

(1992) 04 KL CK 0002

In the High Court Of Kerala

Case No : W.A. No. 380/91 and O.P. 9916 of 1991

Nair Service Society

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision : 07-04-1992

Acts Referred:

Calicut University Act, 1975 — Section 57, 60
General Clauses Act, 1897 — Section 14
Kerala University Act, 1974 — Section 16, 17, 19, 19(2), 23(ii)
Mahatma Gandhi University Act, 1985 — Section 100, 100(1), 59, 62

Citation : (1992) 1 KLJ 765

Hon'ble Judges : M. Jagannadha Rao, C.J;P. Krishnamoorthy, J

Bench : Division Bench

Advocate : P.G. Parameswara Panicker, for the Appellant; M.C. John, Govt. Pleader, P. Gopalakrishnan Nair, Govind K. Bharathan, P.N.K. Achan, K.J. Joseph and M.K. Damodaran, for the Respondent

Final Decision : Allowed

Judgement

P. Krishnamoorthy, J.—The private colleges in Kerala are within the area of operation and within the jurisdiction of three Universities, viz. Kerala, Calicut and Mahatma Gandhi Universities. The petitioner in O. P. No. 9357 of 1990, who is the appellant in W. A. No. 380 of 1991, is a corporate management, as defined in the three Universities Acts mentioned above. The petitioner is having different colleges in different parts of the State of Kerala, coming under the jurisdiction of the above three Universities. In the original petition, which is the subject matter of the writ appeal, the prayer is to quash, by the issue of a writ of certiorari, the Kerala University (intra University transfer of teachers of colleges under corporate management having colleges affiliated to the Kerala University) First Statutes, 1990, Ext. P1, a similar First Statute issued in respect of the private teachers of the Calicut University, Ext. P2, and Ext. P3, a First Statute issued under the provisions of the Mahatma Gandhi University in regard to the intra University transfer of teachers of colleges coming under the corporate

management having colleges affiliated to the Mahatma Gandhi University. All the three statutes are dated 25-8-1990. These three statutes were issued by the Government in exercise of their purported power under the relevant provisions of the three University Acts. These three statutes provide for the rules regarding the transfer of private college teachers from one college to another, within the jurisdiction of each University, in the colleges belonging to the corporate management. The petitioner is challenging the validity of these three first statutes.

2. The petitioner is challenging the validity of these statutes on the ground that u/s 57 of the Kerala and Calicut University Acts and u/s 59 of the Mahatma Gandhi University Act, the power to appoint teachers, including the principals of colleges, is vested in the educational agency. Section 60 of the Kerala and Calicut University Acts and Section 62 of the Mahatma Gandhi University Act provide that the conditions of service of teachers of private colleges, including their conditions relating to pay, pension, provident fund, etc., shall be prescribed by the statutes. The statutes are to be passed by the Senate, so far as the Kerala and Calicut Universities are concerned, a condition of service, but only an incident of service, the Government is not empowered to issue a statute in respect of the matter of transfer of private college teachers. It was also contended that the right to appoint" having been vested in the educational agency under the relevant provisions of the University Acts, transfer, which is a necessary concomitant of that power, cannot be interfered by the Government and, accordingly, it is invalid. The petitioner further contends that the three statutes, Exts. P1 to 3, do not take into account the interest of the institution at all, but take into account only the interest of the teachers and, accordingly, it is liable to be set aside. It is also the case of the petitioner that the 1990 statutes are in conflict with the earlier statutes on the same subject and on that ground also, it is liable to be quashed. So far as Ext- P3 statute in respect of teachers in colleges coming under the Mahatma Gandhi University is concerned, an additional contention was raised by the petitioner that the first statutes were issued beyond the period of one year mentioned in Section 100 of the relevant Act and, accordingly, it is without jurisdiction.

3. The State has filed a detailed counter affidavit. It is alleged in the counter affidavit that under the relevant provisions in the Act, the Government have power to issue first statutes specifying the conditions of intra University transfer. They are also empowered to prescribe conditions of service of teachers of private colleges, by means of first statutes. The earlier statutes of 1976 and 1979 do not deal with the intra University transfer of teachers appointed by corporate management and that they still -retain their power to issue the first statute in regard to intra University "transfer of teachers. Exts. P1 to 3 do not, in any way interfere with the right of the corporate management in the matter Of appointment of teachers under the relevant provisions of the University Acts and that the impugned statutes only lay down the condition for transfer It was also alleged that the matter of transfer of private college teachers is one of the facets

of the conditions of service and that they are competent to issue relevant statutes in the matter.

4. The learned single Judge came to the conclusion that the transfer is one of the conditions of service and that it can be regulated by statutes. It was also found that the first statutes of 1976 and 1979, though deal with conditions of service, do not deal with the aspect of transfer of private college teachers and, accordingly, the power of the Government to issue first statute is not exhausted. The other contentions raised by the counsel for the petitioner were also rejected by the learned single Judge. In regard to the validity of Ext. P3, the learned single Judge came to the conclusion that the period of one year mentioned in Section 100 of the Mahatma Gandhi University Act is only directory and not mandatory and, accordingly, the statute, though issued after the period of one year, is valid and cannot be set aside. The petitioner has come up in appeal against the afore said judgment of the learned single Judge.

5. In the appeal, the learned counsel for the appellant - petitioner raised five contentions, viz:

a) Exts. P1 to 3 statutes are void and without jurisdiction as the power vested in the Government is exhausted by the issuance of the first statutes of 1976 and 1979 by the Government in regard to the conditions of service of teachers;

b) Exts. P1 to 3 statutes are beyond the power of the Government as transfer is not a condition of service, but only an incident of service;

c) The right to appoint private college teachers is vested in the educational agency under the relevant provisions of the three University Acts. Transfer is a necessary incident of the power of appointment and the interference with that right of the management by these statutes is beyond authority;

d) The impugned statutes do not take into account the interest of the institution; and

e) The three statutes are in conflict with the earlier statutes of 1976 and 1979 issued by the Government.

6. We shall first deal with Exts. P1 and 2 statutes issued under the provisions of the Kerala and Calicut University Acts. The provisions in these two Acts are identical. So far as Mahatma Gandhi University Act is concerned, there are certain slight differences in the provisions of the Act and so, we shall be dealing with Ext. P3 statutes separately.

7. Point (a). In order to decide the question as to whether the power of the Government is exhausted by issuing two statutes in 1976 and 1979 in respect of the conditions of service of private college teachers, it is necessary to note the object and the relevant provisions of the University Acts. As stated earlier, the provisions in the Kerala and Calicut University Acts are identical and, accordingly, we are referring only to the provisions contained in the Kerala University Act. It

is well known that the main object of the University Acts was to confer autonomy on the University in academic and other matters and to minimise outside Interference as far as possible. In 1950, Dr. S. Radhakrishnan, who later became the President of India, in his celebrated report of the University Education Commission, 1950, said:

Exclusive control of education by the State has been an important factor in facilitating the maintenance of totalitarian tyranny. We must resist, in the interest of our democracy, the trend towards the Governmental domination of the educational process. Higher education is undoubtedly an obligation of the State but State aid is not to be confused with State control over academic policy and practices. Our Universities should be released from the control of politics.

(Emphasis supplied)

It is with the above object that the University Act has been framed and authorities have been constituted under the University to look after the administrative and educational matters arising in the University and the colleges under the Universities.

8. Section 5 of the Kerala University Act provides the powers of the University and Section 5 (xiii) confers power on the University to regulate the emoluments with the previous sanction of the Government and to prescribe the duties and conditions of service of teachers and non-teaching staff in private colleges. Section 16 provides the authorities of the University, which includes the Senate, Syndicate, Academic Council and certain other bodies. Section 19 of the Act provides for the powers and functions of the Senate. Section 19 (2) , as far as it is relevant, is to the following effect:

Save as otherwise expressly provided in this Act, the Senate shall have following powers, namely :

- (a).
- (b) to make, amend or repeal statutes either of its own motion or on the motion of the Syndicate;
- (c).
- (h) with the previous concurrence of the Government, to regulate the emoluments and prescribe the duties and conditions of service of teachers and non teaching staff in private colleges;
- (i).

Section 34 mentions the matters which are to be provided by the statutes and Section 34 (k) provides that statutes can be made for all other matters, which, by this Act, are to be or may be prescribed by statutes Section 35 provides that the statutes have to be passed by the Senate. The section also provides that no statute passed by the Senate shall be valid or come into force until assented to

by the Chancellor. Section 57 provides that 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. It further provides that the 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. Section 60 of the Act provides that conditions of service of private college teachers shall be such as may be prescribed" by statutes. Section 64 provides for inter University transfer of private college teachers, where an educational agency has colleges under the justification of the Kerala University and also within the jurisdiction of the Calicut University. Section 83 of the Kerala University Act is to the following effect;

Notwithstanding anything contained in this Act, the first statutes and the first ordinances of the University shall be made by the Government.

It can thus be seen that the conditions of service of private college teachers have to be prescribed by statutes and the power of issuing" statutes is vested in the Senate normally. But, u/s 83 of the Act, a limited power is given to the Government to issue first statutes. From the scheme and setting of the provisions of the Act, it is clear that the object of giving the power of issuing first statutes to the Government is only to avoid a stalemate till the authorities of the University, like the Senate, Syndicate, etc. are constituted. u/s 17, the Senate shall consist of certain ex-officio members, elected members, life members and other members and it may take some time for constituting these authorities. The purpose of vesting the power in the Government to issue first statutes and ordinances u/s 83 is only to avoid a stalemate during the interregnum till these authorities are constituted. Under the Act, one of the subjects, for which provision can be made through statutes, is the conditions of service of private college teachers, which is provided for u/s 60 of the Act. When Sections 60 and 83 are read together, certainly, the Government will have the power to issue first statutes in respect of conditions of service. On the subject conditions of service - Government have already issued three statutes, the first one in 1976, the second one in 1979 and the third one in 1988. The impugned statutes are fourth in order.

9. The 1976 statutes (S.R.O.No. 377 of 1976) deal with pension, provident fund, gratuity, insurance and age of retirement of teachers of private colleges. The statutes of 1979, the Kerala University (Conditions of Service of Teachers and Members of Non-teaching Staff) First Statute, 1979 is in respect of the conditions of service "other than" pension, provident fund, gratuity, insurance and age of retirement of teachers and members of the non-teaching staff in private colleges. The 1988 statutes are in respect of transfer of teachers to other Universities. The first statutes issued in 1979 and 1988 are not under challenge before us It can be seen that the power of the Government to issue first statutes, conferred u/s 83 of the Act, has already been exercised thrice by the Government in regard to the very same subject-conditions of service. Section 13 of the Interpretation and General Clauses Act, 1125, which is applicable to Kerala (corresponding to

Section 14 of the General Clauses Act) states that whereby any Act any power is conferred, then, unless a different intention appears, the power may be exercised from time to time as occasion arises. In the present case, the provisions in Section 83 of the University Act, in the light of the other provisions already referred to, certainly evinces an intention to the contrary that the power u/s 83 can be exercised only once and not from time to time. That power having been already exercised by the Government in relation to conditions of service of private college teachers by issuing statutes in 1976 and 1979 got itself exhausted and cannot be utilised after a period of fifteen years from the date of its first exercise. We are supported, in the above view, by two decisions of the Supreme Court, reported in *Sri Nasiruddin Vs. State Transport Appellate Tribunal*, and *Lachmi Narain and Others Vs. Union of India (UOI) and Others*, .

10. In the former case, the Supreme Court was considering Paragraph 14 of the United Provinces High Courts (Amalgamation) Order, 1948. Paragraph 14" reads as follows:

14. The new High Court, and the judges and division courts thereof, shall sit at Allahabad or at such other places in the United Provinces as the Chief Justice may, with the approval of the Governor of the United Provinces, appoint:

Provided that unless the Governor of the United Provinces with the concurrence of the Chief Justice, otherwise directs, such judges of the new High Court, not less than two in number, as the Chief Justice, may from time to time nominate, shall sit at Lucknow in order to exercise in respect of cases arising in such areas in Oudh, as the Chief Justice may direct, the jurisdiction and power for the time being vested in the new High Court:.

The question arose as to whether the Chief Justice Is entitled to enlarge the areas in Oudh when he has already fixed the area under the proviso. After considering the proviso, the Supreme Court held that:

The second part of the first proviso to para 14 of the Order, which speaks of cases arising in such areas in Oudh as the Chief Justice may direct do not attract the application of the words "from time to time". The second part of the first proviso to para 14 shows that such areas in Oudh as the Chief Justice may direct are areas in respect of which once such direction is given, there is no intention in the Order to exercise such power of direction from time to time.

It was further held that the Chief Justice of the High Court has no power to increase or decrease the areas in Oudh from time to time. The areas in Oudh having been determined once by the Chief Justice, there is no scope for changing the areas. Thus, it was held by the Supreme Court that the power under the proviso having been once exercised by the Chief Justice, it is exhausted and he has no power to further extend the areas.

11. In *Lachmi Narain and Others Vs. Union of India (UOI) and Others*, , the question that arose for consideration was Section 2 of the Part C States (Laws)

Act, 1950, which empowered the Central Government to extend, by notification in the official gazette, to any Part C State or to any part of such State, with such restrictions and modifications as it thinks fit, any enactment which is in force in a Part A State. In exercise of that power, the Central Government issued a notification dated 28th April 1951, extending to the then Part C State of Delhi, the Bengal Finance (Sales Tax) Act, 1941. Later, on 7-12-1957, the Government of India made an amendment to the afore said notification, in exercise of the powers conferred u/s 2 of the Union Territories (Laws) Act, 1950. The question arose as to whether the second, notification was valid or not. In construing the section Their Lordships of the Supreme Court held that the power given u/s 2 of the Act exhausts itself on extension of the enactment and that it cannot be exercised from time to time. It was observed:

The power given by Section 2 exhausts itself on extension of the enactment; it cannot be exercised repeatedly or subsequently to such extension. It can be exercised only once, simultaneously with the extension of the enactment.

12. In the light of the above decisions, we have no hesitation to hold that the power of the Government u/s 83 of the Act got itself exhausted by the issuance of 1976 and 1979 statutes in regard to conditions of service.

13. It was rightly conceded by all counsel appearing in the case that the power to amend a statute issued under the University Act vests only in the Senate u/s 19 (2) of the Act. The first statutes of 1976 and 1979 deal with conditions of service of private college teachers. Certain provisions have been made in the 1990 statutes, Exta. P1 to 3, restricting the right of the management in regard to transfer of private college teachers, which we shall assume to be a condition of service though that is very much disputed by the counsel for the appellant. In other words, in effect, it is an amendment to the statutes of 1976 and 1979 regarding conditions of service, by adding certain provisions in regard to transfer of private college teachers. Addition of certain provisions to an existing statute will also amount to amendment of the statute. The power of amendment of a statute vests only in the Senate and the impugned statutes issued by the Government really amend the 1976 and 1979 statutes regarding conditions of service and are clearly without authority of law and is an invasion on the power of the Senate vested in it u/s 19 (2) of the Act and, accordingly, they are liable to be set aside.

14. The learned single Judge has upheld the validity of the statutes on the ground that the earlier first statutes issued by the Government do not provide for inter University transfer and, accordingly, the Government retains its power to issue first statutes in respect of transfer of teachers. We think that this is not the correct approach to be made in the circumstances of the case. u/s 83 of the Act, the Government can pass a first statute only on a virgin field and not in an occupied field. Though no direct authorities were placed before us, we feel that it is apposite to refer to the cases decided by the Supreme Court in construing Article 245 of the Constitution of India, wherein analogous questions in regard to

occupied field and repugnancy between federal and provincial legislations have come up for consideration. It has been held that the mere fact that one of the legislations does not contain any provision regarding a particular facet of a subject is not decisive to decide whether the legislation occupies the entire field or not. Ch. Tika Ramji and Others etc. Vs. The State of Uttar Pradesh and Others, refers to Nicholas on Australian Constitution, wherein he has mentioned three tests of inconsistency or repugnancy, which are to the following effect :

- (1) There may be inconsistency in the actual terms of the competing statutes;
- (2) Though there may be no direct conflict, a State law may be inoperative because the Commonwealth Law, or the award of the Commonwealth Court, is intended to be a complete exhaustive Code; and
- (3) Even in the absence of intention, a conflict may arise when both State and Commonwealth seek to exercise their powers over the same subject matter.

In Colin Howard's Australian Federal Constitutional Law (2nd Edition 1972), it is stated that there could be inconsistency between the law, which is silent and another law which contains a positive provision. It is stated :

The Commonwealth Act may say nothing about some situations because of a policy decision that they are best left unregulated by statute. In such a case, a State Statute which regulates these situations is nonetheless in conflict with the intention of the Commonwealth Act because it leads to a direct clash.

It can be seen from the above passages that the fact that the earlier first statutes are silent on the question of transfer of private college teachers is not decisive, but the real question to be decided is as to whether the previous statutes were intended to be exhaustive on the conditions of service and whether Government intended to occupy the entire field. In order to decide that question, it will be necessary to deal with the provisions of the first statutes of 1979, providing for conditions of service of private college teachers "other than" pension, provident fund, gratuity, insurance and age of retirement. The aforesaid statute begins with the appointment of teachers and ends with the disciplinary action against teachers of private colleges. Chapter I contains the definition provision and Chapter II deals with the matter of appointment of teachers and how the selection is to be made. Chapter III provides for restriction of other activities of private college teachers, salary, vacation salary, scales of pay, increments, probation, grant of leave, absence of duty, travelling allowance, foreign service, payment of honorarium, seniority list and application of certain provisions of the Kerala Service Rules to the teachers-Chapter IV deals with disciplinary proceedings against the teachers of private colleges. It deals with the penalty, disciplinary authority, procedure for imposing major penalty and the procedure for imposing minor penalty. Chapter V deals with special provisions in respect of private colleges which have accepted the direct payment system. Chapter VI deals with certain miscellaneous provisions, like surrender of earned leave, medical benefits, proof of date of birth, etc. Over and above all these, the

Preamble to the first statutes of 1979 is very important, which is to the following effect:

S.R.O. No. 489 of 1979 - In exercise of the powers conferred by Section 83 of the Kerala University Act, 1974 (17 of 1974) and in supersession of all statutes on the subject, the Government of Kerala hereby make the following first statutes in respect of the conditions of service other than pension, provident fund, gratuity, insurance and age of retirement of teachers and members of the non-teaching staff in private colleges namely.

From the wording of the Preamble in supersession of all statutes on the subject" and "in respect of the conditions of service other than pension.", it is evident that the Government intended to pass the first statutes of 1979 in respect of all the conditions of service other than pension, provident fund, gratuity, etc. and would conclusively show that they intended those statutes to be exhaustive on the subject. The intention was to make a first statute in respect of all the conditions of service other than pension, provident fund, gratuity, insurance and age of retirement of teachers.

15. The various provisions mentioned above, contained In the statutes of 1979, would show that the Government intended the statute to be an exhaustive one in the matter of conditions of service. The 1976 statute dealt with pension, provident fund, gratuity, insurance and age of retirement of teachers and by the two statutes of 1976 and 1979, the Government has exercised and exhausted its power vested in it u/s 83 of the Kerala University Act in regard to conditions of service. The mere fact that no provision was incorporated in regard to transfer of private college teachers, by itself, is not a decisive test, as it is clear that the Government intended to exhaust the entire subject of conditions of service by these two statutes. In that view of the matter, the first statutes issued in respect of transfer of private college teachers in 1990, after fifteen years from the date of the first statute, is absolutely without jurisdiction and is beyond the powers conferred on the Government u/s 83 of the Kerala and Calicut University Acts.

16. So far as the statutes under the Mahatma Gandhi University is concerned it is to be noted that there is slight difference in the provisions of the aforesaid Act from the other two University Acts. u/s 5 (xiii), the power to prescribe duties and conditions of service of teachers and non teaching staff vests in the University, Under Section 23 (xxiii), the power to prescribe the duties and conditions of service of teachers in private colleges vests in the Syndicate and not in the Senate, as is provided for under the Kerala and Calicut University Acts u/s 23 (ii) , the power to make statutes and ordinances and to amend or repeal the same is also vested in the Syndicate and not in the Senate. Section 36 of the Act provides for the procedure for making statutes by the Syndicate and Section 59 vests the power of appointment of teachers in the management. Section 62 provides that the conditions of service of private college teachers shall be prescribed by statutes and Section 68 deals with the inter University transfer. Section 99 (2) of the Act provides that all the statutes and ordinances made

under the Kerala University Act and in force on the date of commencement of this Act shall continue to be in force in respect of the areas coming under the Mahatma Gandhi University Act. By virtue of this provision the first statutes of 1976 and 1979 in respect of conditions of service issued by the Kerala Government in respect of Kerala University became applicable to the Mahatma Gandhi University. Section 100 confers power on the Government to issue the first statutes and ordinances. Section 100 (1) of the Mahatma Gandhi University Act is different from the corresponding provision in the Kerala and Calicut University Acts. Section 100 (1) is to the following effect:

Notwithstanding anything contained in this Act, the first statutes and the first ordinances of the University shall be made by Government in consultation with the University Grants Commission within a period of one year from the date of Commencement of the Mahatma Gandhi University (Amendment) Act, 1988.

17. The Mahatma Gandhi University (Amendment) Act, 1988 came into force on 17-2-1988 and Ext. P3, the first statute in regard to transfer of teachers of private colleges, was issued only on 25-8-1990. It is patently clear that the first statute, Ext. P3, was issued long after the expiry of the period of one year mentioned in Section 100 (1) of the Mahatma Gandhi University Act. The learned single Judge came to the conclusion that the provision contained in Section 100 (1) is only directory and not mandatory and if the section is construed otherwise, the Government will be powerless to regulate the transfer of private college teachers coming within the jurisdiction of that University.

18. We find it difficult to agree with this conclusion of the learned single Judge. Lachmi Narain and Others Vs. Union of India (UOI) and Others, , the Supreme Court has laid down the test to find out whether a section is mandatory or directory, in the following manner:

The primary key to the problem whether a statutory provision is mandatory or directory is the intention of the law maker as expressed in the law itself. The reason behind the provision may be a further aid to the ascertainment of that intention.

We have already said, while construing the provisions in the Kerala and Calicut University Acts, that the object of the University Acts is to give autonomy to the Universities in academic and other educational matters. The same will hold good in respect of Mahatma Gandhi University also. The authorities like the Senate, Syndicate, etc. are to be constituted under the Act and primarily the conditions of service of teachers have to be made by the Syndicate, by means of a statute. As stated earlier, it may take some time for the constitution of these bodies, which consist of ex-officio members, elected members and nominated members. It is only to avoid a stalemate during the inter reg num that an enabling provision is made in Section 100 (1) of the Mahatma Gandhi University Act, by which, authority is given to the Government to make first statutes in respect of matters which are to be provided for in the statutes. It is with that object in mind

that a period of one year was provided for in Section 100 (1) of the Act and it cannot be said to be only directory. It is not as if the University is powerless, even if the period of one year mentioned in Section 100 (1) is over, for, the power is vested in the Syndicate to make statutes in regard to the conditions of service of teachers. That power is not at all affected in any way by the expiry of the period of one year and the authorities constituted under the Act will have the power to make statutes in regard to the conditions of service of teachers. Accordingly, we hold that the power of the Government to issue first statutes conferred on them u/s 100 (1) of the Act will cease to have operation on the expiry of the period of one year from the date of commencement of the Mahatma Gandhi University (Amendment) Act, 1988. In that view of the matter, Ext. P3 statute Issued by the Government in respect of private college teachers coming under the Mahatma Gandhi University Act is also equally without jurisdiction and is inoperative.

19. It was contended by the counsel for the respondents that if the impugned statutes are declared to be invalid, the private college teachers will be very much affected as the management will have an unbridled power to transfer them to any place at their will and pleasure. It is to be stated that the apprehension is misplaced. We have only held that the Government has no power to exercise its power under the corresponding provisions of the three University Acts in regard to this matter. This will not affect the power of the authorities of the Universities to make relevant statutes in the matter, in accordance with the provisions of the Act. The provisions in the University Acts are clear that the Senate or the Syndicate, as the case may be, has the power to make relevant statutes prescribing conditions of service of private college teachers, notwithstanding the cessation of Government's power.

20. As we have held in favour of the petitioner on the first point, it is not necessary for us to express any opinion on the other questions raised by the counsel for the appellant - petitioner and they are left open. It is made clear that we have not expressed any opinion on those questions and for the purpose of deciding Point No. 1, we have only assumed that transfer also is a condition of service and nothing contained in our judgment shall be taken as a finding that transfer is a condition of service.

21. O. P. No. 9916 of 1991 is filed by two private college teachers, for the issue of a writ of mandamus or other direction directing the petitioner - appellant to implement the provisions contained in Ext. P1 statute. As we have already held that Ext. P1 statute is inoperative, O. P. No 9916 of 1991 is only to be dismissed and, accordingly, we do so.

22. In the result, W. A No. 380 of 1991 is allowed. The judgment of the learned single Judge is set aside and the Kerala University (Intra University Transfer of Teachers of Colleges under Corporate Management having colleges affiliated to the Kerala University) First Statutes, 1990 (Ext. P1), the Calicut University (Intra University Transfer of Teachers of Colleges under Corporate Managements having

colleges affiliated to the University of Calicut) First Statutes, 1990 (Ext. P2) and the Mahatma Gandhi University (Intra University Transfer of Teachers of colleges under Corporate Managements having colleges affiliated to the Mahatma. Gandhi University) First Statutes, 1990 (Ext P3) are hereby quashed and declared inoperative. It is made clear that the judgment pronounced by us will have only prospective operation. If any transfer orders have been Issued in pursuance of Exts. P1 to 3 statutes, they shall be effective in spite of this judgment and shall not be cancelled or varied by virtue of this judgment alone unless there are other reasons warranting the same. We have considered only the validity of the statutes Exts. P1 to 3 and nothing contained in this judgment shall be taken as an expression of opinion of ours on the validity of the 1976, 1979 and 1988 statute; on the subject, which were not in challenge before us.

O.P. No. 9916 of 1991 is dismissed. There will be no order as to costs, in both the cases.