

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

&

THE HONOURABLE MRS. JUSTICE C.S. SUDHA

FRIDAY, THE 24TH DAY OF MARCH 2023 / 3RD CHAITHRA, 1945

RP NO. 220 OF 2023

AGAINST THE JUDGMENT DATED 15.09.2022 IN WA 1070/2022 OF

HIGH COURT OF KERALA

REVIEW PETITIONERS/APPELLANTS IN WRIT APPEAL:

- 1 DIRECTOR OF COLLEGIATE EDUCATION
THIRUVANANTHAPURAM, PIN - 695001
- 2 THE STATE OF KERALA REP. BY THE PRINCIPAL
SECRETARY TO GOVERNMENT
HIGHER EDUCATION DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM, PIN - 695001
BY ADV.B.VINITHA SR.GP.

RESPONDENTS/RESPONDENTS IN WRIT APPEAL:

- 1 THE MANAGER
ST.DOMINIC COLLEGE, KANJIRAPPALLY,
PARATHODE P.O., KOTTAYAM, PIN - 686512
- 2 THE MAHATMA GANDHI UNIVERSITY REPRESENTED BY ITS
REGISTRAR, PRIYADARSINI HILLS,
KOTTAYAM, PIN - 686560
BY ADVS
SRI.KURIAN GEORGE KANNANTHANAM (SR.)
SRI.SURIN GEORGE IPE
SRI.TONYGEORGE KANNANTHANAM

THIS REVIEW PETITION HAVING COME UP FOR ADMISSION ON
24.03.2023, ALONG WITH RP.225/2023, THE COURT ON THE SAME
DAY DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

&

THE HONOURABLE MRS. JUSTICE C.S. SUDHA

FRIDAY, THE 24TH DAY OF MARCH 2023 / 3RD CHAITHRA, 1945

RP NO. 225 OF 2023

AGAINST THE JUDGMENT DATED 15.09.2022 IN WA 1136/2022 OF
HIGH COURT OF KERALA

REVIEW PETITIONER/APPELLANT IN WRIT APPEAL:

STATE OF KERALA REP. BY THE PRINCIPAL SECRETARY
TO GOVERNMENT, HIGHER EDUCATION DEPARTMENT,
SECRETARIAT, THIRUVANANTHAPURAM., PIN - 695001
BY ADV.B.VINITHA SR.GOVERNMENT PLEADER

RESPONDENTS/RESPONDENTS IN WRIT APPEAL:

- 1 THE MANAGER,
ST.DOMINIC COLLEGE, KANJIRAPPALLY,
PARATHODE P.O, KOTTAYAM PIN - 686512
- 2 MAHATMA GANDHI UNIVERSITY,
REPRESENTED BY ITS REGISTRAR, PRIYADARSINI
HILLS, KOTTAYAM, PIN - 686560
BY
SRI.KURIAN GEORGE KANNANTHANAM (SR.)
SRI.SURIN GEORGE IPE
SRI.TONYGEORGE KANNANTHANAM

THIS REVIEW PETITION HAVING COME UP FOR ADMISSION ON
24.03.2023, ALONG WITH RP.220/2023, THE COURT ON THE SAME
DAY DELIVERED THE FOLLOWING:

P.B.SURESH KUMAR & C.S.SUDHA, JJ.

R.P.No.220 of 2023 in W.A.No.1070 of 2022
and

R.P.No225 of 2023 in W.A.No.1136 of 2022

Dated this the 24th day of March, 2023.

O R D E R

P.B.Suresh Kumar, J.

As the writ appeals from which these review petitions arise were disposed of by a common judgment, the review petitions are also disposed of by this common order. The State and its officials who were the appellants in the appeals are the petitioners in this review petitions.

2. The matters pertain to the approval of the appointment of Principal of St.Dominics College, a private aided Arts and Science College coming under the Direct Payment Scheme of the State Government. As done while disposing of the writ appeals, parties and documents are referred to in this

order also, as they appear in W.P.(C) No.5638 of 2022.

3. The petitioner was the Manager of the College. The College is affiliated to the Mahatma Gandhi University. When the post of Principal of the College fell vacant, the management appointed one Dr.Seemon Thomas as the Principal of the College. The said appointment was not approved by the University on the ground that the College does not have five hours of teaching workload per week for the subject viz, Statistics to be allocated to the Principal. Ext.P8 is the order issued by the University in this regard. Ext.P8 order was under challenge in W.P.(C) No.5638 of 2022. The case set out by the petitioner in the writ petition was that minimum teaching workload is not insisted for the Principal either in the Ordinance issued by the Syndicate of the University under Section 37 of the Mahatma Gandhi University Act or in the Regulations issued by the University Grants Commission (the UGC).

4. A counter affidavit was filed on behalf of the State contending that the State is empowered to fix the

teaching workload of teachers in private colleges and that a minimum workload of five hours per week is mandatory for Principals also in terms of the orders issued by the Government from time to time.

5. As a matter of fact, it is in terms of Ext.P1 order that the Government has prescribed that Principals of Arts and Science Colleges should handle five hours of teaching workload per week. However, when Ext.P1 order was later modified as per Ext.P2 order in order to make the former in tune with the prescriptions in the Regulations issued by the University Grants Commission as regards workload, no prescription was made as regards the workload to be handled by Principals of Arts and Science Colleges. Later, the Government modified Ext.P2 order with retrospective effect from the date of Ext.P1 order, prescribing that the Principals of Arts and Science Colleges shall also handle five hours of teaching workload. Ext.R3(a) is the order issued by the Government in this regard. W.P.(C) No.10888 of 2022 was instituted by the petitioner challenging Ext.R3(a) order.

6. The learned Single Judge took the view that insofar as Statute 81 of Chapter 45 of the Statutes which enumerates the duties and responsibilities of Principals of Arts and Science Colleges does not provide that there shall be teaching workload for Principals, and insofar as the Mahatma Gandhi University Ordinance regarding Workload and Staff Pattern of Teaching Staff of Private Aided Arts and Science Colleges, 2018 (the Ordinance) issued under Section 37 of the Mahatma Gandhi University Act dealing with the workload of teachers prescribes only a maximum workload of five hours per week for Principals, it cannot be said that there shall be a minimum teaching workload for the Principal. The learned Single Judge also took the view that in the light of the scheme of the Act as also the Statutes and Ordinances issued thereunder, the Government cannot prescribe workload for teachers and Principals of private colleges. It was also held by the learned Single Judge that at any rate, Ext.R3(a) does not apply to the appointment of the Principal of the College effected prior to the said order. In the circumstances, the writ

petitions were allowed and Ext.P8 order of the University and Ext.R3(a) order of the Government were set aside, and the proposal for approval of the appointment of the Principal of the College was remitted for fresh consideration by the University untrammelled by Exts.P1 and R3(a) orders. As noted, the State and its officials preferred writ appeals aggrieved by the said decision of the learned Single Judge.

7. The following were the questions formulated for decision in the appeals:

- i) Whether the State Government is empowered to issue orders fixing the workload of teachers including Principals of private colleges?
- ii) Can Ext.R3(a) order be said to be only explanatory in nature?
- lii) Do the Act and the Statutes and Ordinances issued thereunder, as also the UGC Regulations absolve the Principal of an Arts and Science college completely from the teaching responsibility?
- iv) Does the impugned judgment call for any

interference in these appeals?

After hearing the learned counsel for the parties on either side, we have answered the first three questions in favour of the State and the last question in favour of the petitioner. According to the State and its officials, the view expressed by us for answering the last question in favour of the petitioner is vitiated by an error apparent on the face of the record warranting interference of this Court in exercise of its review jurisdiction.

8. Heard the learned counsel for the parties.

9. We have answered the first three questions formulated for decision in the appeals holding that the State is empowered to issue orders fixing the workload of teachers including Principals of private colleges; that Ext.R3(a) order is a clarificatory one and that the Mahatma Gandhi University Act and the Statutes and Ordinances issued thereunder as also the UGC Regulations do not absolve the Principals of Arts and Science Colleges from teaching responsibility. Despite the aforesaid findings, we refrained from interfering with the

decision of the learned Single Judge for the various reasons stated in paragraph 18 of the judgment which read thus:

18. Question (iv): As noticed, approval was declined for the appointment of the Principal on the ground that five hours of teaching workload is not available in the college for the Principal. Let us now examine the question as to whether the said stand of the University is correct. Ext.P7 communication issued by the University to the Director of Collegiate Education indicates that the workload in Statistics, the subject of the Principal in the college is 16.5 hours and there is a sanctioned post, and a permanent teacher is working against that post. Looking at the facts in the above perspective, the university cannot be faulted for having declined approval of the appointment of the Principal. But, as noticed, Ordinance 9(3) which is extracted in paragraph 17 above specifies that from the total hours of teaching calculated for a particular department, the workload of the Principal, if the Principal belongs to that Department, shall be deducted and the balance so arrived at shall be divided pro rata by the maximum workload of all categories of teachers. It is also provided therein that if there is a balance of 9 hours workload or more, a proposal for creation of an additional post can be made. Assuming that there was no teacher for Statistics in the college, a teacher could have been appointed in the college after the appointment of the Principal, of course, after making a proposal before the Government for creation of an additional post and in that case, there would not have been any issue relating to the approval of the appointment of the Principal as also the teacher so appointed, for the workload

available even after deducting the workload of the Principal is more than 9 hours. Of course, the situation here is different inasmuch as a teacher is already working. As pointed out by the learned Senior Counsel for the petitioner, pursuant to the impugned judgment, the appointment of the Principal of the college has already been approved. The question therefore, is as to whether the said decision of the University should be interfered with by reversing the judgment, as the approval was accorded for the appointment based on the direction in the impugned judgment. The University has not preferred any appeal challenging the impugned judgment. As we find that the Government would have certainly obliged to sanction an additional post taking upon itself the financial obligations arising out of the same, had this been a case where there was no teacher in the college for the subject Statistics, we deem it appropriate to refrain from interfering with the decision of the learned Single Judge, treating the direction as one passed in exercise of the discretionary jurisdiction of the court.

As explicit from the extracted paragraph, it is placing reliance on Ordinance 9 of the Mahatma Gandhi University Ordinance regarding Workload and Staff Pattern of Teaching Staff of Private Aided Arts and Science Colleges, 2018 (the Ordinance) that we have decided not to interfere with the decision of the learned Single Judge. Ordinance 9 reads thus:

“(9). Procedure for calculating the number of teachers required for a Department.

i. Total hours of teaching work per week (Lecture/Practical) shall be 25. Apart from the above there shall be Tutorials, Tests, Exams, Field Work and extracurricular activities, which do not come under the purview of fixing the Staff Pattern.

ii. The total number of lecture hours per week and supervision periods of practical classes for Science subjects shall be calculated first on the basis of hours prescribed for the concerned subject in the syllabus for the respective hours and strength of subjects.

iii. From the total hours so calculated the workload of Principal (if the Principal belongs to that Department) shall be deducted. The balance hours so arrived at shall be divided pro rata by the maximum workload of all categories of teachers after deduction as prescribed above. If there is a balance of 9 hours or more, a proposal for the creation of an additional post may be made as per section 59(1) of Mahatma Gandhi University Act 1985. The workload shall be distributed equally among all teachers.”

It is evident from Ordinance 9(iii) of the Ordinance extracted above that while calculating the number of teachers required for a particular department, if the Principal belongs to that department and if the workload comes to nine hours or more, after deducting his/her workload, a proposal for the creation of an additional post can be made. Even though the said provision does not directly apply to the facts of the case, having regard to the fact that the Government would have certainly obliged to

sanction an additional post, had this been a case where there was no teacher in the college for the subject Statistics, we felt that it is only appropriate that we refrain from interfering with the decision of the learned Single Judge treating the direction as one issued by the learned Single Judge in exercise of the discretionary jurisdiction vested in him.

10. The singular contention of the State and its officials is that the Ordinance is one framed by the Syndicate of the University in terms of the specifications laid down by the Government in Ext.P1 order and there is a provision in the Ordinance itself to the effect that the same shall stand modified to the extent of the amendments which the Government would make from time to time to Ext.P1 order. According to the review petitioners, the provision in Ext.P1 order that after adjusting the workload at the rate of 16 hours per week per teacher, if the remaining workload in a particular subject in a college is 9 hours and above, the college would be free to apply for an additional post, has been given a go-bye in Ext.P2 order by clarifying that a workload of 16 hours per week is required for

sanctioning regular teaching posts; that no teaching posts will be allowed for a workload of less than 16 hours and that service of Guest Lecturer alone will be permitted for subjects with a workload of less than 16 hours. The provision in Ext.P2 order relied on by the review petitioners reads thus :

“In all Aided Arts and Science Colleges in the State, workload of 16 hours per week is required for sanctioning and filling up of regular teaching posts. No regular teaching post will be allowed for a workload of less than 16 hours, even if it is a single faculty subject. Service of Guest lecturer alone will be permitted for subjects with a workload of less than 16 hours.”

According to the review petitioners, when Ext.P2 order is issued modifying Ext.P1 order, the corresponding provision in the Ordinance also stands modified, and this Court, in the circumstances, ought not have relied on the unmodified Ordinance to answer question (iv) in favour of the petitioner.

11. As noticed, it is placing reliance on Ordinance 9 of the Ordinance dealing with the procedure for calculating the number of teachers required for the Department that we have answered question (iv) in favour of the petitioner, taking the stand that the Government would certainly have obliged in

sanctioning an additional post, had this been a case where there was no teacher in the college for the subject Statistics. But, as pointed out by the State, while acting upon the provision contained in the Ordinance dealing with the procedure for calculating the number of teachers required, this Court omitted to take note of the specific provision in the Ordinance to the effect that the same is one prepared in tune with Ext.P1 order and that the same will stand modified to the extent of amendments which the Government would make from time to time to the said order. The aforesaid provision in the Ordinance reads thus:

“NOTE: The above workload is fixed in accordance with the specification laid down in the Government Order No.G.O. (Ms).93/2018/H.Edn. dtd 09.05.2018 and shall stand modified to the extent of amendments, which the Government would make from time to time.”

In the light of the said Note, Ext.P2 order issued by the Government modifying G.O.(MS) No.93/2018/H.Edn dated 09.05.2018 shall be treated as part of the Ordinance and if the same is treated as part of the Ordinance, in the light of the

provision in Ext.P2 order that no regular teaching post will be allowed for a workload of less than 16 hours and that service of Guest Lecturer alone will be permitted for subjects with workload of less than 16 hours, the provision in the Ordinance that if the Principal belongs to a particular department and if the workload comes to nine hours or more, after deducting his/her workload, a proposal for creation of an additional post can be made, has become obsolete. Needless to say, the finding on question (iv) based on the said obsolete provision is vitiated, warranting correction in exercise of the review jurisdiction of this Court, as it is an error apparent on the face of the record.

12. In the light of the finding aforesaid, we would have normally interfered with the decision of the learned Single Judge. But, it is seen that inasmuch as the University has already approved the appointment of the Principal of the College, the State does not want this Court to interfere with the direction issued by the learned Single Judge. Even the very prayer in the review petition is to answer question (iv) in favour

of the State without disturbing the appointment and the decision of the University to approve the appointment. On a query from the Court, the learned Government Pleader reiterated the said stand and submitted that the review of the finding on question (iv) is sought, as it is apprehended that the finding on the said question would be cited as a precedent in other cases.

In the circumstances, the review petition is disposed of with the findings and observations made in this order.

Sd/-

P.B.SURESH KUMAR, JUDGE.

Sd/-

C.S.SUDHA, JUDGE.

YKB