

(1997) 11 KL CK 0019

In the High Court Of Kerala

Case No : O.P. No's. 19043/96 P, 282/97 H, 456/97 D, 742/97 L and 12227/97 E

Unnikrishna Pillai

APPELLANT

Vs

Director of Collegiate Education and Others

RESPONDENT

Date of Decision : 21-11-1997

Acts Referred:

City of Bangalore Improvement Act, 1945 — Section 27
Criminal Procedure Code, 1973 (CrPC) — Section 165, 165(1)
Foreign Exchange Regulation Act, 1973 — Section 37(1), 37(2)
Industrial Employment (Standing Orders) Act, 1946 — Section 15(2), 3, 3(2)
Kerala University Act, 1957 — Section 63, 64
Mahatma Gandhi University Act, 1985 — Section 67, 68, 68(1)

Citation : (1997) 11 KL CK 0019

Hon'ble Judges : C.S. Rajan, J

Bench : Single Bench

Advocate : M.V. Thamban, Nandakumara Menon, Murali Purushothaman, K. Gopalakrishna Kurup, T.K. Chinna, Suresh Kurup and B.K. Purushothaman, for the Appellant; P.V. Asha, Government Pleader for Respondents 1 and 2 and P.C. Parameswara Panicker, P. Gopal, Thomas Mathew Nellimoottil, P.C. Sasidharan, M.P. Prabhanandan and S. Gopalkumaran Nair for Respondents 3 to 9, for the Respondent

Judgement

C.S. Rajan, J.—In these Original Petitions the common question relating to the rights and privileges of the members of the non-teaching staff working in the affiliated private colleges under one University for a transfer to another college under the same management affiliated to another University arises for consideration. O.P. Nos. 282, 742 and 12227 of 1997 relate to affiliated colleges under the Mahatma Gandhi University. O.P. No. 456/97 relates to Universities of Kerala, Calicut and Mahatma Gandhi. O.P. No. 19043 of 1996 has been filed by members of the non-teaching staff against promotion and transfers of persons in accordance with the seniority list prepared University-wise.

2. Reference to exhibits in this judgment will be with reference to the exhibits produced in O.P. No. 282/97. By Ext. P-1 dated 2nd September 1995, the

Government informed the Director of Collegiate Education that there was no enabling provision in the University Act or Statutes for a staff of a private college appointed in a college under a particular University to get a transfer to another University. Thereafter by Ext. P-2 circular dated 30th October 1995, the Principals/Managers of all private colleges were requested to prepare University-wise seniority lists of non-teaching staff. Accordingly the various private college managements affiliated to the respective Universities prepared seniority lists of non-teaching staff. In Ext. P-4 judgment dated 27th June 1996, this Court directed the Travancore Devaswom Board, a corporate educational agency having colleges under the Kerala and Mahatma Gandhi Universities to prepare seniority lists of the non-teaching staff of the colleges after inviting options.

3. In O.P. No. 4879/96 (Ext. P-4 in O.P. No. 12227/97), this Court directed the Government to consider as to whether the non-teaching staff is liable to be transferred from the jurisdiction of one University to another. Accordingly the Government issued Ext. P-7 letter dated 10th December 1996 to the Director of Collegiate Education. The Government found that in the absence of any specific provisions in the University Act/Statutes, inter-University transfer of non-teaching staff of private colleges under corporate managements from one University to another could not be prohibited until and unless such an enactment was made either by the Government or by the Universities. Therefore the earlier circulars and letters were cancelled by the Government.

4. The Petitioners in these Original Petitions except the Petitioners in O.P. No. 19043/96 do not want inter- University transfers. The Petitioners in O.P. No. 19043/96 want promotion and posting in the colleges affiliated to other Universities where there are vacancies.

5. The relevant provisions contained in the three Statutes governing the Kerala, Mahatma Gandhi and Calicut Universities are worded in the same language. In the Kerala University Act, Sections 63 and 64 deal with the above matter. In the Calicut University Act, Sections 63 and 64 deal with the inter-University transfer of teachers and non-teaching staff. In the Mahatma Gandhi University Act, they are Sections 67 and 68. Sections 67 and 68 of the Mahatma Gandhi University Act, are extracted below:

67. Non-teaching staff of Private Colleges- (1) The provisions of this Chapter shall, so far as may be, apply to the non-teaching staff of the private colleges.

(2) Subject to the provisions of Sub-section (1), method of appointment, pay and other conditions of service of the non-teaching staff of private colleges shall be such as may be prescribed by the Statutes.

68. Transfer of teachers to other Universities.- (1) Where an educational agency has colleges under the jurisdiction of the Gandhiji University and also under the jurisdiction of the Kerala University or the Calicut University, the educational agency shall within three months of the commencement of this Act or within such further period, not exceeding three months, as may be granted by the

Government for sufficient reason, prepare a seniority list of the teachers of all such colleges.

(2) After the preparation of the list under Sub-section (1), the educational agency shall give a right of option to the teachers as to the University under the jurisdiction or which he opts to remain and the teachers shall be allotted to each University area in accordance with such option:

Provided that where the number of teachers who have opted to work under the jurisdiction of the Gandhiji University or the Kerala University or the Calicut University is more than the number required, allotment shall be made on the basis of seniority.

(3) Any teacher aggrieved by any entry in the list prepared under Sub-section (1) or by the allotment under Sub-section (2) may appeal to the Government within sixty days from the date of communication of the list or order of allotment to him, and the decision of the Government thereon shall be final.

(4) Where a teacher is allotted to a University area under the section he shall not be transferred to a college affiliated to any other University.

(5) Nothing contained in this section shall apply in respect of Principals of private colleges.

6. According to Section 68(1), the educational agency shall prepare a seniority list of the teachers of all the colleges under it. Thereafter the educational agency shall give a right of option to the teachers as to the University under the jurisdiction to indicate in which University they are choosing to remain. Thereafter in accordance with their option, the teachers shall be allotted to the respective Universities. After a teacher is allotted to a University area, he shall not be transferred to a college affiliated to any other University.

7. u/s 67, the provisions of Chapter VIII which deals with the private colleges and shall so far as may be, apply to the non-teaching staff of the private colleges. So the question to be decided in this case is how far the provisions contained in Section 68 regarding the transfer and allotment of teachers to the other Universities can be made applicable in the case of the non-teaching staff?

8. Sri Gopalakrishna Kurup, learned Counsel appearing for the Petitioners in some of the Original Petitions argued that the words "so far as may be" appearing in Section 67 must be interpreted as to mean that the provisions of Section 68 must be made applicable unless they are excluded either expressly or by a necessary implication. The learned Counsel cited three judgments of the Supreme Court in order to impress upon this Court the above line of argument.

9. In the ruling reported in *The Associated Cement Co. Ltd. Vs. P.D. Vyas and Others*, , the Supreme Court had to consider the real ambit and scope of the words "so far as is practicable" appearing in Section 3(2) of the Industrial Employment (Standing Orders) Act. Considering the above provision the

Supreme Court observed as follows:

(6) Section 3 of the Act requires the employer to submit draft standing orders. Section 3(2) provides that in the draft thus submitted, provision shall be made for every matter set out in the Schedule which may be applicable to the industrial establishment, and where model standing orders have been prescribed, shall be, so far as is practicable, in conformity with such model. It is common ground that model standing orders have been prescribed in the present case, and so it follows that u/s 3, Sub-section (2), the draft submitted by the Appellants had to be in conformity with the model standing orders so far as was practicable. In other words, the effect of Section 3, Sub-section (2) is that unless it is shown that it is", impracticable to do so, the Appellants' draft had to conform to the model. This position cannot be disputed.... The cumulative effect of these provisions is that the certifying officer has to be satisfied that the draft standing orders deal with every matter set out in the Schedule and are otherwise in conformity with the provisions of the Act. This latter requirement necessarily imports the consideration specified in Section 3, Sub-section (2), that is to say, the draft standing order must be in conformity with the model standing order which is provided u/s 15(2)(b) for the purposes of the Act, and, as we have already seen, unless it is shown that it would be impracticable to do so, the draft standing order must be in conformity with the model standing order. It is quite true that this requirement does not mean that the draft standing order must be in identical words but it does mean that in substance it must conform to the model prescribed by the appropriate Government.

10. In the ruling reported in *The Land Acquisition Officer, City Improvement Trust Board Vs. H. Narayanaiah and Others*, the Supreme Court was required to consider the meaning of the words "in so far as they are applicable" appearing in Section 27 of the City of Bangalore Improvement Act. In the above case the Supreme Court observed as follows:

There was some argument on the meaning of the words "so far as they are applicable" used in Section 27 of the Bangalore Act. These words cannot be changed into "insofar as they are specifically mentioned" with regard to the procedure in the Acquisition Act. On the other hand, the obvious intention, in using these words, was to exclude only those provisions of the Acquisition Act which become inapplicable because of any special procedure, prescribed by the Bangalore Act (e.g. Section 16) corresponding with that found in the Acquisition Act [e.g. Section 4(1)]. These words bring in or make applicable so far as this is reasonably possible, general provisions such as Section 23(1) of the Acquisition Act. They cannot be reasonably construed to exclude the application of any general provisions of the Acquisition Act. They amount to laying down the principle that what is not either expressly, or, by a necessary implication, excluded must be applied. It is surprising to find misconstruction of what did not appear to us to be reasonably open to more than one interpretation.

11. In the ruling reported in *Dr Partap Singh and Another Vs. Director of*

Enforcement, Foreign Exchange Regulation Act and Others, the Supreme Court considered the words "so far as may be" appearing in Section 37(2) of the Foreign Exchange Regulation Act. Section 37(2) of the above Act provides that the provisions of the Code relating to searches, shall so far as may be, apply to searches directed u/s 37(1). In the above context the Supreme Court observed as follows:

12. Section 37(2) provides that the provisions of the Code relating to searches, shall so far as may be, apply to searches directed u/s 37(1). Reading the two sections together, it merely means that the methodology prescribed for carrying out the search provided in Section 165 has to be generally followed. The expression "so far as may be" has always been construed to mean that those provisions may be generally followed to the extent possible. The submission that Section 165(1) has been incorporated by pen and ink in Section 37(2) has to be negated in view of the positive language employed in the section that the provisions relating to searches shall so far as may be apply to searches u/s 37(1). If Section 165(1) was to be incorporated by pen and ink as Sub-section (2) of Section 37, the legislative draftsmanship will leave no room for doubt by providing that the provisions of the Code of Criminal Procedure relating to searches shall apply to the searches directed or ordered u/s 37(1) except that the power will be exercised by the Director of Enforcement or other officer exercising his power and he will be substituted in place of the Magistrate. The provisions of Sub-section (2) of Section 37 has not been cast in any such language. It merely provides that the search may be carried out according to the method prescribes in Section 165(1). If the duty to record reasons which furnish grounds for entertaining a reasonable belief were to be recorded in advance, the same could have been incorporated in Section 37(1), otherwise a simple one line section would have been sufficient that all searches as required for the purpose of this Act shall be carried out in the manner prescribed in Section 165 of the Code by the officer to be set out in the section. In order to give full meaning to the expression "so far as may be" Sub-section (2) of Section 37 should be interpreted to mean that broadly the procedure relating to search as enacted in Section 165 shall be followed. But if a deviation becomes necessary to carry out the purposes of the Act in which Section 37(1) is incorporated, it would be permissible except that when challenged before a Court of law, justification will have to be offered for the deviation. This view will give full play to the expression "so far as may be."

12. A reading of the discussion in all these rulings will lead to the conclusion that the expression "so far as may be" must be given full play. The above construction must also mean that the provisions contained in the section must be generally followed to the extent possible. It is also permissible to deviate from the general rule of following the provisions contained in the other section, provided that it has been made expressly permissible to deviate from the provisions which have been made applicable to the latter section.

13. Sri P.G. P. Panicker, learned Counsel appearing for the educational agencies argued that the words "so far as may be" maybe given the meaning "so far as it may be practicable". Of course, as held by the Supreme Court, such an interpretation is also possible for the expression "as far as may be".

14. Then the question in the context of these cases is whether it is practicable to prepare a seniority list of non-teaching staff for each University. The Travancore Devaswom Board had already prepared a list of non-teaching staff under the Kerala and Mahatma Gandhi Universities. They have also acted upon the above list and effected promotions and transfers. They are under challenge-in O.P. No. 19043/96. The Nair Service Society which is also having colleges under different Universities has started preparation of the seniority list but stopped in the midway because of the latest directions. Therefore it cannot be said that preparation of the seniority list is not practicable. Thus the argument of the learned Counsel appearing for the educational agencies may not be correct and it does not reflect the real state of affairs.

15. Therefore the proper interpretation to be given on the words "so far as may be" appearing in Section 67 is that the provisions contained in Section 68 have to apply to the non-teaching staff also. If such an interpretation is accepted, the educational agency has to prepare a seniority list of non-teaching staff University-wise and to effect transfers and promotions on the basis of the above seniority list.

16. The other argument advanced by Advocate Sri M.V. Thampan, learned Counsel appearing for the Petitioners in O.P. No. 19043/96 is that the promotional avenues of the non-teaching staff in the colleges affiliated to one University will be minimised. The vacancies which arise in other colleges belonging to the same educational agency but affiliated to a different University will not be available to the members of the non-teaching staff working under the same educational agency. But such a contingency is inevitable when different Universities are considered to be units for the purpose of promotion. Therefore I do not think that such depletion of chance of promotion to one section of employees can be a valid ground to give a limited meaning to the expression "so far as may be" appearing in Section 67 of the Mahatma Gandhi University Act.

17. Therefore the observation of the Government in Ext. P-7 that in the absence of any prohibition in the University Act/Statutes prohibiting inter-University transfer of non-teaching staff, the transfer of the non-teaching staff from colleges of one educational agency coming under one University to another belonging to the same educational agency, but affiliated to another University cannot be prevented is not correct. According to me, Sections 67 and 68 provide ample power to the educational agency to allot teachers and non-teaching staff from the colleges under one University to another college under a different University after calling for option and preparing a seniority list thereafter. For that purpose the educational agency is bound to billow the procedure prescribed in the various Sub-sections of Section 68.

18. The educational agencies who are parties to these Original Petitions are therefore directed to prepare a seniority list of non-teaching staff in accordance with Section 68 of the Mahatma Gandhi University Act and Section 64 of the Kerala and Calicut University Acts and publish the same as expeditiously as possible, at any rate within six months from the date of receipt of a copy of this judgment. Till the seniority lists are prepared as directed above, there shall not be any inter-University transfers of non-teaching staff. At the same time it is made clear that the educational agencies can resort to transfers and promotions either in accordance with the existing seniority list or in accordance with the provisional seniority list to be prepared as a temporary measure. Those transfers and promotions must be reviewed immediately after the finalisation of the seniority list.

The Original Petitions are disposed of as above.