Supreme Court of India
Lilly Kurian vs The University Appellate ... on 19 December, 1996
Bench: A.M. Ahmadi, Sujata V. Manohar

PETITIONER:
LILLY KURIAN

Vs.

RESPONDENT:
THE UNIVERSITY APPELLATE TRIBUNAL AND ORS.

DATE OF JUDGMENT: 19/12/1996

BENCH:
A.M. AHMADI, SUJATA V. MANOHAR

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T Mrs. Sujata V.Manohar.J St. Joseph's Training College for Women, Ernakulam is an educational institution established by the religious congregation of Mother of Carmel of Carmel belonging to the Roman Catholic Church. It is an educational institution established and administered by a religious minority and hence entitled to the Protection of Article 30(1) of the Constitution. The college was affiliated to the University of Kerala.

From the inception of the college in 1957 the appellant-Lilly Kurian was the Principal of the college. It is her case that she was persuaded by the management to accept the Principalship of the college when it was started and she was persuaded to resign a class I Gazetted officer's post in Government service for this purpose. The appellant also contends that the management had hoped that she would become a nun. She, however, refused to become a nun and got married, after which the relations between her and the management deteriorated. When one of the nuns belonging to the religious order became partially qualified for the Principal's post, attempts were made by the management to remove the appellant in order to make a qualified nun Principal of the College.

On account of an incident which took place in the college on 30th of October, 1969 between the appellant who was the Principal and a Lecturer Rajaretnam who was on deputation to the college, complaints were made by the appellant as well as by Rajaratnem to the Management Board of the college. The management Board thereupon decided to take disciplinary proceedings against the

appellant. According to the management, letters dated 11th November, 1969, 12th November, 1969 and 13th of November, 1969 were sent to the appellant under certificate of posting, giving her a charge-sheet and calling her for a disciplinary enquiry to be held on 16th of November, 1969. The appellant contends that she was on leave from 14.11.1969 to 17.11.1969 and was out of station. She received the letter of 13th of November, 1969 fixing the date of enquiry as 16th November, 1969 only on 17th of November, 1969. In the meanwhile, the enquiry was held ex-parte against the appellant on 16.11.1969. It concluded on 19.11.1969. On 13.12.1969 a show-cause notice was issued to the appellant asking her to show-cause why penalty of removal from service should not be imposed upon her.

Thereupon the appellant on 18th of December, 1969 filed a suit being O.S.819/69 before the Munsiff's court challenging the enquiry proceedings and asking for an injunction to restrain the management from implementing its decision. We are not referring in detail to these and various subsequent proceedings and suits filed by the management but only to certain relevant dates.

On 2nd of January, 1970 an order was passed by the management dismissing the appellant from service. The appellant filed an appeal from the order of dismissal to the Vice-Chancellor of the Kerala University under Ordinance 33(4) Chapter LVII of the Ordinances framed by the Syndicate of the Kerala University. The Vice-Chancellor after staying the order of dismissal by an interim order, ultimately allowed her appeal on 19.10.1970.

In the meanwhile, in April 1970 a fresh disciplinary enquiry was instituted against the appellant by the Managing Board of the College on the charge of insubordination in view of her having sent two communications to the Education Department to terminate the deputation of Rajaretnam. As a result, on 9th of December, 1969 deputation of Rajaretnam was terminated by the Education Department. The appellant was placed under suspension on 10th of April, 1970 in the second enquiry and sister Lewina was appointed a substitute principal. The appellant filed an appeal before the Vice- Chancellor under the above Ordinance. Both these appeals were heard together by the Vice-Chancellor who allowed both these appeals by the above order of 9.10.1970. The Vice-Chancellor after going in detail into the facts relating to the holding of the disciplinary enquiry in November, 1969 came to the conclusion, inter alia, that there was a serious violation of the principles of natural justice in holding the enquiry. He therefore, set aside, the order passed by the management and passed an order directing that the appellant should be allowed to continue as the principal.

In the meanwhile, as against the civil suit which was filed by appellant in the Munsiff's court, the management also filed various suits. Sister Lewina who was appointed substitute Principal, also filed certain suits as a result of which, in the course of this litigation, the orders passed by the Vice-Chancellor reinstating the appellant were also challenged. All these suits were heard together and by a common judgment dated 6th of December, 1972 the Munsiff upheld the orders of the Vice-Chancellor and permitted appellant to continue as the Principal.

Appeals were filed before the District Judge from this common judgment and order, and from him to the High Court. Ultimately in second appeal a Division Bench of the High Court by its judgment

and order dated 19.7.1973 held that the Vice-Chancellor who was a Statutory Tribunal had no power to grant reinstatement. On this narrow ground the Division Bench allowed the appeals of the management. While allowing the appeals the Division Bench held that ordinances 33(1) and 33(4) under which a right of appeal to the Vice- Chancellor was granted. were not in Violation of Article 30 (1) of the Constitution of India.

From the judgment of the Division Bench appeals were filed before this Court by the appellant. This Court. by its judgment and order dated 15.9.1978, (reported in 1979 [1] SCR 821) dismissed the appeal of the appellant. This Court said: (1) that the expression "conditions of service" includes everything from the stage of appointment to the stage of termination of service and also relates to matters pertaining to disciplinary action. The right of appeal forms a part of the conditions of service and is. therefore, valid.

(2) The protection of minorities which is granted under Article 30 (1) is subject to the regulatory power of the State. This regulatory power, power, however, is for the purpose of preventing maladministration or for promoting better administration of the minority institution or for its benefit. But if it impairs the right of a minority to administer the institution, it cannot be justified on the ground that such interference is in public interest. Interference would be Justified only in the interest of the minority concerned. (3) That the power of appeal which was conferred on the Vice-Chancellor in ordinance 33 (4) amounted to an encroachment on the right of the institution to enforce discipline in its administration because it was an uncanalised and unguided power. The grounds on which the Vice-Chancellor could interfere were not defined and his power of interference was unlimited. He could even interfere with the punishment which was inflicted. This would affect the disciplinary power of a minority institution. In the absence of any guidelines, such a power could not be considered as merely a check on maladminstration. This Court, therefore, set aside the two orders of the Vice- Chancellor though for reasons different from those given by the Division Bench of the Kerala High Court. This Court did not examine the merits of the claim made by the appellant in this view of the matter.

During the Pendency of appeal before the Supreme Court, the Kerala University Act, 1974 came into force on 9.8.1974. Under Section 61 of the Kerala University Act, 1974 it was provided as follows:-

> `61. Past disputes relating to service conditions of teachers:- Notwithstanding, anything contained in any law for the time being in force, or in any judgment, decree or order of any court or other authority,--
>
> (a) any dispute between the management of a private college and any teacher of that college relating to the conditions of service of such teacher pending at the commencement of this Act shall be decided under and in accordance with the provisions of this Act and the Statutes made thereunder:
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> (b) any dispute between the management of a private college and any teacher of that college relating to the conditions of service of such teacher, which has arisen after the 1st day of August, 1967, and has been disposed of before the commencement of this

> Act shall, if the management or the teacher applies to the Appellate Tribunal in that behalf within a period of thirty days from such commencement, be reopened and decided under and in accordance with the provisions of this Act and the Statutes made thereunder as if it had not been finally disposed of."

Under section 60(7) or the said Act, the Appellate Tribunal may, after giving the parties an opportunity of being heard and after such further enquiry as may be necessary pass such order thereon as it may deem fit including an order of reinstatement of the teacher concerned. Under Section 65 the Appellate Tribunal shall be a judicial officer not below the rank of a District judge nominated by the Chancellor in consultation with the High Court. In View of these provisions and particularly the provisions of Section 61 the appellant filed two fresh appeals before the Appellate Tribunal constituted under the Kerala University Act of 1974 being appeals 4 of 1974 and 8 of 1974. These appeals were allowed by the Appellate Tribunal by its judgment and order of 26th of May, 1977. The Tribunal also came to a conclusion similar to the conclusion which was arrived at by the Vice-Chancellor in the earlier proceedings and held, inter alia, that there was a violation of the principles of natural justice while holding the disciplinary enquiry. It also set aside the orders passed by the management and directed reinstatement.

The order of the Tribunal was challenged by the management before the High Court in revision. Two writ petitions were also filed before the High Court by the management and by sister Lewina in which the constitutional validity of Section 60(7) and Section 61 were challenged by the management as violation Article 30(1) of the Constitution. All these matters were placed before a Full Bench of Kerala High Court consisting of five judges. This was because, in an earlier Full Bench judgment of the Kerala High Court in the case of Benedict Mar Gregorios v. State of Kerala & Ors. (1976 KLT 458) the court had examined the Validity of Sections 60 and 61 of the Kerala University Act of 1974 and upheld the constitutional Validity. The management of the said college had contended that this view required reconsideration in the light of the judgment of this Court of 15th of September, 1978 in the earlier proceedings between the appellant and the respondents chellenging the orders of the Vice-Chancellor. In view of this contention a larger Full Bench was constituted. The Full Bench by its common judgment and order dated 29.8.1979 has struck down Sections 60(7) and Section 61 of the Kerala University Act. 1974 as Violating Article 30(1) of the Constitution of India. The present appeal is filed challenging this judgment and order of the Full Bench of the Kerala High Court.

To complete the history of litigation between the appellant and the respondents it seems that in the present litigation before the Appellate Tribunal, the appellant had not impleaded sister Lewina as a party respondent. To make good this lacuna, the appellant in 1977 filed three fresh appeals before the Tribunal being appeals 15 to 17 of 1977. These appeals have been dismissed by the Appellate Tribunal on 5.9.1981 in view of the present Full Bench judgment of the Kerala High Court which was delivered on 29.8.1979. The appellant filed a revision before the High Court from this judgment and order of the Tribunal which was ultimately not prosecuted by the appellant and was dismissed for non- appearance of the appellant on 23.1.1987.

On 17th of April, 1985 the Mahatma Gandhi University Act, 1985 came into force which became applicable to the said institution. Under Section 63(6) of this Act any teacher aggrieved by an order imposing on him any of the penalties which are specified in that sub-section has a right to appeal to the Appellate Tribunal constituted. under the said Act on the grounds which are set out in that sub-section. This Act and its appeal provisions seem to have been drafted bearing in mind the decision of this Court in The Ahmedabad St. Xaviers College Society and another etc. v. State of Gujarat and another (AIR 1974 SC 1389). Under Section 62(c) of the Mahatma Gandhi University Act, 1985 any dispute arising or pending between the management of a private college and the teacher of that college in respect of any matter coming under clause (a) or (b), shall be decided in accordance with the provision of this Act and the Statutes made thereunder. Once again, the appellant filed fresh appeals before the Appellate Tribunal constituted under the said Act, basing her right to file such appeals on Section 62(c). she also claimed damages of Rs.5,55,000/- for wrongful dismissal, The Appellate Tribunal, by its order dated 25.8.1987, dismissed the appeals filled by the appellant on the ground that there was no pending dispute before it at the time when the Mahatama Gandhi University Act, 1985 or the Ordinance which preceded it, came into force.

This appeal before us from the Full Bench decision of the Kerala High Court, therefore, appears to be the final round of litigation between the parties. Do Sections 60(7) and 61 of the Kerala University Act, 1974 violate Article 30(1) of the Constitution? Under Section 60(7) any teacher who is aggrieved by an order passed in any disciplinary proceedings can fine an appeal before the Appellate Tribunal constituted under the Act. The Appellate Tribunal has the power, after giving the parties an opportunity of being heard and after further such enquiry as may be necessary, to pass such order in appeal as it may think fit including an order of reinstatement of the teacher concerned. Section 61 gives a right of appeal to a teacher in respect of past disputes which are spelt out there. This Court, in the case of St. Xavier College (supra) observed in connection with Article 31(1) that the right conferred on the religious and linguistic minorities to administer educational institutions of their choice is not an absolute right. This right is not free from regulation. just as regulatory measures are necessary for maintaining the educational character and content of minority institutions, similarly regulatory measures are necessary for ensuring orderly, efficient and sound administration. The right to administer is not the right to maladminister. The Court (page 1399 para 41) made a distinction between a restriction on the right of administration. It said, "The choice in the personnel of management is a part of the administration. The university will take steps to cure the same".

In dealing with Section 52(a) of the Gujarat University Act which provided for reference of any dispute between the governing body and any member of the teaching other academic and non-teaching staff of an affiliated college to a Tribunal of Arbitration, the court held that in the case of a minority institution such held that in the case of a minority institution such reference will introduce an area of litigous controversy inside the educational institution. The domestic jurisdiction of the governing body would be displaced and a new jurisdiction will be created in an outside body. Hence such a provision would not apply to a minority institution.

The decision of this Court in the case of the appellant herself in Lilly Kurian v. Sr. Lewina and Ors. (1979 [1] SCR

821) is more directly on point in the present case. This Court held that the conferment of a right of appeal to an outside authority (like the Vice-Chancellor in that case) took away the disciplinary power of a minority educational authority, particulary because the appellate power was unlimited and undefined. The grounds on which he could interfere had not been defined and he had unlimited powers, including the power to interfere with the punishment imposed. Such an unguided and unchannelised power which could be exercised in appeal constituted interference with the right of a minority institution to administer its own institutions. It could not be construed merely as a check on maladministration. The same is the position with Sections 60(7) and 61 of the Kerala University Act of 1974. Once again, the power of appeal is "unchannelised" and "unguided" and the Appellate Tribunal can even order reinstatement of a dismissed teacher. In the light of the ratio laid down by these decisions, the Full Bench of the Kerala High Court, in the impugned judgment, has rightly held that Section 60(7) and Section 61 of the Kerala University Act, 1974 give powers to the Appellate Tribunal that are uncanalised and unguided. These Sections are, therefore, inconsistent with the fundamental rights guaranteed to religious and linguistic minorities by Article 30(1) of the Constitution. We do not see any reason to take a different view. Obviously we are not concerned in the present 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.

Taking an overall view of the matter, however, and considering all the circumstances we thought some compensation needs to be paid to the appellant. We put it to counsel during the course of hearing. Counsel had no comment to make on the question of quantum. The appellant has urged that the enquiry against her was not conducted in a fair manner and that she has lost many years of useful service. She had joined as the Principal of this College when it was newly founded on being persuaded by the management to give up a Class I Gazetted Officer's post. She also said she had spent a lot of money in pursuing the litigation. We feel that ends of justice will be met if she is awarded compensation. Learned counsel for the respondents 2 to 4 has very fairly agreed to abide by our directions.

We direct respondents 2,3 and 4 in these appeals to pay to the appellant compensation of Rs.3,50,000/- in full and final satisfiction of all her claims against these respondents. We hope that this will put an end to all existing and any further litigation between the parties who have been litigation between the parties who have been litigating since 1969 on various fronts. The appeal is disposed of accordingly. No order as to costs.