

(1980) 08 KL CK 0005

In the High Court Of Kerala

Case No : O.P. No"s. 4934 of 1976 and 868/77

Mother Anasthasia

APPELLANT

Vs

University Appellate Tribunal and Others

RESPONDENT

Date of Decision : 19-08-1980

Acts Referred:

Constitution of India, 1950 — Article 30(1)
Industrial Disputes Act, 1947 — Section 2, 25F, 25F(1)
Kerala Education Rules, 1959 — Rule 49, 51A, 52

Citation : (1980) 08 KL CK 0005

Hon'ble Judges : Subramonian Poti, J;Khalid, J

Bench : Division Bench

Advocate : M.I. Joseph, for the Appellant; Government Pleader for Respondents 1 and 3 and M. Ramachandran and U.K. Ramakrishnan for Respondent 4, for the Respondent

Final Decision : Allowed

Judgement

Khalid, J.—The Petitioner in O.P. No. 868 of 1977 and the first Petitioner in O.P. No. 4934 of 1976 are the same. These petitions involve the same question and therefore are being disposed of by a common judgment. A learned single Judge of this Court directed O.P. No. 868 of 1977 to be heard by a larger Bench at a time when the question of validity of a section could be heard only by a Bench of five Judges, since the validity of the Calicut University Act was under challenge. Subsequently when that bar was removed, the matter has been placed before a Division Bench to be heard along with O.P. No. 4934 of 1976. The parties will be referred to in this judgment as they are arrayed in O.P. No. 868 of 1977, 2nd Petitioner in O.P. No. 4934 of 1976 is the 4th Respondent in this O.P.

2. The Petitioner is the Superior General of a religious congregation of Mannuthy known as "Holy Family Congregation". The said congregation is running a first grade college exclusively for women situated at Irinjalakuda affiliated to the University of Kerala. After the coming into being of the Calicut University, this

college came under it by virtue of Section 51 of the Calicut University Act (for short, the Act). A temporary leave vacancy arose in that college, to fill which vacancy, the educational agency took out an advertisement inviting applications from duly qualified persons. According to an agreement between the Educational agency and the Government, even for temporary vacancies appointment can be made only from a select list prepared by the Selection Committee. Only two candidates appeared before the Selection Committee. The first rank-holder was a male and the second, the 2nd Respondent herein a female. The 2nd Respondent was appointed in the leave vacancy for a period from 2nd January 1974 to 30th March 1974. On the expiry of the leave vacancy on 30th March 1974, the permanent Lecturer assumed charge. Subsequently, in the year 1976 a permanent vacancy arose in the college. The educational agency advertised the vacancy inviting applications from qualified hands. The 2nd Respondent submitted her application in response to the advertisement on 14th May 1976. On 16th May 1976 she submitted a petition with the request that she be appointed as a Junior Lecturer on the strength of her preferential claim based on Section 57(6) of the Act. The Educational agency constituted a Selection Committee, who asked the applicants to appear before it. Out of 27 applicants, 25 including the 2nd Respondent appeared before the Selection Committee. The additional 4th Respondent, who ranked first in the list, was selected and the 2nd Respondent was informed that she was not included in the select list. She thereupon filed an appeal before the Calicut University Appellate Tribunal, Trivandrum, u/s 57(10) of the Act and obtained an injunction against grant of approval of the appointment of the fourth Respondent. The University thereupon refused to grant approval as per Ext. P-1 order which is under challenge in O.P. No. 4934 of 1976. Subsequently, the injunction order was vacated and the appeal was allowed by Ext. P-5 order. This order is challenged in this writ petition. The validity of Section 57(6) of the Act is under challenge in both the writ petitions as being violative of Article 30(1) of the Constitution.

3. The first Respondent is the University Appellate Tribunal and the 3rd Respondent, the State of Kerala. The 2nd Respondent and the State have a common case. According to them, Section 57(6) provides for preferential claim to teachers who had worked even in a temporary vacancy, for future vacancies. The order of the Appellate Tribunal is sought to be justified relying on this section.

4. Though Section 57(6) is challenged as violative of Article 30(1) of the Constitution, we need go into this challenge only if it becomes necessary. We proceed to consider the claim of the 2nd Respondent based on Section 57(6) first.

5. We shall read Section 57(6) of the Act:

Notwithstanding anything contained in Sub-sections (1) and (4) a teacher discharged from a private college on or after the 14th day of March, 1974, due to abolition of a course of study in that college or for any other reason except disciplinary action against him shall be given preference in the matter of future appointments in the private college or, as the case may be, or any of the private

colleges under the management of the educational agency within the University area.

(emphasis supplied)

This section has to be read closely giving meaning to all the words used. The 2nd Respondent's contention is that she satisfies all the conditions laid down by the section and hence is entitled to its protection. According to her, her case would fall within the expression "discharge...for any other reason". The Petitioner's case however is that the section contemplates only discharge due to abolition of a course of study in that college or for any reason other than termination of a vacancy on the expiry of the period of appointment.

6. We have not been shown any authority which would be on all fours with the situation we have before us. The only case on which reliance was attempted to be placed by the 2nd Respondent's Counsel is the one reported in *The State Bank of India Vs. Shri N. Sundara Money*, which was a case under the Industrial Disputes Act. We shall refer to it presently. But before doing so, we will consider the scope of the section in its entirety. We have to first consider the word "discharge" occurring in the section. The Respondents' Counsel submits that the word "discharge" would take within its ambit any termination, while the Petitioner's Counsel submits that the word discharge had a definite meaning and a distinct connotation. According to him, the word discharge needs volition on the part of one, to have its impact on another, whereas the word termination need not necessarily take in a subject and an object. We have given our anxious consideration to this aspect of the case, and we feel constrained despite our sympathies with the fourth Respondent's predicament to agree with the Petitioner's interpretation. The word "termination" is used both in the transitive and intransitive form. Not so the word "discharge" in the law of master and servant. When a teacher works in a temporary leave vacancy, he or she has to go out of service on the expiry of the term for which he or she was appointed and there is nothing further that has to be done by the appointing authority for termination of this appointment. No order of discharge or relief is necessary in such cases. A person appointed in a temporary vacancy knows that her term will run out on a particular day and it is with this knowledge that he or she enters service. In other words, in all cases of temporary service for a particular period, what is to happen on the expiry of that period is known. Abolition of a courses of study cannot be anticipated. There may be many other causes, not anticipated, not in the knowledge of any one which may result in the discharge of a teacher. When such reasons occur, the teacher goes out not voluntarily but on her being discharged from service by an act of the appointing authority. The words "abolition of a course of study" or "for any other reason" indicate the object of the section. To include termination on the expiry of the term in the expression "for any other reason" would not be proper. The words "except disciplinary action" give a clear guideline to construe the word "reason" in the section. All such reasons would be those which were not in the contemplation of the parties

when application was made. The dictionary meaning of the word "discharge" may not assist us and dictionary meanings should not be the ultimate authority in matters of interpretation of statutes. "Abolition of a course of study" is something that is beyond the control of the appointing authority or the teacher. When a course of study is abolished, the services of some teachers become redundant. Such teachers do not get out of the institution voluntarily. But are discharged from service for this reason. Such a teacher cannot be placed on the same par with a teacher who has to go out on the expiry of the term for which he or she was appointed. The expression "for any other reason" has to take its colour from the preceding as well as the succeeding words. Termination of vacancy after the expiry of the period will never be discharge for a reason. It is the death of the service on effluxion of time. The words used in the section are not "for any reason" or "for any reason whatsoever". Perhaps, some argument could have been built if such were the words used. It could have been argued that the only ground excluded is disciplinary action. The words used here are "for any other reason". In the expression "for any other reason" the word "other" assumes great importance because it has to be read along with the words "except disciplinary action". So read, the section should be deemed to take within it only such reasons as cause the loss of service about which he or she could not have anticipated. The abolition of a course of study is an illustration. Disciplinary action is an exceptional reason. There can be other reasons too, which cannot be speculated. Termination of vacancy by effluxion of time cannot be brought within this expression, and in any case it will not amount to discharge from service.

7. It will be useful to contrast the section in question with Rule 51A of Chapter XIV(A) of the Kerala Education Rules, which reads as follows:

Qualified teachers who are relieved as per Rule 49 or 52 or on account of termination of vacancies shall have preference for appointment to future vacancies in schools under the same educational agency, provided they have not been appointed in permanent vacancies in schools under any other Educational Agency.

The object of the rule is clear and unambiguous. The words used are "who are relieved...on account of termination of vacancies". These words admit of no doubt as to their intent. It is clear that teachers relieved on account of termination of vacancies are intended to be benefited and protected by this rule. The contrast between Section 57(6) of the Act and Rule 51A of Chapter XIV(A) of the Kerala Education Rules is clear and tested in the light of the language used in Rule 51A, it becomes apparent that Section 57(6) of the Act does not contemplate teachers who have to go out of service on account of termination of vacancies. The use of the word "relieved" in the rule in contradistinction to the word "discharge" in Section 57(6) is not without significance. More useful will be to contrast the present section with its predecessor provision in the Kerala University first statutes, 1972, Chapter XLIX Clause 4, which reads:

Claim of thrown outs.--A teacher appointed on probation or for a specified period shall have the claim for appointment to the first vacancy within three years if he was thrown out of service for want of vacancy.

A reading of this Clause brings out how Section 57(6) of the Act has departed from its predecessor. While the above Clause uses the word thrown out, Section 57(6) of the Act uses the word discharge, again a significant and deliberate phraseology. We have no hesitation to hold that a person who goes out of service on the expiry of the period for which he/she was appointed cannot claim protection of this section because in such cases there is no discharge from service for any reason.

8. Strong reliance was placed by the first Respondent's Counsel on the decision reported in *The State Bank of India Vs. Shri N. Sundara Money*, . There, the Supreme Court was dealing with Section 2(oo) of the Industrial Disputes Act. Section 2(oo) reads:

2.(oo) "retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include--

(a) voluntary retirement of a workman; or

(b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or

(c) termination of the service of a workman on the ground of continued ill-health.

The expression used here is "for any reason whatsoever". The Supreme Court held that these words were very wide and did not admit of any exception. On a construction of this section, the contention of the employer that the automatic, cessation of service by efflux of time will not come within the mischief of this section was repelled. The Supreme Court observed as follows:

9. A breakdown of Section 2(oo) unmistakably expands the semantics of retrenchment. "Termination...for any reason whatsoever" are the key words. Whatever the reason, every termination spells retrenchment. So the sole question is has the employees' service been terminated? Verbal apparel apart, the substance is decisive. A termination takes place where a term expires either by the active step of the master or the running out of the stipulated term. To protect the weak against the strong this policy of comprehensive definition has been effectuated. Termination embraces not merely the act of termination by the employer, but the fact of termination however produced. May be, the present may be a hard case, but we can visualise abuses by employers, by suitable verbal devices, circumventing the armour of Section 25F and Section 2(oo). Without speculating on possibilities, we may agree that "retrenchment" is no longer terra incognita but area covered by an expansive definition. It means "to and, conclude, cease". In the present case the employment ceased, concluded,

ended on the expiration of nine days--automatically may be, but cessation all the same. That to write into the order of appointment the date of termination confers no moksha from Section 25F(b) is inferable from the proviso to Section 25F(1) (sic). [Section 25F(a)] True, the section speaks of retrenchment by the employer and it is urged that some act of volition by the employer to bring about the termination is essential to attract Section 25F and automatic extinguishment of service by effluxion of time cannot be sufficient.... Words of multiple import have to be winnowed judicially to suit the social philosophy of the statute. So screened, we hold that the transitive and intransitive senses are covered in the current context. Moreover, an employer terminates employment not merely by passing an order as the service runs. He can do so by writing a composite order, one giving employment and the other ending or limiting it. A separate, subsequent determination is not the sole magnetic pull of the provision. A pre-emptive provision to terminate is struck by the same vice as the post-appointment termination. Dexterity of diction cannot defeat the articulated conscience of the provision.

The distinction between Section 2(oo) in the Industrial Disputes Act and the provision in the Act with which we are concerned has to be clearly borne in mind. The Industrial Disputes Act is a piece of legislation with great social objectives and a social philosophy behind it. To equate its provisions with the provisions of the Act may not be proper. Even so, on the wording of the two sections the distinction can be understood. In one, we have the word "termination", in the other the word "discharge". Termination can be by effluxion of time without the intervention of an outside agency and it can also be by act of parties. The Supreme Court said that Section 2(oo) took in both these happenings. The word termination is used in the dual sense in landlord and tenant and master and servant cases. Not so is the word discharge. The confines of the word "terminate" are wider than the word "discharge". Where a person's services cease by the period running out, there is an automatic cessation or termination of his services or he is thrown out of service. But if he is to be discharged, some one has to act to bring that into effect. This is the distinction. The contention that along with the order of appointment in such cases there is the order of discharge also will not help the 2nd Respondent to get into the scope of Section 57(6) of the Act.

9. We have given our anxious consideration to the facts of this case in the context of what was observed by the Supreme Court. We hold that no assistance can be taken from the principles laid down by the Supreme Court in the above decision, on the wording of the two sections. As we have already indicated, a teacher employed for a particular period goes out not by way of discharge for any reason but by cessation of the period for which he was appointed.

10. In O.P. No. 4934 of 1976 the prayer is to quash Ext. P-1, which is a communication from the Registrar intimating the Petitioner that the appointment of Smt. Mariamma Chacko cannot be approved by the University. There is also

another prayer in the O.P. to declare Section 57(6) of the Calicut University Act as unconstitutional and void as it contravenes Article 30(1) of the Constitution. In the view that we take that the protection of Section 57(6) cannot be extended to a teacher like the 2nd Respondent, it is not necessary to consider the validity of section in the light of Article 30(1) of the Constitution. We quash Ext. P-1.

11. In O.P. No. 868 of 1977 the prayer is to quash Ext. P-5, the order of the Calicut University Appellate Tribunal, Trivandrum, by which it was held that the 2nd Respondent is entitled to the protection of Section 57(6). In this case, the Petitioner has an additional plea that the appeal before the Appellate Tribunal itself was not maintainable since the fourth Respondent was not appointed but only selected, at the time appeal was filed. It is submitted that u/s 57(10) of the Act, the right of appeal is conferred only against an appointment. The appeal was filed against selection and not against appointment. The teacher appointed or selected was not made a Respondent before the Appellate Tribunal. It is submitted that the finding of the Tribunal that the appeal lay from the selection is erroneous. Section 57(10) reads:

...any person aggrieved by any appointment under this section may appeal to the Tribunal.

for an appointment to be effective, it must be reported to the University for approval and the University must grant approval for such appointment. It is only then that the right u/s 57(10) comes into being and becomes operative. In this case, the Additional 4th Respondent was not appointed and her appointment was not approved by the University and as such the 2nd Respondent did not get a right of appeal u/s 57(10). The appeal before the Tribunal, the first Respondent, is therefore incompetent. Ext. P-5 is bad for this reason also. We quash Ext. P-5.

12. On our finding that Section 57(6) cannot apply to the 2nd Respondent, it is not necessary to consider the validity of the section. Both the petitions are allowed. The parties are directed to bear their costs.

13. Before parting with the case, we would like to observe that Section 57(6) in its present form may cause great hardship and suffering to deserving teachers denying them a right to be appointed when future vacancies arise. It may also give a handle to the management to misuse the right of appointment. It is for the Legislature to consider this aspect of the case to ameliorate the service conditions of teachers in distress.