(2007) 08 KL CK 0024

In the High Court Of Kerala

Case No : W.A. No. 2529 of 2005

State of Kerala and Others — APPELLANT

Vs

Arun George and Others — RESPONDENT

Date of Decision : 18-08-2007

Acts Referred:
Kerala University Act, 1974 — Section 57, 57(1)

Citation : (2007) 08 KL CK 0024

Hon'ble Judges : K.S. Radhakrishnan, J;Antony Dominic, J

Bench : Division Bench

Advocate : K.K. Ravindranath, Govt. Pleader, for the Appellant; T.A. Shaji, S.C. for M.G. University, T.P. Kelu Nambiar Babu Varghese, Manju Antoney and T.J. Thomas, for the Respondent

Final Decision : Dismissed

Judgement

Radhakrishnan, J.—Question that is posed for consideration in these cases is whether the State Government is legally obliged to pay salary and other allowances to the teachers who were appointed by the Management, for the graduate and post-graduate courses started by them on the strength of Ext. P-2 and P-2(a) orders.

2. Learned Judge Sri K.K. Denesan allowed W.P.(C.) 482/2005 and issued a writ of mandamus directing the State Government to pay the salary and other allowances for the teachers appointed by the Management, aggrieved by the same, W.A. 2529/2005 has been preferred by the State. Learned Single Judge took the view that the unilateral condition imposed by the Government that it would not bear any financial burden cannot be sustained. Learned Judge also held that non payment of salary would violate bipartite agreement entered into between the Government and other managements which finds statutory support from the provisions of the University Act and Statutes. Another learned Single Judge of this Court Sri K.M. Joseph in W.P.(C.) 7549/2004 however took a contrary view stating that there is no obligation on the part of the Government to

sanction the appointment of Lecturers merely because the Course has been sanctioned, and that the obligation would depend on the conditions that are imposed at the time of sanctioning the courses.

3. In view of the conflicting views expressed by the two learned Judges of this Court, it is necessary for us to examine various contentions raised before us to resolve that conflict and to render an authoritative pronouncement on the issues raised. For disposal of these cases, we may refer to the facts in W.P.(C.) 482/2005. Eighth Petitioner in W.P.(C.) 482/2005 has started various graduate and post graduate courses on the strength of Exts. P-2 and P-2(a) orders issued by the Government. Ext. P-2 is the Government Order No. G.O. (Ms.) 134/98/H. Edn., dated 9-11-1998. Government had accorded sanction on the requests made by the eighth Petitioner and other managements for starting new courses in the year 1998-1999 in the affiliated Arts and Science Colleges in the State. Details of the new courses are shown in the appendix attached to that order. Operative portion of Ext. P-2 order reads as follows:

Sanction is accorded for starting the new courses as mentioned in the Appendix during the year 1998-99 in the affiliated Arts and Science Colleges mentioned subject to the condition that there will be no additional financial commitment on the part of Government, on this account.

(Emphasis added)

4. Ext. P-2(a) is another Government Order No. G.O. (Ms.)162/99/H. Edn., dated 6-12-1999. The operative portion of the Government Order reads as follows:

Sanction is accorded for starting the new courses as mentioned in the Appendix to this Government Order during the year 1999-2000 in the affiliated Arts and Science Colleges mentioned subject to the condition that the expenditure will not exceed the budget allotment for the purpose on any account.

(Emphasis added)

5. Managements of the various aided colleges submitted their applications to the university for affiliation of the new Degree and Postgraduate courses on the basis of the sanction accorded by the Government vide Exts. P-2 and P-2(a) orders. For starting such new Degree and P.G. Courses in the year 1998-99 and 1999-00, the management was legally obliged to get sanction of the university for affiliation as provided in the university statutes. University, therefore, considered the request made by the eighth Petitioner and Ors. and passed Ext. P-3 university order dated 13-11-1998 refering to Ext. P-2. Operative portion of Ext. P-3 reads as follows:

The Government vide G.O. read above have accorded sanction for starting new degree and P.G. Courses in the colleges affiliated to Mahatma Gandhi University during 1998-99. The courses were recommended by the University and forwarded to Government for getting their views as per the Statutes of M.G. University. Sanction has been accorded by the Vice-Chancellor subject to ratification by the Syndicate for affiliation of the following courses in the Colleges indicated below with effect from the academic year 1998-99 without any additional financial commitment to University/Government.

(Emphasis added)

6. Ext. P-3 is yet another order passed by the University on 10-12-1999 for the year 1999-00. Petitioners 1 to 7 and Ors. were appointed by the Management to the various courses sanctioned by the Government on the strength of Ext. P-2 and P-2(a) orders. Management had forwarded the proposals for approval of appointments to the University, but were rejected by the University vide order dated 31-5-2002 due to the ban imposed by the Government on the appointments in view of the abolition of Pre-degree Courses from various colleges vide Pre-degree Course (Abolition) Act, 1997. Section 5 of the Act, created a statutory ban on appointments in various aided colleges for a period of three years from 3-6-1997 to 2-6-2000. As soon as the period of statutory ban was over, the eighth Petitioner, Management, forwarded a letter dated 14-4-2003 for approval of appointment of the Petitioners 1 to 6 and Ors. . University in the meanwhile issued staff fixation orders for the years 2001-02 and 2002-03 in the various departments, but no staff fixation orders were issued in respect of the courses started by the managements on the strength of Exts. P-2 and P-2(a). Reference may also be made to the judgment of this Court in O.P. 21268/2002 which was disposed of directing the University to consider the requests for issuing staff fixation order. Failure to do so by the University had resulted in a Contempt of Court Proceedings. University later approved certain appointments, but rejected the appointments of the Petitioners due to want of vacancy and also due to the fact that Courses were sanctioned without any financial commitment on the part of the Government. Appointment of the Petitioners 1 to 7 were not approved and hence they were not getting salary. In such circumstances, they have filed the present Writ Petition for a writ of certiorari to quash Exts. P-6 and P-6(a) Staff Fixation Orders and also for a writ of mandamus commanding the University to reconsider the staff fixation orders issued vide Ext. P-6 and P-6(a) and also for a direction to Respondents 3 and 4 to disburse salary with arrears from the date of their appointment.

7. Sri K.K. Ravindranath, Senior Government Pleader appearing for the State submitted that the learned Single Judge has completely ignored the specific conditions imposed by the Government in Exts. P-2 and P-2(a) orders while according sanction for starting of new graduate and post graduate courses by the private colleges. Learned Government Pleader submitted that the Government had accorded sanction for starting those new courses with the specific condition that the State would have no additional financial commitments. Courses were started by the Management on their own volition and hence have to find out their own resources for the conduct of the courses including payment of salary to teaching and non-teaching staff. Government Pleader further submitted that the learned Single Judge has placed reliance on the direct payment by agreement

executed between the Management and the Government so as to cast an obligation on the Government to pay salary to the Petitioners 1 to 7 ignoring the specific conditions stipulated in Ext. P-2 and P-2(a). Learned Government Pleader placed reliance on the learned Single Judge''s judgment in W.P.(C.) 7549/2004 and pointed out that even the appeal against that judgment was rejected by the Division Bench. Further it was also submitted that the learned Judge was not justified in placing reliance on the decision in Amina Vs. State of Kerala, .

8. Sri T.P. Kelu Nambiar, Senior Counsel appearing for the Respondent submitted that the Government have to honour the direct payment agreement which is statutory in nature. The learned senior Counsel also referred to the Statute 16(1), Part B of Chapter 45 of the Mahtma Gandhi University Statutes, 1997 and submitted that the unilateral condition imposed by the Government in Exts. P-2 and P-2(a) cannot stand in the light of the various provisions of the University Act and Statutes. Reference was made to Statute 9 and 40 of the University Statutes.

9. Learned Single Judge, in our view, has erred on facts as well as on law in holding that the Government have got a statutory obligation to pay salary and other monitory benefits to those teachers who have been appointed to various courses started by the Management on the strength of Exts. P-2 and P-2(a) orders. Statute 16 of the Mahatma Gandhi University Statutes, 1997 deals with approval of appointments which reads as follows:

Approval of appointment.-(1) Approval of every appointment to the teaching post shall be made by the Syndicate subject to the conditions that the appointment is in accordance with the staff pattern fixed by the University and that the person so appointed is fully qualified for the post.

(2) The Deputy Director of Collegiate Education concerned shall verify before making direct payment of salaries as to whether the post for which payment is claimed is in accordance with the staff pattern and workload fixed by the University. Doubtful cases shall be referred to the University for clarification and the correctness of direct payment ensured.

(3) In the case of those private colleges coming under the Direct Payment Scheme, the Director of Collegiate Education or the Officer authorised by him in this behalf shall verify in consultation with the University as to whether the teaching post in private colleges are in excess of the posts sanctioned by the University. However, in the case of incumbents declared as supernumeraries by the University, the controlling officers shall ensure that no fresh appointment is made against future vacancies until all the supernumeraries are absorbed against those vacancies. The direct payment of salaries shall not be made to the person appointed against fresh vacancies, before the absorption of supernumeraries.

10. Government is obliged to pay the salary under Direct Payment Agreement only to those teachers who have been appointed to vacancies which arose due to superannuation, death, leave vacancies and whose appointments have been

approved by the University. Government have no obligation to pay the salary to teachers or non-teaching staff appointed by the management when they start new courses or add new divisions to the existing courses etc., unless the Government agree to bear the financial burden. Private Managements are free to start their own courses in the unaided sector for which the Government have no financial commitment. This issue came up for consideration before a Division Bench of this Court in State of Kerala and Ors. v. Dr. Sina, A.R. and Ors. 2007 (3) K.H.C. 96 This Court while examining the scope of Section 57 of the Kerala University Act, 1974 held that the Government is obliged to disburse salary of the teachers appointed by duly constituted Selection Committee to the existing vacancies in aided colleges. This Court held that Section 57(1) was introduced not to take away the statutory powers for fixing the students strength and work load already conferred on the Syndicate of the University.

11. Statute 9 of the M.G. University Statute deals with grant of affiliation, which is extracted hereunder:

Grant of affiliation.-After considering the report of the local enquiry, if any, and after making any further enquiry as it may deem necessary, the Syndicate shall decide after considering the report of the local enquiry and also after ascertaining the views of the Government whether the affiliation be granted or refused, either in whole or in part In case the affiliation is granted, the fact shall be reported to the Senate at its next meeting.

12. The University under Exts. P-3 and P-4 orders specifically informed the eighth Petitioner and Ors. that the sanction has been accorded by the Vice-Chancellor subject to ratification by the Syndicate for affiliation of various courses without any additional financial commitment to the University/ Government. It has been made clear by the Government as well as by the University that there would be no financial commitment if the eighth Petitioner and Ors. start new degree and P.G. courses on the basis of sanction accorded by the Government vide Exts. P-2 and P-2(a) orders.

13. Learned Single Judge has recorded a specific finding that on the strength of Direct Payment Agreement, Government is bound to pay the salary of the teachers and that the Government have no right to impose a condition that they would not meet the financial commitment. If the Private Managements want to start new courses, in the graduate and postgraduate level, they must do so subject to the sanction and approval of the Government and the University but they have to find out their own funds. There is no compulsion either on the part of the Government or on the part of the University to start any new course in any of the private aided colleges. After starting the graduate and postgraduate courses on the strength of Exts. P-2 and P-2(a) with the condition that the Government will have no financial commitments, they cannot insist that the Government should disburse salary of the teachers appointed by the Management. Such a situation is not covered by the Direct Payment Agreement entered into between the Government and private management. Agreement was

entered into on the Government agreeing to certain terms and conditions, with respect to the appointment of staff, admission of students, collection of fee etc. Government have agreed that they would disburse pay and allowances of teaching and non-teaching staffs which accrue from 1-9-1972. But so far as posts sanctioned under P-2 and P-2(a), with a specific condition that the Government would have no financial commitments, is not covered by the Direct Payment Agreement.

14. Learned Single Judge has completely ignored these basic aspects and committed an error in following the judgment in Amina''s case (supra). We find ourselves unable to accept the following findings recorded by the learned Single Judge in Amina''s case.

The plea of the Government arising rather out of financial strain, and the stand of the University, of course can be appreciated only if we stand their shoes. Additional posts impose financial burden to the State Exchequer, but the question is, could this be pointed out as a reason for avoiding statutory liability. The Direct Payment System had been introduced, and accepted by the parties concerned, and if that be so, the Government could not have resorted to a stand that they still have unilateral right to repudiate the terms. The argument is thoroughly unacceptable. The obligation arises from a statutory contract. The import of a plea of policy, as suggested by the Government Pleader, has no place or relevance. If the Government finds such burden unbearable, appropriate measures could be resorted to as admissible under law. The Government have no case that the fee collected are not remitted to them, as is envisaged in the Direct Payment System.

15. If we grant our stamp of approval to the above finding, then the private managements can start any number of Degree or Postgraduate courses in the State on their own volition and the State Government is bound to pay salary and allowances to those teachers. We therefore, hold that Amina''s case has not been correctly decided and we overrule the same. Government in our view is not bound to pay salary to those teachers and drain the public exchequer. Government can impose any condition while according sanction for starting a new course or adding new batches or divisions.

16. We are not prepared to accept the contention that while imposing the conditions in Ext. P-2 and Ext. P-2(a) the State Government is repudiating the Direct Payment Agreement. Direct Payment Agreement, as we have already indicated deals with only posts which were in existence on the date of the agreement, subsequently created with Government sanction, without any pre-conditions attached and to filling up of the vacancies created due to superannuation, death or leave vacancy. Government is dealing with public money. Province of the State has increased considerably necessitating corresponding growth in public expenditure and in public revenue. State Government have to incur huge expenditure in various fields, not only in the field of education, but public health, sanitation, drinking water, housing etc. State can

spend it finances within its limited budget and State cannot be mulcted with huge financial liabilities by private managements by starting new graduate and postgraduate courses under the guise of the Direct Payment Agreement. State can always impose conditions, while according sanction as is done in Exts. P-2 and P-2(a). Condition laid down by the Government orders in Exts. P-2 and P-2(a) are therefore perfectly legal and valid and the Management is bound by those conditions and it is the responsibility of Managements to pay salary to the teachers whom they have appointed on the strength of Exts. P-2 and P-2(a) orders.

17. We are, therefore, unable to agree with the views expressed in Amina''s case. We fully endorse the view expressed by the learned Single Judge in W.P.(C) 7549/2004. Writ Appeal 2529/2005 filed by the State is, therefore, allowed and the judgment of the learned Single Judge is set aside, and the writ petitions would stand dismissed.

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