

STATE OF KERALA

v.

MOTHER ANASTHASIA, SUPERIOR GENERAL AND ORS.

FEBRUARY 6, 1997

[K. RAMASWAMY AND S. SAGHIR AHMAD, JJ.]

Service Law:

Calicut University Act, 1975 :

Sections 57(1), (4) and (6) - Lecturers—Preferential claim for appointment—Could be claimed only by those Lecturers discharged on abolition of the post or course of study or such similar circumstances—A temporary teacher in a leave vacancy cannot be considered as a discharged employee as such—Hence she cannot claim preferential Right.

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 6768-69 of 1983.

From the Judgment and Order dated 19.8.80 of the Kerala High Court in O.P. Nos. 868/77-C and 4934 of 1976-D.

M.T. George for the Appellant.

Joseph Paikada for K.M.K. Nair and M.A. Firoz (NP) for the Respondents.

The following Order of the Court was delivered:

These appeals by special leave arise from the judgment of the Division Bench of the Kerala High Court in O.P. Nos. 868/77 and 4934/76.

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 January 2, 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, fourth respondent was selected. The third respondent chal-

A langed 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 :

B "Notwithstanding anything contained in sub-sections (i) 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 reference in the matter of future appointments
 in the private college or, as the case may be, or any of the private
 colleges under the management of the educational agency within
 C the university area."

(Emphasis supplied)

D A reading thereof would indicate that notwithstanding anything con-
 tained in sub-section (i) and Section 4 of Section 57, a teacher discharged
 from a private college on or after March 14, 1974 due to abolition of a
 course of study in that college or for any other reason except on discipli-
 nary 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
 E 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
 permanent teacher or 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 then disciplinary
 F action, such a teacher who held the post was given preferential treatment
 for future appointment. A temporary teacher in a leave vacancy cannot be
 considered as discharged nor claimed the status as discharged employee.
 Discharge would connote for any other reason *ujus dem 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
 G to set up preferential claim for appointment but not a teacher who for-
 tuitously came to be appointed in a leave vacancy much less for a limited
 period.

The appeals are accordingly disposed of. No costs.

G.N.

Appeals disposed of.