
(2009) 02 KL CK 0057
In the High Court Of Kerala
Case No : W.A. No. 1197 of 2007

Suresh R. (Dr.)

APPELLANT

Vs

Mahatma Gandhi University and Others

RESPONDENT

Date of Decision : 17-02-2009

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2009) 1 ILR (Ker) 857 : (2009) 2 KLJ 76 : (2009) 1 KLT 950

Hon'ble Judges : M.L. Joseph Francis, J;K. Balakrishnan Nair, J

Bench : Division Bench

Advocate : O.V. Radhakrishnan, for the Appellant; Kaleeswaram Raj and T.A. Shaji, S.C., for the Respondent

Final Decision : Dismissed

Judgement

K. Balakrishnan Nair, J.—Since common questions arose for decision in these Writ Appeals, they are heard and disposed of together by this common judgment. The main point that arises for decision in these cases is whether the Mahatma Gandhi University can make appointments to more vacancies than that are notified for selection.

W.A. No. 1197/2007:

2. This appeal is treated as the main case. The appellant was the 2nd respondent in the writ petition. Respondents 2 and 3 were the writ petitioners. The 1st respondent University issued Ext. P3 notification dated 24.12.2005, inviting applications for various teaching posts under it .Item No. 16 under the said notification was for appointment to two posts of Lecturer in International Relations/Political Sciences/History/Economics in the School of International Relations. The writ petitioners were qualified for appointment to the said post. Pursuant to the said notification, the Selection Committee met on 8.3.2006,held the interview of the candidates and published the rank list on 22.5.2006.The appellant was ranked as Rank No. 2. He was an open merit candidate. Rank No.

1 was appointed in the open merit vacancy. The second vacancy was filled up by an Ezhava reservation candidate. While so, as per Ext. P1 proceedings dated 6.1.2007, one Dr. K.N. Harikumar, who was a Senior Lecturer working in the School of International Relations and Politics was relieved from the University, to enable him to join the Centre for Development Studies, Trivandrum. He availed leave without allowance from the University on 22.10.2001 and was working as an Associate Fellow in the said Centre. Since the said institution decided to absorb him, he moved for relieving him from the service of the University and the same was granted as per Ext. P1 proceedings. In the resultant third vacancy, which arose in January, 2007, Rank No. 2 was proposed to be appointed. On coming to know of this, the writ petitioners approached this Court, seeking the following reliefs.

i) to declare that the appointment of the 2nd respondent as Lecturer in the School of International Relations and Politics in Mahatma Gandhi University is unjust, illegal, arbitrary and unconstitutional;

ia) to issue a writ of mandamus directing the 1st respondent to terminate the service of the 2nd respondent as Lecturer, forthwith

ii) to issue a writ of mandamus directing the 1st respondent to refrain from appointing the 2nd respondent or any other candidates as Lecturer in School of International Relations and Politics in M.G. University without issuing a proper advertisement on the basis of Chapter III Clause 3 of Mahatma Gandhi University Statutes 1997 and without following the procedure stated therein;

iii) to issue a writ of mandamus directing the 1st respondent to initiate a fresh selection process for appointment of Lecturer in the School of International Relations and Politics in M.G. University by issuing a proper advertisement as contemplated by Chapter HJ of Clause 3 of Mahatma Gandhi University Statutes 1997.

3. The main contention raised in the writ petition was that the University can fill up only the vacancies notified by it and in support of that submission, the petitioners relied on the Division Bench decision of this Court in Kerala Agricultural University v. Gopinathan Unnithan 1996(1) KLT 344 and the decision of the Apex Court in Ashok Kumar and Others Vs. Chairman, Banking Service Recruitment Board and Others, . They also relied on the decision of this Court in Rajamohan v. The State of Kerala ILR 1997 Ker 199.

4. During the pendency of the writ petition, since the 2nd respondent was appointed, the writ petition was amended challenging his appointment also. The 2nd respondent/appellant resisted the prayers in the writ petition, by filing a detailed counter affidavit. He pointed out that the writ petitioners were defeated candidates and therefore, they have no locus standi to raise the challenge against his appointment. It was also submitted that after having participated in the selection, they are estopped from challenging the appointment. The University has decided to keep the rank list published by it alive for a period of

one year and therefore, there is nothing wrong with the appointment made during the currency of the rank list to the vacancy, which arose in the meantime, it is submitted.

5. The 1st respondent University also filed a counter affidavit, supporting its actions. The University pointed out that the Syndicate has taken a decision to give one year's validity to the rank list published pursuant to the selection and to fill up the vacancies, which arose in the meantime, from the said list.

6. The learned Single Judge, who heard the writ petition, upheld the contention of the writ petitioners, allowed the Writ Petition and quashed the appointment of the appellant/2nd respondent. The University was directed to undertake a fresh selection, in accordance with law, for appointment to the post of Lecturer, in which, the appellant was appointed.

7. The learned senior counsel for the appellant, Mr. O.V. Radhakrishnan, attacked me impugned judgment on various grounds. He pointed out that the writ petitioners have not challenged the select list. Having participated in the selection, they are estopped from challenging the appointment of the appellant. The University has taken a policy decision to keep alive the rank list published by it pursuant to Ext. P3 notification, for a period of one year. The University is competent to do that. The learned senior counsel pointed out that selection can be made for making appointment in anticipated vacancies also. The same is permissible, in view of various decisions of the Apex Court. In support of his submissions, the learned senior counsel relied on the decisions of the Apex Court in Prem Singh and Others Vs. Haryana State Electricity Board and Others, and in Secretary, A.P. Public Service Commission Vs. B. Swapna and Others, .

8. We heard the learned Counsel, Mr. Kalseeswaram Raj, for respondents 2 and 3. The learned Counsel relied on the decisions, which the said respondents/writ petitioners cited before the learned Single Judge. Further, it is submitted that respondents 2 and 3 have no grievance against the selection and therefore, they are not challenging the select list. Their claim is that the select list could be used only to fill up the notified vacancies. While participating in the selection, they never had an inkling that the select list is going to be used for filling up vacancies, which are not notified. The notification, Ext. P3, does not contain any such stipulation. Further, the rules contained in Chapter III of the 1st Statutes of the Mahatma Gandhi University, providing for selection for filling up of teaching posts, do not contemplate publication of any rank list.

9. We also had the benefit of hearing learned Counsel, Mr. N. Sugathan, who appeared for the appellants in the connected cases and also learned Counsel, Smt Bhadrakumari, who appeared for the contesting respondents in the connected appeals. She also relied on the decision of this Court in Administrator, U.T. of Lakshadweep Vs. Musthak, , in support of her submissions.

10. The preliminary objection raised by the learned senior counsel for the appellant regarding the locus standi of the writ petitioners or the question of

estoppel, raised against them, is plainly untenable. Similar contentions raised in Prem Singh and Others Vs. Haryana State Electricity Board and Others, were rejected by the Apex Court in the following words:

12. In our opinion, there is no substance in the objection raised with respect to locus standi of the original writ petitioners. The candidates could not have anticipated when they appeared for the interview that the Selection Committee would recommend candidates and the Board would make appointments far in excess of the advertised posts. The petitioner, who was not eligible, had a just grievance that due to appointments of candidates in excess of the posts advertised he was deprived of the right of consideration for appointment against the posts which would have become vacant after he acquired eligibility.

11. So, we hold that the participation of the writ petitioners in the selection process will not, in any way, bar them from contending that the 2nd vacancy, which arose in the open merit quota, should be filled up only after issuing a fresh notification and conducting selection. They are candidates, who could have tried their chance to get appointment, if a fresh notification is issued. At any rate, they have a right to be considered for selection to the new vacancy, flowing from Article 14 and 16 of the Constitution of India. Their rights in this regard were infringed by the action of the University. So, they have every right to maintain the writ petition.

12. It is more or less fairly settled that if the rules, governing selection, provide a life for the rank list and also permit appointments from that list to vacancies reported till the expiry of the list, there is not nothing wrong with filling up more vacancies than the notified vacancies. So, for resolving the controversy in this case, the 1st point to be ascertained is whether there is any such provision in the statutes of the M. G. University, governing selection and appointment of teachers. No statutory provision has been brought to our notice on this point. Of course, it is a settled principle in law that a statutory authority, which is authorised to frame subordinate legislation, may issue executive orders on subjects, concerning which it is authorised to frame rules or regulations. This position is settled by the decision of the Apex Court in V. Balasubramaniam and Others Vs. Tamil Nadu Housing Board and Others, . If, in relation to a particular selection, it is proposed to have a rank list alive for a particular period and it is proposed to fill up the vacancies that may arise during the currency of the rank list from it, there should be a decision to that effect by the competent body of the University and it should be published along with the notification itself. In this case, Ext. P3 notification is totally silent, regarding the life of the rank list or appointment to vacancies other than those notified. In view of the above position, the University can fill up only the vacancies notified by it. The said position is settled by the decisions of the Apex Court in Hoshiar Singh Vs. State of Haryana and Others, , Gujarat State Dy. Executive Engineers' Association Vs. State of Gujarat and Others, , State of Bihar and another Vs. Madan Mohan Singh and others, , Madan Lal and Others Vs. State of Jammu and Kashmir and

Others, , Mukul Saikia and Others Vs. State of Assam and Others, and also the decisions relied on by the writ petitioners, which we have already mentioned earlier.

13. To get over the decisions, the learned senior counsel for the appellant, mainly, relied on the decision of the Apex Court in Prem Singh and Others Vs. Haryana State Electricity Board and Others, . But, we notice that the said decision is against the proposition canvassed by the appellant. In fact, the excess appointments made were saved on the special facts of the case and on equitable ground. The operative portion of the judgment, which is contained in paragraph 26, will show the same. The said portion of the judgment reads as follows:

26. In the present case, as against the 62 advertised posts the Board made appointments on 138 posts. The selection process was started for 62 clear vacancies and at that time anticipated vacancies were not taken into account. Therefore, Strictly speaking, the Board was not justified in making more than 62 appointments pursuant to the advertisement published on 2,11,1991 and the selection process which followed thereafter. But, as the Board could have taken into account not only the actual vacancies but also vacancies which were likely to arise because of retirement etc. by the time the selection process was completed it would not be just and equitable to invalidate all the appointments made on posts in excess of 62. However, the appointments which were made against future vacancies - in this case on posts which were newly created - must be regarded as invalid. As stated earlier, after the selection process had started 13 posts had become vacant because of retirement and 12 because of deaths. The vacancies which were likely to arise as a result of retirement could have been reasonably anticipated by the Board. The Board through oversight had not taken them into consideration while a requisition was made for filling up 62 posts. Even with respect to the appointments made against vacancies which arose because of deaths, a lenient view can be taken and on consideration of expediency and equity they need not be quashed. Therefore, in view of the special facts and circumstances of this case we do not think it proper to invalidate the appointments made on those 25 additional posts. But the appointments made by the Board on posts beyond 87 are held invalid. Though the High Court was right in the view it has taken, we modify its order to the aforesaid extent. These appeals are allowed accordingly. No order as to costs.

(emphasis supplied)

14. The learned senior counsel for the appellant also relied on the decision of the Apex Court in Secretary, A.P. Public Service Commission Vs. B. Swapna and Others, Selection involved in this case was a selection made by the Andhra Pradesh Public Service Commission. The Rules of the Commission itself provide for a rank list, which will remain in force for a period of one year. So, the observations in that case can, in no way, support the case of the appellant.

15. Going by the various decisions of the Apex Court mentioned, we have no

doubt in our mind that the University should have filled up only the two vacancies notified by it. If an additional vacancy was, available, the only course open to the 1st respondent University, was to notify the same and fill up the same, after making the selection in accordance with law. So, we find no merit in the appeal and it is accordingly dismissed.

W.A. Nos. 1665/2007 and 1715/2007:

These appeals are filed by the same person, whose selection was unsettled by the common judgment of this Court in W.P.(C) No. 26454/2006 and 27024/2006. The case of the appellant is squarely covered by our judgment in W.A. No. 1197/2007. But, learned Counsel, Mr. N. Sugathan, appearing for the appellant tried to draw a distinction, by contending that the 2nd open merit vacancy, in which the appellant was appointed, was available even at the time of initial notification. We think, the said fact will not make any difference. If that vacancy was available, that should also have been notified. If three vacancies were available, more candidates would have applied. Many may not have applied, thinking that there were only two vacancies available. If appointment is made to a vacancy without notification, the same will affect the rights of many candidates, guaranteed under Article 14 and 16 of the Constitution of India. So, the principle which persuaded us to dismiss W.A. No. 1197/2007, will govern these appeals also. Accordingly, they are also dismissed.