
(2010) 11 KL CK 0344

In the High Court Of Kerala

Case No : Writ Petition (C) Nos.30579, 32052 and 32535 Of 2009

Lakshmi Sukumar

APPELLANT

Vs

The Manager and Others

RESPONDENT

Date of Decision : 19-11-2010

Acts Referred:

KERALA UNIVERSITY ACT, 1974 — Section 57

Citation : (2010) 11 KL CK 0344

Hon'ble Judges : T.R. Ramachandran Nair, J

Bench : Single Bench

Advocate : O.V. Radhakrishnan, for the Appellant; Saigi Jacob Palatty, for the Respondent

Final Decision : Allowed

Judgement

T.R. Ramachandran Nair, J.—These three Writ Petitions concern a common issue. Therefore, they are disposed of by a common judgment.

2. The Petitioners herein have been appointed by the St. Thomas College, Kozhencherry as Lecturers in the English Department. The main relief

sought for in the Writ Petitions is for a direction to the 3rd Respondent to issue concurrence to the appointment of the Petitioners and to release the

salary from the date of appointment.

3. The appointments were made after a due process of selection. The interview was conducted on 13.12.2007. The Petitioner in W.P.(C) No.

30579/2009 is named first in the rank list. The Petitioner in W.P.(C) No. 32052/09 stood as rank No. 2 and the Petitioner in W.P.(C) No.

32535/09 is the 3rd rank holder. The Petitioners in W.P.(C) No. 30529/09 and 32052/2009 were appointed on 15.12.2007 and the Petitioner in

W.P.(C) No. 32535/09 was appointed on 29.12.2007. The appointments were

approved by the University vide Exhibits P5, P4 and P5 respectively in these cases.

4. As a next step for payment of salary, the papers were forwarded to the Deputy Director of Collegiate Education for concurrence. It appears

that various objections had been taken up in the matter, even though the Petitioners contended that such objections could not have been

entertained at all. Having failed to get any positive response in the matter, the Petitioners have filed these Writ Petitions.

5. The Petitioners point out that one of the objections raised by the Deputy Director of Education is based on an order passed by the Government

produced as Exhibit P6, in W.P.(C) No. 302579/09, dated 1.7.2009, which is only after the appointments were approved. The said order

envisages re-admission of teachers who have been deployed earlier to the Higher Secondary Schools from the College on de-linking of Pre-

Degree. It is pointed out that the said re-deployment will not affect the employment of the Petitioners for reasons more than one. At the time of

appointment of the Petitioners, there were only seven permanent Lecturers working in the College as against 12 sanctioned posts and 5 vacancies

were existing at that time in the English Department. Out of the five, three are retirement vacancies and two vacancies consequent on grant of leave

without allowance. The retirement vacancies are that of Smt. Annie Abraham on 1.3.2007, Shri Thomas Oommen on 31.3.2007 and Dr. Ramani

Titus on 30.4.2007. The Lecturers who continue on leave without allowances are Smt. Laila M. Varghese and Shri Mathew Ninan. The learned

Counsel for the Petitioner in W.P.(C) No. 30579/09 also relied upon the details shown in Exhibit P10 and P11 in support of the plea that the total

number of sanctioned posts are 12 and even if the two teachers who have been re-admitted from the Higher Secondary Schools, namely,

Respondents 5 and 6 are considered there will not be any excess strength in the Department.

6. A reading of Exhibit P10 shows that the reply was given by the Director of Collegiate Education to the father of the Petitioner in W.P.(C) No.

30579/09. It is mentioned in the reply that going by the work load sanctioned, 193 hours are available for the English Department and 12

sanctioned posts are there. Evidently, the appointments of the Petitioners were in

2007 and the re-posting of the deployed teachers of the Higher

Secondary Schools was after Exhibit P6 order was passed in 2009. It is evident from Exhibit P10 also that as on 17.12.2007, out of the 12

persons, nine persons were in service and when the last appointment was given in December, 2007, two were on leave without allowance also.

Effective strength was only seven.

7. Exhibit P11 in W.P.(C) No. 30579/2009 is a further reply given by the Deputy Director of Collegiate Education, Kottayam-the 3rd

Respondent to the Petitioner's father, where a chart is given in the last page which also shows that in December, 2007 the strength of teachers

including deployed junior Lecturers is nine. Therefore, it can be easily seen that at the time when the selection proceedings were finalised only

seven teachers were there and including the teachers who have come back from the Higher Secondary School, it will be nine. Hence, even after

appointment of the Petitioners, sanctioned strength will not exceed 12. Proceedings of the University produced as Exhibit P5 dated 20.2.2009

granting approval of appointment of Petitioners will show that they are in the retirement vacancies.

8. When the matter was taken up on the last occasion, the learned Government Pleader submitted that the 3rd Respondent Deputy Director of

Collegiate Education had raised an objection to the stand taken the University and the learned Standing Counsel for the University was directed to

get instructions in the matter. Thereafter, the learned Standing Counsel for the University has filed a statement dated 18.11.2010. It is stated in

paragraph 4 therein that the objection raised by the Deputy Director of Collegiate Education was again considered by the University and a decision

is taken reiterating the earlier stand taken by the University. Accordingly, it was resolved that the approval of appointment of the Petitioners

already given is in order and it need not be revoked.

9. Heard the learned Senior Counsel appearing for Respondents 5 and 6, the learned Government Pleader and the learned Standing Counsel for

the University. Evidently, deployment of teachers from the Higher Secondary Schools will not affect the claim of the Petitioners, especially since

their appointment was approved by the University, which stand is reiterated by the University again. Apart from that, as discussed above, the

sanctioned strength is 12 and even now two leave vacancies are there. The learned Counsel for the Management based on the statement filed in

W.P.(C) No. 30579/09 submitted that at present a new post in the department arose in the context for regularisation of B. Com. Marketing

Course as per G.O.(MS) No. 260/ 2010/H. Edn. dated 20.8.2010. So, presently, there are 13 substantive posts and two substantive vacancies

and one leave vacancy remain to be filled.

10. The learned Counsel for the Petitioner relies upon the decisions of this Court in *Cherian Mathew v. Principal S.B. College, Changanassery*

(1998(2) KLT 144) and to contend for the position that the Government or other Officers of the Department cannot sit in appeal over the decision

taken by the University regarding the number of teachers appointed as well as the approval granted. In the first of the decisions cited above,

namely, *Cherian's* case, after examining the matter, Their Lordships held as follows in paragraphs 3 to 5.

3. Kerala University First Ordinance 1978 inter alia provide for assessment of work load and pattern of teaching staff in Arts and Science

Colleges. Chapter XIII of the First Ordinance deals with the said issues. Statute 3 is concerned with the procedure for calculating number of

teachers required for a department. In the case of Mahatma Gandhi University, it is conceded before us, no separate Ordinance has been

promulgated and the Kerala University First Ordinance govern all similar issues. Likewise the Calicut University First Ordinance controls the

procedure for calculating number of teachers required for a department.

4. On the basis of the work load calculated in terms of Ordinance 3 in the Kerala University First Ordinance, teachers are allowed to be appointed

in Colleges run by private management. The appointment so made in conformity with the work load assessed by the University are approved by the

concerned University. To the teacher whose appointments is so approved, salary should be paid by the Government through Director of Collegiate

Education. In other words, when a teacher is appointed by private management in terms of the provisions contained in the Kerala University First

Ordinance or the Calicut University First Ordinance as the case may be, his salary has to be disbursed by the Government if that appointment has

been approved by the concerned University. In case the Director of Collegiate

Education doubts the propriety of the appointment of a teacher in the sense that the work load did not require the appointment of such a teacher, the issue will have to be taken up by him with the University. The University then has to re-examine the entire issue and to take a decision on the issue as to whether the appointment was proper or not. When the University takes a decision on this aspect, that decision will be binding on the Government.

5. No provision of the University Act First Statutes, Ordinance or Regulations in force enables the Government to sit in judgment over the decision arrived at by the University regarding the number of teachers to be appointed in a Department in a college run by a private management. In the absence of such a provision, the Government is not entitled to impose a condition that prior approval from the Director of Collegiate Education is needed for a management to appoint a teacher in its staff.

11. The said decision was relied upon in the later decision in Salini's case. Therein also in paragraphs 10 and 11 the legal position was reiterated thus:

10. Scope of Section 57(2) of the Kerala University Act has to be tested in the light of the above mentioned statutory provisions. Power of the University in granting approval as well as sanctioning posts after ascertaining the work load and fixation of staff pattern as per the Statutes has not been taken away by the University Amendment Act 2 of 2005. Clear cut provisions have been made in the University Statutes and Ordinances as to how the work load has to be assessed and staff strength fixed so as to avoid unnecessary appointments. Further the interest of the students is also to be safeguarded by appointing sufficient number of teachers without delay. Power is also conferred on the Deputy Director of Collegiate Education to take up the matter with the University in case there is any doubt with the approval granted. In appropriate cases, Government can also examine the action taken by the Deputy Director and address the University through him.

11. We have no reason to think that an august body like Syndicate or the Deputy Director of Collegiate Education would act arbitrarily or against public interest while exercising powers statutorily conferred on them. Sub-s.(1) of S.57 only says that appointments to the posts eligible to receive

salary from the Government shall be made only after getting prior sanction from or from such officers authorised by the Government. For filling up

the posts sanctioned by the University on the basis of work load or staff pattern, no prior permission of the Government is necessary. Once

Syndicate of the University grants approval for filling up the existing vacancies depending upon the workload and staff pattern Government

Committee. If Government or its Officers find that the approval was granted by the University illegally it can always take up the matter before the

University or other forums so that public interest will not suffer. S.57(1) was introduced not to take away the statutory powers already conferred

on the Syndicate of the University. Principle laid down in Cheriyan Mathew's case, supra in our view, still holds good. In view of the above

mentioned circumstances, we are inclined to affirm the judgment of the learned single Judge in W.P.(C)No.12109 of 2006 and dismiss

W.A.No.940 of 2007.

Going by the above dictum, the Officers of the Government itself can take up the matter with the University and once the University reiterates the

position, they cannot raise any further objections in the matter.

12. In that view of the matter, as is evident from the facts of these cases, the objection taken by the 3rd Respondent has already been considered

by the University and they have confirmed again the approval and appointment of the Petitioners. Therefore, the objection by the 3rd Respondent

with regard to the payment of salary cannot be justified.

13. The learned Government Pleader submitted that the Government may be granted an opportunity to challenge the orders passed by the

University. The said submission is opposed by the learned Counsel for the Petitioners by submitting that in these cases all the aspects have been

considered by the University while granting approval and the reply given by the Director as Exhibit P10 in W.P.(C) No. 30579/09 will show that

sanctioned strength is there to accommodate all the teachers. Therefore, I reject the said plea.

14. In that view of the matter, the Writ Petitions are allowed. It is declared that the Petitioners are entitled to be paid salary consequent on

approval of their appointments. On forwarding the bills claiming salary of the Petitioners, the 3rd Respondent will counter sign the same and pass

the bills including the arrears within a period of two months.