

(2012) 06 KL CK 0143
In the High Court Of Kerala
Case No : C.R.P. No. 364 of 2011

Leelamony

APPELLANT

Vs

S.N. Trust

RESPONDENT

Date of Decision : 14-06-2012

Acts Referred:

Kerala University Act, 1974 — Section 60, 60(4)

Citation : (2012) 3 KLJ 745 : (2012) 3 KLT 632

Hon'ble Judges : Thottathil B. Radhakrishnan, J;K. Vinod Chandran, J

Bench : Division Bench

Advocate : M. Balagovindan and T.K. Ananda Padmanabhan, for the Appellant; A.N. Rajan Babu, P. Gopalakrishnan (MVA), M. Rajagopalan Nair, George Poonthottam and Government Pleader (James Mathew Kadavan), for the Respondent

Judgement

Thottathil B. Radhakrishnan, J.—These matters relate to a teacher employed in a private college under a corporate management governed by the provisions of the Kerala University Act, 1974, for short, the "Act", and the statutes framed thereunder. Hereinafter, we refer to her as "the teacher". The teacher's husband, while Principal of a college under the same management faced disciplinary proceedings. He got a favourable interlocutory judicial order and approached the management requesting to give effect to it. Allegedly, he was subjected to some physical restraint. That appears to have led his wife, the teacher, to go over to the headquarters of the management. The allegation is that she behaved in a rude and unruly manner by making some utterances against the management and by creating a scene by detaining some of the officials of the management. It appears that the husband's demotion from the category of Principal to that of Selection Grade Lecturer was interfered with by this Court and the Apex Court has affirmed such interference.

2. The aforesaid allegations against the teacher led to disciplinary proceedings, including domestic enquiry through an advocate. The disciplinary authority

accepted the findings in the enquiry and imposed the punishment of barring of two increments with cumulative effect. The teacher challenged it before the Tribunal constituted under the Act. The Tribunal affirmed the management's decision, holding that the only argument raised, the one based on sub-s.(4) of S. 60 of that Act, was unsustainable and that there is no ground to interfere with the findings of the enquiry officer. She has challenged that decision of the Tribunal by filing C.R.P.364/11.

3. In the mean while, the teacher who was then working in S.N. College, Kollam was transferred from there. She appealed against that to the Vice-Chancellor and obtained an order requiring the management to consider her request to post her back to her home college. The management has challenged that decision in W.P.C).4790/11. The teacher has filed W.P.C).37376/10 seeking an order compelling the management to comply with the Vice-Chancellor's direction. Hearing learned counsel for parties in those Writ Petitions, the learned Single Judge had issued a direction, as an interim measure, ordering the management to comply with the order of the Vice-Chancellor. Stated to be in obedience to that, the management transferred the teacher to S.N. College for Women, Kollam. By now, she is again brought to S.N. College, Kollam. Thus, the issues arising for decision in W.P.C).Nos. 4790/11 and 37376/10 have turned out to be merely academic. Hence, those Writ Petitions are treated as infructuous for all intents and purposes. They are accordingly closed.

4. Reverting to C.R.P.364/11, as already noted, the Tribunal has affirmed the findings of the enquiry officer. Going by the tone and tenor of the order of the Tribunal, there was no serious attack to the findings of the enquiry officer before the Tribunal. The fundamental issue raised before the Tribunal and before us is that, in terms of sub-s.(4) of S. 60 of the Act, disciplinary proceedings could not have been carried beyond three months of its initiation. Going by the facts, there is no dispute that the disciplinary proceedings spread over nearly an year at the hands of the disciplinary authority or the enquiry authority. But the issue is whether there is anything in sub-s.(4) of S. 60 of the Act to torpedo the disciplinary proceedings so held.

5. Section 60 which falls under Chapter VIII of the Act relating to Private Colleges and Affiliation of Colleges deals with Conditions of Service of Teachers of Private Colleges. It reads as follows.

60. Conditions of service of teachers of private colleges:--

(1) Notwithstanding anything contained in any law or in any contract or other document, the conditions of service of private colleges, whether appointed before or after the commencement of this Act, including conditions relating to pay, pension, provident fund, gratuity, insurance and age of retirement, shall be such as may be prescribed by the Statutes.

(2) No teacher of a private college shall be kept under suspension by the educational agency except when disciplinary proceedings are initiated against

him.

(3) When a teacher of a private college is suspended for a period exceeding fifteen days, the matter, together with the reason for the suspension, shall be reported to the Vice-Chancellor.

(4) Any disciplinary proceedings initiated under sub-section (2) shall be completed within a period of three months or within such further period as may be allowed by the Vice-Chancellor after hearing the parties concerned.

(5) Any person aggrieved by an order of the Vice-Chancellor under sub-section (4) may, within a period of thirty days from the date of receipt of the order by him, appeal to the Appellate Tribunal.

(6) No disciplinary action shall be taken against a teacher without giving him a reasonable opportunity of showing cause against the action proposed to be taken against him.

6. Sub-section (1) of S. 60 shows that the provisions of S. 60 apply over and above any law or any contract or other document which can govern conditions of service of teachers of private colleges. This means that if there is anything in any other law, contract or other document, which runs contrary to the contents of S. 60 of the Act, that will be superseded by the provisions of S. 60. But the provisions of any other law or contract which govern the relationship between the parties and are not in conflict with S. 60 will continue to run. The jural relationship between a master and servant necessarily enjoins on the appointing authority, the power to remove the servant from service. The power to appoint carries with it the power to remove. The power to appoint carries with it the power to initiate any disciplinary proceeding. Disciplinary control over an employee or servant is essentially within the power and rights of any employer or master. The power to initiate proceedings is not in conflict with the contents of S. 60. In terms of sub-s. (6) of S. 60, no disciplinary action shall be taken against a teacher without giving that teacher a reasonable opportunity to show cause against the action proposed to be taken. Disciplinary proceedings initiated has to be held by affording appropriate and sufficient opportunity of hearing in terms of sub-section (6) of S. 60. That provision is merely the statutory expression of an otherwise recognized canon of administrative law.

7. Reverting to sub-s. (2) of S. 60, it can be seen that no teacher of a private college shall be kept under suspension except when disciplinary proceedings are initiated against that teacher. This sub-section does not, by itself, give the authority to initiate disciplinary proceedings. As already noted, the power to initiate disciplinary proceedings inheres in every master. So much so, the restriction in sub-section (2) of S. 60 is only regarding suspension. The prescription is that no teacher can be placed under suspension except in connection with a disciplinary proceedings, that too, only when disciplinary proceedings are initiated.

8. Coming to S. 60(4), which is the pivotal ground of the teacher even before us; it states that any proceeding initiated under sub-s.(2) shall be completed within a period of three months or within such further period as may be allowed by the Vice-Chancellor after hearing the parties concerned. Sub-s.(2) of S. 60, as already noticed, is only regarding suspension of a teacher pending disciplinary proceedings and does not relate to initiation of disciplinary proceedings. The prohibition therein is that no teacher shall be kept under suspension except when disciplinary proceedings are initiated. The real intention of that provision in S. 60(4) is to ensure that no teacher is continued under suspension for a period of not more than three months in connection with disciplinary proceedings, without further approval of the Vice-Chancellor. The provisions contained in sub-s. (4) have been so couched that it may give the impression that the restriction imposed thereby, is on disciplinary proceedings. In fact, it is not so. We see no substance, on the face of situational justice, to read, interpret, or understand that provision otherwise. If we venture to do so, that would wreck the balance of justice in re the servant qua the master, in the realm of the accepted and settled doctrines and canons of laws relating to administration of service. S. 60(4) does not apply as a restriction in cases where the teacher is not placed under suspension. The view taken by the Tribunal in this regard is only to be affirmed. Sub-s.(5) of S. 60 providing for an appeal to the Appellate Tribunal from the decision of the Vice-Chancellor would also be relevant only in cases where the teacher is placed under suspension pending disciplinary proceedings and the Vice-Chancellor, either refuses or permits enlargement of time in exercise of authority under sub-s.(4). In the case in hand, the teacher was not placed under suspension. Hence, we do not find any ground to interfere with the impugned order upholding the initiation of disciplinary proceedings, the enquiry and its completion. However, on the totality of the facts and circumstances, we think that the punishment is excessive. The teacher, a lady, was essentially reacting against some incident in connection with her husband who was also a teacher. On facts, we see that there were some issues between the management, the teacher and her husband who has now demitted office after serving as a Principal. In the fitness of things, the cumulative effect given to the barring of increments was situationally unnecessary. Ends of justice require that the same is trimmed down and modified to be one of barring of two increments without cumulative effect, thereby taking away the cumulative effect imposed on the sufferance of the barring of increments. This modification to the punishment shall be appropriately given effect to in calculating the drawals as may be due to the teacher in accordance with law.

The C.R.P. is allowed to the limited extent as ordered above.

No costs.