

(1953) 09 KL CK 0022
In the High Court Of Kerala
Case No : O.P. No. 80 of 1953

Joseph Mundassery

APPELLANT

Vs

Manager, St. Thomas College

RESPONDENT

Date of Decision : 29-09-1953

Acts Referred:

Constitution of India, 1950 — Article 226, 310, 311

Citation : (1953) 09 KL CK 0022

Hon'ble Judges : Koshi, C.J;Menon, J

Bench : Division Bench

Advocate : V.K.K. Menon, P. Sreedhara Menon and V.G. Bhaskaran Nair, for the Appellant; K.P. Abraham, K.K. Mathew and K.T. Ninan, for the Respondent

Final Decision : Dismissed

Judgement

M.S. Menon, J.—The Petitioner was a member of the teaching staff of the St. Thomas College, Trichur, a first Grade College affiliated to the University of Madras and the counter-Petitioner is the Manager of that institution. The Petitioner's services were terminated by an order of the management dated 10-6-1953 and the prayer in the petition is worded as follows:

The Petitioner, therefore humbly prays that this Hon"ble High Court may be pleased to call for relevant records from the counter-Petitioner and issue a writ of certiorari to quash the order dated 10-6-1953 passed by the Management of the College and if necessary to further issue a writ of prohibition forbidding further action by the Management in this matter. In the alternative it is humbly prayed that such orders or directions as this Hon"ble Court may deem fit be issued in this matter.

2. The Petitioner's contentions are:

(1) that the management of St. Thomas College, Trichur is a quasi-public authority exercising judicial functions in matters of discipline and removal from service and hence amenable to the jurisdiction of this Court under Article 226 of

the Constitution;

(2) that according to the Laws of the University of Madras the conditions of service applicable to the Petitioner are the same as those prescribed for Government servants and Articles 310 and 311 of the Constitution, if not in terms at least in principle, are available to him;

(3) that the management of the St. Thomas College in passing the order dated 10-6-1953 has not followed the usual procedure adopted in government service and the principles of Articles 310 and 311 of the Constitution;

(4) that the action of the management is not bona fide and that the rules of natural justice have been violated; and

(5) that in view of the above the petition has to be allowed and his prayers granted.

3. The first ground is dealt with in para. 18 of the petition as follows:

18. St. Thomas College is a Public Authority charged with administrative and quasi-judicial functions and bound by the laws of the University of Madras. As such it is an Authority amenable to the corrective jurisdiction of this Hon'ble Court under Article 226 of the Constitution of India.

and the second ground in paras. 8 to 13 in the following terms:

8. The St. Thomas College, Trichur whose management is represented by the counter-Petitioner is a First Grade College affiliated to the University of Madras, incorporated by statute in the State of Madras. As an affiliated College, the above College is bound in law by the statutes and Ordinances passed by the Madras University. One of such laws pertaining to affiliated Colleges is "every College shall satisfy the Syndicate on the following points:

(1) ...

(2) the character, qualifications, and adequacy of its teaching staff and the conditions of their service.

9. The Senate of the University of Madras resolved at its meeting held in March 1945 that a General Inspection of the Colleges of the University should be held according to Section 16(12), Madras University Act. Accordingly the Syndicate appointed a General Inspection Commission who submitted their report on 28-10-47.

10. In that report, the commission recommended under the heading Conditions of Service amongst other things that "if there should be any serious disagreement between a teacher and the management, the usual procedure adopted in Government service should be followed before the teacher's service is terminated."

11. At a special meeting of the Senate held on 19-2-1948, the report of the

General Inspection Commission was adopted by the Senate.

12. Therefore, at present, the St. Thomas College as an affiliated College is, in law bound by all the laws of the University of Madras which include the above-mentioned rule as to the conditions of service of the staff of the affiliated Colleges.

13. Therefore, in terminating the service of a member of a staff, the management is bound to follow the usual procedure adopted in Government service and also subject to the provisions of Articles 310 and 311 of the Constitution of India.

4. CONTENTION No. (1): It has been submitted at the Bar and the submission remains uncontradicted, that the St. Thomas College, Trichur, is a private educational institution owned and financed by His Grace the Bishop of Trichur and that it is not in receipt of any contribution either from State or Central Revenues. The argument on behalf of the Petitioner was that in spite of this, matters relating to education being of paramount importance to the body politic, an educational institution affiliated to a statutory body like the University of Madras and enjoying the benefits of such affiliation should be deemed to be a public institution and its management at least a quasi-public authority.

5. This position was sought to be supported by a decision of Subba Rao J. in - C.D. Sekkilar Vs. R. Krishnamoorthy, a case in which a dismissed student applied for a writ of mandamus under Article 226 of the Constitution against the Principal of the Pachaiyappa's College, Madras, for his re-instatement as a student of that College.

6. Though the writ was refused by the learned Judge, in disposing of the preliminary objection to his jurisdiction, he said that "the Principal of an institution maintained from the funds of a public trust contributed from public funds affiliated to the University and governed by the rules of the University and the scheme framed by the High Court is certainly a person holding a quasi-public office" and held that he had the necessary jurisdiction to issue a writ to the Principal of the Pachaiyappa's College.

7. There is no clear indication in the judgment as to which of the many features of the Pachaiyappa's College mentioned by the learned Judge in the passage extracted and in other portions of the judgment induced his conclusion that the Principal of the college is a person holding a quasi-public office and thus amenable in, appropriate cases to a writ of mandamus from the. High Court of Madras. The St. Thomas College, Trichur, is not maintained from the funds of a public trust or by any contribution from public funds. It is also not governed by any scheme framed by any Court. The only point of similarity between the Pachaiyappa's College and the St. Thomas College, as far as the present issue is concerned, is that the former is a constituent college and the latter an affiliated college of the University of Madras and that both of them are governed by the Laws of that University.

8. We are not prepared to say that the mere factum of affiliation is sufficient to make the management of a private college maintained entirely from private funds a quasi-public authority amenable to the jurisdiction of this Court under Article 226 of the Constitution.

9. In this view contention No. 1 is unacceptable and has to be overruled.

10. CONTENTION No. (2): The Petitioner's learned Counsel admitted that Articles 310 and 311 of the Constitution will not in terms apply but according to him the principles embodied in these Articles are available to his client because of a resolution of the Senate of the University of Madras passed at its special meeting on 19-2-1948. The resolution reads as follows:

That the report be adopted and forwarded (SIC) Government (p. 7).

11. The Senate of the University of Madras had resolved at a meeting in March 1945 that a General Inspection of the affiliated and constituent colleges of the University should be held in accordance with Section 16(12), Madras University Act, 1923, and in pursuance of that resolution a Commission was appointed by the Syndicate at that University. Exhibit P-6 is a copy of the report of the Inspection Commission.

12. Chapter III of the report deals with "Staff, scales of salaries, conditions of Service" and the passage extracted in para. 10 of the petition occurs in para. 7 of that Chapter. The full text of para. 7 is as follows:

Conditions of service: The Commission was glad to note that in most of the Colleges there was continuity of service of the teacher although in some of the Colleges there was no specific agreement to this effect. It is desirable that the conditions of service should be definitely stated in writing by all management. In a few Colleges, however, temporary appointments were made for periods ranging from one to five years, and the members so recruited were given notice of discharge, their services being terminated three to six months after notice. The period of probation in most Colleges varies from 1 to 2 years. The Commission desires that the following conditions of service should be uniformly observed in all Colleges:

Probation for one or at the most for two years may be fixed for teachers newly appointed by Colleges, but there should be no period of probation when a person who has already been, in the service of the College is promoted, from one grade to Anr. . After the satisfactory completion of the period of probation, a teacher should be confirmed and should continue in the service of the College till he reaches the age of retirement which should ordinarily be 55. Short-term vacancies may be provided for but such short-term appointments should be for a maximum of two years. If there should be any serious disagreement between a teacher and the management, the usual procedure adopted in Government service should be followed before the teacher's service is terminated. In all cases where a management finds it necessary to terminate the service of a permanent

member for misconduct or gross neglect of duty, a report should be sent to the University giving a detailed statement of the reasons necessitating such termination. The Commission would suggest that management to enter into agreement of service, binding on both parties, with all teachers on first recruitment. It is not easy for the Commission to enter into a detailed consideration of the right relationship that should exist between the management and the teachers; this is unique relationship very different from that of the normal employer and employee. The Commission would stress the need to consider the teaching profession as one which requires a great deal of consideration at the hands of the managements if the teacher is to have the needed influence over that otudents entrusted to his care and the right status in society.

13. From the fact that the Senate of the University of Madras has adopted the report the of General Inspection Commission we are not prepared to say that the conditions of service suggested therein have become a part of the laws of the University. However strong the persuasive force of such a resolution may be, the contents of the report cannot be considered as having attained any statutory force by a mere resolution of the Senate.

14. The Laws of the University of Madras mean the rules laid down in the Madras University Act, 1923, and the Statutes, Ordinances and Regulations made thereunder. Sections 30, 32 and 33 of the Act show how Statutes, Ordinances and Regulations of the University are made and it is impossible to say that the resolution passed by the Senate at its meeting on 10-2-1948 amounts to either a Statute or an Ordinance or a Regulation.

15. Our attention has also been invited to paras. 6 to 21 of Chap. XXVI of the Laws of the University. The heading of the Chapter is "Recognition, Affiliation and Approval of Colleges" and paras. 6 to 21 are printed under the sub-heading "Conditions to be satisfied by Constituent, Affiliated and Oriental Colleges." Paragraph 10 has the marginal heading "condition of recognition, affiliation or approval" and is in the following terms:

Every College shall satisfy the Syndicate on the following points:

1. the suitability and adequacy of its accommodation and equipment for teaching;
2. the character, qualifications, and adequacy of its teaching staff and the conditions of their service;
3. the residence, physical welfare, discipline and supervision of its students; and
4. such other matters as are essential for the maintenance of the tone and standard of University education.

In regard to the matters referred to above, the Syndicate shall be guided by the reports of inspections, and by any rules which may be prescribed.

16. Paragraph 10 cannot possibly be of any assistance to the Petitioner. The

question before us is not whether the University can prescribe the conditions of service that should obtain in an affiliated college as a pre-requisite to affiliation or its continuance but whether the University has as a matter of fact done so. Our conclusion as indicated above is that the University-we dare say for very valid reasons-has failed to do so and that the resolution of the Senate adopting the report of the Inspection Commission by itself cannot in any way be considered as a cure for that failure.

17. Learned Counsel for the Petitioner agreed that if our conclusions on contentions (1) and (2) are against his client none of his other contentions will arise for consideration.

18. The petition fails and is dismissed. We make no order as to costs.

19. After the order was pronounced, the Petitioner's learned Counsel asked for leave to appeal to the Supreme Court. We do not consider this to be a fit case for appeal. The leave asked for is hence rejected.