
(2011) 01 KL CK 0027

In the High Court Of Kerala

Case No : C.R.P. No's. 148 and 640 of 2009 and W.P. (C) 33309 of 2009

The Manager, Sn Trust, Sn Trust Building

APPELLANT

Vs

Dr. N. Unnikrishnan, Principal (On Probation), The Kerala
University and Dr. M. Devakumar, Principal, Sn College

RESPONDENT

Date of Decision : 06-01-2011

Acts Referred:

Constitution of India, 1950 — Article 14

Kerala University Act, 1974 — Section 54, 59, 59(6), 59(8), 63(6)

Citation : (2011) 3 KLJ 691

Hon'ble Judges : Thottathil B. Radhakrishnan, J; P.S. Gopinathan, J

Bench : Division Bench

Advocate : A.N. Rajan Babu, for the Appellant; M. Balagovindan, for the
Respondent

Final Decision : Dismissed

Judgement

Thottathil B. Radhakrishnan, J.

"CR"

1. While working as a Senior Grade Lecturer in the service of one of the colleges under the Sree Narayana Trust, the teacher involved in these matters was promoted to the post of Principal on 19.5.2007. In terms of the Kerala University Act, 1974, for short, the "Act", he had to undergo one year of probation in that post, within a total period of two years. On 20.5.2008, he was given a notice that the Management proposes to hold that he is not suitable for continuance in the category of Principal and has not successfully completed probation. Consequently, he was reverted to the category of Selection Grade Lecturer on 9.6.2008. The teacher challenged that decision in Appeal No.5 of 2008 in terms of Section 59(8) of the Act before the University Appellate Tribunal, hereinafter, the "Tribunal". An interim order in that appeal brought the parties to this Court in W.P.(C) 18865 of 2008; the Management obtaining an interim order of stay. In modification of that order, this Court clarified on 3.12.2008 that the stay order

will not be a ground for taking any disciplinary proceedings against the teacher. With that modification, the interim order granted in that case was extended. Ultimately, when that writ petition came up for hearing, the learned Single Judge noted that the whole controversy was on the basis of a couple of orders passed by the Tribunal pending the appeal and that the parties had agreed, by that time, that their pleadings before the Tribunal are complete and that the appeal is ripe for hearing. Accordingly, that writ petition was ordered without entering on merits, on 15.12.2008, directing that the Tribunal shall dispose the proceedings before it in a time bound manner. It was also directed that the interim order of stay granted in that writ petition will remain in force in the mean time. Thereafter, the Tribunal disposed Appeal No. 5 of 2008 on 31.1.2009. This means that the interim order of stay granted and modified by this Court on 3.12.2008 in W.P.(C) 18865 of 2008 ordering that grant of stay will not be a ground for taking disciplinary proceedings against the teacher, continued to work against the management till 31.1.2009, the date on which the Tribunal decided Appeal No. 5 of 2008.

2. However, in the interregnum, the teacher was placed under suspension on 19.1.2009 and memo of charges was served on him along with that suspension order. An enquiry officer was appointed before 31.1.2009, the date of disposal of Appeal No. 5 of 2008. The teacher did not participate in that enquiry. The enquiry concluded by upholding the charges. As a consequence, the teacher was removed from service. He challenged that and certain incidental matters in University Appeals 4 of 2009 and 5 of 2009 u/s 63(6) of the Act before the Tribunal.

3. Before proceeding further, we may note that the teacher had challenged the order of suspension dated 19.1.2009 in another independent writ petition before this Court, W.P.(C) 5548 of 2009. The learned Single Judge stayed that order and directed reinstatement of the teacher as Principal. At the instance of the management, the Division Bench modified that order in a writ appeal and directed that the teacher be reinstated as Senior Grade Lecturer. In purported obedience of that order, the teacher was reinstated on the date immediately preceding his superannuation from service on 31.3.2009.

4. Thereafter, by independent orders, the Tribunal allowed the teacher's appeals.

5. C.R.P. 148 of 2009 is filed by the management challenging the Tribunal's decision in University Appeal No. 5 of 2008 i.e. the one that related to the question of declaration of probation in the category of Principal. C.R.P. No. 640 of 2009 is filed by it challenging the order in University Appeal No. 5 of 2009 which related to the question of imposition of punishment of removal from service.

6. We heard Adv. A.N. Rajan Babu for the management and Adv. M. Balagovindan, on behalf of the teacher.

7. The learned counsel for the management argued that in so far as the question of declaration of probation in the category of Principal is concerned, the

Tribunal's decision is wrong. He argued that in terms of Section 59 of the Act, the management is entitled to refuse declaration of due completion of probation either on account of want of vacancy in the category or on account of the candidate being unfit to be considered for declaration of successful completion of probation. He further argued that in the case in hand, the situation is the second among them and the preliminary enquiry that was conducted was only to ascertain whether the teacher was eligible to have the probation in the category of Principal declared and therefore, it is not an enquiry which results in any finding of guilt. This dichotomy in the quality of enquiry is canvassed before us on the basis of the decisions of the Apex Court in *Radhey Shyam Gupta Vs. U.P State Agro Industries Corporation Ltd. and Another*, and *Progressive Education Society and Another Vs. Rajendra and Another*, . The learned counsel for the management, accordingly, argued that the Tribunal exceeded its jurisdiction in holding that the probation ought to have been declared as duly completed. Supporting C.R.P. 640 of 2009 arising in relation to the issue regarding the removal of the teacher from service, the learned counsel for the management argued that it is a case where allegations made against the teacher are so serious and grievous including complaints touching financial mismanagement and such a conduct is unbecoming of the head of an educational institution. Referring to the materials, he pointed out that the teacher had not replied even to the show cause notice and did not participate in the enquiry. He further argued that there is no material brought in by the delinquent teacher in the enquiry which could have tilted the scales in his favour. He argued that the Tribunal exceeded its jurisdiction in setting aside the punishment of removal from service and ordering reinstatement.

8. Per contra, the learned counsel for the teacher argued that his client had actually been on probation for more than one year and when the statute prescribes that the probation period shall be for one year from out of a total continuous period of two years, even if the management was of the view that the teacher had not successfully completed the period of probation in the category of Principal, the period of probation ought to have been extended. He says that indisputably, the period of probation was not extended on the completion of one year from its commencement and hence the situation is a self working one, where the management is deemed to have approved the satisfactory completion of the probation of the teacher in the category of Principal. He further argued that in the light of the interim order and the final judgment in W.P.(C) 18865 of 2008 as noted above, the suspension of the teacher and the initiation of the disciplinary proceedings by serving the memo of charges and appointment of the enquiry officer have been done in the teeth of prohibitory orders by the writ court and therefore, they have to be treated as without jurisdiction and hence nonest, null and void. The learned counsel for the teacher further argued that the charges levelled against him, as a whole, are groundless and the action is essentially a process of victimization and the materials relied on in the so called enquiry are totally vague and cannot be utilised to fasten any liability.

9. We record that the learned counsel for the management intervened at this stage to point out that the memo of charges is dated 22.8.2008 and hence the submission on behalf of the teacher on the basis of the aforesaid orders of this Court is not sustainable. We shall consider that submission also, as we proceed.

10. We shall first deal with C.R.P. 640 of 2009 which relates to the disciplinary proceedings that ended in the imposition of the punishment of removal from service. While the learned counsel for the management may be justified in saying that the memo of charges is dated 22.8.2008, i.e., before the interim order dated 3.9.2008 in W.P. (C) 18865 of 2008, the fact of the matter remains that the teacher was placed under suspension and enquiry proceedings were held by the appointment of an enquiry officer and further proceedings were held during the currency of the aforesaid interim order which was CRP640/09 & con.cases -: 9 :-consciously and specifically merged in the final judgment dated 15.12.2008 in W.P.(C) 18865 of 2008 and made to run till the termination of the Appeal No. 5 of 2008 before the Tribunal, which event occurred only on 31.1.2009. Therefore, we find formidable substance in the argument on behalf of the teacher that the entire disciplinary proceedings against him were without jurisdiction and on the face of prohibitory orders by this Court. The same has, therefore, only to be treated as void. We note that such an aspect was not considered by the Tribunal. May be, no such issue was raised and argued. Being a jurisdictional matter, it goes to the root of the issues, having an impact on discipline and obedience to judicial orders. We find no reason why such an argument shall not be upheld at the instance of the teacher in this bunch of matters.

11. Now, for the completion of the case relating to the disciplinary proceedings, we have also looked into some of the materials that form part of the enquiry file, which was made available by the management before the Tribunal. The proceedings appear to have been initiated on a complaint by two teachers. That mentioned about the Principal not taking into confidence, the members of a committee which was constituted for purchase of computer hardware and peripherals for the purpose of the college. We have perused the expert opinion obtained in that regard. There is a difference of Rs.2,78,721/- shown as overpayment in the purchase for the purpose of computer lab. The alleged variation in the pricing etc. is not corroborated by any material like invoice, quotations etc. from any supplier. While the delinquent teacher could be criticized for not obtaining proper quotations, it is also the requirement that liability cannot be fastened without reliable materials, unless the allegations against the delinquent teacher, who was on the threshold of his superannuation, are proved. With these materials and situations, we do not find any ground to interfere with the order of the Tribunal in University Appeal No. 5 of 2009 impugned in C.R.P. 640 of 2009. That revision is only to be dismissed.

12. We now proceed to deal with C.R.P. 148 of 2009 which relates to the question of declaration of due completion of probation in the category of Principal.

13. Section 54 of the Act deals with probation. It deals with probation and

contains eight sub-sections. Sub-section (3) provides that the educational agency may terminate the probation for want of vacancy. Sub-section (4) provides that any probationer who faces such a situation and consequential discharge or reversion, shall be given preference in the matter of future appointments to the same post. A conjoint reading of these two provisions would show that what is conceived by those provisions is wholly non stigmatic; dealing with a situation of non-availability of a substantive vacancy in which the probationer can continue under probation. It does not mean anything more. Now, adverting to sub-section (6), if the educational agency decides that the teacher is not suitable for continuance in the post, the teacher can be discharged from service or reverted to his original post. Therefore, the suitability for continuance in the post is the criteria. That sub-section also provides for a reasonable opportunity to show cause against the action proposed to be taken against the teacher in this regard. When the teacher is proceeded against under sub-section (6), that is, on the ground of not being suitable for continuance in the post, sub-section (8) of Section 59 provides to the teacher a right of appeal to the Tribunal. No appeal is provided to the Tribunal against a decision where declaration of completion of probation becomes impossible for the reason that there is no substantive vacancy. These two clear situations, specifically envisaged by the legislature, themselves indicate that the second among the two, which depends upon the management holding that the teacher is not suitable for continuance in the post, is a decision that would visit the teacher with stigma and adverse civil consequences.

14. We now advert to the decision of the Apex Court in *Radhey Shyam Gupta* (supra) relied on by the learned counsel for the management. He rightly took us through the growth of law as traced in that precedent. He argued that the case in hand is not one where the finding as to unsuitability is the foundation for the refusal to declare due completion of probation though the decision of the management not to declare due completion of probation was only motivated by the view in that the teacher is unsuitable to be the Principal, and therefore, the action cannot be treated as punitive and hence a pre-decisional hearing by pointing out the grounds of the proposed decision is not contemplated. He argued that the clear terms of sub-section (6) of Section 59 provide only for opportunity of showing cause against the action and not against the grounds of the proposed action.

15. The argument on behalf of the management invokes for consideration some of the finer principles relating to rule of fair hearing and decision making process in the administrative realm, including the application of principles of natural justice. The post of a Principal of a college carries higher emoluments and would provide the teacher with a higher pay packet, reflecting on the last pay drawn at the time of retirement. This fact cannot be disputed. Emoluments of a teacher grow when that person is moved to the category of the Principal, by addition of allowance, though there may not be any change in the scale of pay, it is pointed out. But, this necessarily has an impact on the retirement benefits that the

Principal would carry home after having sweated out a large part of his life in the field of education. The moment Section 59(6) is invoked, the action proposed is nothing but refusal to declare satisfactory completion of probation. A decision refusing to declare due completion of probation in terms of Section 59(6) on the ground that the teacher is not suitable to hold that post would visit him with adverse civil consequences. The rules of natural justice, including the application of the principle *audi alteram partem*, are inherent in administrative proceedings, which affect rights of individuals. These safety valves are integral components of Articles 14 and 16 of the Constitution. It is a well settled principle of administrative law that except in cases where the principles of natural justice are expressly excluded by legislative process, it shall be treated as inherent and inseparably woven into the judicial or quasi judicial processes. It applies also to administrative functions when individual rights are decided touching matters that could be contentious. It has necessarily to be ensured that principles of natural justice are adhered to. It has also to be recalled that the teacher and the management before us are governed by the Direct Payment Scheme whereunder the Government pays, including salaries, and the University Grants Commission also provides the support. It is therefore, an employment which cannot escape the scrutiny, at any rate, in terms of Article 14 of the Constitution. Now, if the teacher is to answer and show cause against the action proposed, necessarily, the teacher has to know the question which he has to answer. The teacher cannot be expected to make a roving enquiry or to draw whimsical assumptions as to the reasons on which the management would conclude on any such issue. The only answer that the teacher can give to the show cause notice is the answer to the reason that would be working in the mind of the management for the proposed decision to refuse to declare due completion of probation. Hence, unless the management expresses the grounds on which it proposes to hold that the teacher is not suitable for continuance in the post, it would be wholly impossible for the teacher to answer to the show cause notice. To hold to the contrary would be apparently perverse and arbitrary. Hence, we hold that in terms of Section 59(6) of the Act, a teacher who is being asked to show cause against the proposed action to hold him as not suitable for continuance in the post is entitled to be notified of the grounds on the basis of which the management entertains the tentative decision that the teacher is not suitable for continuance in the post. We negative the management's plea and argument to the contrary.

16. Applying the aforesaid principles to the facts of the case in hand, we notice that the teacher was never given a show cause notice disclosing the reasons for the proposed action. It did not contain anything other than the proposal of the management to refuse declaration as to due completion of probation, by holding the teacher as not suitable for continuance in the post of Principal. Such action is plainly arbitrary and in violation of the principles of law as noted above. The said action is, therefore, unsustainable.

17. For the aforesaid reasons, we hold that the decision of the Appellate Tribunal

in Appeal No.5 of 2008 does not warrant interference in revision u/s 59(8) of the Act. Hence, C.R.P. 148 of 2009 is liable to be dismissed.

18. Now, we have W.P.(C) 33309 of 2009 filed by the teacher seeking directions requiring the completion of formalities in relation to the disbursement of benefits on account of the decisions of the Tribunal, which we have herein before found to be sustainable, and for consequential orders relating to retiral benefits. We find no ground for the management or for the State of Kerala and authorities under it to delay the payment. We also notice on record that in C.R.P.148 of 2009, an interim order was passed on 5.3.2009, to the following effect:

.....

Interim stay, as prayed for, is granted up to 31.3.2009. If, ultimately, the revision is dismissed, the revision petitioner shall pay the monetary benefits, which the 1st respondent would have received had he continued as Principal, with 10% interest....

19. Learned counsel for the Management pointed out that the provisions in the Act give the decision of the Appellate Tribunal the status of a decree of a civil court and all that could be done is for the teacher, if so advised, to apply for its execution through the jurisdictional civil court, in accordance with those provisions. We are of the view that the said provision only enables the execution of the decision as if it were a decree. That does not preclude other remedies and reliefs. The fruits of the decree or result of the litigation cannot be permitted to remain a mirage. It has to reach the seeker. We have before us a teacher whose life was spent teaching college students. That teacher is left with no retiral support for the last about two years. We find no ground to dissuade ourselves from commanding the management and State of Kerala and its officers to complete the formalities and release the entire arrears including pensionary arrears, DCRG etc. that may be due to the teacher by giving effect to the decisions of the Tribunal. Any differential in the pay and other dues including the interest component in terms of the interim order as recorded above shall also be released. The management will do the needful in this regard within forty five days from the date of receipt of a copy of this judgment. The Government officers will ensure follow up action. It is so directed.

In the result, the writ petition is ordered as aforesaid and the civil revision petitions are dismissed. No costs.