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**(1965) 12 KL CK 0017**  
**In the High Court Of Kerala**

Rama Varma

APPELLANT

Vs

Cochin Devaswom Borad and Others

RESPONDENT

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**Date of Decision :** 23-12-1965

**Acts Referred:**

Constitution of India, 1950 — Article 226

**Citation :** (1966) 10 KLJ 1019 : (1967) 1 LLJ 350

**Hon'ble Judges :** P. Govindan Nair, J

**Bench :** Single Bench

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## Judgement

Govindan Nair, J.—The writ applicant seeks to quash Ex. P. 17 order dated 20 March 1964 passed by the Secretary of the Cochin Devaawom Board cancelling the "provisional confirmation" of the petitioner as the principal of the Sri Kerala Varma College, Trichur. He also seeks to set aside Ex. P. 18 which is the communication addressed to the petitioner that his provisional confirmation as principal has been cancelled. By an order on Civil Miscellaneous Petition No. 3848 of 1964 the petitioner has been permitted to seek the additional relief to quash the order appointing V. P. Kannan Nair as the principal of the college in the place of the petitioner.

2. The main contention raised in opposition to this writ application is that the relationship between the petitioner and respondent 1 to this writ application is purely that of master and servant and that no relief can be had by the petitioner in proceedings under Article 226 of the Constitution.

3. The petitioner was the seniormost professor in the college. He was "provisionally confirmed" as principal by Ex. P. 1 order dated 15 June 1960. It is this order that has been cancelled by Ex. P. 17. The effect of this is that the petitioner is reverted as professor.

4. But if the relationship between the petitioner and respondent 1 is purely that of master and servant, no relief can be granted by this Court in proceedings under Article 226 of the Constitution. This point is not challenged. Counsel for

the petitioner however argued that the petitioner was holding an office, that of a principal in the college, which he was entitled to continue to hold according to statutory provisions and that in any event the contract of employment is governed by statutory provisions and therefore it is urged, this Court can and should Interfere by issuing an appropriate writ under Article 226 of the Constitution when either, he has been prevented from holding the office, or when there has been an Infringement of the terms of the contract.

5. The question, therefore, to be determined in this writ application is, whether the relationship of the petitioner and respondent 1 is purely that of master and servant or whether the petitioner was holding an office which he was entitled to continue to hold by virtue of statutory provisions or whether the contract of employment is governed by statutory provisions.

6. Before dealing with this question, I may refer to one aspect which was stressed by counsel on behalf of the petitioner. He Invited my attention to Ex. P. 1 order passed by respondent 1 reading as under:

the Board has been pleased to confirm Rama Varma as principal, Sri Kerala Varma College, provisionally with effect from 8 April 1959;

the principal is requested to make proposals for the subsequent arrangement;

and argued that he had been provisionally confirmed and that the confirmation provisional though, it could be set aside only on one particular event happening. It was pointed out that one Akhileswara Ayyar who was the principal of the college was suspended on 4 December 1958 and was later dismissed on 8 April 1959. Akhileswara Ayyar had moved writ applications Original Petitions No. 839 of 1958 and No. 540 of 1959, respectively, against the suspension order and the dismissal order and that the appeals from the orders passed in those original petitions as well as another writ application moved by the said Akhileswara Ayyar, Original Petition No. 825 of 1959, were disposed of by this Court only by its judgment, dated 23 December 1960. The judgment la in Cochin Devaswom Board v. Akhileswara Ayyar 1961-II L.L.J. 562. This Court set aside the suspension order as well as the dismissal of the said Akhileswara Ayyar. It is urged that the petitioner was confirmed " provisionally " only because of the pendency of these proceedings in Court and that, therefore, the only contingency which would justify the reduction of the petitioner from the rank of the principal to that of professor is the return of Akhileswara Ayyar as principal of the college. From the decision of this Court in Cochin Devaswom Board v. Akhileswara Ayyar 1961-II L.L.J. 562 (vide supra) an appeal was taken before the Supreme Court which was finally compromised and Akhileswara Ayyar resigned from the college on 25 October 1962. This is evidenced by Ex. P. 4. So It is pointed out that the only contingency on the happening of which the petitioner could have lost his rank as principal was eliminated by the resignation of Akhileswara Ayyar and, therefore, there was no justification whatever for passing the order Ex. P. 17, in March 1964. My attention in this connexion has been Invited to Rule 22(A) of the

Cochin Service Regulations, Rule 71 of the Travancore Service Regulations, Rule 34(b) of the Kerala State and Subordinate Service Rules and Rule 18(c) of the Kerala Service Rules applicable to the Finance Department, and it was argued that tentative appointments may be made for particular reasons and that they are liable to be set aside only in the happening of the particular event which was contemplated. I shall assume without deciding, for the purpose of this case, that the effect of Ex. P. 1 order granting provisional confirmation to the petitioner is that it is only subject to be altered on Akhileswara Ayyar returning to the college. Even so the petitioner will be entitled to relief only in case he is able to establish that he was holding an office or that the ordinary relationship of master and servant between him and the college administration has been altered by statutory provisions.

7. Firstly it is contended that by virtue of Proclamation II of 1124 issued by His Highness the Maharaja of Cochin, the college and all its effects vested in His Highness the Maharaja, which means, that the college had become vested in the State and all the employees of the college had become employees of the State and that, therefore, the Kerala Service Rules which are applicable to Government employees applied to the petitioner. It may be mentioned here that the college was formed in 1947 by a Senatus pursuant to a Charter issued by His Highness the Maharaja of Cochin in the year 1947. The Senates laid down the conditions of service applicable to their employees and this is seen from Ex. P. 21. After the Proclamation II of 1124 it is urged that the college had become a Government Institution and its employees had become Government servants. The Proclamation is in these terms:

WHEREAS it is expedient to cancel the unpublished Charter granted on 26 Vrischigam 1123 to the Sri Kerala Varma College Senatus, hereinafter referred to as the Senatus, and to revoke all the powers conferred on the Senatus by the aforesaid Charter; we are, hereby pleased to command-

(1) that the Charter granted to the Senatus on 28 Vrischtgam 1123 and all the rights and powers conferred thereby shall stand revoked;

(2) that the entire effects of the Senatus inclusive of the grants made from Devaswom funds shall vest in US for the purpose of managing and maintaining the Sri Kerala Varma College; and

(3) that the Sri Kerala Varma College shall, subject to our control, be hereafter managed by the Commissioner of Devaswoms.

8. On behalf of respondent 1 It was pointed out that the college had always been functioning on funds given to it by the Devaswom Board, that even after the Proclamation II of 1124 it had been so managed and that public funds had never been utilized for paying the employees of the college and that the employees cannot be said to be State employees. He also invited my attention to the Devaswom Proclamation dated 11 February 1910 and urged that the endowments attached to and the income derived from the devaswoms, whether

incorporated or unincorporated, were constituted into a common trust. That Proclamation was in the year 1085 M.E. long before the Proclamation II of 1124. The effect of Proclamation II of 1124 which states that the entire effects of the Senatus as well as the grants made under the Devaswom fund shall vest In US in the contest is not that they should belong to the State. Viewed in the light of the Devaswom Proclamation of 1910 it has to be held that the college had not become State property and the employees had not become State employees.

9. Alternatively It was argued by reference to the provisions in the Travancore-Cochin Hindu Religious Institutions Act, 1950, that the rules contained In Ex. P. 21 framed by the Senatus had become statutory rules and that there has been an infringement of those rules in passing Ex, p. 17 order. A reference was made to Section 62 of the Travancore-Cochin Hindu Religious Institutions Act as well as to Section 122(4) of the same Act. Section 62 is not very important. It only shows that the administration of the college had vested in the Cochin Devaswom Board. Section 122(2)(e) enables the Board to make rules with reference to the method of recruitment and qualifications, the grant of salaries and allowances, discipline and conduct of officers and servants of the Board and of the Devaswom Department and generally the conditions of their service. It is admitted that no rules have been framed pursuant to the above provisions. But it is urged that because of Section 122(4) reading as under:

122. (4) Until rules are made by the Board under Sub-sections (1) and (2), the rules in force before 1 July 1949, shall, so far as may be, continue to be in force.

The rules contained in Ex. P. 21 have assumed the status of statutory rules and that any Infringement of those rules will have the same effect as the infringement of the statutory rules. I am unable to accept this contention for I am inclined to take the view that "... the rules in force before the 1 July 1949 " refer to rules framed under some statute which was in force before that date. It cannot possibly be applied to what is contained in Ex. P. 21, However, I do not wish to express any final opinion in regard to this matter for I am not satisfied that there has been any infringement of the service conditions in Ex. P. 21. My attention has been invited to Para. 4 of Ex, P. 21 that a person is ordinarily entitled to serve till he completed his sixtieth year. This can have no application and there is no case that the petitioner's services have been dispensed with before he reached the age of superannuation. Then reference was made to Para. 18 of Ex. P. 21 and it was urged that the termination of services for wilful neglect of duty, serious misconduct, gross insubordination and mental unfitness envisaged by that rule can be had only after informing the person in writing of the grounds on which action is intended to be taken and after giving him a reasonable opportunity for stating his case in writing and that a final decision should be reached only after duly considering his statement. It is said that no notice was given to the petitioner that he had not been afforded any opportunity to state his case and that a decision had been taken without considering his case. It is, therefore, argued that condition 18 in Ex. P. 21 has been violated.

10. Condition 18 in terms applies only to termination of services. As I pointed out earlier, the petitioner's services had not been terminated. If at all, he had only been reduced in rank.

11. The question arising for determination in such cases has been, if I may say so with great respect, dealt with elaborately in a well-known case *In Ridge v. Baldwin and Ors.* (1963) 2 All E.R. 66. I may refer to a passage from the decision:

The law regarding master and servant is not in doubt. There cannot be specific performance of a contract of service, and the master can terminate the contract with his servant at any time and for any reason or for none. But if he does so in a manner not warranted by the contract he must pay damages for breach of contract. So the question in a pure case of master and servant does not at all depend on whether the master has heard the servant in his own defence. It depends on whether the facts emerging at the trial prove breach of contract. But this kind of case can resemble dismissal from an office where the body employing the man is under some statutory or other restriction as to the kind of contract which it can make with its servants, or the grounds on which it can dismiss them. The present case does not fall within this class because a chief constable is not the servant of the watch committee or indeed of anyone else.

Reference may also be made to a passage from *Vine v. National Dock Labour Board* (1956) 2 All E.R. 9393 reading as under:

This is an entirely different situation from the ordinary master and servant case. There, if the master wrongfully dis-misses the servant, either summarily or by giving insufficient notice, the employment is effectively terminated, albeit in breach of contract. Here, the removal of the plaintiff's name from the register being, in law, a nullity, he continued to have the right to be treated as a registered dock worker with all the benefits which, by statute, that status conferred on him. It is, therefore, right that, with the background of this scheme, the Court should declare his rights.

12. The above decisions and the passages that I have referred to were read by the Privy Council in *Vidyodaya University of Ceylon and Ors. v. Silva* 1964) 3 All E.R. 865 and their lordships came to the conclusion that the termination of the services of a person who was appointed as a professor and head of the department of the economics of the Vidyodaya University, by the university, cannot be challenged in writ proceedings before the Court. The university was established by the Vidyodaya University and Vidyalandara University Act, 1958. By Section 18(e) of that Act the council had power to dismiss any officer or teacher

on the grounds of incapacity or conduct which, in the opinion of not less than two-thirds of the members of the council, renders him unfit to be an officer or teacher of the university.

Admittedly it is pursuant to this provision that the services of the professor and head of the department of economics were terminated and that their lordships observed:

It seems to their lordships that a "teacher" who has an appointment with the university is in the ordinary legal sense a servant of the university unless it be that Section 18(a) gives him altered position.

13. The circumstance that the university was established by statute and is regulated by the statutory enactments contained in the Act of 1958 does not involve that contracts of employment, which are made with teachers and which are subject to the provisions of Section 19(e), are other than ordinary contracts of master and servant. Comparison may be made with the case of Barber v. Manchester Regional Hospital Board. In his judgment in that case Berry, J., said:

Here, despite the strong statutory flavour attaching to the plaintiff's contract, I have reached the conclusion that in essence It was an ordinary contract between master and servant and nothing more".

In this case I am not even satisfied that there is even a strong statutory Savour in the contract of service between the petitioner and the administration of the college, now the Cochin Devaswom Board, respondent 1. The relationship between the two is purely that of master and servant. This is so even If it is assumed that Ex. P. 21 had obtained the status of statutory rules by virtue of Section 122(4) of the Travancore-Cochin Hindu Religious Institutions Act, 1950. There are, therefore, no grounds to Interfere with the order Ex. P. 17, the communication Ex. P. 18, and with the appointment of the said Kannan Nair.

14. Nor am I satisfied that there has been any violation of the principles of natural justice or that there has been any mala fides.

15. I dismiss this writ application. There will be no order as to costs.