
(2004) 12 KL CK 0045
In the High Court Of Kerala
Case No : C.R.P. No. 864 of 2004

Raveendran

APPELLANT

Vs

Manager, Sree Narayana College

RESPONDENT

Date of Decision : 17-12-2004

Acts Referred:

Kerala University Act, 1969 — Section 56(2), 56(2B), 60, 60(2), 60(4)
Limitation Act, 1963 — Section 5, 5(11), 5(9)

Citation : (2005) 1 ILR (Ker) 338 : (2005) 1 KLT 960

Hon'ble Judges : R. Bhaskaran, J; M.N. Krishnan, J

Bench : Division Bench

Advocate : V. Giri and T.M. Rama Kartha, for the Appellant; A.N. Rajan and M.K. Chandramohan Das, for the Respondent

Final Decision : Dismissed

Judgement

R. Bhaskaran, J.—The scope and ambit of Section 60(4) of the Kerala University Act and whether it is mandatory or only directory is the main question for decision in this revision. There is also the further question as to whether the enquiry conducted against the petitioner is vitiated by violation of principles of natural justice? This Civil Revision Petition is filed challenging the common judgment of the Kerala University Appellate Tribunal, Trivandrum in Appeal Nos. 4 and 6 of 2004.

2. The petitioner in the Revision Petition, Dr. N. Raveendran was the Principal of Sree Narayana Guru College, Chelannur. He was originally appointed as Lecturer under the first respondent, S.N. Trust. He was promoted and appointed as Principal on 5.10.1998. He was issued a show cause notice while on probation as Principal and was reverted as Selection Grade Lecturer. This Court in Writ Appeal Nos. 1633 of 2001 and 1598 of 2001 found that the order of revision is punitive and could not have been made without an enquiry. The petitioner was directed to be reinstated as Principal without prejudice to the right of the management to act in accordance with law.

3. Subsequently the management issued a show cause notice proposing disciplinary proceedings on 3.11.2001. The petitioner filed objections. Thereafter memo of charges were issued on 16.4.2002 and the petitioner was suspended from service on 23.4.2002. Though the order of suspension was challenged by the petitioner before the Appellate Tribunal as well as this Court there was only a direction to complete the enquiry as expeditiously as possible. A retired District Judge, M.K. Abdulla who was appointed as Enquiry Officer expressed his inability to continue the enquiry. Sri. Sudhakaran, another retired District Judge was appointed as Enquiry Officer. This Court in C.M.P. No. 5674/2002 in C.R.P. No. 1344/2002 passed an order on 1.11.2002 that if the enquiry was not completed before 30.11.2002 the petitioner should be reinstated in service without prejudice to the continuation of enquiry. Sri. Sudhakaran who expressed his inability to continue as Enquiry Officer since the petitioner raised a contention that he had close relationship with Sri. Vellappalli Natesan, the General Secretary of S.N. Trust. Petitioner was thereafter reinstated as Principal though after filing application for taking action for contempt of court for non implementation of order of reinstatement in service. The petitioner rejoined duty as Principal on 26.12.2002 and entered on leave for 15 days. Thereafter he was reverted as Selection Grade Lecturer on the ground that he had not satisfactorily completed his probation as Principal. The reversion order was set aside by the University Appellate Tribunal and the petitioner was directed to be reinstated as Principal. In the meanwhile the first respondent appointed Sri. K. Aravindaksha Menpn, a retired District Judge as Enquiry Officer. He commenced enquiry by notice dated 13.3.2003. Petitioner filed an objection to the enquiry on the ground that the period of sanction from the Vice Chancellor to continue the disciplinary proceedings expired on 12.9.2002. The preliminary objection was overruled and the Enquiry Officer proceeded with the enquiry and filed his report on 14.7,2003. On the basis of the enquiry report the first respondent issued notice dated 13.8.2003 proposing the dismissal of the petitioner from service. Thereafter by order dated 25.3.2004 the order of dismissal was passed by the first respondent.

4. Petitioner challenged the order of dismissal before the Appellate Tribunal and by judgment dated 26.5.2004, the order of management, was sustained. In this Revision Petition the petitioner has raised two contentions:

(1) The entire disciplinary proceedings and order of punishment are invalid in as much as there is violation of Section 60 of the Kerala University Act. The disciplinary proceedings were not completed within the period of 3 months or within such further period as was allowed by the Vice Chancellor.

(2) There is violation of principles of natural justice as no sufficient opportunity was given to the petitioner to participate in the enquiry proceedings and to defend his case effectively.

5. Before going into these two legal contentions it may not be inappropriate to refer to the charges in nutshell (omitting unnecessary details) which are levelled against the petitioner. There are 16 charges levelled against the petitioner. The

first charge was remaining unauthorisedly absent without applying for leave and making attendance even for the days of absence. The second charge was not marking attendance in the departmental attendance register but keeping the attendance register for the Principal himself and keeping it in his personal custody. The third charge was leaving the Head Quarters of the college without taking prior permission from the Manager on a number of days. The fourth charge was leaving the Headquarters without handing over charge of the Principal on various dates as enumerated in the charge sheet. The fifth charge was leaving the station without getting the leave sanctioned on various dates and disobeying the orders of the Manager. The sixth charge was withdrawing amounts and misappropriating the same from the P.T.A. fund. The seventh charge was violating admission rules prescribed by the Calicut University and collecting excess registration fee from the students. "The eighth charge was unauthorisedly collecting donation from public without knowledge and permission of the management. The ninth charge was flirting with girl students of the college and visiting girl's hostel during night and flirting with inmates. The tenth charge was taking two girl students of the first M. Com. class of the college viz., Sobhana K.V. and Reshma to Mookambika and staying with them in Devi Kripa and making unauthorised payment of Rs. 9,000 to the girl students from the P.T.A. fund. The eleventh charge was not making available the attendance register for verification. The twelfth charge was unauthorisedly staying in the college office. The thirteenth charge was making use of office phone for personal purpose and incurring loss to the management for Rs. 28,656. The fourteenth charge was not maintaining good relations with fellow teachers. The fifteenth charge was behaving incourteously and indecently to the Deputy Director of Collegiate Education. The sixteenth charge was holding the post of Director of Sreenikethan Central School, Chathannur another institution not connected with the management while holding the post of Lecturer in S.N. College, Punalur and receiving bribes from various teachers for appointing them as teachers in such institutions.

6. The Enquiry Officer found the petitioner guilty of all the charges except, charge No. 5(a) which related to wilful disobedience of the order of Manager dated 12.7.2000 directing the petitioner to join as Selection Grade Lecturer in History in S.N. College, Kollam.

7. Learned counsel for the petitioner heavily relied on Section 60 of the Kerala University Act to contend for the position that the entire disciplinary proceedings and order of dismissal are vitiated on account of non compliance of Section 60 of the Kerala University Act which reads as follows:

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 Statues.

2. No teacher of a private college shall be kept under suspension by the educational agency except when disciplinary proceedings are initiated against him.

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 initiated under Sub-section (2) shall be completed within a period of three months or within such further period as may be allowed by the Vice-Chancellor after hearing the parties concerned.

5. Any person aggrieved by an order of the Vice Chancellor under Sub-section (4) may, within a period of thirty days from the date of receipt of the order by him, appeal to the Appellate Tribunal.

6. 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.

7. Any teacher aggrieved by an order passed after the commencement of this Act in any disciplinary proceedings taken against him may, within sixty days from the date on which a copy of such order is served on him or within sixty days after the Appellate Tribunal has been constituted under this Act, whichever period expires later, appeal to the Appellate Tribunal and 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:

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

8. Any order passed by the Appellate Tribunal under Sub-section (7) may be executed through the Subordinate Judge's 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 of ten 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 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.

Sub-section 2 of Section 60 states that no teacher of a private college shall be kept under suspension by the educational agency except when disciplinary proceedings are initiated against him and Sub-section (4) states that any disciplinary proceedings initiated under Sub-section (2) shall be completed within a period of three months or within such further period as may be allowed by the Vice Chancellor after hearing the parties concerned. The contention of the learned Counsel for the petitioner is that the petitioner was issued with show cause notice on 3.11.2001 and the Vice Chancellor extended the time for completion of disciplinary proceedings by one month from 12.8.2002, and the entire disciplinary proceedings should have been completed before 12.9.2002. In this case the order of dismissal was passed only on 25.3.2004 and therefore the entire proceedings are invalid.

8. While considering the question whether a provision in a Statute is mandatory or directory the context in which the provision is made and the object of such provision and the consequences, if any, provided in the Statute are all relevant. If for eg., the Statute provides that failure to complete disciplinary proceedings within a period allowed by the Vice Chancellor will make the order of punishment void then it is a sure test to come to the conclusion that the provision is mandatory. In the Principles of Statutory Interpretation by G.P. Singh, 2nd edition, page 214 the law is summed up on the basis of the decisions of the Supreme Court and other Courts as follows:

The study of numerous cases on this topic does not lead to formulation of any universal rule except this that language alone most often is not decisive, and regard must be had to the context, subject-matter and object of the statutory provision in question, in determining whether the same is mandatory or directory. In an oft-quoted passage Lord Campbell said: "No universal rule can be laid down as to whether mandatory enactments shall be considered directory only or obligatory with an implied nullification for disobedience. It is the duty of courts of justice to try to get at the real intention of the legislature by carefully attending to the whole scope of the statute to be considered". As approved by the Supreme Court: "The question as to whether a statute is mandatory or directory depends upon the intent of the Legislature and not upon the language in which the intent is clothed. The meaning and intention of the Legislature must govern, and these are to be ascertained not only from the phraseology of the provision, but also by considering its nature, its design, and the consequences which would follow from construing it the one way or the other". "For ascertaining the real intention of the legislature", points out Subbarao, J. "the Court may consider inter alia, the nature and design of the statute, and the consequences which would follow from construing it the one way or the other;

the impact of other provisions whereby the necessity of complying with the provisions in question is avoided; the circumstances namely, that the statute provides for a contingency of the non-compliance with the provisions; the fact that the non-compliance with the provisions is or is not visited by some penalty; the serious or the trivial consequences, that flow therefrom; and, above all, whether the object of the legislation will be defeated or furthered". If object of the enactment will be defeated by holding the same directory, it will be construed as mandatory; whereas if by holding it mandatory serious general inconvenience will be created to innocent persons without very much furthering the object of enactment, the same will be construed as directory".

The question whether a provision in the Bihar Non Government High School Rules prescribing a time-limit for the District Educational Officer to approve the appointment of teachers as mandatory or directory was considered by the Patna High Court in the decision reported in Jay Narayan Mishra Vs. The State of Bihar and Others, . It was held as follows:

It is not necessary to multiply illustrative cases on the point. As laid down in several cases one has really to address himself to the enactment which one has to construe and find out the intention of the Legislature as expressed by the language employed in the statute. The scope and the object of the Act or the Rules have to be kept in view. It has also to be seen as to what would be the result of one construction or the other with a view to find out the intention of the Legislature. Keeping these principles in mind, I proceed to examine the rule aforesaid".

In para 23 it is held that it is well-settled that where duties are to be performed by public officers the time-limit prescribed for such performance are generally directory rather than mandatory.

9. In the decision reported in Administrator, Municipal Committee, Charkhi Dadri and another Vs. Ramji Lal Bagla and others, , the question considered by the Supreme Court was whether Section 44-A of the Punjab Town Improvement Act, 1922 as amended by the Haryana Legislature was mandatory or not. That section provided that any scheme in respect of which a notification has been published u/s 42 shall be executed by the trust within a period of five years from the date of such notification. Though power was given to the State Government to extend the said period, no order was passed by the Government on the petition for extension. The contention of the persons from whom lands were acquired was that since the scheme was not executed within five years the entire notification had elapsed and that the petitioners were not liable to be dispossessed from their properties. The Supreme Court held that Section 44A is only directory in nature and not mandatory. It was for the reason that the section does not provide the consequence of non-compliance with its requirement. It was held by the Apex Court as follows:

One of the well-accepted tests for determining whether a provision is directory or

mandatory is to see whether the enactment provides for the consequence flowing from non-compliance with the requirement prescribed. *State of U.P. Vs. Manbodhan Lal Srivastava*, . The proviso to Section 44A empowers the Government to extend the said period. The proviso does not prescribe the outer limit beyond which extension cannot be granted".

10. The Constitutional validity of corresponding provision in the University Act, 1969, Section 56(2) and (2B) which corresponded to Section 60(2) of the Kerala University Act was considered by this Court in the decision reported in *Rt.Rev.Dr.M.M. John v. Government of Kerala* 1971 KLT 875, and it was held that the provision that a teacher could be kept under suspension only on initiating disciplinary proceedings against him, should be construed as one in the interest of the teacher as well as in the interest of the public and it will not affect disciplinary control of the management. In the decision reported in *Sivarama Pillai v. Vice Chancellor, Kerala University* 1973 KLT 769, *Namboodiripad, J.* considered the scope of Section 56(2B) of the Kerala Univeristy Act, 1969. The relevant paragraph in the judgment reads as follows:

Principles of natural justice are essentially rules of procedure thought of in cases where prescribed procedure is not readily available. The prime object of any rule of procedure is to guide and control the enforcement of a right or obligation recognized by law so as to ensure justice to all parties concerned. Broadly speaking rules of procedure have little relevance unless they are closely associated with a right or obligation recognised by law; and any rule of natural justice is no exception. With respect to what categories of rights and obligations and to what extent the procedural safeguards are of significance are questions which do not properly arise in this case".

The issue raised before the learned Judge was whether the exercise of power by the Vice Chancellor while extending the period call for strict compliance with principles of natural justice. It was held that the time limit set by law for completion of the disciplinary proceedings is primarily intended to avoid harassment to and victimisation of the teacher concerned by the undue protraction of the disciplinary proceedings by the management. The result that follows from the non completion of the enquiry within the specified time cannot be considered as equivalent to the discharge or acquittal in a criminal action. It was further held that except in a very remote and casual sense a positive right as such does not accrue to the teacher even if the proceedings initiated are not completed within the period specified.

11. A combined reading of Sub-section 2 and 4 of Section 60 makes it clear that mere violation of Sub-section 4 by itself will not make the entire disciplinary proceedings invalid. Sub-section (2) of SECTION 60 only states that no teacher of a private college shall be kept under suspension by the educational agency except when disciplinary proceedings are initiated against him. In other words suspension is not to be made as a measure of punishment but only when disciplinary proceedings are initiated and it is to facilitate a proper enquiry.

Therefore when a teacher is kept under suspension such suspension cannot be unduly continued and it was necessary to fix a time-limit for completion of the disciplinary proceedings as otherwise the petitioner will continue under suspension indefinitely. It is for that reason a provision was made to complete the disciplinary proceedings within a period of three months giving further power for the Vice Chancellor to extend the period. Learned Counsel for the petitioner contended that under Sub-section 5 right of appeal is given to an aggrieved party against the order of Vice Chancellor. Sub-section 4 indicates that the Vice Chancellor should exercise the power taking into account all aspects. And if the Vice Chancellor does not exercise the power properly the Appellate Tribunal can interfere in the matter and therefore, according to the learned counsel, the intention of the Legislature was that the provision has to be complied with for making disciplinary proceedings valid.

12. While testing this argument the facts of the present case itself will help in finding out an answer. The Vice Chancellor extended the time by one month on 12.8.2002 and the petitioner was under suspension from service pending disciplinary proceedings. The petitioner challenged that order before the Calicut University. Appellate Tribunal in Appeal No. 7 of 2002. The Tribunal dismissed the appeal and the petitioner filed O.P.No. 11520/2002 before this Court challenging the memo of charges and the suspension order. The petitioner also filed C.R.P. No. 1344/2002 challenging the order of dismissal of the appeal No. 7 of 2002 by the Tribunal. This Court directed the enquiry to be completed within two months from 4.9.2002. Therefore there was a further extension of time by this Court from 12.9.2002 which was the time fixed by the Vice Chancellor. This Court directed the enquiry to be completed within two months. The management filed C.M.P.No. 5674/2002 in C.R.P. No. 1344/2002 for extension of time by further two months. In the C.M.P. this Court directed the reinstatement of the petitioner in service without prejudice to the continuance of the enquiry. That order was dated 1.11.2002. Therefore this Court permitted the enquiry to be continued. The order passed in C.M.P.No. 5674/2002 has become final. It can thus be seen that the purpose of providing a time limit u/s 60(4) of the Act was only to see that the period of suspension is not unduly prolonged. When this Court directed the petitioner to be reinstated in service by order dated 1.11.2002 that purpose was served. Before passing order on 30.11.2002, the petitioner had filed R.P.No. 646/2002 in C.R.P.No. 1344/2002 raising the very same contention that the period fixed by the Vice Chancellor cannot be extended further. That R.P. was dismissed by order dated 28.10.2002. While disposing of the R.P. a Division Bench of this Court noted that enquiry proceedings are in progress and there is no reason to interfere with the same. The disciplinary proceedings were challenged by the petitioner raising the very same grounds and after hearing both sides this Court found that there is no merit in the contention. But it is unnecessary to rest this judgment on that basis as even on interpretation of the Sub-section of 2 and 4 of Section 60 we are of the opinion that non compliance with Sub-section 4 will not make the entire disciplinary proceedings null and void

compelling the management to initiate fresh disciplinary proceedings. While discussing the question whether there was failure of natural justice we will further discuss the facts in detail which will also show that there was no intentional delay caused at the instance of the management. In fact at every point of time it was the petitioner who was standing in the way of completing the disciplinary proceedings for one reason or other. He made personal allegations against the Enquiry Officers and two of the retired District Judges left the enquiry and a third retired District Judge had to be found out to conduct the enquiry. If a person can successfully protract the disciplinary proceedings and say that the period fixed by the Statute is over and fresh proceedings has to be initiated at every time then it will result in mockery of the statutory provision itself which cannot be the intention of the Legislature. Therefore, we hold that non compliance with Sub-section 4 of Section 60 will not in all cases make the disciplinary proceedings null and void. At the same time we make it clear that it does not mean that a management can take its own time and by delaying the enquiry the delinquent employee can be kept under suspension. If the enquiry is not completed within the time granted by the Vice Chancellor it will be always open to the teacher to demand the management for reinstatement in service.

13. The next question to be considered is whether there was violation of principles of natural justice while awarding punishment of dismissal from service to the petitioner. Ext.A-21 is the enquiry report by Sri. K.Aravindaksha Menon, retired District and Sessions Judge. The Enquiry Officer proposed to hold the first sitting for the enquiry on 5.4.2003 and issued notice to the parties. The petitioner sent his written statement by registered post with copy to the management. On 5.4.2003 petitioner raised a preliminary objection that the enquiry cannot begin since the time granted by the Vice Chancellor for the completion of the enquiry was over. The Enquiry Officer found that since the High Court in C.R.P. No. 1344/2002 has directed to complete the enquiry as expeditiously as possible and at any rate within two months by order dated 1.11.2002 and in subsequent order the High Court directed the petitioner to be reinstated in service without prejudice to the continuance of the enquiry a preliminary objection was unsustainable. After passing orders on preliminary objection on 19.4.2003 the enquiry was posted to 24.4.2003 for examination of the witnesses on the side of the management. On that day the petitioners counsel prayed for an adjournment on the ground of illness of the petitioner. By a detailed order that petition was dismissed and M.W.1 was examined in chief and the case was posted for cross-examination to 26.4.2003. On that day also the petitioner's counsel refused to cross-examine and he had absented himself even at the time of chief examination on 24.4.2003. The enquiry was adjourned to 3.5.2003 at Ernakulam for examination of the remaining witnesses. On that day the petitioner and counsel were absent. Eight witnesses all members of the staff of the college who had come from Chelannur at Calicut were examined on that day. The Advocate for the management and the members of the staff had come from Kollam. Seven witnesses were examined in chief Ext.M-2 to M-24 were

marked on that day. The case was adjourned to 8.5.2003. The remaining witnesses M.W. 8 to M.W.14 were examined on that day. But the counsel did not cross-examine these witnesses. On 13.5.2003 M.Ws 15 and 16 were examined. The counsel did not cross-examine them. Exts.M35 to 52 were marked and the case was adjourned to 16.5.2003. The petitioner and counsel were absent on that day. The case was posted to 29.5.2003 for orders. At the request of the petitioner all the witnesses were allowed to be recalled for cross-examination and when the case was posted on 29.5.2003 the petitioner's counsel asked for adjournment. On that day the Enquiry Officer passed a detailed order showing the events which took place till then and posted the case to 7.6.2003 for cross-examination of the main witnesses. On 2.6.2003 the Enquiry Officer received a registered letter raising allegations against the Enquiry Officer himself. The counsel for the petitioner did not cross-examine the witness or participate in the enquiry and went out in protest when the case was called. After analysing the entire oral and documentary evidence the Enquiry Officer entered findings on each and every charges and as already noted except charge No. 5(a) all other charges were found proved.

14. Learned counsel for the petitioner strenuously contended that the main witnesses were examined on 3.5.2003 which was a hartal day and the petitioner could not be found fault for not participating on that day. Though at first blush this may appear to be a genuine reason for the petitioner to abstain from enquiry on that day on a closer scrutiny it can be seen that there is no substance in this contention. All the witnesses on the side of the management had come from Calicut and staff of the management had come from Kollam. So far as the petitioner was concerned it was a serious matter since the charges levelled against him were very serious in nature. It was therefore to be expected from the petitioner that he must also take steps to be present at the enquiry on that day just like the other witnesses and the staff of the management and the counsel were present. In fact the counsel for the petitioner had contracted the Enquiry Officer on that day and made sure that the enquiry was proceeding. The Enquiry Officer was kind enough to again post the case on a non hartal day to enable the petitioner to cross-examine the main witnesses. But the petitioner's counsel refused to cross-examine the witnesses on that day also. Therefore the Enquiry Officer was left with no other option except to consider the available evidence and enter findings on the basis of such evidence. In this connection it has also to be remembered that the earlier two Enquiry Officers had to leave the enquiry on account of personal allegations. Allegations were made against the third Enquiry Officer also which are referred to in the enquiry report and by no stretch of imagination it can be said that the petitioner genuinely wanted to participate in the enquiry and to prove his innocence.

15. There is no contention raised before us on merit of the findings in the enquiry except the two points already discussed. There is also no contention that if the charges are proved the punishment was in any way excessive as the charges are serious in nature.

16. This revision is filed u/s 60(9) of the Kerala University Act. The grounds on which this Court can interfere in the order passed by the Appellate Tribunal are:

(1) That the Tribunal had decided erroneously.

(2) has failed to decide the question of law.

17. On a reading of the judgment of the Appellate Tribunal and in the facts of the present case it cannot be said that the Tribunal has either decided erroneously or has failed to decide any question of law.

The Civil Revision Petition is thus devoid of any merit and it is dismissed.