
(1997) 12 KL CK 0038
In the High Court Of Kerala
Case No : O.P. No. 3004 of 1993

V.J. Varghese

APPELLANT

Vs

Vice Chancellor and Others

RESPONDENT

Date of Decision : 16-12-1997

Acts Referred:

Citation : (1998) 1 KLJ 176

Hon'ble Judges : B.N. Patnaik, J

Bench : Single Bench

Advocate : M.R. Rajendran Nair, for the Appellant; Thomas Mathew Nellimoottil, P.F. Thomas and N.N. Sugunapalan, for the Respondent

Final Decision : Dismissed

Judgement

B.N. Patnaik, J.—The petitioner, who is working as Senior Lecturer, Commerce Department, Aquinas College, Kochi-6, has challenged Ext.P1 order of the Vice Chancellor of Mahatma Gandhi University, Kottayam (1st respondent) dated 16.11.1992, by which the third respondent was declared to be senior to him in service. The petitioner commenced service as a Junior Lecturer in the St. Albert's College, Ernakulam on 16.7.1981. While he was working as such, he was appointed as Junior Lecturer in Commerce in Aquinas College, Kochi by order dated 27.10.1981. The third respondent was also appointed as a Lecturer in the same College. Both of them joined the College on 28.10.1981. Their first appointments as well as the subsequent promotions were approved by the University. In the gradation list of teaching staff, which was prepared by the Manager of Aquinas College (2nd respondent), the petitioner was shown to be senior to the third respondent. Being aggrieved by it, the third respondent filed a representation before the first respondent--Vice Chancellor--with a request to declare him as senior to the petitioner. The Vice Chancellor considered the question as to whether rule 4 or rule 7(b) of the "Rules to govern the seniority of teachers of Private Colleges under the Mahatma Gandhi University" (Ext.P6) is applicable to this case. He rejected the contention of the petitioner that the first

working day of the newly started college is 28.10.1981. He held that in the newly started college the first working day was the day when the Principal joined duty, i.e. 1.10.1981. Rule 7(b) of the seniority rules is not applicable in this case and therefore the - seniority in this case was fixed as per rule 4. The third respondent being senior in age, he is entitled to be declared as senior to the petitioner.

2. The petitioner has contended that the first working day of the college is the date on which the classes commence during the academic year. The days on which the College office functions or the Principal attends the college are not taken into account as working days of the college. Since teaching in this college commenced on 28.10.1981, the first working day of the college was 28.10.1981 and not 1.10.1981. Rule 7(b) of Ext.P6 is applicable to this case and the petitioner having had more length of service should have been declared as senior to the third respondent.

3. In the counter-affidavit filed by the first respondent, it is stated inter alia that the working days are not counted from the date when regular classes are commenced. Even if no regular classes are held on any day, it would still be a working day for the college, if the institution is not closed. While the petitioner had joined duty on 28.10.1981, the Principal had assumed charge on 1.10.1981 and as such the College has started to function from the date on which the Principal has assumed charge. The first working day of the college, therefore, is 1.10.1981. Hence, the Vice Chancellor is justified in holding that the third respondent is senior to the petitioner in terms of Rule 4 of Ext.P6 rules.

4. The only point for consideration in this case is whether the view of the Vice Chancellor that the first working day of the newly started college happened to be 1.10.1981 instead of 28.10.1981 is correct. The relevant rules, as referred to above, read as follows:

GANDHIJI UNIVERSITY

Private Colleges - Rules to govern the seniority of teachers-reg.

SYNDICATE considered the question of framing rules to govern the seniority of teachers of private colleges, along with the recommendations of the standing committee on teaching and non-teaching staff of private colleges held on 21.1.1986.

4. Where the date of first appointment is the same, seniority of a teacher in a cadre shall be determined on the basis of the rank in the selection list and where no selection list is maintained, seniority shall be fixed on the basis of age, the older person shall be senior.

Provided however, in the case of promotions from one cadre to another effected on the same date, their relative seniority in the lower cadre shall be maintained in the promote cadre, as well.

7. (a) When a teacher having service in other institution (s) takes up

appointment under a particular management his/her service in that particular management alone shall be taken into account to fix his/her seniority.

(b) Seniority of a teacher appointed to a College newly started by an educational agency shall be decided with reference to the length of total previous service, if any, in the same grade or cadre under any other educational agency or corporate management, as the case may be, reckoned on the first working day of the College, provided he/she joins duty on the first working day. (Subject to the provisions in (a) above).

5. There is no dispute that the petitioner and the third respondent joined in the newly started college on 28.10.1981. There is also no dispute that the third respondent is older than the petitioner. The previous experience of the petitioner can be taken into consideration only if it is held that the first working day of the newly started College is 28.10.1981. There is also no dispute that the Principal of the College assumed charge of the office on 1.10.1981. The Principal is the head of the institution. The administrative functions commenced soon after he joined the College. The two broad categories of functions of college are the academic functions like teaching the students after admission, conducting examinations etc., and administrative functions like admitting the students into the college and managing the day-to-day affairs of the college establishment. The academic function of a college cannot commence until the college starts functioning on the administrative side like admitting the students. Unless there are students duly admitted in the college, there is no occasion of teaching to the students. Therefore, the administrative function proceeds the academic function in a newly established college. In this view of the matter, I am of the opinion that the first working day of the college should be reckoned as the day on which the newly started college commences its administrative function. The administrative function can be commenced only when the Principal joins duty or some one acts in that capacity. In order to make the teachers teach the students, the college should have started functioning prior to it. In this case, the Principal having joined duty on 1.10.1981 and commenced the administrative functions of the college on that day in order to enable the teachers to perform their academic activities, the first working day of the college should be reckoned as 1.10.1981. The view taken by the Vice Chancellor (1st respondent), therefore, appears to be absolutely correct.

For the reasons stated above, I find that there is no merit in this writ petition. It is, therefore, dismissed. No costs.