

State of Kerala

Vs

Mother Anasthasia, Superior General and Others

Civil Appeals Nos. 6768-69 of 1983

(S. Saghir Ahmed, K. Ramaswamy JJ)

06.02.1997

ORDER

1. These appeals by special leave arise from the judgment of the Division Bench of the Kerala High Court in OPs Nos. 868 of 1977 and 4934 of 1976.

2. The admitted position is that Smt. Mary Lily, the third respondent, was temporarily appointed in a leave vacancy for a period of three months effective from 2-1-1974 in St. Joseph's College for Women, Irinjalakuda. After the expiry of the period, she ceased to be a Lecturer. In 1976, when a permanent vacancy had arisen advertisement was made for recruitment. Pursuant thereto, when 27 candidates including the third respondent had applied for and called for selection therein Smt. Mariamma Chacko, the fourth respondent was selected. The third respondent challenged the validity of the selection and appointment of Smt. Mariamma on the ground that under Section 57(6) of Calicut University Act, 1975, she had preferential claim for appointment since she was a discharged employee. Sub-section (6) of Section 57 reads as under :

"57. (6) Notwithstanding anything contained in sub-sections (1) and (4), a teacher discharged from a private college on or after the 14th day of March, 1974, due to abolition of a course of study in that college or for any other reason except disciplinary action against him shall be given preference in the matter of future appointments in the private college or, as the case may be, any of the private colleges under the management of the educational agency within the University area."

3. A reading thereof would indicate that notwithstanding anything contained in sub-section (1) and sub-section 4 of Section 57, a teacher discharged from a private college on or after 14-3-1974 due to abolition of a course of study in that college or for any other reason except on disciplinary action against him, shall be given preference in further appointments in a private college or any of the private colleges under the management of the educational agency within the university area. Admittedly, the third respondent was appointed in a leave vacancy for a short period of three months. The intendment of sub-section (6) appears to be only that when a permanent teacher or a teacher appointed on a regular basis is discharged from service due to abolition of the course of study in that college or for any other reason, obviously, other analogous causes other than disciplinary action, such a teacher who held the post was to be given preferential treatment for future appointment. A temporary teacher in a leave vacancy cannot be considered as discharged nor can claim the status as discharged employee. Discharge would not be for any other reason ejusdem generis due to abolition of the post or course of study or such similar circumstances except for discharge due to misconduct. Such a teacher only will be eligible to set up preferential claim for appointment but not a teacher who fortuitously came to be appointed in a leave vacancy much less

for a limited period.

4. The appeals are accordingly disposed of. No costs.