
(2002) 05 KL CK 0002

In the High Court Of Kerala

Case No : OP No. 8676 of 2002 & OP No.8676 of 2002

M.K. Abdul Majeed

APPELLANT

Vs

University of Kerala and Others

RESPONDENT

Date of Decision : 27-05-2002

Acts Referred:

Kerala University Act, 1974 — Section 57

Citation : (2002) 2 KLJ 368

Hon'ble Judges : K. Balakrishnan Nair, J

Bench : Single Bench

Advocate : S. Muhammed Haneef, for the Appellant; Harun-Al-Rasheed, M.K. Chandramohan Das, P.V. Mohanan and P. Nandakumar (G.P.), for the Respondent

Final Decision : Allowed

Judgement

K. Balakrishnan Nair

1. The petitioner who is a Lecturer (Selection Grade) of T.K.M. College of Arts and Science, Kollam challenges the omission of the fourth respondent to complete the selection to the post of Principal of his College pursuant to Ext.P2 Notification. He also challenges the appointment of the fifth respondent to the post of Principal. The brief facts necessary for the disposal of the case are the following. The petitioner at the time of filing of the Original Petition was working as Lecturer in charge of Principal of T.K.M. College of Arts and Science. It is a college affiliated to the University of Kerala. He joined the service of the College on 15.2.1975 and presently he is a Selection Grade Lecturer under the U.G.C. Scheme. According to him he is the senior-most among Selection Grade Lecturers and therefore as and when vacancies arose in the post of Principal, he was being put in charge. As per Ext. P1 dated 31.12.2001, he has been put in charge of the post of Principal for a period of three months or till the appointment to the Principal's post is made in accordance with the University Act and Statutes. The fourth respondent has issued Ext.P2 Notification inviting applications to the post of Principal, T.K.M. College of Arts and Science. It was

published in the. Malayala Manorama Daily dated 29.12.2000.

2. When the petitioner came to know that the management is going to appoint the fifth respondent as Principal who is an outsider, he filed Ext.P3 representation before the fourth respondent. Apprehending that contrary to the provisions of the Act and Statutes, the fifth respondent may be appointed, the petitioner filed the present Original Petition seeking appropriate reliefs. This Court on 2.4.2002 granted an interim order enabling the petitioner to continue as Lecturer in charge of Principal till selection to the post of Principal is finally made pursuant to Ext. P2 notification. The fifth respondent entered appearance and filed a counter affidavit stating that he has already assumed charge of the post of Principal on 1.4.2002 itself. It is submitted by him that he is the Principal of M.E.S. College, Nedungandam and the Government as per Ext. R5(a) order has given sanction for posting him on deputation for a period of two years as the Principal of T.K.M. Arts and Science College, Kollam. On the basis of Ext. R5 (a) dated 31.12.2001, the fourth respondent has appointed the fifth respondent as Principal for a period of two years from 1.4.2002 as per Ext.R5(b) order dated 30.3.2002. Pursuant to that, he reported for duty as per Ext.R5 (d) and he has been admitted to duty as per Ext.R5 (e). On receipt of the counter affidavit, the petitioner filed a reply affidavit. He also amended the Original Petition challenging Ext.P4 order of the Government (Ext.R5 (a) giving sanction for appointing the fifth respondent as Principal for a period of two years on deputation. The petitioner has also impleaded the State of Kerala as the additional 6th respondent.

3. In view of the musical chair played by the petitioner and the fifth respondent (the petitioner on the strength of the interim order of this Court and the fifth respondent on the strength of his appointment by the Manager) this Court vacated the interim order on 10.4.2002. The Original Petition itself was heard on merits.

4. The statutory provision governing appointment of teachers in the private colleges is Section 57 of the Kerala University Act. The relevant portion of the said Section reads as follows:

57. Appointment of teachers in private colleges -

(1) Appointments to the lowest grade of teacher in each department of a private college shall be made by the educational agency by direct recruitment on the basis of merit.

(2) Appointments of principals shall be made by the educational agency by promotion from among the teachers of the college or of all the colleges, as the case may be, or by direct recruitment.

(3) Where the appointment of Principal is made by promotion, the educational agency shall make the appointment on the basis of seniority -cum- fitness.

5. In the light of the above statutory provision, the appointment can be made only by promotion or by direct recruitment. There is no third method of

appointment by deputation. Therefore, the challenge made by the petitioner against Ext.R5 (a) has to be upheld. The learned standing counsel for the University also supported the contention of the petitioner.

The learned counsel for the 5th respondent submitted that after the introduction of the direct payment system, the Government have got paramount power to issue directions to the management. Therefore, according to him, the Government have got power to issue an order in the nature of Ext.R5 (a) in relation to a college where direct payment system is introduced. The said contention of the learned counsel is *ex facie* unsustainable. When the Act itself provides in unambiguous terms the method of appointment, the Government cannot override it on the ground that it is a college where direct payment system is in force. Invoking the power under the Statute dealing with direct payment system, the Government cannot act contrary to the provisions of the Act. The contentions of the learned counsel for the fifth respondent in this regard-are misconceived. The learned counsel for the management supported the contentions urged by the fifth respondent. In view of my finding that appointment of Principal can be made only as provided u/s 57 of the Kerala University Act, Ext. P4 (Ext. R5(a)) is unsustainable. I quash the same. Ext.R5(b) being a dependant order, with the quashing of Ext. R5(a), Ext.R5(b) also falls to ground. Thus, the appointment of the fifth respondent as Principal of T.K.M. Arts and Science College on deputation for a period of two years is set aside. The fourth respondent shall either promote one of the teachers of the college or appoint someone directly as notified as per Ext.P2 notification. This the fourth respondent shall do expeditiously, at arty rate, within three months from the date of receipt of a copy of this judgment. In view of the quashing of Exts. R5(a) and R5(b), the fourth respondent shall pass consequential orders making interim arrangement for the administration of the college till a regular hand is appointed by promotion or direct recruitment, within two weeks from the date of receipt of a copy of this judgment.

The Original Petition is allowed as above.