IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE THOTTATHIL B.RADHAKRISHNAN
&
THE HONOURABLE MR. JUSTICE S.S.SATHEESACHANDRAN

FRIDAY, THE 28TH DAY OF FEBRUARY 2014/9TH PHALGUNA, 1935

CRP.No. 822 of 2005 (D)

[AGAINST THE JUDGMENT DATED 30-06-2005 IN APPEAL NO.9 OF 2004 OF THE CALICUT UNIVERSITY APPELLATE TRIBUNAL, THIRUVANANTHAPURAM]
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PETITIONERS/RESPONDENTS:
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1. THE MANAGER, PRAJYOTI NIKETAN COLLEGE, PUDUKKAD.

2. THE SECRETARY, PRAJYOTI NIKETAN SOCIETY, P.O.PUDUKKAD.

3. GOVERNING BODY, REP. BY CHAIRMAN (DIRECTOR), PRJAYOTI NIKETAN, PUDUKKAD.

BY SRI.MATHAI M.PAIKADAY, SENIOR ADVOCATE,
ADVS.SRI.JOSE KURIEN PERAYIL,
SRI.ALEX JOSE PAIKADA.

RESPONDENT/PETITIONER:
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1. DR.SR.ANCY S.H, PRINCIPAL (UNDER DISMISSAL), PRAJYOTI NIKETAN COLLEGE, PUDUKKAD.

<u>*ADDL. R.2. IMPLEADED:</u>

2. GOVERNMENT OF KERALA, REP. BY CHIEF SECRETARY.

***ADDL. R.2. IS IMPLEADED VIDE ORDER DATED 09/06/11 IN C.R.P.NO.822/05.**

R1 BY ADVS. SRI.P.VIJAYAKUMAR,
SRI.JOHNSON MANAYANI,
ADDL. R2. BY SR. GOVERNMENT PLEADER SRI. NOBLE MATHEW.

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 24-07-2013, THE COURT ON 28-02-2014 PASSED THE FOLLOWING:

Prv.

C.R.P.NO.822/2005-D:

APPENDIX

PETITIONERS' ANNEXURES:

ANNEXURE -I: **PHOTOCOPY OF THE REPORT OF THE ENQUIRY INTO THE CHARGES LEVELLED AGAINST SR. ANCY, PRINCIPAL, PRAJYOTI NIKETAN COLLEGE, PUDUKKAD.**

ANNEXURE-II: **PHOTOCOPY OF THE ORDER DTD. 12/05/2004 ISSUED BY THE GOVERNING BODY, PRAJYOTI NIKETAN COLLEGE, PUDUKKAD.**

ANNEXURE -III: **PHOTOCOPY OF THE JUDGMENT OF THE APPELLATE - TRIBUNAL IN APPEAL NO.18 OF 1997.**

RESPONDENTS' ANNEXURES: **NIL.**

//TRUE COPY//

P.S. TO JUDGE.

Prv.

"CR"

Thottathil B.Radhakrishnan

&

S.S.Satheesachandran, JJ.

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C.R.P.No.822 of 2005-D

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Dated this the 28th day of February, 2014

Order

Thottathil B.Radhakrishnan, J.

1. This revision filed under Section 60(9) of the Calicut University Act, 1965 by the Manager of an aided college affiliated to the Calicut University and the Secretary and the Governing Body of the Society which runs that College, is against an order passed by the Calicut University Appellate Tribunal, for short, 'Tribunal', in an appeal filed by the respondent under Section 60 (7) of that Act read with Regulation 8 of the Calicut University Appellate Tribunal Regulations.

2. Respondent was the Principal of the College. She was dismissed from service by order dated

15.05.2004 following disciplinary proceedings. She challenged that before the Tribunal. The Tribunal overruled the objections of the management that it is a minority institution and was entitled to protection under Article 30(1) of the Constitution of India. It further held that even if it were one entitled to such protection, that would not insulate it from the Tribunal interfering with the disciplinary action and the punishment imposed, since the actions complained of by the Principal are committed in violation of the laws, and the protection under Article 30(1) of the Constitution of India is no licence to act in an illegal manner of the esteemed rights of the employees of the institution. The Tribunal held that the appeal was maintainable under Section 60(7) of the Calicut University Act. On facts, the Tribunal held that the enquiry proceedings and the enquiry report and the findings therein were wholly unsustainable as regards all the four articles of charges levelled against the Teacher. The Tribunal, on an

appreciation of the entire materials on record, including the depositions and documentary evidence, held that the charges did not amount to misconduct, and that the allegations against the Principal have not been established by any material worth credence. Resultantly, the Tribunal ordered reinstatement of the appellant before it, with full backwages.

3. The learned senior counsel appearing for the revision petitioners argued that having regard to the contents of the objections raised by the management, in writing, before the Tribunal, it can never be held that the College is not a minority institution eligible to protection under Article 30(1) of the Constitution of India. He argued that the provisions in Section 60(7) of the Calicut University Act are in pari materia with the provisions of Section 60(7) of the Kerala University Act, 1974, and the said provision gives uncanalised and unguided power to the Tribunal, and therefore, following the

judgments of the Apex Court in Lilly Kurian v. Sr.Lewina [(1979) 2 SCC 124] and in Lilly Kurian v. University Appellate Tribunal [1997(1) KLT 722 (SC); the latter affirming the judgment of this Court in Manager, St.Joseph's Training College v. University Appellate Tribunal [1980 KLT 67 FB (5 Judges)] overruling the earlier Full Bench decision of this Court in Benedict Mar Gregorios v. State of Kerala [1976 KLT 458 (3 Judges)]; the Tribunal could not have entertained the appeal as against a minority institution. It was further argued that the quality of findings rendered by the Appellate Tribunal is conspicuously that which would be rendered by a Tribunal with no restrictions on the grounds of appeal or the nature of orders against which appeals could be filed. The interference made by the Tribunal is criticised as sweeping and having been made, as if it is a comprehensive adjudication by a court of first instance or an appellate authority with power to revisit a decision of an inferior authority on all fours,

by re-appreciating the entire materials and substituting the conclusions of the inferior authority with its conclusions. In this view of the matter, it is argued that the findings rendered by the Tribunal also tend to show that it is the result of an unrestricted appellate power being available to the Tribunal and such power cannot be exercised to interfere with the minority educational institution's disciplinary power over its employees, including teachers.

4. Per contra, the learned counsel appearing for the respondent Teacher argued that the entire file and materials, including the enquiry proceedings and the nature of allegations made in the memo of charges, clearly indicate that the situation is one of victimisation of a woman employee and the charges levelled have not been proved with any reliable material on record, much less to say any legal evidence. He, therefore, says that the decision of the disciplinary authority and the consequential order of dismissal are not based on

any material and are perverse and the educational agency has acted in violation of the principles of natural justice and the action is simply one of victimisation of the respondent who was the Principal of the College.

5.The appeal to the Tribunal is provided as per sub-section 7 of Section 60 of the Calicut University Act and this revision to the High Court is provided for under sub-section 9 of that section. Sub-section 7 of Section 60 of the Calicut University Act has not been declared as unconstitutional, void and inoperative by any competent court. The constitutional validity of the statutory provision contained in an enactment cannot be challenged in a statutory revision under provisions of that enactment, though that revision lies to the High Court. Bearing this in mind, we may immediately notice that the five Judge Full Bench decision of this Court in Manager, St.Joseph's Training College (supra) was one rendered deciding different original

petitions filed under Article 226 of the Constitution of India as well as revisions filed under the relevant provision of the Kerala University Act, 1974. The conclusion arrived at by the Full Bench in that case is that sub-sections 5 and 7 of the Kerala University Act contained uncanalised and unguided power and since the extent of appellate power is not defined, those provisions offend Article 30(1) of the Constitution and therefore, cannot be applied to an educational institution established and managed by a religious or linguistic minority. While affirming that decision, in Lilly Kurian v. University Appellate Tribunal(supra), the Hon'ble Supreme Court noted that sub-section 6 of section 63 of the Mahatma Gandhi University Act, 1985 is made specifically stating that any teacher aggrieved by an order imposing on him any of the penalties which are specified therein has a right of appeal to the Appellate Tribunal on the grounds which are set out in that sub-section. The Apex Court noted that the said provision in

the Mahatma Gandhi University Act, 1985 seems to have been drafted bearing in mind the decision of the Hon'ble Supreme Court in Ahmedabad St.Xavier's College Society v. State of Gujarat [(1974) 1 SCC 717]. Though it was mentioned in paragraph 17 of the judgment in Lilly Kurian v. University Appellate Tribunal (supra) (as reported in KLT), that Their Lordships were obviously not concerned in that appeal with the provisions of the Mahatma Gandhi University Act, 1985 which confers very different and more specific and limited appellate powers on the Appellate Tribunal, the observations in paragraph 14 of that precedent were made looking at the provisions of Section 63(6) of the Mahatma Gandhi University Act, in the backdrop of the law laid in Ahmedabad St.Xavier's College Society (supra). We see that those observations can be taken as indicative of the principle that any vice on the face of the uncanalised and unguided appellate power in similar provisions has to be read down and understood as limited in its application to

minority institutions in consonance with the provisions made in Section 63(6) of the Mahatma Gandhi University Act. We are inclined to take this view because, Section 63(6) of the Mahatma Gandhi University Act enumerates different penalties against which any teacher aggrieved may appeal to the Appellate Tribunal. The grounds of appeal also get confined to those which are set out in that section.

6. Relevant portion of Section 63(6) of the Mahatma Gandhi University Act reads as follows:

> "(6) Any teacher aggrieved by an order imposing on him any of the following penalties, namely:-
>
> (a) withholding of increment;
>
> (b) recovery from pay of any pecuniary loss caused to the institution or the monetary value equivalent to the amount of increment ordered to be withheld;

(c)reduction to a lower rank in the seniority list or to a lower grade or post; and

(cc)removal from service;

(ccc)compulsory retirement from service;

(d)dismissal from service,

may within sixty days from the date on which a copy of such order is served on him, appeal to the Appellate Tribunal on any one or more of the following grounds, namely:-

i.that there is want of good faith in passing the order;

ii.that the order is intended to victimise the appellant;

iii.that in passing the order, the educational agency has been guilty of a basic error or violation of the principles of natural justice;

iv.that the order is not based on any material or is perverse:

.....”

Such restriction on the nature of punishments which could be appealed against and the grounds to which that right of appeal is restricted clearly lays down statutory guidance, restrictions and norms for invoking the appellate power and exercise of that appellate power by the Appellate Tribunal. That being so, the vice noted in provisions which give uncanalised and unguided appellate power to the Appellate Tribunals under the University laws ought to stand regulated when a matter before it relates to a linguistic or religious minority entitled to protection under Article 30(1). In our view, such reading down of the provisions in sub-section 7 of section 60 of the Calicut University Act and regulating the exercise of appellate power in cases where the management is an institution belonging to a religious or linguistic minority denomination would reconcile and satisfy the constitutional requirement to enforce relevant statutory provisions in accordance with the Constitution. Such restricted application of sub-section 7 of

section 60 of the Calicut University Act would take away, the impairment of the religious and linguistic minority establishments' entitlements under Article 30(1) of the Constitution. This balancing of rights, while applying the scope of appellate jurisdiction under sub-section 7 of section 60 of the Calicut University Act, is necessary to ensure that the teacher, who is also a citizen of India, is not left high and dry, but gets the support of the adjudicatory process through a Tribunal which is nothing but the substitution of a seat of judicial authority. This would facilitate rendering justice between the teacher and the establishment in relation to a dispute, which would otherwise be a service dispute where the teacher should have remedies within the limits of the Constitution and the laws. Therefore, in so far as the provisions in Sub-section 7 of Section 60 of the Calicut University Act not having been declared unconstitutional, void and inoperative by any competent court, we are of the view that the said

provision has to be applied and jurisdiction of that Tribunal ought to be regulated to the extent noted above, that is to say, to be in conformity with the restrictions similar to those which are available in Section 63(6) of the Mahatma Gandhi University Act as quoted above.

7. Having held so, we proceed to examine whether the decision of the Tribunal warrants interference in this revision under sub-section 9 of Section 60 of the Calicut University Act which provides that any person who objects to an order passed by the Tribunal may prefer a petition to the High Court on the ground that the Appellate Tribunal has either decided erroneously or failed to decide any question of law. This is in pari materia with the provisions in Section 103 of the Kerala Land Reforms Act, 1963 which provides for a revision to the High Court on the ground that the Appellate Authority or the Land Board, or the Taluk Land Board, as the case may be, has either decided erroneously, or failed to decide, any

question of law. We make this comparative evaluation of the statutory provisions in two pieces of legislations of the same legislature to make immediate reference to the decision of the Hon'ble Supreme Court of India in Mammu v. Hari Mohan [(2000) 2 SCC 32] rendered in re questions relating to revisional jurisdiction of the High Court under the KLR Act. The questions that arose in that case were two. Firstly, it dealt with the issue as to whether a revision under Section 103 of that Act would lie against an order of remand made by the Appellate Authority to the Land Tribunal. The earlier views of the High Court of Kerala were overruled on that point, and it was held that an order of remand can be subjected to a revision under Section 103. The second question that arose for decision was as to the correctness of the revisional order of the High Court on the merits of the case. The High Court had discussed in detail, the facts and circumstances emerging on record and had come to the finding on the question as to whether the person who claimed the

benefit of the KLR Act is a kudikidappukaran or not, with respect to the structure that was in dispute in that case. Dilating on the scope of the revisional jurisdiction under Section 103 of that Act, Their Lordships held as follows:

> "From the afore-noted statutory provisions, it is manifest that the power of revision vested in the High Court is wide and it is not limited only to the question of law or jurisdiction. It hardly needs to be emphasised that the revisional power to disturb findings of fact or law recorded by the Land Tribunal or the Land Board or the Taluk Land Board as the case may be, (sic) only in appropriate cases in which the Court is satisfied that such interference is necessary in the interest of justice and for proper adjudication of the dispute raised by the parties."

Appreciating the facts and examining the findings of the High Court, the Apex Court held that the order of the High Court showed that it had taken note of the relevant facts and, it was on the basis of such facts and circumstances appearing

from the evidence on record, that the High Court had come to the findings rendered by it. The facts and circumstances noted by the High Court were held as relevant and germane for determining the question which was in dispute between the parties, that is to say, as to whether the person claiming to be a kudikidappukaran was one so with respect to the structure in question and as such, entitled to purchase the property. This precedent gives ample guidance to the exercise of revisional jurisdiction under Section 63(6) of the Mahatma Gandhi University Act which we, by the reasoning process made above, have adopted as a reasonable regulation of the jurisdiction of the Appellate Tribunal under the Calicut University Act and thereby, bringing it in conformity with the protection available to institutions of religious or linguistic minorities in terms of Article 30(1) of the Constitution as enunciated in the abovenoted precedents in the litigation relating to Lilly Kurian (supra). In fact, the Land Tribunal and

the Appellate Authority under the KLR Act are treated as quasi-judicial Tribunals and the Appellate Authority under the University Act is a Tribunal which is fundamentally a statutory body, though manned by a judicial officer. This is how the University Tribunals have been viewed by the precedents noted above. Under such circumstances, we can never ignore the eligibility of a teacher to redressal before an authority constituted for such purpose, having regard to the fact that the decision of that authority would be final.

8. While it is true that the Tribunal held that it has comprehensive powers as a court of first appeal and therefore, could visit the decision of the disciplinary authority by sitting in appeal and re-appreciating the entire materials and the records that it had before it, in the ultimate analysis, what emerges from the order of the Tribunal is that the initiation of the disciplinary proceedings against the Teacher was not in good faith and there is violation of the

principle of natural justice in the disciplinary proceedings, including the enquiry and also that the order issued by the disciplinary authority and the initiation of the proceedings were to victimise the appellant before it. The quality of findings rendered by the Tribunal is essentially to the effect that the order impugned before it is not passed on any reliable material in the assessment of that judicial authority.

9.The four charges levelled by the management against the Teacher were that (i) she permitted Sr.Christella to advance loan on interest to Johnson Joseph, Peon; (ii) she brought disrepute to the College by attempting to effect admission of B.Sc Psychology Course in violation of University Norms; (iii) she circulated letters making false allegations against the Manager; and (iv) she circulated letters defaming Manager, causing unrest in the Institution. The appellant submitted reply denying all the said charges. Thereafter, the Manager appointed an Advocate as

the Enquiry Officer. He commenced enquiry on 10.1.2004. MW1 to MW5 were the witnesses on behalf of the management and Exts.M1 to M23 were the documents marked on the side of the management. DW1 and DW2 were the witnesses on behalf of the delinquent and Exts.D1 to D22 were marked on her side. Exts.X1 to X7 were produced by the management at the instance of the Teacher. On 25.2.2004, the Teacher filed a list of two additional witnesses with the prayer that they may be examined on the next posting date. That was disallowed by the Enquiry Officer on the ground that the additional witnesses in the list were not produced for examination before him on 25.2.2004, the day on which the list was filed. The Enquiry Officer submitted his report to the Manager on 29.3.2004. After hearing both sides, it was held that the Teacher is guilty of Charges I to III and partially guilty of Charge No.IV. Based on that enquiry report, the management issued a letter dated 7.4.2004 calling upon the Teacher for her explanation to the report and the

proposed punishment. She submitted explanation. The Manager thereupon delegated his powers to the Governing Body to pass necessary orders as to punishment. The Governing Body thereafter passed the penalty order dismissing the Teacher from service. It was that order dated 12.5.2004 which was challenged before the Tribunal.

10. Evaluating the materials and the findings of the Enquiry Officer as regards Charge No.I, the Tribunal held that the specific case of the Teacher, in defence, was that there was a practice in the institution of giving advance to its staff on appropriate terms and that precedent was followed while Sr.Christella released amounts to Johnson Joseph, the Peon. DW1 had deposed before the Enquiry Officer that during his tenure as Principal, there was practice of advancing loan to the staff of the College on certain conditions. The Tribunal found that the management had no case that the delinquent teacher, while functioning as the Principal of

the College, had misappropriated any amount from the College fund. In fact, the management did not have a case to that effect. However, the Enquiry Officer held that the loan was advanced by Sr.Christella without the knowledge of the Manager and the delinquent teacher has committed misappropriation of funds belonging to the management. This was not even the case of the management, as rightly noted by the Tribunal. The Tribunal also noted that from Ext.X7, it is clear that the management had initially decided to initiate action against Sr.Christella. That decision was taken in the Governing Body meeting held on 8.7.2003 and no action was then proposed against the delinquent teacher. It was in the Governing Body meeting held on 21.8.2003 that decision was taken to proceed against the delinquent on Charge No.II. The Tribunal noted that Charge No.I regarding the release of funds by Sr.Christella and the alleged permission of the delinquent teacher in that regard were included as Charge No.I later with a view to

strengthening the disciplinary proceedings against the delinquent teacher. The Tribunal noted that in Ext.D11 letter dated 25.3.2003 issued by the Manager to Sr.Christella, the delinquent Principal is mentioned as a new hand in the post of Principal. The Tribunal noticed the fact that the alleged transaction of advancing loan to Johnson Joseph was on 15.11.2002 when the delinquent was functioning as acting Principal only from 1.11.2002. The alleged incident took place within 15 days of her provisional appointment as Principal. These facts and circumstances were wholly ignored by the Enquiry Officer. This, according to the Tribunal, was unsustainable. The Tribunal also examined the materials and had concluded that advances were given even to employees before they could be paid salary on the basis of the agreement between the Government under direct payment system. The testimony of DW2 was noted by the Tribunal to the effect that some irregularities were there in the College from the tenure of first Principal

onwards, however that, no steps were taken to ascertain the funds of the College on various accounts till Ext.M2 dated 7.4.2003. No recovery was effected from the Peon, namely, Johnson Joseph, to whom the amount of Rs.6,000/- was allegedly advanced. The Tribunal noted that no loss has been caused to the establishment on account of any act attributed to the delinquent teacher and the Enquiry officer had failed to consider the relevant aspects, including the fact that the delinquent was a fresh hand as a Principal and had been following the precedents carried on in the institution. The Tribunal concluded that the proceedings clearly show that the management was acting with a closed mind even at the time of issuing charge sheet, with a view to victimise the delinquent.

11. As regards Charge No.II, which pertains to the admission of B.Sc. Psychology course for 2003-04 allegedly against the University guidelines, the Tribunal examined Ext.M3 guidelines issued by the

University and had concluded in paragraph 25 of the order of the Tribunal that the University had only warned the delinquent teacher to be more vigilant in future. The Tribunal held that 33 students had joined leaving open only two vacancies. The observations of the University requiring the teacher to be more vigilant in future could not have been construed as censure as pleaded by the management. An error of judgment of a delinquent is a matter that falls for consideration in a disciplinary proceedings, and the non-consideration of such plea and the conclusion ignoring the reasonable and legitimate inferences available on the materials and pleadings on record, will necessarily vitiate the enquiry proceedings as being rendered in violation of the principles of natural justice. Non-advertence to relevant and material facts and particulars necessarily leads to the decision being arbitrary and perverse.

12.Considering Charges III and IV among the memo of

charges, the Tribunal held that the finding of the Enquiry Officer that Charge No.III was wholly and Charge No.IV was partially proved does not sustain at all in view of the materials on record. Ext.M1 is a copy of a typewritten letter addressed to the Arch Bishop of Thrissur. That person was not examined as a witness. The original of Ext.M1 was allegedly authored by the delinquent and the copy of that letter was allegedly circulated among public and staff members. The management examined MW1, the local Parish to show that copies of Ext.M1 were given. The Tribunal noted that even the management had no case that the photocopy of the letter was given to MW1 who deposed only that the copy of the letter was not personally delivered to him but was seen in his letter box. The delinquent teacher's plea before the Enquiry Officer was that Ext.M1 is a fabricated one that had abundant worth in the context of the fact that MW1 had deposed that the contents of Ext.M1 photocopy and those in the letter received by him are the same.

Ext.D2 relied on by the delinquent teacher in the enquiry proceedings was a letter signed by 33 teachers of the College stating, inter alia, that the Manager was pressurising them to sign on undated documents and also compelling them to give evidence against the delinquent and that if the Manager doubted a person, he would go to the extent of making false charge against that person. Looking into the entire materials, the Tribunal concluded that the management had not been able to establish that Ext.M1, the alleged defamatory statement, was authored by the delinquent teacher and the other charges of defamation and circulation of letters are also not supported by any convincing evidence. Therefore, it is necessarily a case where the order imposing punishment and the enquiry proceedings and report on which it is based, are vitiated by basic errors and violation of principles of natural justice and also because, it is not based on any material which could be treated as relevant to enter into a finding

against the delinquent to any extent. Under such circumstances, those findings are only to be treated as perverse.

13.The Tribunal noted the position of law that mere error of judgment, carelessness or negligence in performance of duty is not a misconduct and the findings of the Enquiry Officer against the delinquent are not supported by evidence and he had conducted the enquiry in a manner which was not fair. The Enquiry Officer was found to have not given opportunity to the delinquent teacher to examine the witnesses shown in the additional list submitted by her to disprove Charge No.II framed against her by the management. The Tribunal held that the contention of the delinquent about victimisation, bias, non-consideration of evidence by the Enquiry Officer etc. merits acceptance.

14.The aforesaid being the nature of findings by the Tribunal, it cannot but be said that the

exercise of appellate power by the Tribunal was only to the extent of the restrictive appellate power in terms of the limit of the provisions to which the appellate jurisdiction could be applied in relation to a minority institution as enunciated above.

15. For the aforesaid reasons, we find no reason to interfere with the impugned decision of the Tribunal.

In the result, this revision petition is dismissed. No costs.

Sd/-
Thottathil B.Radhakrishnan
Judge

Sd/-
S.S.Satheesachandran
Judge

Sha/
-true copy-

PS to Judge