

(1994) 11 KL CK 0048
In the High Court Of Kerala
Case No : O.P. No. 8435/90 D

Prof. K.M. Varghese

APPELLANT

Vs

Mahatma Gandhi University and Others

RESPONDENT

Date of Decision : 25-11-1994

Acts Referred:

Limitation Act, 1963 — Section 5(9)

Mahatma Gandhi University Act, 1985 — Section 2(29), 56(9), 62, 63, 64

Citation : (1994) 11 KL CK 0048

Hon'ble Judges : Mathew P. Muricken, J

Bench : Single Bench

Advocate : T.P. Kelu Nambiar and S.M. Prem, for the Appellant; Thomas Mathew Nellimoottel, for Respondents Nos. 1 and 2, Biju Kuriakose and P. Santhalingam, for the Respondent

Final Decision : Allowed

Judgement

Mathews P. Mathew, J.—Petitioner is the Principal of a private college affiliated to the first Respondent University. On the basis of an allegation that the Petitioner committed certain serious irregularities in the matter of admission of students during the academic year 1990-91, the Syndicate of the first Respondent University conducted an enquiry. The enquiry was conducted by three members of the committee constituted by the Syndicate. The Enquiry committee reported to the University that certain irregularities were committed by the Principal in the matter of admission of students in the Pre-degree class and the University directed the Principal to regularise the admissions and report to the University within a week. The Petitioner purportedly for complying with the said direction sought for a marginal increase of 25 percent seats in Arts Groups for the academic year 1990-91 so as to regularise the alleged irregular admissions. However, on the basis of the report submitted by the committee had also recommended withholding increment of the Petitioner for two years and also administering a warning to the management in this regard. The University on the basis of the findings of the Enquiry committee passed Ext. P-4 order withdrawing

the approval accorded to the Petitioner as Principal of the college for a period of one year without prejudice to his normal functioning as a teacher in the college.

2. Ext. P-4 is challenged in this Original Petition mainly on the ground that the University has acted without jurisdiction in passing Ext. P-4 inasmuch as the power to take disciplinary action against teachers of private colleges vest in the educational agency and not with the University.

3. There can be no dispute that the power of appointment of teachers in private colleges is vested in the management viz. the concerned educational agency of the private colleges. The relationship of master and servant exists only between the educational agency and the teachers concerned in the private college. In the absence of any specific statutory provisions to the contrary the power of disciplinary action vested in the management over the members of its staff is absolute and no outside agency including the University can interfere with the absolute right of the management to take disciplinary action against its employees including the Principal. This does not mean that the legislature is without powers to make necessary regulations allowing the University or other appropriate agencies to take disciplinary action against teachers in private colleges if specific provisions to that effect are made by statutory enactments.

4. The conditions of service of teachers of private colleges including the powers of disciplinary action is contained in Sections 62, 63 and 64 of the Mahatma Gandhi University Act (hereinafter referred to as the Act). Sections 62 - 64 of the Act provides as follows:

62. 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 teachers 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) Notwithstanding anything contained in the Act, the Statutes, Ordinances and Regulations made there under,

(a) a person appointed as teacher in a private college in a temporary vacancy and continuing as such shall be appointed as teacher in any permanent vacancy that may arise, after such appointment in the temporary vacancy, in the private college or, as the case may be, any of the private colleges under the management of the educational agency within the University area;

(b) a teacher relieved from a private college on or after the 14th day of March, 1974 due to the abolition of a course of study in that private college or the cessation of the period for which he was appointed or for any other reason except disciplinary action against him shall be given preference in the matter of future appointments in the private colleges or, as the case may be, any of the private colleges under the management of the educational agency within the

University area.

63. Disciplinary powers of educational agency over teachers of private colleges.-

(1) The educational agency may at any time place a teacher of a private college under suspension when any disciplinary proceedings is proposed to be taken against him or when such disciplinary proceedings are pending.

(2) A teacher of a private college who is detained in custody whether on a criminal charge or otherwise for a period exceeding forty-eight hours shall be deemed to have been suspended with effect from the date of detention by an order of the educational agency and shall remain under suspension until further orders.

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

(4) Any disciplinary proceedings against a teacher of a private college by the educational agency shall be completed within a period of three months or within such further period as may be allowed by the Vice-Chancellor.

(5) 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) Any teacher aggrieved by an order imposing on him any of the following penalties, namely:

(a) withholding of increment;

(b) recovery from pay of any pecuniary loss caused to the institution or the monetary value equivalent to the amount of increment ordered to be withheld;

(c) reduction to a lower rank in the seniority; list or to a lower grade or post; and

(cc) removal from service;

(ccc) compulsory retirement from service;

(d) dismissal from service, may, within sixty days from the date on which a copy of such order is served on him, appeal to the Appellate Tribunal on any one or more of the following grounds namely:

(i) that there is want of good faith in passing the order;

(ii) that the order is intended to victimise the Appellant;

(iii) that in passing the order, the educational agency has been guilty of a basic error or violation of the principles of natural justice;

(iv) that the order is not based on any material or is perverse:

Provided that the Appellate Tribunal may admit an appeal presented after the expiration of the said period of sixty days if it is satisfied that the Appellant had sufficient cause for not presenting the appeal within that period.

(7) On receipt of an appeal Under Sub-section (6) the Appellate Tribunal may, after giving the parties an opportunity of being heard, and after such further inquiry as may be necessary pass such order thereon as it may deem fit, including an order of reinstatement of the teacher concerned.

(8) Any order passed by the Appellate Tribunal Under Sub-section (7) may be executed through the Subordinate Judges Court having jurisdiction over the area in which the private college is situate as if it were a decree passed by that Court.

(9) Any person who objects to an order passed by the Appellate Tribunal Under Sub-section (7) may, within sixty days from the date on which a copy of such order is served on him, prefer a petition accompanied by Court fee stamps of the value often rupees to the High Court on the ground that the Appellate Tribunal has either decided erroneously or failed to decide, any question of law.

(10) The provisions of Section 5 of the Limitation Act, 1963 (Central Act 36 of 1963), shall be applicable to any proceedings Under Sub-section (9).

(11) The High Court shall, after giving the parties an opportunity of being heard, pass such order on the petition, as it deems fit.

(12) Where the High Court passes any order under Sub-section (11), the Appellate Tribunal shall amend the order passed by it in conformity with the order of the High Court.

64. Disciplinary powers of Government over teachers of private colleges.-

(1) Notwithstanding anything contained in this Act or in the Statutes, Ordinances or Regulations and subject to Such rules as may be made by Government in this behalf, the Government or such officer not below the rank of Deputy Director of Collegiate Education as may be authorised by the Government in this behalf, shall have power to take disciplinary proceedings against a teacher of a private college and to impose upon him all or any of the penalties specified by or under this Act:

Provided, that before exercising the powers under this Sub-section the Government or the authorised officer, as the case may be, shall intimate the Manager regarding the circumstances requiring disciplinary action against the teacher concerned and give the Manager a reasonable opportunity of taking disciplinary action and the Government or the authorised officer, as the case may be, shall take disciplinary action against the teacher only if the Manager fails to take appropriate disciplinary action.

(2) The Government or the officer authorised Under Sub-section (1), as the case may be, may suspend a teacher of a private college when any disciplinary proceeding is proposed to be taken against him under that Sub-section or when

such disciplinary proceedings are pending.

However, Section 72 of the Act gives the University the power to take action against the management for noncompliance with the directions issued by the University under the Act or in the Statutes, Ordinances, and Regulations, etc. made under the Act. Section 56(9) also empowers the University to take certain action against the management in a given condition. But no provision of law is brought to my notice which empowers the University to assume original powers to take disciplinary action against teachers of private colleges which is inherently vested in the respective management, i.e. Educational Agency.

5. In the instant case the University assumed original powers of the disciplinary action against an employee of a private college and proceeded as if they are taking disciplinary action against an employee of the University which is not justified in law. Such an action is clearly without jurisdiction. The punishment imposed includes withdrawal of approval of the Petitioner from his working in the capacity of Principal without prejudice to his Continuing as a teacher. The term teacher is defined in the Act. Section 2(29) provides as follows:

(29) "teacher" means a Principal, Professor, Associate Professor, Assistant Professor, Reader, Lecturer, Instructor or such other person imparting instruction or supervising research in any of the colleges or recognised institutions and whose appointment has been approved by the University.

A Full Bench of this Court in *V. Rev. Mother Provincial and Ors. v. State of Kerala and Ors.* 1969 KLT 749 as well as the Apex Court has interpreted the word "approval" to the effect that the power given to the University in this regard is to be taken as the power to scrutinise whether the person concerned has got the necessary qualification as prescribed by the appropriate authority to hold the post and whether the appointment is made by the competent authority. There is no case that the Petitioner does not have the prescribed qualification to hold the post. As a matter of fact he is permitted by the impugned order itself to discharge his functions as a teacher of the college. A feeble attempt is made on behalf of the University to treat Ext. P-4 as an order withdrawing the approval granted to the Petitioner to act as a Principal and to make it appear that Ext. P-4 is not an order passed in disciplinary proceedings. A mere reading of Ext. P-4 makes it abundantly clear that University has in fact sought to exercise disciplinary action against the Petitioner for certain alleged misconduct and it is legally impossible to treat that action as exercise of any other power vested in the University. There is no provision in law for the University to impose such a punishment on a teacher in a private college. From the facts of the case it is clear that Ext. P-4 is nothing but an order passed in disciplinary action and initiating any action by way of disciplinary proceedings against a teacher in a private college is without jurisdiction for the reasons mentioned hereinabove. I, therefore, set aside Ext. P-4.

6. The setting aside of Ext. P-4 will not stand in the way or fetter the University

from taking appropriate action in the matter of irregular admission, if any, alleged to have been committed in accordance with law. The Original Petition is allowed.