

(2015) 06 KL CK 0081

In the High Court Of Kerala

Case No : O.P. (KAT) Nos. 173 of 2015 (Z), 174, 175, 176, 177, 178, 179, 180, 181 and 182 of 2015

Santhosh T. Varghese

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 09-06-2015

Acts Referred:

Citation : (2015) 3 KHC 564

Hon'ble Judges : P.R. Ramachandra Menon, J; Babu Mathew P. Joseph, J

Bench : Division Bench

Advocate : T.A. Shaji, Senior Advocate, Namitha Jyothish and Darsan Somanath, for the Appellant

Final Decision : Dismissed

Judgement

P.R. Ramachandra Menon, J.—Common grievance is exposed in all these original petitions preferred by the petitioners, who are working in different capacities (Assistant Professors/Associate Professors) in the Maharaja's College, Ernakulam. It is in respect of the interim order passed by the Kerala Administrative Tribunal in the concerned O.As against their transfer insisting to give a written undertaking to en-shoulder additional duties pursuant to the declaration of autonomy to the said college. The stipulation in this regard as contained in Annexure A5 Government Order itself is under challenge in the O.As. The Tribunal confined the interim relief only to the extent of giving some breathing time to give the undertaking and the Original Applications kept pending, which according to the petitioners has rendered the O.As infructuous. Hence the challenge.

2. Heard Sri. T.A. Shaji, the learned senior counsel appearing for the petitioners and Mr. Mohammed Shafi, the learned senior Government Pleader appearing on behalf of the respondents. The facts and figures are referred to as given in O.P. (KAT) No. 173 of 2015 for convenience of reference, unless it is otherwise dealt with separately.

3. The sum and substance of the case projected by the petitioners is that they came over to the Maharaja's College on the basis of their request for a posting and have been accommodated in the concerned posts very recently. It is stated that nobody else has sought for a transfer to the said college so as to occupy their seats, in response to the notification issued, calling for applications, if any. When applications were invited as borne by Ext. P3 dated 09.12.2014 issued by the second respondent, there was absolutely no need, necessity or occasion for the petitioners to have submitted any option, for the reason that there was no threat of transfer as far as they are concerned. The name of the petitioners were not included in the draft list for transfer prepared and submitted by the concerned respondent as well. But all of a sudden, things took a different turn and the petitioners came to be transferred, as per Annexure A4 dated 29.05.2015. In the case of the petitioners, evidently they have been transferred out to the concerned colleges far away from Ernakulam for the sole reason that they have not submitted any undertaking as stipulated. Petitioners contend that this is per se wrong and illegal in all respects and that, had it been necessary to execute such an undertaking, they would have exercised their option, showing the desired place, pursuant to Ext. P3 issued in connection with the general transfer. Since such an opportunity has been denied to the petitioners, they have been quite adversely affected and are not in a position to move out. It is also the case of the petitioners that, no sufficient publication was effected by the respondents with regard to Annexure A5 revised transfer norms, pursuant to declaration of autonomy to the concerned college. The said order was issued by the Government only on 05.05.2015. The draft list was published on 22.05.2015, followed by the final list on 29.05.2015. It is stated that since serious consequences have been resulted because of the turn of events; the matter requires to be considered and intercepted at the earliest opportunity, so as to have the grievance redressed.

4. Coming to the factual position, the stand of respondents, as put forth by the learned Government Pleader, is that there is absolutely no basis or merit for the contention that no publication was effected. After calling for the applications for transfer vide Ext. P3, because of the change in circumstances leading to issuance of Annexure A5 dated 05.05.2015, a Circular was issued on the very next day, by the Director informing all concerned, through the Principal, to do the needful as to the necessity to submit undertaking, enabling the aspirants to continue in the post in the Maharaja's College and the others, who are interested to come to the Maharaja's College, subject to expression of willingness to en-shoulder higher duties and responsibilities in view of the change in circumstances. It is pointed out that, the Principal of Maharaja's college sent personal "e mail" to all the teachers on 13.05.2015, alerting the necessity to give undertaking in writing and this was followed by "SMS" message as well. Despite all these alerts, the petitioners did not find it necessary to give undertaking and was resisting the cause. It is also stated that, out of the total of 169 teachers working in the Maharaja's College, as many as 117 teachers rose to the occasion and the need

of the hour and gave the undertaking. As many as 42 teachers working elsewhere have expressed their willingness to come to the Maharaja's College and have given the undertaking to shoulder the higher responsibility, so as to give effect to the provisions of the Statute and to achieve the desired objective. This being the position, the version of the petitioners that there was no sufficient publication and that they were not aware of the sequence of events cannot but be held as incorrect.

5. With regard to the circumstances leading to issuance of the circular insisting to give an undertaking, it is very much necessary to have an idea as to the factual situation with reference to the change in the Statute, as put forth by the learned Government Pleader. Pursuant to the guidelines formulated by the University Grants Commission in the year 2011 for conferring autonomous status to deserving colleges/institutions, for promoting at least 10% of such colleges to have acquired such status, the Government of Kerala accepted the same and announced the Scheme. The Kerala Higher Education Council appointed a committee and as per the report of the committee headed by Prof. N.R. Madhava Menon, the Government as per G.O. (Ms) No. 130/2013/H.Edn. dated 10.05.2013 have approved in principle to grant autonomous status to Government and Aided Colleges in the State. Subsequently, further proceedings were pursued and based on the report of the "Autonomy Approval Committee", the Government issued G.O.(Ms) bearing No. 618/2013/H.Edn dated 13.09.2013 so as to cause amendment to the University Acts. It was accordingly, that the relevant enactments dealing with the Universities in the State were amended by virtue of the Universities Laws (third amendment) Act 2014. After completing the formalities and based on the report of the expert committee evaluating the merit in respect of the concerned colleges, the UGC granted autonomous status to as many as 11 colleges in the State, among which, the Maharaja's College happens to be the only college in the Government Sector.

6. To have an idea as to the desired objective, it is necessary to go through some of the provisions of the amended Statute. The term "Autonomous College" is defined under Section (4B) of the University Laws (Third Amendment) Act, 2014. Section 69 E deals with the "Academic Council" of an Autonomous College, showing the constitution with the Principal as its Chairman along with all heads of the departments in the college and four teachers of the college representing different departments not below the rank of an Associate Professor to be nominated by the Director of Collegiate Education in the case of the Government Colleges and the Principal in the case of a college other than a Government College. Section 69F deals with powers and functions of the Academic Council. "Board of Studies" of an autonomous college is dealt with under Section 69G and the powers and functions of the Board are detailed under Section 69H. Section 69I deals with the Constitution of the "Governing Council", of which the Principal has to be its Secretary, while Section 69L deals with the powers and functions of the Governing Council. In almost all these bodies, there has to be adequate representation from the part of the teachers, who have a pivotal role to play in

various fields. The power and authority which hitherto was being exercised by the University/its organs, gets transferred to college/institutions and its bodies as above; thus intending to serve the career and curriculum of the student community at large, in a better manner. It was to give effect to the said object, that the Government proceeded with further steps modifying the transfer norms, by issuing Annexure A5 Government Order dated 05.05.2015.

7. As evident Annexure A5 GO., it is clearly stated that duties and responsibilities of teaching faculties of an autonomous college are different from those of other colleges and accordingly, for the smooth functioning of the college, co-operation of the faculties and their continuity in the college is necessary. It is also mentioned therein that, unlike other Government College teachers, teachers of the autonomous college get greater opportunity to effectively and creatively participate in the varied academic activities, such as designing and restructuring the curriculum and put into practice innovative academic ideas. Apart from the regular duties of a teacher in an ordinary college, teachers in the autonomous college need to en-shoulder higher responsibilities. It is in the said circumstances, that "minimum tenure protection" has been envisaged, which has been stipulated in Annexure A5 itself. Some key posts have been identified and protection has been given to the concerned teachers from transfer, as mentioned therein. The above Government Order also stipulates that, all teachers in the autonomous college should be protected from transfer for a minimum period of "three years" from the date of their appointment in the autonomous college, if they submit a written affidavit of willingness, to perform the duties and responsibilities related to the autonomy assigned to them.

8. With regard to the case of the petitioners that they did not get any opportunity to submit an option mentioning the place of choice/priority before the displacement as per the impugned order, it is to be noted that all the petitioners are now occupying the seats/posts in the Maharaja's college. Necessity to give "undertaking" was informed to all concerned, as per Annexure A5 Government Order dated 05.05.2015 and the subsequent Circular dated 06.05.2015, followed by the "e-mail" and "sms" sent by the Principal on 30.05.2015. It was accordingly, that out of the 169 teachers, as many as 117 teachers had submitted their willingness, besides the undertaking given by 42 teachers of the other colleges situated elsewhere. Even otherwise, the petitioners cannot be heard to say that they are having the vested right to have a transfer/posting of their choice, even if they have given option. Guidelines are issued only to serve as a general norm and there may be circumstances, which necessitate some deviation for justifiable reasons.

9. The nature of contention raised by the petitioners in "Ground (B)" that "the teachers who are not interested" in shouldering additional responsibilities as stipulated in Annexure A5 could have given an option, pointing out the station of their choice and get a transfer, may in fact disturb the mind of anybody. This is for the reason that a "teacher" cannot be disinterested in discharging the duties

in imparting knowledge to the students, be it original or additional. Teacher is not a "workman" but performs a duty in moulding generations helping to bring up responsible citizens. Imparting of education is a mission and it is a noble avocation. Importance of the post and the nature of duties have been explained by the Apex Court in *Miss A. Sundarambal Vs. Government of Goa, Daman and Diu and Others*, AIR 1988 SC 1700 : (1988) 3 JT 121 : (1989) LabIC 1317 : (1989) 1 LLJ 61 : (1988) 2 SCALE 82 : (1988) 4 SCC 42 : (1988) 1 SCR 604 Supp : (1989) 1 SLJ 61 : (1988) 2 UJ 329 . A person has to be melted before moulded and if the melting is not proper, moulding is of no use. Melting of a person initially starts at home as a child and it subsequently is taken over by the teachers in the schools and then in colleges, carrying forward at different levels. The character formation of any individual is attributable, in part, to the contribution made by the teachers, who very much owe a commitment to the society. This Court does not intend to say that the petitioners herein do not have any such commitment, but only highlights the status of a teacher, who actually occupies higher level in the society and are supposed to promote the cause as aforesaid, in building up proper citizens of tomorrow.

10. The purpose of the "undertaking" to be given in terms of the amended provisions of the Statute and the Government Orders issued, is obvious; as running of an institution in a smooth manner is of paramount importance. Unless and until suitable teachers are identified, who are ready to en-shoulder the higher responsibilities, both in the academic as well as administration field, it is not possible to give effect to the autonomous status conferred by the UGC upon the institution. Further steps are to be pursued by the head of the institution and other authorities concerned, so as to have a participation of teachers as members of various committees and to bring about the desired objective, in the best interest of the students at large. It was with the said intent, that the matter was given wide publicity and willingness was sought for.

11. But for the alleged hardships/inadequacy of publication and lack of the opportunity to submit the option, no other ground, much less a tenable ground is raised in these original petitions. It is also relevant to note that amendment to the provisions of the Statute has not been subjected to challenge from the part of the petitioners. Same is the position with regard to Annexure A5 Government Order dated 05.05.2015. The petitioners have only sought for a declaration that the said G.O. is not applicable to their case. How and why the same is not applicable is not explained. As put forth by the learned Government Pleader, the Government is having sufficient power to issue Orders/Circulars in the nature of Annexure A5, by virtue of the authority conferred under Section 69Q(2) of the Act. In the above circumstances, this Court finds that the challenge raised by the petitioners against the orders passed by the Tribunal does not hold any water at all.

12. The learned Government Pleader submits that the order of transfer has already been given effect to and some of the teachers have joined in the

Maharaja's College in the AN of 01.06.2015 and FN of 02.06.2015. The learned senior counsel for the petitioners points out that interim order was passed by the Tribunal on 02.06.2015. Whether there is any violation of the order passed by the Tribunal, is a matter which is to be looked into by the Tribunal. Since this Court has declared the position as to the absence of any merit in the original petitions and since the time granted by the Tribunal is to expire today, this Court finds it fit and proper to grant time to give the undertaking in writing, from date of expiry, till 16th of this month. It is made clear that we have not expressed anything with regard to the correctness or otherwise of granting autonomous status to the institution, as it does not form subject matter of these Original Petitions.

With the above observations, interference is declined and the original petitions are dismissed.