
(2006) 08 KL CK 0061
In the High Court Of Kerala
Case No : Writ Petition (C) No. 8618

Dr. V. Reshmi and Others

APPELLANT

Vs

University of Kerala and Others

RESPONDENT

Date of Decision : 25-08-2006

Acts Referred:

Kerala University Act, 1974 — Section 57, 57(1)

Citation : (2006) 08 KL CK 0061

Hon'ble Judges : A.K. Basheer, J

Bench : Single Bench

Advocate : K.R.B. Kaimal, B. Unnikrishna Kaimal, M. Balagovindan and Sajith Panicker, for the Appellant; S. Gopakumaran Nair, S.C., Kerala University and A.N. Rajan Babu, S.C., S.N. Trust, for the Respondent

Judgement

A.K. Basheer, J.—Since the issue involved in this bunch of Writ Petitions is the same and the relief sought for is also identical, they are being disposed of by this common judgment.

2. Petitioners are stated to be working as Lecturers in different subjects like Zoology, Mathematics, Hindi, Commerce, Economics etc. in different colleges under the same management viz., Sree Narayana Trust, Kollam. Petitioners claim that they were appointed by the management after a due process of selection. The applications submitted by them in response to the notification issued in this regard were duly considered and selection was held as contemplated under the relevant Act/Statutes/Regulations etc.

3. The grievance of the Petitioners is that their appointment is not being approved by the university without any valid or justifiable reasons. Resultantly, they are not being paid salary though they have been working ever since their appointment

4. It is on record that the Petitioners in all these cases except the Petitioner in W.P. No. 15988/2006 were appointed during November/December 2004. The

Petitioner in the Writ Petition mentioned above was appointed in June 2005.

5. It is contended by the Petitioners that they are qualified to hold the post of Lecturer, they having obtained the requisite qualifications prescribed under the Act and the relevant Rules and Regulations. They were appointed against sanctioned vacancies available in the respective institutions. There is no legal or procedural impediment in the appointment. Therefore the University is not at all justified in refusing to take an appropriate decision in the matter of approval, though the management had forwarded the orders of appointment with all relevant documents.

6. In the counter-affidavit filed by the Deputy Director of Collegiate Education it is primarily contended that the management could not have made appointments without obtaining concurrence/sanction of the Government, particularly in view of the ban on creation and filling up of posts consequent on the introduction of the Pre-degree Abolition Act. After delinking of the Pre-degree from the colleges, large number of Junior Lecturers were deployed to Higher Secondary Schools. The deployed teachers will have to be accommodated against regular vacancies which may arise in the parent institution. Fresh recruitments will be possible only if the number of teachers in the subject concerned is reduced based on the workload in that subject and that too only after obtaining prior concurrence/sanction from the Government. The managements in these cases are running several aided colleges in the State. All such institutions have to be taken as a single unit. Vacancy in a particular college cannot be filled up without accommodating all the excess Lecturers working in the other institutions. In short it is contended that the Government is not liable to pay salary to the teachers appointed by the management in posts not sanctioned by the Government.

7. In the counter-affidavit filed by the University in some of the Writ Petitions, it is contended that the appointments can be approved only if the Government gives its concurrence as provided under the amended provisions contained in Section 57(1) of the Kerala University Act, 1974. By the said amendment brought into force in January 2005 by the University Laws (Amendment) Act, 2005, "any appointment to the posts eligible to receive salary from the Government shall be made only against posts sanctioned by the Government or by such officers as may be authorised by the Government."

8. It is contended by the University that since the sanction of the Government is a pre-requisite for granting approval to the appointment of teachers in private colleges, which come under the direct payment system, the University has not accorded sanction to the appointments of the Petitioners so far. It is further averred in the counter-affidavit that the norms and procedure for selection of teachers mandate that new appointments shall be made only after getting order of staff fixation from the University. No appointment can be made in anticipation of sanction of new posts. It was incumbent on the management to obtain prior sanction from the University before issuing notifications inviting applications for

appointment. While conceding that The nominee of the University had participated in the selection process, it is further contended that mere participation of the nominee does not mean that the University had given its consent for appointment. Before deputing the nominee to participate in the selection process, the University usually does not look into the workload or other norms of eligibility of the candidate for appointment. The duty of the nominee is to represent the University and to assess the qualifications of the candidates for the post.

9. The other contention raised by the University in the counter-affidavit is that the Director of Collegiate Education has to assess the workload and staff position in each college. The Government has to accord sanction for appointments on the basis of the report of the Director of Collegiate Education. The Director has not so far forwarded the statement of workload for the academic year 2004-05 in respect of the colleges under the University of Kerala. On March 27, 2006, the Registrar of the University had contacted the Director over telephone and requested him to forward the statement of workload. The Director had assured that it would be forwarded immediately. It is further stated that on receipt of the statement of workload from the Director, the University would consider the proposals for approval of appointments of the Petitioners.

10. In this context it is necessary to refer to Section 57 of the Kerala University Act, 1974. Clause (1) of Section 57; after its amendment with effect from January 6, 2005, postulates that appointments to the posts eligible to receive salary from the Government shall be made only against posts sanctioned by the Government or by such officers as may be authorised by the Government (emphasis supplied).

11. Learned Government Pleader who appears for the Director of Collegiate Education has placed heavy reliance on the above statutory mandate. It is contended by him that the management is entitled to make appointment only against posts sanctioned by the Government Unless and until the management gets the requisite sanction before making the appointment, the Government will not be bound to pay salary to the appointees. Statute 14 of the Kerala University First Statute 1979 deals with approval of appointment which is extracted hereunder:

14. Approval of appointment.--(1) Approval of every appointment to the teaching post shall be made by the Syndicate subject to the conditions that the appointment is in accordance with the staff pattern fixed by the University and that the person so appointed is fully qualified for the post.

(2) The Deputy Director of Collegiate Education concerned shall verify before making direct payment of salaries as to whether the post for which payment is claimed is in accordance" with the staff pattern and workload fixed by the University. Doubtful cases shall be referred to the University for clarification and the correctness of direct payment ensured.

(3) In the case of those private colleges coming under the Direct Payment Scheme, the Director of Collegiate Education or the Officer authorised by him in this behalf shall verify in consultation with the University as to whether the teaching posts in private colleges are in excess of the post sanctioned by the University. However, in the, case of incumbents declared as supernumeraries by the University, the controlling officers shall ensure that no fresh appointment is made against future vacancies until all the supernumeraries are absorbed against those vacancies. The direct payment of salaries shall not be made to the persons appointed against fresh vacancies, before the absorption of supernumeraries.

12. A perusal of the clauses in the above statute undoubtedly shows that the Syndicate of the University is the authority to grant approval to the appointments made in the teaching post. Approval can be granted only on condition that the appointment is in accordance with the staff pattern faced by the University and that the person so appointed is fully qualified for the post. Clause (2) further stipulates that the Deputy Director of Collegiate Education concerned shall verify, before making direct payment of salaries, as to whether the post for which payment is claimed is in accordance with the staff pattern and workload fixed by the University. It is further provided in Clause (2) that doubtful cases shall be referred to the University for Clarification and the correctness of direct payment. It is also pertinent to note that Clause (3) of Statute 14 empowers and authorises the Director of Collegiate Education or the Officer authorised by him to verify, in consultation with the University, as to whether the teaching posts in private colleges are in excess of the post sanctioned by the University (emphasis supplied).

13. A conjoint reading of Sub-section (1) of Section 57 of the Act and Statute 14 extracted above, makes it abundantly clear that a joint responsibility is cast upon the University as well as the Government, in the matter of appointment of teaching staff in private colleges which come under the direct payment system. While it is obligatory on the part of the University to fix the staff pattern depending on the workload (which is yet again to be fixed by the University), it is clear from the provisions referred to above that an obligation is cast on the Deputy Director of Collegiate Education as well, before making direct payment of salaries, to verify as to whether the post for which payment is claimed is in accordance with the staff pattern and workload fixed by the University. Of course, the Deputy Director can refer doubtful cases to the University for clarification to ensure that only those teachers who have been appointed in accordance with staff pattern and also against sanctioned posts are paid salary.

14. It is true that after the amendment brought into effect to Section 57 of the Act in the year 2005, appointments to the posts eligible to receive salary from the Government shall be made only against posts sanctioned by the Government or by such officers as may be authorised by the Government. In other words, the liability of the Government to pay salary to the appointee will arise only if the appointment is against a sanctioned post. As noticed already, the University has

to fix the staff pattern depending on the workload as provided under Statute 14. Statute 75 further postulates that the Director of Collegiate Education or the officer authorised in that behalf by the Director of Collegiate Education, shall be competent to examine in detail the workload of each department of study and the staff position in each college and satisfy himself that no extra staff is permitted to continue in service. The Director shall, if he so desires, have periodical consultation with the University in the matter. Reference to the above statutory provisions has been made only to highlight the fact that the authorities concerned viz., the University as well as the Director of Collegiate Education have not apparently taken any effective steps for regularisation of appointment of the Petitioners in terms of the statutory mandates referred to above.

15. The only prayer in these writ petitions is to issue an appropriate direction to the University to approve the appointments in question. Undoubtedly, the stand taken by the Director of Collegiate Education in particular and the University in general, is against the statutory duty and obligation cast upon them. The indifferent attitude of the two authorities has been far from satisfactory, to say the least. The two authorities ought to have ensured that order of staff fixation had been passed on the basis of the workload available in the colleges in question.

16. In the cases on hand, all the appointments except one were made during the academic year 2004-05. It would not have been difficult at all to fix the staff pattern on the basis of the workload, with specific reference to the relevant criteria for completing the above process. If only the two authorities had taken appropriate action in the matter as contemplated under the Act and the Statutes, this unnecessary delay could have been avoided. It would not have been difficult at all to ascertain as to whether the appointments were made against sanctioned posts or not, and also as to whether they were in accordance with the orders of staff fixation, workload etc. Evidently the authorities have shirked their responsibility for reasons best known to them only. If the Director was of the view that Petitioners were not appointed against sanctioned posts, such a decision could have been taken and communicated after verifying the relevant records available in the University or the Colleges concerned. On the contrary, if there was no legal impediment in approving the appointments, such a decision ought to have been taken by both the University and the Director as provided under the relevant statutory provisions.

17. It is distressing to note that large number of teachers are being constrained to approach this Court with the grievance that they are not being paid salary or that their appointments are not being approved for one reason or the other. In several cases it has been noticed that the Directorate has been raising serious objections in the matter of appointments made by the management. Even in cases where appointments were made prior to the amendment of the Act in the year 2005, the Directorate has been raising objection on the ground that previous sanction of the Government has not been obtained before making

appointment. Strangely, in some cases when appointments were made by the managements in vacancies which arose due to retirement or death of the incumbents also, similar objections have been raised.

18. One factor which appears to vex the Government and the Directorate is that the staff pattern in most of the colleges has not yet been finalised so far. It would appear that some of the deployed Junior Lecturers are yet to be accommodated in their parent colleges when they come back from Higher Secondary Schools. This process is still continuing in stray cases. But still, in my view, the real problem lies elsewhere.

19. It is understandable that being the paymaster, the Government may be anxious to ensure that the managements do make appointments only against sanctioned posts, so that the Government is liable to pay salary only to legitimate appointees. It is possible that some managements may resort to some unethical and illegal methods and make appointments in non-existent vacancies. It is also probable that some managements may create artificial vacancies by effecting transfer of teachers to other colleges under their own management within the jurisdiction of the same University. Similarly leave vacancies can also be created to facilitate fresh appointments. It is also likely that some managements having several institutions under more than one or two Universities, may try to create vacancies by making inter University transfers and by some such other methods. I hasten to add that the above observations made by me are only probabilities or possibilities which may or may not occur. But the fact remains that a fresh appointment in a college is always an attractive and lucrative proposition, as far as the management is concerned. The worrisome factor as far as the Government is concerned, is that it being the paymaster, the liability to pay salary has to be borne by it, if the institution is covered under the direct payment system.

20. But in my view all these problems can be resolved if the Government and the University concerned put their heads together and make a concerted effort to weed out the evil of illegal appointments that may be attempted by some unscrupulous managements. If the Universities and the Directorate are prepared to fix the workload, staff pattern etc., in the colleges every year regularly and meticulously, the menace can be controlled to a large extent; and even eradicated totally. This can be achieved if a methodology is evolved by which fixation of strength of teaching staff in the colleges is made an annual mandatory feature as in the case of Departmental and aided schools under the Kerala Education Rules. Necessary rules can be formulated for this purpose. The University Act and Statutes can be properly amended by incorporating new provisions or clauses or by amending some existing clauses. If the statutory provisions in line with the rules contained in Chapter XXIII of the Kerala Education Rules are incorporated in the University Act and Statutes, that will definitely go a long way in solving the present imbroglio.

21. For the reasons stated above, I deem it necessary to direct the Government

and the Universities in the State to address the issue forthwith. I am sure that the Government and the Universities will bestow their attention in the matter and do the needful on a war footing.

22. Having regard to the entire facts and circumstances, these Writ Petitions are disposed of with a direction to the University of Kerala to take an appropriate decision in the matter of appointment of the Petitioners as expeditiously as possible, at any rate within two months from the date of receipt of a copy of this judgment.

It is made clear that it will be open to the University and the Director/Deputy Director to take a decision in accordance with law and in consultation with the authorities concerned. The Director of Collegiate Education and the Deputy Directors concerned, shall also ensure that the process of approval is completed within the time stipulated above. If it is found that the orders of appointment of the Petitioners are liable to be approved, appropriate sanction/orders for disbursement of salary to them shall also be passed without any delay and it shall be ensured that they are paid entire arrears of salary within two months from the date of the decision taken in the matter.

23. Writ Petitions are disposed of in the above terms.

Registry shall forward a copy of this judgment to the Chief Secretary, Govt. of Kerala, Secretary to Higher Education Department, the Director of Collegiate Education, Government of Kerala, and also to the Registrars of all Universities in Kerala for appropriate action, in terms of the directions contained in paragraph 22 of the judgment.