
(1973) 08 KL CK 0002
In the High Court Of Kerala
Case No : O.P. No. 815 of 1972

Sivarama Pillai

APPELLANT

Vs

Vice Chancellor, Kerala University and Another

RESPONDENT

Date of Decision : 09-08-1973

Acts Referred:

Kerala University Act, 1969 — Section 562B

Citation : (1973) KLJ 776

Hon'ble Judges : N.D.P. Namboodiripad, J

Bench : Single Bench

Advocate : K. Chandrasekharan and M.P.R. Nair, for the Appellant; K.P. Radhakrishna Menon and S. Easwara Iyer, for the Respondent

Final Decision : Dismissed

Judgement

N.D.P. Namboodiripad, J.—The post of the Principal of a private college by name Sree Sankara College, Kalady, fell vacant sometime in December, 1970. The management, by Ext. XI order dated 5th December, 1970 appointed the petitioner, who was then functioning as Professor of Hindi in the college, provisionally as Acting Principal of the college with effect from the forenoon of Monday, the 7th December, 1970, subject to the approval of the Board of Directors of the Sree Sankara College Association, and the approval of the University of Kerala. The affairs of the college soon fell into disarray; and the familiar pattern of events like agitation by students, quarrel among the teaching staff, and the closing down of the institution itself for an abnormal period followed in succession. The troubles in the institution were attributed to the shortcomings and the incapacity of the petitioner in the matter of discharging the functions of the Principal; and the management thought of taking action. Even before any action was actually taken the petitioner filed a suit as O.S. 72/1972 in the Sub Court. Parur, for certain reliefs against the management against his reversion. It is not necessary for the purpose of this petition to narrate the course of that litigation. The 2nd respondent manager issued Ext. P1 notice

dated 22 91971 calling upon the petitioner to show cause within one week in writing as to why he should not be reverted to his old post on 5121971. I may also state at this stage that the approval of the Board as well as of the University for the appointment made by Ext. XI was not obtained by that time. About a month later the 2nd respondent issued Ext. P2 dated 22101971 proposing to hold an enquiry-into certain allegations made against the petitioner and also enclosing a chargesheet. Ext. P2 further informed that the date of the enquiry will be made known to the petitioner, that the list of witnesses and the list of documents to be produced by the management will be supplied to him, and that the petitioner will be supplied with copies of any of those documents if he so desired. Certain further proceedings were taken in the enquiry initiated by Ext. P2. Since the enquiry could not be completed within three months from the date of its initiation the 2nd respondent sent a letter dated 191 1972 to the 1st respondent, who is the Vice Chancellor of the University of Kerala, seeking extension of time. From the records of the University placed for my perusal it is seen that on 2111972 the 1st respondent passed an order granting three months' time to the 2nd respondent from 2211972 for completing the disciplinary proceedings against the petitioner. The regular order was communicated to the 2nd respondent only on 2511972; and Ext. P3 is the copy of the order. Though Exts. P1, P2 and P3 are challenged in this petition on a number of grounds, at the time of argument the only contention raised before me was that Ext. P3 is liable to be quashed in as much as it is violative of the principles of natural justice. It is not seriously disputed that if Ext. P3 cannot be interfered with there is hardly any ground for challenging the validity of Exts. P1 and P2. I am now, therefore, considering only the question whether Ext. P3 is bad for non-compliance with the principles of natural justice. Here too, the short case put forward is that the 1st respondent passed Ext. P3 order without giving the petitioner an opportunity to be heard.

2. 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 recognised 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 entire case of the petitioner in relation to the applicability of the principles of natural justice in the matter of passing Ext. P3 rests on sub-S. 2B of S. 56 of the Kerala University Act 1969. sub-s. 2 of S. 56 of the Act as it originally stood was struck down by this court along with certain other provisions of that Act as ultra vires. Thereafter for the old sub-S. 2 of S. 56 certain new provisions were substituted by S. 7 of the Kerala University (Amendment) Act, Act 13 of 1971. The substituted provision so far as it is relevant for the purpose of this case is extracted below:

Amendment of S. 56. in S. 56 of the principal Act,

(1) for sub-section (2), the following sub sections shall be substituted, namely:

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

(2A) 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.

(2B) 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. An appeal shall lie to the appellate Tribunal from the order of the Vice Chancellor declining to extend the time. The appeal shall be filed within a period of thirty days.

xxx xxx xxx

The constitutional validity of this new provision was also challenged in an earlier case, and this court by its decision reported in *The Rt. Rev. Dr. M.M. John Vs. Govt. of Kerala and Others*, upheld the validity of sub-Ss. 2, 2A and 2B newly added to S. 56 of the principal Act. As is obvious it is sub-s. 2B that is material in this case. Under sub-s. 2B, the Vice Chancellor is given power to grant further period for completing the disciplinary proceeding if the management has not completed the same within three months from the initiation of the concerned proceeding. The question is whether the exercise of that power by the Vice Chancellor calls for strict compliance with principles of natural justice. The answer undoubtedly would depend upon the object sought to be achieved by sub-s. 2B. 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 not contended before me that the omission to complete the enquiry within three months as enjoined by sub-s. 2B will disentitle the management to initiate de novo proceedings on the basis of the past delinquency of the teacher. In other words, 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. The petitioner was suspended pending enquiry, and consequently, it was contended that the non-completion of the enquiry within the statutory period will terminate the suspension, and in that sense a right has accrued to him. It is not incumbent upon the management to place a teacher under suspension when disciplinary action is initiated. Hence the scope of sub-s. 2B of S. 56 cannot be interpreted in one way when there is a suspension and in a quite different way when there is no suspension. In other words, the scope and content of sub-s. 2B has to be

interpreted independently of the question whether in a particular case there has been a suspension pending enquiry or not. As far as I could see any extension of time by a responsible authority like the Vice Chancellor does not involve the adjudication of any right or liability of the teacher concerned necessitating any procedural safeguard. Neither by the express words used in sub-s. 2B nor by the very object with which the aforesaid provision was enacted can it be said that any rule of natural justice is built in the concerned provision. There has not been any infringement of any rule of natural justice when the 1st respondent passed Ext. P3; order; and there is little substance in this petition.

The writ petition is, therefore, dismissed with costs.