

A STATE OF KERALA & ORS. ETC. ETC.

v.

ARUN GEORGE & ORS. ETC. ETC.

B (Civil Appeal Nos. 8459-8461 of 2010)

JANUARY 14, 2015.

**[V. GOPALA GOWDA AND R. BANUMATHI, JJ.]**

C *Education / Educational Institutions – Private*  
*educational institutions and managements – Payment of*  
*salary to teachers appointed in the newly commenced*  
*courses – Direct Payment System evolved by State*  
D *Government whereby it decided to introduce a scheme of*  
*direct payment of salaries to teaching and non-teaching staff*  
*of private colleges, the management of which agreed to*  
*Government control in the matter of appointment of teaching*  
*& non-teaching staff, and in the admission of students – 8<sup>th</sup>*  
E *respondent–management executed and agreed to the same*  
*– Vide Government Order, sanction was accorded for starting*  
*new courses subject to the condition that there will be no*  
*additional financial commitment on the part of Government*  
*– Sanction of new courses led to the increase of work load*  
F *and the services of respondent nos. 1 to 7 utilised by the 8<sup>th</sup>*  
*respondent–management – Respondent nos. 1 to 7*  
*appointed against sanctioned posts of teachers – Proposal*  
*forwarded by 8<sup>th</sup> respondent-management for approval of the*  
*appointment of respondent nos. 1 to 7 rejected – Writ petition*  
G *– High Court held that the conditions relied on by the*  
*Government were violative of the provisions contained in the*  
*Direct payment agreement and directed the State to pay*  
*salary and allowances to the teachers appointed by the*  
*private managements in the newly commenced courses –*

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*Justification – Held: Justified – No case of the Government that 8<sup>th</sup> respondent – management violated the terms of the Direct Payment Agreement – For many years, services of respondent nos. 1 to 7 were utilized for imparting instruction, invigilation and other duties – When respondent nos. 1 to 7 were appointed by the Statutory Selection Committee, no reason as to why respondent nos. 1 to 7 should be denied the payment of salary – It was obligatory for the Government to honour these appointments and pay the salary.*

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 8459-8461 of 2010

From the Judgment and Order dated 07.10.2009 of the High Court of Kerala at Ernakulam in R.P. Nos. 101 and 180 of 2008 and W.A. No. 2529 of 2005

With

Civil Appeal Nos. 8463-8464, 8466, 8470, 8471-8472, 8473, 8474, 8475, 8476, 8477, 8478, 8479, 8480, 8481-8482 and 8483 of 2010

Civil Appeal Nos. 1368, 10865, 10867-10868 and 10869 of 2011

Civil Appeal No. 1552 of 2012

Civil Appeal No. 8893-8894 of 2014

Civil Appeal Nos. 1202-1203 of 2015

C. S. Rajan, Mathai M. Paikaday, Babu Varghese, K. L. Varghese, Jogy Scaria, Bina Madhavan, P. V. Dinesh, P. I. Jose, Alok K. Prasad, Vishwanath Bahuguna, James P. Thomas, Rohit Kumar Singh, V. J. Francis, Anupam Mishra, Simanta Kumar, M. P. Vinod, Jose Abraham, E. M. S. Anam, Dheeraj Nair, Haris Beeran, Mushtaq Salim, Radha Shyam

A Jena, M/s. T. T. K. Deepak & Co., K. Rajeev, Dr. K. P. Kylasanatha Pillay, A. Venayagam Balan, Ranjith K. C., Lakshmi Raman Singh, Harshad V. Hameed, Dileep Poolakkot, Sajith P., B. N. Dubey for the Appearing Parties.

B The Judgment of the Court was delivered by

**R. BANUMATHI, J.** 1. Leave granted in Special Leave Petition (C) Nos. 29423-29424 of 2010.

C 2. State of Kerala has filed these appeals assailing the order passed by the High Court allowing various review petitions filed by the respondents and declaring that the conditions relied on by the Government are violative of the provisions contained in Direct Payment Agreement and the University Statutes and directing the State to pay salary and allowances to the teachers who were appointed by the Private Managements in the newly commenced courses.

D 3. The issue arising in these appeals being similar, the cases were heard together and shall stand disposed of by this common order. For convenience, the appeals filed by State of Kerala and others in C.A. Nos. 8459-8461 of 2010 challenging the order dated 07.10.2009 in R.P. Nos. 101 & 180 of 2008 and W.A. No. 2529 of 2005 are taken as lead case.

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4. Briefly stated the background facts are as under:-

G The State of Kerala accorded sanction on 09.11.1998 to the private educational institutions and managements for starting few new courses subject to the condition that there should be no additional financial commitment on the part of the State on that account. The 8<sup>th</sup> respondent-management applied to the Mahatama Gandhi University and the university vide an order dated 13.11.1998 granted permission to start

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new degree/graduate and post-graduate courses w.e.f. the academic session 1998-99 without any additional financial commitment to the University/Government. The managements for various aided colleges including the 8<sup>th</sup> respondent - management applied for affiliation of new courses. The Government issued an order dated 06.12.1999 according sanction for starting the new courses as mentioned in the appendix to the Government order subject to the condition that the expenditure will not exceed the budget allotment for the purpose of any account. Respondent Nos. 1 to 7 who were appointed by the 8<sup>th</sup> respondent-management to the various new courses sanctioned by the Government, the management forwarded the proposal for approval of their appointment to the university; but the same was rejected on 31.05.2002. In the year 2003, staff fixation order was issued to the Secretary of 8<sup>th</sup> respondent - management on 10.12.2003 for the years 2001-02 and 2002-03.

5. Being aggrieved by the non-approval of the appointment of respondent nos. 1 to 8, respondents preferred Writ Petition (c) No. 482 of 2005 seeking a writ of mandamus and also to quash the staff fixation orders. Vide a judgment dated 12.08.2005, learned Single Judge allowed the writ petition holding that the Government is liable to pay the salary and other allowances to the teachers appointed to the new courses by the managements.

6. Aggrieved by the said order, State of Kerala preferred an appeal bearing W.A. NO. 2529 of 2005. In the meantime, many writ petitions were filed on similar grounds. By the common judgment dated 18.08.2007, Division Bench allowed the appeal filed by the State of Kerala and dismissed the other writ petitions. Division Bench held that the State can always impose conditions while according sanction and the condition so imposed, that the new appointments are without any

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A additional financial commitment to the State, is perfectly legal and valid and the private college managements are bound by it.

7. Aggrieved by the same, various review petitions were preferred by the respondents and also other private college managements contending that the said judgment dated 18.08.2007 was rendered without adverting to the provisions of the University Act, the Statutes, the Direct Payment Agreement and various judgments of the Apex Court as also that of the High Court. Vide a common order dated 7.8.2009, the Division Bench allowed the review petitions holding that the conclusion of the Division Bench in W.A. No. 2529 of 2005 (dated 18.08.2007) that Direct Payment Agreement do not apply to courses subsequently commenced, is directly contrary to Clause 35 of the Agreement. While allowing the review petitions, the Court directed the State to pay salary and allowances to the teachers who were appointed by the private managements in the newly commenced courses. Being aggrieved, the State has filed these appeals assailing the said order.

8. Mr. C.S. Rajan, learned senior counsel for the appellants contended that Government should not be compelled to bear the salary and expenses of those teachers who were appointed by the private managements, as private managements got the approval of the new courses subject to the condition that there will be no additional financial commitment. Further, learned senior counsel for the State submitted that the private colleges, after accepting the conditions in the Government Orders that there will be no additional financial commitment, are estopped from contending the contrary and the University has rightly rejected the approval of the appointment of respondent nos. 1 to 7 for want of posts/strength fixed for the academic year.

9. Per contra, Mr. Babu Varghese, learned senior counsel appearing for respondent no. 8 submitted that in the guise of imposing restriction of financial commitment the Government is violating the statutory provisions as well as the clauses in the Articles of Direct Payment Agreement. It was further contended that they have fully discharged their obligation in terms of the provisions of Direct Payment Agreement, in terms of admission of students, collection of fees, reservation of seats as prescribed by Government and remitted the same in the Government treasury and, therefore, the State is also obliged to perform its mutual obligation under the Articles of Direct Payment Agreement. It was also submitted that the documents obtained under the provisions of Right to Information Act which are annexed would clearly show that there had been budget allocation for sanctioning aided courses and some of the teachers appointed in the new courses were paid the salary.

10. Mr. Mathai M. Paikeday, learned senior counsel for respondent nos. 1 to 7 reiterated the above submissions and additionally submitted that the Government is bound to pay the salaries of the teachers as both the selection of respondent nos. 1 to 7 and their appointment were in accordance with the provisions of the University Laws and Articles of the Direct Payment Agreement.

11. We have also heard the learned counsel for all other respondents who are represented before us in other connected matters.

12. We have carefully considered the rival contentions and perused the impugned order and other materials on record. The main point falling for consideration is in respect of newly commenced courses for which affiliation was granted whether the State Government is bound to pay the salary to the teachers for the relevant period?

A           13. Direct Payment System was evolved by the State  
Government vide GOMS No. 185/72/Edn. dated 30.08.1972  
for all the private Arts and Science colleges. Under the Direct  
B           Payment Agreement, Government decided to introduce a  
scheme of direct payment of salaries to the teaching and non-  
teaching staff of private colleges, the management of which  
agree to Government control in the matter of appointment of  
the teaching and non-teaching staff and in the admission of  
C           students. The control would be in the form of laying down  
general principles to be followed and by participation of  
representative of the Government and the Universities in the  
selection and appointment of staff and in the admission of  
students. Thus, a scheme for direct payment of salaries in  
private Arts and Science colleges in consultation with the  
D           Universities, the representatives of the private college  
managements and the teaching and non-teaching staff  
representatives of the private colleges have been evolved. The  
8<sup>th</sup> respondent – management executed and agreed to the  
E           same and is said to have complied with all the rules of the  
agreement.

          14. Vide Government Order No. GOMS 134/98/H.Edn.  
dated 09.11.1998 sanction was accorded for starting new  
courses subject to the condition that there will be no additional  
F           financial commitment on the part of Government. Pursuant to  
the same, Vice-Chancellor of Mahatma Gandhi University vide  
an order dated 13.11.1998 sanctioned the affiliation of the new  
courses in the private colleges from the Academic Year 1998-  
99 subject to ratification by the Syndicate and without any  
G           additional financial commitment. Vide order dated  
06.12.1999, Government granted approval for new courses  
subject to stipulation that the expenditure will not exceed the  
budget allotted for this purpose and University also approved  
the same vide an order dated 10.12.1999 subject to the same  
H           conditions as stipulated in the order dated 13.11.1998.

15. It appears that new courses so sanctioned led to the increase of work load. So the private college managements acting in consonance with the provisions of the University Statutes and Direct Payment Agreement constituted Statutory Selection Committee, the Committee comprised of both the representatives of the Government and the University. It is stated that respondent nos. 1 to 7 were also appointed by the said Statutory Selection Committee. Respondent Nos. 1 to 4, 6 and 7 were appointed on 01.07.2002 and respondent no. 5 on 07.01.2002.

16. Learned senior counsel appearing for the respondent nos. 1 to 7 has urged that GOMS No. 134/98/H/Edn. dated 09.11.1998 and GOMS No. 162/99/H/Edn. were issued only to accommodate the lecturers who were rendered surplus due to de-linking of pre-degree courses from the colleges and the same fact is evident from annexure R1/3. It is stated that due to de-linking of pre-degree courses, Pre-degree Courses (Abolition) Act, 1997 was passed and as per Section 5 of the Act, a statutory ban was imposed on appointments for a period of three years commencing from 03.06.1997 to 02.06.2000. However, after the expiry of the period, the State has not fixed staff pattern. Hence, respondent no. 8 and Kerala Private College Management Association and other private colleges approached the High Court by OP No. 21268 of 2002 which was disposed of directing the university to fix the staff strength in the respondents' colleges and to consider the representations of the private colleges in accordance with the Statutes and Ordinances. As the University did not comply with the order, contempt proceedings were initiated against the University and it has later approved certain appointments; but rejected the appointment of respondent nos. 1 to 7 due to want of vacancy and also due to the fact that the courses were sanctioned without any financial commitment on the part of the Government. Appointments of respondent nos. 1 to 7

A were thus not approved and, hence, they were not getting salary.

17. Although, initially approval was not granted for the appointments of respondent nos. 1 to 7, the University granted approval to these appointments vide its order No. AC.B1/1/3169/05 dated 29.10.2005. As noticed earlier, sanction of new courses led to the increase of work load and the services of respondent nos. 1 to 7 were utilised by the 8<sup>th</sup> respondent – management. The courses are purely aided courses and therefore, the provisions of Direct Payment Agreement are undoubtedly applicable. The State administration cannot shirk its responsibility of ensuring proper and quality education in Schools and Colleges on the plea of lack of resources. In the facts and circumstances of the case in hand, we do not deem it necessary to consider this question in further detail.

18. It is also to be noted that by perusal of the records viz. Annexures R8/14, 15, 16, 17 & 18, it is evident that respondent nos. 1 to 7 were appointed only against sanctioned posts. It is not the case of the Government that 8<sup>th</sup> respondent – management violated the terms of the Direct Payment Agreement. For many years i.e. from 2002, services of respondent nos. 1 to 7 have been utilized for imparting instruction, invigilation and other duties. By perusal of the information obtained under Right to Information Act that the Government has paid salaries and emoluments to some of the lecturers appointed in other private colleges. When the respondent nos. 1 to 7 were appointed by the Statutory Selection Committee, we find no reason as to why respondent nos. 1 to 7 should be denied the payment of salary. When respondent nos. 1 to 7 have been appointed by the Statutory Selection Committee, it becomes obligatory for the Government to honour these appointments and pay the salary.

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19. In our considered view, the learned Single Judge of the High Court and the Division Bench in review petitions rightly held that respondent nos. 1 to 7 are entitled to the payment of salary for the relevant period and we find no reason to interfere with the same. A

20. In the result, these appeals are dismissed and consequently, the other connected appeals stand dismissed. B

Bibhuti Bhushan Bose

Appeals dismissed.