necessarily, that control shall be from a department of the Government. What shall be that department?

10. For the effective functioning of the Government, Government have to frame rules in terms of Article 166(2) and (3) of the Constitution which ordinarily is called Rules of Business. Rule 4 of the said rules in Part I provides that "the business of Government shall be transacted in the Department specified in the First Schedule, and shall be classified and distributed between those departments as laid down therein". In the first schedule, there is no department like Collegiate Education Department but only Higher Education Department. The business of Higher Education Department is further dealt with under various sub headings including "Department of Collegiate Education". Necessarily, that will take in, when the Government is functioning in not only in respect of the Govt, colleges but also in respect of aided colleges which is a part of that department for the control exercised by Government. There are Director of Collegiate Education and Deputy Director of Collegiate Education who are controlling the affairs and matters relating to the service of aided college teachers. That is within the Collegiate Education Department.

11. What was prevalent earlier was the Special rules for Kerala Collegiate Education Service, 1967, in which Principal and Deputy Director belonged to a

common category. In those Special rule also there was a prescription of service qualification for appointment as Principal or Deputy Director. It was in the following line:

A minimum of twenty Ave years" teaching experience at the degree level and/or postgraduate degree level; under the Kerala Collegiate Education Service and/or under the Kerala Collegiate Education Subordinate Service.

(emphasis supplied)

Thus in the earlier rules, the teaching experience prescribed was that in the Collegiate Education Service or Collegiate Education Subordinate Service; where as in the present rule, what is prescribed is 25 years of service in the Collegiate Education Department. Collegiate Education Service or Collegiate Education Subordinate Service is confined to Govt, colleges alone. Necessarily, when 25 years of service in the Collegiate Education Department is mentioned in the present rules, the earlier provision is expanded. If, as contended by the Govt. Pleader it is confining to Govt, colleges alone, necessarily the old phraseology of Collegiate Education Service would have been employed in the relevant provision by the rule making authority. In other words, the rule making authority had made conscious deviation by using a different phraseology. Necessarily, that intention is reflected in the explanatory note which indicates that the object of the amendment of the Special rules as per G.O. (P) No. 114/94/H. Ed., dated 6-8-1994 introducing that qualification was to prescribe 25 years of service in the Collegiate Education Department which take in private colleges as well. Therefore, the contention urged by Govt. Pleader in that regard cannot in any way be accepted.

12. Now we will deal with the apprehension of the Appellant in W.A. No. 2000/06. The direction issued by the learned Single Judge is in the following lines:

Be that as it may, in view of the declaration as above, there will be a direction to Respondents 1 and 2 to take appropriate action forthwith in the case of the Petitioner while considering the claim for promotion as Principal.

Therefore there is no direction by the learned Single Judge to promote the writ Petitioner. Only his case was directed to be considered reckoning his service in the aided college as well for the purpose of calculating 25 years of service prescribed as a qualification for appointment was principal.

13. As promotion has to be made based on the merit and ability of the incumbent concerned, as provided in Rule 28(b), necessarily, his case also has to be considered by the Departmental Promotion Committee. Departmental Promotion Committee has to consider the case of the incumbent concerned depending upon the number of vacancies and the number of persons in the filed of choice shall be equal to three times of number of vacancies and that too depending upon the respective and inter se seniority of the incumbents in the feeder category. Necessarily, if as submitted by the Appellant in W.A. No.

2000/06 he is sufficiently senior enough to be considered by the DPC in preference to the Petitioner, that will not be omitted to be considered. The DPC has to follow the necessary requirement in terms of Rule 28(b) of the General rules in KS& SS rules, where under it works for the preparation of a select list. On the other hand if temporary appointment is to be made by promoting an incumbent seniority shall be the criterion as provided in Rule 9(a)(i) or 31(a)(i) as the case may be. Taking these aspects, consequential orders shall be passed with respect to the writ Petitioner within one month.

W.As. are disposed of.