

(2011) 12 KL CK 0038

In the High Court Of Kerala

Case No : Writ Petition (C) No. 38035 of 2010

Ranjith K.K. and Another

APPELLANT

Vs

The Kannur University and Others

RESPONDENT

Date of Decision : 22-12-2011

Acts Referred:

Kannur University Act, 1996 — Section 11(3), 25, 37
Kerala University Act, 1974 — Section 10(18), 13(6), 23
Motor Vehicles Act, 1988 — Section 213, 213(1), 213(4)

Citation : (2012) 1 KLJ 174

Hon'ble Judges : T.R. Ramachandran Nair, J

Bench : Single Bench

Advocate : George Poonthottam, for the Appellant; M. Saseendran (SC), P.U. Shailajan, Kishor B, P.C. Sasidharan, M. Manju, K.R. Ranjith Binoy K. Kadavan, K.T. Shyamakumar, P. Ramachandran and R. Sudhish, for the Respondent

Final Decision : Dismissed

Judgement

T.R. Ramachandran Nair, J.—The petitioners were candidates for appointment to the post of Assistants, notified by the University. They have participated in the selection also. The appointments of contesting respondents are challenged in this writ petition, on the plea that the selection committee constituted is not the properly constituted one in terms of the statute. Instead of the Vice Chancellor, the Pro Vice Chancellor was the Chairman of the committee. Heard learned counsel for the petitioner Shri George Poonthottam, learned Standing Counsel for the University Shri M. Saseendran, and learned counsel Shri P.C. Sasidharan, P.U. Shailajan, Shri K.T. Shyamkumar, Shri Benoy K. Kadavan, Shri R. Sudhish and Shri P. Ramachandran, appearing for the contesting party respondents.

2. Learned counsel for the petitioner submitted that u/s 25 (viii) of the Kannur University Act, the power to appoint teachers and other employees of the University is vested in the Syndicate. Statute 8 of Part II of Chapter IV of the Kannur University First Statutes, 1998 provides that recruitment shall be made

on the basis of recommendation made by a selection committee consisting of Vice Chancellor as the Chairman. It is pointed out that when the statutory selection committee will have to conduct the selection, the power of the Vice Chancellor cannot be delegated to the Pro Vice Chancellor. Ext.P1 is the copy of the notification. Ext.P2 is a notification where the Chancellor of the University has accepted the proposal for delegation of certain powers to the Pro Vice Chancellor. Ext.P4 is the notification constituting the selection committee wherein the Pro Vice Chancellor is the Chairman.

3. Shri George Poonthottam, learned counsel for the petitioner submitted, by relying upon the decision of a Division Bench of this Court in Sharafudeen v. Registrar, University of Kerala, 1997 (1) KLT 257, that the delegation attempted herein is without any jurisdiction and therefore the entire selection procedure will have to go and has to be declared invalid. It is pointed out that when the statute provides for a particular method for doing things, the said method alone can be resorted to. Herein, Statute 8 provides for constitution of the selection committee. The same cannot be varied by delegating the powers of the Vice Chancellor, to the Pro Vice Chancellor.

4. Learned Standing Counsel for the University, Shri M. Saseendran submitted that going by Section 11(3) of the Act, the power to make appointment below the rank of Deputy Registrar, is available to the Vice Chancellor and the proviso clearly allows delegation of his powers to the Pro Vice Chancellor or to the Registrar. Unlike the case decided by the Division Bench in Sharafudeen's case (supra), herein there is a specific provision enabling such delegation. It is thus pointed out that what is delegated by the Vice Chancellor is not the power of the Syndicate, but it is one delegating the powers of the Vice Chancellor to the Pro Vice Chancellor which is well protected u/s 11(3) of the Act. It is pointed out that the power to make appointment includes the power to make selection and in that context learned Standing Counsel relies upon a decision of the Apex Court in S. Satyapal Reddy and Others Vs. Govt. of A.P. and Others, .

5. The provisions relied upon by the learned counsel for the petitioner are Section 25 of the Act and Statute 8 of Part II of Chapter IV of the First Statutes. Section 11(3) of the Act and its proviso reads as follows:

11(3): Subject to the provisions of the Statutes and the Ordinances, the Vice Chancellor shall have power to appoint, suspend, dismiss or otherwise punish any employee of the University below the rank of Deputy Registrar. Provided that the Vice Chancellor may delegate any of his powers under this sub-section to the Pro Vice Chancellor or the Registrar.

Section 11(3) confers power on the Vice Chancellor to make appointment to various posts. Herein, the post notified being the post of Assistant, the Vice Chancellor is having power to make appointment to the said post. The proviso confers power to delegate any of his powers to the Pro Vice Chancellor or the Registrar. The power of the Vice Chancellor to make appointment is subject to

the provisions of the Statute and the Ordinances. Section 25 defines powers of the Syndicate. Sections 25(viii) and (xix) reads as follows:

25(viii) - To appoint teachers and other employees of the University and prescribe their duties.

(xix) - To delegate any of its powers to the Vice Chancellor or to a committee appointed from among its members. "

The power to make statutes and ordinances is conferred u/s 37 of Chapter V. Sub-section (s) of Section 37 reads as follows:

37. The Statutes. - Subject to the provisions of this Act, the Statutes may provide for all or any of the following matters, namely:

(s) the delegation of powers vested in the various authorities and officers of the University."

Statute 8 of Part II Chapter IV provides for recruitment to posts. It shows that the Vice Chancellor will be the Chairman. Statute 11 of Chapter II deals with the powers and functions of the Pro Vice Chancellor. Statute 11 (a) reads as follows:

11. Powers and functions of Pro-Vice Chancellor.- (a) The Pro-Vice Chancellor shall exercise such powers and perform such functions as may be determined by the Chancellor in consultation with the Vice-Chancellor.

Therefore, under the said provision the Pro Vice Chancellor can exercise such powers and perform such functions as may be determined by the Chancellor in consultation with the Vice Chancellor. Herein, Ext.P2 is the notification issued showing that the Chancellor granted approval of the proposal for delegation of various powers including all matters related to establishment and service matters of non teaching staff of the University. The constitution of the selection committee is by Ext.P4, done by the Vice Chancellor under the Kannur University First Statutes, 1998. In the Schedule to the Kannur University Ordinances, 1999 as against the post of Assistant, the appointing authority shown is the Vice Chancellor, which is also relevant while considering the issue raised herein.

6. In the decision of the Division Bench in Sharafudeen's case, 1997 (1) KIT 257 relied upon by the learned counsel for the petitioner, it was held that the delegation of the power of the Vice Chancellor to the Pro Vice Chancellor therein, was not legal. The facts of the case show that Statute 4 therein provides that Vice Chancellor shall be the ex-officio Chairman of the Selection Committee. Section 10(18) of the Kerala University Act provided that "in the event of a temporary vacancy occurring in the office of the Vice Chancellor, or where the Vice Chancellor is temporarily absent, the Chancellor shall make necessary arrangements for exercising the powers and performing the duties of the Vice Chancellor." The said provision was relied upon in support of the delegation made. Apart from the same, the relevant statute under the Kerala University Act, 1974, Section 23(viii) gives power to the Syndicate to appoint teachers and other

employees of the University and in clause (xix) it is stated that "the Syndicate can delegate any of its powers to the Vice Chancellor or to the committee appointed from among its members. " Statute 3 of Chapter 3 of the Statutes also provides that the teachers of the University shall be appointed by the Syndicate. The Division Bench in para 9 of the judgment, held that Section 10(18) of the Kerala University Act doesn't come into the picture, as it applies only to a contingency when the Vice Chancellor is temporarily absent, or there is a temporary vacancy in the said office. In para 11, the legal position was explained thus:

11. As already stated, the power to appoint teachers is vested with the Syndicate under S. 23 of the Kerala University Act. The procedure for appointment is fixed under Statute 4 of Chapter 3 of the University First Statutes. By this, a selection committee is constituted and the Vice Chancellor is made the ex-officio Chairman of the Selection committee. The statute has fixed the Vice Chancellor to be the Chairman with the intention that the selection committee will be prescribed by an eminent person like the Vice-Chancellor. The duty is cast on the Vice-Chancellor taking into account his position. Further, the statutes itself says that the Vice-Chancellor has to nominate two members for the selection committee. This power to select has been delegated by the Syndicate to a committee consisting of the Vice Chancellor. The Vice-Chancellor cannot further delegate his function by directing another person to discharge the functions as the Chairman of the selection committee. The statute has intended that this power should be exercised only by the Vice-Chancellor. Of course, if the Vice-Chancellor is temporarily absent or that post is vacant and another person is appointed to discharge that function, that person may be competent to act as the Chairman by virtue of the fact that he has been authorised to discharge the functions of the Vice-Chancellor. There he is competent to head the selection committee because he is discharging the functions of the Vice-Chancellor. "When the statute prescribes that a particular thing should be done in a particular manner, it can be done only in that manner.

7. The above paragraph will show that the Division Bench was of the view that the power to appoint teachers is vested with the Syndicate u/s 23 and the power to select has been delegated by the Syndicate to a committee consisting of the Vice Chancellor. Therefore, the Vice Chancellor cannot further delegate his functions by directing another person to discharge the functions as the Chairman of the selection committee, since the statute has intended that the power should be exercised only by the Vice Chancellor.

8. When we compare the provisions of the Kerala University Act to that of the Kannur University Act, it can be seen that even though Section 25(viii) confers power to make appointment of teachers and other employees of the University, to the Syndicate, Section 11(3) further confers power on the Vice Chancellor to make appointment of employees below the rank of Deputy Registrar and the proviso confers power to delegate any of his powers u/s 11(3) of the Act, to the

Pro Vice Chancellor. Therefore, unlike the provisions discussed in Sharafudeen's case, 1997 (1) KLT 257, herein the Vice Chancellor retains the original power of appointment along with the power to delegate his power to the Pro Vice Chancellor. Therefore, the provisions are quite different, as under the Kerala University Act and Statutes the Syndicate alone is the appointing authority. The Vice Chancellor is the appointing authority as far as the post of Assistant herein is concerned, going by the relevant schedule of the Ordinances. Therefore, the power that is delegated by the Vice Chancellor is only his statutory power to make appointment to the post of Assistant and it is not the power exercised by the Syndicate or delegated by it. Accordingly, it can be seen that herein, the Vice Chancellor was not acting as a delegate of the Syndicate. In fact, Section 13(6) of the Act enables the Chancellor to approve the proposal for delegation of powers of the Vice Chancellor, to Pro Vice Chancellor and Ext.P2 is the order thus issued. Therefore, it is evident that there is a proper delegation as far as the powers of the Vice Chancellor, in terms of the proviso to Section 11(3) of the Act.

9. The next question is whether the words "power to make appointment" in Section 11 (3) will take in the functions of the selection committee also. It is a well settled principle that the power to make appointment includes power to take various steps with regard to the completion of the selection process and it is not confined to the actual appointment alone. It is profitable in this context, to refer to the decision of the Apex Court in *S. Satyapal Reddy and Others Vs. Govt. of A.P. and Others*, . Therein, the provision interpreted was Sections 213(1) and (4) of the Motor Vehicles Act, 1988. It was explained thus in para 5:

It is seen that marginal note in Section 213 for "appointment of Motor Vehicles Officers" indicates the subject-matter of the section. Sub-section (1) says that the State Government may, for the purpose of carrying into effect the provisions of this Act, establish Motor Vehicles Department and "appoint as officers thereof such persons as it thinks fit". The power of appointment includes the power to select a fit and competent person who it thinks fit to hold the post and would discharge efficiently the functions assigned under the Act.

Therefore, there cannot be any iota of doubt that the power of the Vice Chancellor to make appointment will include the powers and functions as the Chairman of the selection committee also. For that reason also, there is a proper delegation of powers here by the Vice Chancellor to the Pro Vice Chancellor.

10. Learned counsel counsel for the contesting respondents submitted that the writ petition is one filed by candidates who have participated in the selection process willingly and therefore, after finding that they have not been successful in getting the selection, they have chosen to file this writ petition, which cannot be maintained at all, as they have no locus standi.

11. From the averments of the writ petition, it can be seen that the petitioners applied for the post of Assistant pursuant to Ext.P1 notification and had participated in the selection process. The copy of the rank list has been produced

as Ext.P6. Forty-five persons appointed thereafter, have been arrayed as respondents in the writ petition. Of course, the petitioners could not get appointment as they do not figure among the 45 persons appointed. The writ petition is filed after the rank list was published and after three months of the issuance of the appointment order, on 8.9.2010. The petitioners had willingly participated in the selection process without any demur.

12. In this context, the principles stated by the Apex Court in various decisions are relevant. In Chandra Prakash Tiwari and Others Vs. Shakuntala Shukla and Others, it was held that such a candidate who has participated in the selection process, after the result is known and finding that he has not been successful, cannot turn round that challenge the same. In paragraphs 32 and 34, it was held thus: 32. It is to be noticed at this juncture that while the doctrine of estoppel by conduct may not be applicable but that does not bar the contention as regards the right to challenge an appointment upon the participation at the interview/selection. It is a remedy which stands barred and it is in this perspective it was laid down in Om Prakash Shukla Vs. Akhilesh Kumar Shukla and Others, , that when a candidate appears at the examination without protest and is subsequently found to be not successful in the examination, question of entertaining a petition challenging the said examination would not arise. 34. There is thus no doubt that while question of any estoppel by conduct would not arise in the contextual facts but the law seems to be well settled that in the event a candidate appears at the interview and participates therein, only because the result of the interview is not "palatable" to him, he cannot turn round and subsequently contend that the process of interview was unfair or there was some lacuna in the process.

These principles will squarely apply herein. In Union of India (UOI) and Others Vs. S. Vinodh Kumar and Others, the above legal position was reiterated as follows: 18. It is also well settled that those candidates who had taken part in the selection process knowing fully well the procedure laid down therein were not entitled to question the same.

Therefore, it is clear that the participants of the selection process cannot turn round and challenge the procedure or any lacuna in the process of selection after finding that they have not been successful. In an earlier decision in Madan Lal and Others Vs. State of Jammu and Kashmir and Others, also, the same principle was laid down in the following manner: The petitioners also appeared at the oral interview conducted by the Members concerned of the Commission who interviewed the petitioners as well as the contesting respondents concerned. Thus the petitioners took a chance to get themselves selected at the said oral interview. Only because they did not find themselves to have emerged successful as a result of their combined performance both at written test and oral interview, they have filed this petition. It is now well settled that if a candidate takes a calculated chance and appears at the interview, then, only because the result of the interview is not palatable to him, he cannot turn round and subsequently

contend that the process of interview was unfairer or the Selection Committee was not properly constituted.

For all these reasons also, the petitioners cannot succeed in the writ petition and the objection regarding locus standi is well founded. For all these reasons, the writ petition is dismissed. No costs.