

(2002) 01 KL CK 0057
In the High Court Of Kerala
Case No : O.P. No. 27519 of 2000

St. Paul's College

APPELLANT

Vs

University Appellate Tribunal

RESPONDENT

Date of Decision : 25-01-2002

Acts Referred:

Constitution of India, 1950 — Article 30(1)
Kerala University Act, 1974 — Section 60(7)
Mahatma Gandhi University Act, 1985 — Section 63(6), 63(7), 65, 69

Citation : (2002) 1 ILR (Ker) 615

Hon'ble Judges : K.A. Abdul Gafoor, J

Bench : Single Bench

Advocate : P.F. Thomas, Joji Sunil and A.K. Rani, for the Appellant; K. Ramakumar and Lalitha Nair, Government Pleader, for the Respondent

Judgement

K.A. Abdul Gafoor, J.—The petitioner, the management of a private college affiliated to the third respondent Mahatma Gandhi University initiated disciplinary action against the second respondent, a teacher in the service of the management in that private college. The disciplinary action ended in imposition of a major penalty of compulsory retirement. The teacher thereupon filed an appeal invoking the provisions contained in Section 63(6) of the Mahatma Gandhi University Act before the Tribunal constituted in terms of Section 60 of that Act. The Tribunal issued a notice. The petitioner, the respondents in the said appeal, on the file of the Mahatma Gandhi University Appellate Tribunal, Thiruvananthapuram appeared pursuant to that notice from the Tribunal and raised a preliminary contention regarding the maintainability of the appeal. The petitioner contended that the appellate power conferred on the Mahatma Gandhi Appellate Tribunal including for reinstatement of the teacher concerned in case the order of the management is found to be illegal is a transgression into the rights available to the petitioner management in terms of Article 30(1) of the Constitution of India. The petitioner belongs to a minority community. In support of that contention petitioner relied on two decisions of the Supreme Court in Lily

Kurian Vs. Sr. Lewina and Others, and Lily Kurian Vs. University Appellate Tribunal and Others, . In the first case, anyhow the Supreme Court did not consider whether the appellate power is a transgression on the right of the management under Article 30(1) of the Constitution of India. This was concerning the Kerala University Act, 1974. The Supreme Court made it clear that "we refrain from making any observation with regard to that appeal. We wish to say that the validity of Sections 60(7), 61 and 65 was not in question before us, and so we express no opinion in regard thereto."

2. Section 60(7) is regarding the consideration of the appeal and 61 is regarding past disputes. Section 65 is regarding the constitution of the Appellate Tribunal.

3. After the dismissal of the appeal, again Lilly Kurian approached this Court raising a contention that Section 60(7) was bad. A Full Bench of this Court held that Sections 60(7) and 61 of the Kerala University Act, 1974 because it conferred uncanalised and unguided power to the Appellate Tribunal were inconsistent with fundamental rights guaranteed by Article 30(1) of the Constitution of India. The matter was taken up before the Supreme Court. The Supreme Court held in Lily Kurian Vs. University Appellate Tribunal and Others, as follows:

"This Court held that the conferment of a right of appeal to an outside authority (like the Vice-Chancellor in that case) took away the disciplinary power of a minority educational authority, particularly because the appellate power was unlimited and undefined. The grounds on which he could interfere had not been defined and he had unlimited powers, including the power to interfere with the punishment imposed. Such an unguided and uncanalised power which could be exercised in appeal constituted interference with the right of minority institution to administer its own institutions. It could not be construed merely as a check on maladministration. The same is the position with Sections 60(7) and 61 of the Kerala University Act of 1974. Once again the power of appeal is "uncanalised" and "unguided" and the Appellate Tribunal can even order reinstatement of a dismissed teacher. In the light of the ratio laid down by these decisions, the Full Bench of the Kerala High Court, in the impugned Judgement, has rightly held that Section 60(7) and Section 61 of the Kerala University Act, 1974 give powers to the Appellate Tribunal that are uncanalised and unguided. These Sections are, therefore, inconsistent with the fundamental rights guaranteed to religious and linguistic minorities by Article 30(1) of the Constitution. We do not see any reason to take a different view. Obviously we are not concerned in the present appeal with the provisions of the Mahatma Gandhi University Act, 1985 which confers very different and more specific and limited appellate powers on the Appellate Tribunal."

Thus it was found that Section 60(7) has conferred unguided appellate power on the Tribunal and therefore infringed the fundamental right of the minorities; as it is uncanalised and unguided power.

4. The petitioner contended that similar provision contained in Mahatma Gandhi Act in Section 63(6) is also equally bad, as that also gives the tribunal power to Order reinstatement of the teacher concerned. In such circumstances, the said power amounts to uncanalised and unguided power. So the provisions in Section 63(6) of the Mahatma Gandhi University Act is ultra vires to the Constitution. The Appellate remedy in terms of Section 63(6) of the Mahatma Gandhi University Act could not have been availed of by the third respondent teacher and in that situation, the appeal was not maintainable.

5. This contention was examined by the Tribunal and found that the relevant provisions in the Mahatma Gandhi University Act did not confer unguided and uncanalised power on the Tribunal as the Tribunal did not have equal power as in the case of Kerala University Appellate Tribunal. The Mahatma Gandhi University Tribunal has jurisdiction to entertain appeals only on limited grounds made mention of in Section 63(6) of the Mahatma Gandhi University Act. There was nothing illegal in that provision. Accordingly preliminary objection regarding maintainability of the appeal was overruled as per Ext. P5 Order. That Order is impugned in this Original Petition by the management, again urging the selfsame contention with reference to the violation of Article 30(1) of the Constitution.

6. Therefore, what is to be examined is whether Section 63(6) of the Mahatma Gandhi University Act does have the same vices pointed out by the Supreme Court to Section 60(7) of the Kerala University Act, 1974. Section 60(7) of the Kerala University Act which had been found to be violative of Article 30(1) by this Court and the Supreme Court reads as follows:

Any teacher aggrieved by an Order 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 express 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.

Thus it is clear that the Appellate Tribunal could entertain an appeal on any ground that may be urged by the appellant concerned who was subjected to disciplinary action by the management including the management having the privileges and rights under Article 30(1) of the Constitution of India and the Tribunal could "pass such order thereon as it may" deem fit including an order of reinstatement of the teacher concerned". It is in the above circumstances that the power so conferred on the Tribunal was found unguided and uncanalised power transgressing on the rights available to the minority management in terms

of Article 30(1) of the Constitution.

7. The provisions applicable in this case are Section 63(6) and (7) of the Mahatma Gandhi University Act which read as follows:

"63(6). Any teacher aggrieved by an order imposing on him any of the following penalties, namely:-

- (a) withholding of increment;
- (b) recovery from pay of any pecuniary loss caused to the institution or the monetary value equivalent to the amount of increment ordered to be withheld;
- (c) reduction to a lower rank in the seniority list or to a lower grade or post; and
- (cc) removal from service;
- (ccc) compulsory retirement from service;
- (d) dismissal from service.

may, within sixty days from the date on which a copy of such order is served on him, appeal to the Appellate Tribunal on any one or more of the following grounds, namely:-

- (i) that there is want of good faith in passing the order;
- (ii) that the order is intended to victimise the appellant;
- (iii) that in passing the Order, the educational agency has been guilty of a basic error or violation of the principles of natural justice;
- (iv) that the order is not based on any material or is perverse;

(7) On receipt of an appeal under Sub-section (6), 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".

8. Thus it is seen from Section 63(6) that a teacher aggrieved by an Order imposing a penalty on him by the management can file an appeal before the Tribunal only on the limited grounds such as want of good faith, victimisation, basic error or violation of principles of natural justice or perversity or absence of materials. Any ground as is available before the Kerala University Appellate Tribunal is not available in an appeal to the Tribunal constituted u/s 69 of the Mahatma Gandhi University Act. The Tribunal can entertain the appeal as is revealed by Section 63(6) only on specified grounds. Thus, it cannot be taken that unguided or uncanalised power is cast on the Tribunal. The Tribunal is invested with the power "to pass such Order thereon as it may deem fit including an order of reinstatement of the teacher concerned" as per Sub-section (7) of Section 63 of the Mahatma Gandhi University Act, only if the appellant teacher succeeds on the specific grounds that are available as per Section 63(6) as

mentioned above. The Tribunal can order reinstatement only on such limited grounds so far as the teachers in the colleges affiliated to the Mahatma Gandhi University are concerned; whereas as discussed above, there is no such limitation to the grounds of challenge available to the teachers in the colleges affiliated to the Kerala University in terms of Section 60(7) of the Kerala University Act, 1974. There is marking difference between the said two provisions. Thus it is clear that the power now conferred on the Mahatma Gandhi University Appellate Tribunal constituted in terms of Section 65 of the Mahatma Gandhi University Act and exercise of the appellate power in terms of Section 63(6) and (7) is a power on limited grounds, thereby meaning limited power and not a power to be exercised on any ground. Necessarily going by the decision in Lily Kurian Vs. University Appellate Tribunal and Others, itself, it cannot be said that the appellate power conferred on Mahatma Gandhi University Appellate Tribunal is violative of Article 30(1) of the Constitution of India.

Consequently the Original Petition fails. The Tribunal shall dispose of the appeal taking into account of its long pendency, expeditiously.