
(1976) 01 KL CK 0007

In the High Court Of Kerala

Case No : Original Petition No. 828 of 1973

Gopinathan Nair

APPELLANT

Vs

University of Kerala and Others

RESPONDENT

Date of Decision : 05-01-1976

Acts Referred:

Kerala University Act, 1974 — Section 58(2), 82(3)

Citation : AIR 1977 Ker 22

Hon'ble Judges : V. Balakrishna Eradi, J;G. Viswanatha Iyer, J

Bench : Division Bench

Advocate : S. Narayanan Poti, for the Appellant; K.P. Radhakrishna Menon, K.K. Ravindranath, N. Raghava Kurup, M.S. Narayana Pillai, K. Velayudhan Nair and K.J. Joseph, for the Respondent

Final Decision : Dismissed

Judgement

Balakrishna Eradi, J.—The petitioner who is working as a Second Grade Professor in Mathematics in a private college affiliated to the Kerala University has brought this writ petition challenging the action taken by the Syndicate of the Kerala University as per its resolution passed at the meeting held on 31-8-1972 to grant to the fourth respondent exemption from the minimum qualifications to hold the post of Grade I Professor in Mathematics in the N. S. S. Hindu College, Changanacherry as per Regulation 5 of the Regulations in view of her "tested teaching experience and record of service as Professor Grade II". By the said resolution the Syndicate also granted approval to the appointment of the fourth respondent as Grade I Professor in Mathematics with effect from 8-8-1972, Ext P-2 is the order issued by the Registrar of the University incorporating the aforesaid decision taken by the Syndicate. The petitioner contends that there was no provision in the Kerala University Act, 1969 conferring jurisdiction or power on any authority to grant any exemption from the minimum qualifications prescribed in respect of teachers or expressly empowering the framing of Statutes or Regulations covering the said subject and that hence Statute 3 (xix) of Chapter

IX of the First Statutes of the Kerala University as well as Regulation 5 framed by the Academic Council are ultra vires and void in so far as they purport to confer such a power on the Syndicate.

2. Subsequent to the institution of this writ petition the Legislature has passed the Kerala University Act, 1974 (hereinafter called the 1974 Act) and except Section 64, with which we are not concerned, all the other provisions of the said Act have been brought into force with effect from 19-8-1974. Section 58(2) of the 1974 Act lays down that--

"58. Qualifications of teachers.--

(1) x x x

(2) Notwithstanding anything contained in any law or in any judgment, decree or order of any Court or other authority, any decision or order exempting any teacher from possessing the prescribed qualifications or approving the appointment of any teacher who did not possess the prescribed qualifications or allowing any teacher who did not possess the prescribed qualifications to continue in service, made by any authority or officer before the commencement of this Act shall be deemed to have been made by the authority competent to make such decision or order under this Act as if this Act had been in force at the time when such decision or order was made, and accordingly all such decisions and orders shall be, and shall be deemed always to have been valid and in accordance with law."

The constitutionality of this section has not been challenged before us. The purpose and effect of this section is to confer retrospective validity on all the decisions or orders made or passed by any authority or officer before the commencement of the 1974 Act exempting any teacher from possessing the prescribed qualifications or approving the appointment of any teacher who did not possess the prescribed qualifications by directing that all such decisions and orders are to be deemed to have been made by the authority competent to make such decisions or pass such orders under the present enactment as if the 1974 Act was in force at the time when the decision or order was made.

3. The benefit of the above provision will obviously be available only if under the 1974 Act, there is some authority or officer vested with the power, to make a decision or pass an order like the one in respect of which the validating provision is sought to be made use of. It is contended on behalf of the writ petitioner that there is no provision in the 1974 Act conferring power upon any authority or officer of the University to exempt a teacher from possessing the prescribed qualifications or to approve the appointment of any teacher who does not possess the prescribed qualifications and that hence Section 58 cannot be called in aid by the respondent for validating the order Exhibit P-2 or the decision of the Syndicate on the basis of which that order was issued. This contention, however, overlooks the fact that by Section 82(3) of the 1974 Act the Statutes, Ordinances, Regulations, etc., which were in force immediately prior to its

commencement are to remain operative until such time as they are replaced by Statutes, Ordinances, Regulations, etc. framed under the 1974 Act. The resultant position is that the Kerala University First Statutes, 1972 are still in force, notwithstanding the repeal of the Kerala University Act, 1969 whereunder those Statutes were made. Statute 3 (xix) of Chapter IX of the First Statutes specially confers power on the Syndicate to grant exemption to teachers from the prescribed qualifications in accordance with the regulations framed by the Academic Council. It cannot, therefore, be said that under the 1974 Act there is no authority competent to exempt teachers from the prescribed qualifications.

4. The learned advocate appearing for the petitioner, however, argued that the power conferred on the Syndicate by Statute 3 (xix) is only to grant exemptions in accordance with the Regulations framed by the Academic Council and that the said power was impossible of being validly exercised since under the provisions contained in the 1969 Act the Academic Council had not been empowered to frame regulations covering the subject of grant of exemption to teachers from prescribed qualifications. Let us examine whether there is substance in this argument. In the Kerala University Act, 1969 the powers of the Academic Council were enumerated in Section 23 of that Act. After making specific mention of various matters in the preceding clauses, clause (xiv) of that section conferred on the Academic Council in general terms the authority "to exercise such other powers and perform such other duties as may be conferred or imposed on it by this Act or the Statutes, Ordinances, Regulations, Rules or bye-laws.". Thus clause (xiv) lays down that besides the powers and duties mentioned in clauses (i) to (xiii) additional powers and duties may be conferred or imposed on the Academic Council by the Statutes, Ordinances, etc. Statute 3 (xix) of Chapter IX of the First Statutes has expressly conferred on the Academic Council the power of making Regulations on the subject of grant of exemption to teachers from the prescribed qualifications. It was in the exercise of the said power that the Academic Council framed regulation 5 laying down the conditions subject to which exemption from the prescribed qualifications may be granted by the Syndicate to Second Grade Professors for promotion as First Grade Professors. We have therefore no hesitation to reject the contention put forward by the petitioner that the Academic Council had acted in excess of the powers conferred on it by the Kerala University Act, 1969 in framing Regulation No. 5. By virtue of Regulation 5 read with Statute 3 (xix) the Syndicate is vested with the power to grant exemption to teachers from the prescribed qualifications and to approve the appointment of teachers who did not possess the prescribed qualifications on the strength of the grant of such exemption. The validating provision contained in Section 58(2) of the Act is, therefore, clearly attracted in respect of decisions taken by the Syndicate and orders issued on the basis thereof prior to the commencement of the 1974 Act granting exemption to teachers from the prescribed qualifications and approving the appointment of teachers who do not possess the prescribed qualifications and all such decisions and orders have to be deemed to have been always valid and in accordance with law.

5. Since the very purpose of Section 58(2) is to confer retrospective validity on decisions or orders of the type referred to above which may have been passed by any authority or officer who was not vested with the requisite competence or power at the time when the decision or order was made, it is unnecessary for us to examine the tenability or otherwise of the contention put forward by the petitioner that at the time when Ext. P-2 was passed the Syndicate was not vested with the power to exempt any teacher from the prescribed qualifications. Even if it is to be assumed for purposes of argument that the said contention is well founded, it will not now avail to the advantage of the petitioner since whatever might have been the position that originally obtained such orders have now been retrospectively validated by Section 58(2) .

It follows from the foregoing discussion that the challenge raised by the petitioner against Ext. P-2 cannot be sustained. The Original Petition is, therefore, dismissed, but, in the circumstances, without any order as to costs.