

(2008) 06 KL CK 0024
In the High Court Of Kerala
Case No : WP (C) No. 12784 of 2004 (V)

Sree Usha N.

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 03-06-2008

Acts Referred:

Kannur University Act, 1996 — Section 65(2)

Mahatma Gandhi University Act, 1985 — Section 2(29), 62(2)

Citation : (2009) 1 KLJ 127

Hon'ble Judges : Antony Dominic, J

Bench : Single Bench

Advocate : N. Sugathan and Rasheed C. Nooranad, for the Appellant; Baby Issac Illickal, G. Gopakumar, V.K. Muhammad Yousuf, T.A. Shaji and T.B. Ramani, G.P., for the Respondent

Judgement

Antony Dominic, J.—The petitioners herein were appointed in leave vacancies as Junior Lecturers and Lecturers in St. Thomas College, Ranni, Pathanamthitta District. In these writ petitions they are claiming the benefit of Section 62(2)(b) of the Mahatma Gandhi University Act, 1985, which provides preference in the matter of future appointment in the College.

2. Briefly stated facts of the cases are, the petitioner in WP(C) No. 12784/2004 was appointed as Junior Lecturer in Chemistry by Ext. P1 order dated 23-2-1983 in a leave vacancy. By Ext. P2 order, appointment for the period from 24-02-1983 to 09-01-1984 was approved by the Kerala University, under which the College was then functioning. Subsequently, by Ext. P3 order, the petitioner was again appointed as a Junior Lecturer in a leave vacancy for the period from 13-03-1984 to 20-12-1988 and this, again, was approved by the University as per Ext. P4. While so, by Ext. P5 she was appointed as Lecturer in a leave vacancy for the period from 24-02-1985 to 20-12-1988. The appointment by Ext. P5, was also approved by Ext. P6 order of the University, for the aforesaid period or till the vacancy ceases. Again by Ext. P7 order, the petitioner was appointed in a leave vacancy for the period from 01 -02-1993 to 31 -01-1994 and that was

also approved by the University as per Ext.P8. Still later, by Ext.P9, the petitioner was appointed as Lecturer (Chemistry) from 26-06-1995 to 30-06-1996 and that was also approved by Ext. P10.

3. Here it should be noticed that in the meanwhile, by Act, 17 of 1989, the Mahatma Gandhi University Act, 1985 (hereinafter referred to as "the Act" for short) was amended and Section 62(2) (b) as it stands today, was incorporated. Yet another fact which requires to be noticed is that with effect from 01 -01 -1986, consequent on the introduction of UGC scheme, clearance in NET was made an essential qualification for the appointment of Lecturers in private college. In spite of this, although the petitioner had not cleared the Net examination, she was reappointed for the subsequent periods noticed earlier.

4. On 27-05-2002, coming to know that three vacancies are to arise in the Chemistry Department of the College, the petitioner submitted Ext.P11 representation to the Management requesting that she be appointed on a regular basis to one of those vacancies Simultaneously, she submitted Ext. P12 to the Vice Chancellor reiterating this request. There was no response to the representations and on seeing Ext.P13 notification dated 21-03-2004, issued by the Management inviting applications for the various posts mentioned there in including three substantive vacancies of Lecturers in Chemistry, this writ petition was filed. This writ petition was admitted on 07-04-2004 and it was ordered that, appointment made to the post of Lecturers in Chemistry will be subject to further orders to be passed in the writ petition.

5. In so far as the petitioner in WP(C) No. 18894/2004 is concerned, by Ext.P1 order dated 28-02-1983, she was appointed in a leave vacancy as Junior Lecturer in Chemistry for the period from 01-03-1983 to 29-02-1988. While continuing so, by Ext.P2 order, she was promoted as Lecturer with effect from 01-03-1985. Appointment by Ext. P1 was approved by the University, and Ext. P3 is the order approving the appointment by Ext. P2 for the period till 30-11 -1985. While so, on the termination of the vacancy, by Ext.P4 order she was relieved from the college with effect from 30-11-1985. Similar to the case pleaded by the petitioner in WP(C) No. 12784/2004, on coming to know about the three vacancies which are to arise in the college, she also submitted Ext.P6 representation. It is stated that without considering her claim, the Management of the college issued notification dated 21-03-2004, Ext.P13 referred to earlier, and thereupon she again filed Ext.P9 representation reiterating her request for appointment. As favourable action was not taken by the Management, this writ petition was filed. In this writ petition also, an order dated 28-06-2004 has been passed that" any appointment made will be subject to the result of the writ petition.

6. As already noticed, the claim raised is for appointment by extending the benefit of Section 62(2)(b) of the Act, which read as:

a teacher relieved from a private college on or after the 14th day of March, 1974

due to the abolition of a course of study in that private college or the cessation of the period for which he was appointed or for any other reason except disciplinary action against him shall be given preference in the matter of future appointments in the private college or, as the case may be, any of the private colleges under the management of the educational agency with in the university area.

7. This claim of the petitioners is sought to be disputed by the Management in the counter affidavit filed. Various objections, which are more of technical nature, have been raised. The first objection that was raised, was that the college had already appointed three persons and that these persons are not made parties to the writ petition. This objection is only to be rejected for the reason that at the time when these writ petitions were admitted, this Court had passed interim orders that the appointments made will be subject to the result of the writ petitions. The management could have made appointments only in terms of such orders and if that be so, the appointees are already put on notice that their fate will depend upon the outcome of the writ petitions. Therefore, since the petitioners have filed these writ petitions. Therefore, since the petitioners have filed these writ petitions much prior to the appointments and in view of the orders that are already passed by this Court, this objection is unsustainable and is rejected.

8. It was argued that the petitioners did not make any applications and therefore, they could not have been appointed in terms of Section 62(2)(b) of the Act. In my view this again lacks any substance for the reason that on coming to know about the vacancies, that were ultimately notified by the University on 21-03-2004, both the petitioners have made representations and despite this, this plea is now raised. In my view, the petitioners have claimed appointments on the strength of the statutory right provided in Section 62(2)(b) and therefore the plea of absence of formal application is without any merit or substance.

9. Thirdly, it was contended that in terms of Statute 14 of Chapter 45 of the University Statute, the maximum age limit provided for direct appointment is 36 years and that both the petitioners have exceeded the maximum age limit prescribed in the Statute. In so far as this contention is concerned, it should be noticed that Section 62(2)(b) of the Act does not make the right of reappointment of a teacher who was discharged on cessation of the period for which he was appointed, subject to the maximum age for recruitment. If that be so, irrespective of the age limit provided for direct recruitment, a beneficiary of Section 62(2)(b) is entitled to claim the statutory right. Any interpretation to the contrary will be defeating the provision itself.

10. The similar provision contained in Rule 51A, Chapter XIV-A, K.E.R. came up for consideration of this Court in C.V. Annamma Vs. State of Kerala and Others . Repelling the contention, it was held as follows:

5. The other fundamental ground which finds reflection in all the three impugned orders relates to the age of the petitioner. The contention is that under Rule 1(2)

of Chapter XIV, the age limit for appointment applicable to teachers of government schools shall apply mutatis mutandis to teachers of aided schools. The upper age limit for appointment to government schools is 50. The petitioner was aged 51 in June 1985 when she sought reappointment in the fourth respondent's school. She was therefore not qualified for appointment. So goes the argument. The petitioner however bases her claim on Rule 51A of Chapter XIV with the contention that the age limit prescribed by Rule 1(2) is not applicable to appointments under Rule 51A. Rule 51A (omitting the Notes, which are not relevant) reads:

Qualified teachers who are relieved as per Rule 49 or 52 or on account of termination of future vacancies shall have preference for appointment to future vacancies in schools under the same Educational Agency provided they have not been appointed in permanent vacancies in schools under any other Educational Agency.

6. It is true that if the appointment is a fresh one, without reference to Rule 51A, Rule 1(2) of Chapter XIV-A must come into operation and no person who is above the age limit prescribed for appointment in government schools can be appointed as teacher in an aided school. But the position is different where the appointment is based on the preference under Rule 51A. The provision is one meant for the benefit of teachers and any interpretation of the rule should be one which will advance the object of the rule, namely to confer a benefit on teachers thrown out of employment. Apart from the absence of any age limit in the rule itself, the obvious intent of the rule is that a teacher should be entitled to reappointment in the school in an identical post provided he is within the age of retirement. This rule is intended to benefit teachers who are relieved under Rule 49 or 52 on account of termination of vacancies or otherwise. One of the cases postulated by Rule 52 is where a teacher is relieved on account of reduction in the number of posts under orders of department, that is consequent on the reduction in the manner of post of staff fixation. A teacher who is past 50 and is thrown out consequent on the reduction in the number of posts, will not, on the respondents' condition, be entitled to reappointment despite eligibility and despite his having served the school for long. This certainly could not have been the intent of the rule-makers. In fact, the very purpose of the rule namely protection of teachers will be defeated by such an interpretation. It has therefore to be held that the age limit prescribed by Rule 1(2) will not apply in the case of teachers claiming preference in appointment under Rule 51A.

In my view, the aforesaid decision is a complete answer to the contention now raised.

11. It was contended that Section 62(2)(b) applies only to the teachers as defined u/s 2(29) of the Act. Referring to Section 2(29) of the Act, the learned Counsel contended that a teacher can only be a Lecturer, whose appointment has been approved by the University. According to him, in the instant case, the appointments were approved not by the Syndicate of the University, but by the

Vice Chancellor, the Pro Vice Chancellor or the Registrar. It is contended that since approval was not granted by the Syndicate, the petitioners cannot claim advantage of the approval that were granted by a incompetent authority. In my view, this contention again lacks bonafides or substance. Law requires the Management to obtain approval and in these case, it was the Management which obtained the approval and acting upon such approvals, benefits were granted to the petitioners. If approval was erroneous, management ought to have got it corrected at the appropriate time. They had no case so far that the approval was defective. The Management could not have acted upon the approval of the appointment of the petitioners for some purpose and refuse to act upon the same for other purposes. In this case, the Management has no case that they have never acted upon the approval. If that be so, the resistance now offered to act upon the approval is only intended to defeat the statutory right of the petitioners u/s 62(2)(b), and therefore, it cannot be accepted.

12. Next, the learned Counsel for the Management placed reliance on Statute 24(2) of Chapter 45B of the Statutes and contended that the benefit of Section 62(2)(b) of the Act is available only to those who appointed on probation. The statute 24 (2) of Chapter 45B reads as under:

24(2): A teacher duly appointed on probation or for a specified period if thrown out of service for reasons other than disciplinary action shall be given preference in the matter of future appointments in the private college or as the case may be, or any of the Private College under the arrangement of the educational agency within the University area.

In my view, this provision does not admit the interpretation that is now canvassed by the learned Counsel for the Management. On a purposeful and reasonable reading, this provision can be read as meaning that a teacher duly appointed for a specified period, if thrown out of service for any reason other than disciplinary action, shall be given preference in the matter of future appointment in a private college. The management has not a case that the teachers appointed for a specified period are appointed on probation. If that be so, what is now attempted is a misinterpretation of the provision and that is totally erroneous.

13. Lastly, it was contended that in terms of the UGC Regulations which were introduced with effect from 01-01-1986, clearance in the NET examination has been made a mandatory condition for appointment of Lecturers. It was contended that the petitioners have not cleared NET examination, and therefore are unqualified. This contention was sought to be disputed by the learned Counsel for the petitioners comparing their case with the right conferred on the teachers in terms of the provisions contained in Rule 51A of Chapter XIV-A, K.E.R. The learned Counsel made reference to a Division Bench decision of this Court in Usha Ratnam v. State of Kerala 2001(3) KLT 161. In the said judgment, this Court was dealing with a similar contention raised by the Management of an aided school in order to resist the claim under Rule 51A. Following the earlier

judgments in *Thania v. D.E.O* ILR 1975 Ker 609 and *Anilkumar v. Beena* 2000 (1) KLT 286, this Court negated the contention adoption the reasoning that the statutory right conferred on a teacher is crystallized at the time when he is discharged from service and that the same cannot be taken away. It was held that subsequent introduction of new qualifications cannot affect the vested right so created in favour of a discharged teacher. The relevant portion of paragraph 7 of the judgment is extracted below for reference:

We have gone through the amendment effected to Rules 3(1) and 4(1) of Chapter XXXI. There is nothing to indicate that the right conferred under Rule 51A of Chapter XIV-A has been taken away. Mere fact that a new qualification has been introduced does not mean that it has taken away the statutory right already conferred on Rule 51A claimants which is in the nature of a vested right to those qualified teachers who are relieved as per Rule 49 or Rule 52 on the ground of termination of vacancies. Right is said to be vested when the right of enjoyment, present or prospective, has become the property of some particular person or persons as a present interest, independent of contingency. This is a right which cannot be taken away without the consent of the owner. Vested right can arise from contracts, from statutes and from operation of law. A right of action conferred by a particular statute is said to be a vested right.

14. Apart from the above, it should also be noticed that in so far as the petitioner in WP(C) No. 12784/2004 is concerned, even though NET was made a mandatory qualification, despite the fact that she did not pass the same, she was reappointed by Exts. P7 and P9, for subsequent periods, recognizing the fact that she had already rendered approved service in the College. If that be so, the fact that NET was made a mandatory qualification subsequent to their appointment cannot stand in the way of the petitioners.

15. The learned Counsel for the Management relied on the judgment in *Payyannur Educational Society v. Sathimani V.V and Ors.* ILR 2007 Ker 327. It is seen that by this judgment, the judgment of the learned Single Judge in *Sathimani v. Payyannur Educational Society* 2007(3) KLT 509 was affirmed by the Division Bench of this Court. In this judgment, what came up for consideration of the Divisional Bench is the expression "or for any other reason" occurring u/s 65(2)(b) of the Kannur University Act 1996, which is similar to Section 62(2)(b) of the Act. The Divisional Bench accepted the wide interpretation given by the learned Single Judge. A reading of the judgment of the learned Single Judge, which was affirmed by the Division Bench, would show that the right available to a teacher has been recognized in its totality. This judgment does not help the Management in these writ petitions, in any manner.

16. On an over all consideration of the contentions raised, I am satisfied that the petitioners are entitled to the benefit of reappointment. Accordingly, I declare that the petitioners are eligible for the benefit of Section 62(2)(b) of the Mahatma Gandhi University Act, 1985, and direct the Management to appoint the petitioners to the posts of Lecturer in Chemistry under the 5th respondent

College.

17. This shall be done as expeditiously as possible, at any rate within six weeks of production of a copy of this judgment.