
(2003) 07 KL CK 0042
In the High Court Of Kerala
Case No : W.A. No. 225 of 1998

M. Unnikrishna Pillai and Others

APPELLANT

Vs

The Director of Collegiate Education Ors.

RESPONDENT

Date of Decision : 29-07-2003

Acts Referred:

Kerala University Act, 1974 — Section 63, 64

Citation : (2004) 1 ILR (Ker) 295 : (2004) 1 KLJ 159 : (2003) 3 KLT 954

Hon'ble Judges : K.A. Abdul Gafoor, J;J.M. James, J

Bench : Division Bench

Advocate : M.V. Thamban, for the Appellant; Sujith Mathew Jose (GP), K. Gopalakrishna Kurup, P.G. Parameswara Panicker and P. Gopal, for the Respondent

Final Decision : Dismissed

Judgement

K.A. Abdul Gafoor, J.—Writ petitioner did not succeed at the original stage. therefore this Writ Appeal. Two points are raised in this appeal.

(i) Whether Sec. 64 of the Kerala Universities Act can be applied to non teaching staff of private colleges.

(ii) Even if it can be applied, whether the option to continue in a particular university will affect the promotion, based on the common seniority list originally prepared by the respective management.

2. Sec. 63 and 64 appear in Chapter VIII. Sec. 63 provides as follows:

The provisions of this Chapter shall, so far as may be, apply to the non-teaching staff of the private colleges. Subject to this, their method of appointment, pay and other conditions of service shall be such as may be prescribed by the Statutes.

Thus the provision in Chapter VIII are made applicable to non teaching staff and to the extent possible. Sec. 64 also appears in the same chapter. Necessarily, so

far as it can be applied to the non-teaching staff, the provisions contained in Sec. 64 can be worked out. Sec. 64 provides that the educational agency shall prepare a common seniority list of teachers of all colleges under it, in different universities and allow the respective incumbents to exercise option as to the university under the jurisdiction he or she desires to continue. Based on such option and availability of the vacancies, allotment shall be made by the respective management to the opted universities, subject to the seniority of the incumbents in the list so prepared. Once the allotment is completed, the incumbent so allotted "to a university area under this section shall not be transferred to a college affiliated to any other university".

3. It is true that Sec. 64 is captioned as "transfer of teachers to other universities". It as such apply only to teachers. But when we read Sec. 63 as well, it is clear that the provisions contained in Sec. 64 to the extent possible shall also be applied to the members of non-teaching staff. Necessarily Sec. 64 to the extent possible can be applied to the non-teaching staff. This is what the learned single Judge has held as per the impugned judgment.

4. We see no force in the contention of the appellant that Sec. 64 is not applicable to the members of non-teaching staff. Seniority list is to be prepared pursuant to sub section (i) of Sec. 64 based on over all seniority of the entire members of non-teaching staff in the respective categories. In different colleges in all the universities. It is based on such seniority that incumbents are given an option to go over to the area of the university of their choice. Once they opt, subject to the availability of the vacancies, allotment shall be made by the management. Sub sec.(4) provides that once an allotment is so made, an incumbent allotted will not be transferred to the colleges in any other University.

5. Of course, promotions are effected by the management concerned, against the vacancies available. The vacancies are created as per the University Act and statute in that regard, depending upon the course of study and students strength, by the university. It is only when university sanctions post, either transfer or promotion can be effected. When M.G. University sanctions a post in a college under it, necessarily a person working in a college affiliated to Kerala University cannot aspire to be transferred merely because he once figured as a senior in the common list prepared based on sub section (1) of Sec. 64. Subsequent to the allotment, the efficacy of that list ceased and consequently it will not have any operative force. Transfer is defined in Part I KSR, which is applicable to the non-teaching staff of private colleges. Once option is finalised and allotment is effected, necessarily no transfer is possible. When no transfer is possible, there arises no question of any inter-se seniority between the incumbents allotted to different Universities, so that an incumbent in one University can aspire for the post in another University. Therefore the second contention also cannot be accepted. Necessarily, the judgment impugned calls for no interference.

W.A. fails and is dismissed.