

Law (Edn.) (1925) Department.

Ord. SERIES.

G.O. No. 454

DATED 1-4-1925

[Despatch Abstract.]

University - Madras - Academic Council

Sr. Moffat & Mr. Kunhi Raman

Ex-officio members - election
as validity reference answered.



Dear Mr. Krishnamachari,

With reference to
the enclosed, I am to say that His
Excellency would be glad to be
advised what reply should be sent
to the Registrar of the university
of Madras.

Yours sincerely,

M.R. Ry. Rao Bahadur V.T. Krishnama
Achariyar A.V.L.,
Secretary to Government
Law Department,

* to be kindly returned.

It is requested that all communications should be addressed to The Registrar, University of Madras, Senate House, Triplicane P.O., Madras, and not to any person by name.



UNIVERSITY OF MADRAS.

No. 2333.

SENATE HOUSE,

10 MAR 1925

Enclosures.

FROM

THE REGISTRAR,

University of Madras.

To

The Private Secretary

to H.E. the Chancellor,

University of Madras.

Sir,

I have the honour, by direction of the Syndicate, to request you to submit to H.E. the Chancellor, under Section 41 of the Madras University Act, questions which arise in connection with the election of Mr. C. Kunhi Raman to the Academic Council of the University on 2nd March 1925.

Mr. Kunhi Raman was acting Principal of the Law College till March 2, when Mr. Arthur Davies returned from leave. As Acting Principal, he was an ex-officio member of the Academic Council and as a member of the Academic Council he was elected by the Faculty of Law, President of the Faculty, and by the Board of studies in Law, Chairman of the Board.

On 2nd March I intimated to the Principal of the Law College that there were vacancies in the Academic Council owing to Messrs S. Ramaswami Ayyar and R. Madanagopal Naidu, who were representatives of the Law College, having ceased to be members of the college Staff and requested him to hold an election forthwith.

On 3rd March I received a letter from Mr. Arthur Davies informing me that he had returned from leave and joined duty as Principal and that Mr. Kunhi Raman had been elected by the staff of the Law College as a member of the Academic Council from the time that he handed over charge of the Principalship (Viz) the 2nd March 1925.

See 23/11/4)
of the Act.

I have subsequently been informed by Mr. Arthur Davies that the election of Mr. Kunhi Raman to the Academic Council took place before Mr. Kunhi Raman gave over charge to him of the Principalship of the Law College, that the election was to the vacancy caused by Mr. S. Ramaswami Ayyar ceasing to be a member of the teaching staff of the Law college and that the staff intended the election to take effect from the time when Mr. Kunhi Raman ceased to be an ex-officio member of the Academic Council.

In consequence of this, the question arises:-

Is Mr. Kunhi Raman's membership of the Academic Council continuous?

If it is, he remains President of the Faculty of Law and Chairman of the Board of Studies in Law. His position, in this respect, appears to be similar to that of the Rev. Dr. Moffat.

This proceeds, however, on the assumption that Mr. Kunhi Raman is a member of the teaching staff of the Law College. Mr. Kunhi Raman is a special lecturer in the Law College, attendance at whose lectures is not compulsory and does not count for purposes of certificates of attendance required by the University. Having regard to the terms of his appointment and the tenure of his office, it may be argued that Mr. Kunhi Raman is not a member of the teaching staff. On the other hand it may be pointed out that a reference has been made to the Principal of the Law College who has expressed the opinion that he considers Mr. Kunhi Raman to be a member of the teaching staff of that college and that as he has intimated the election of Mr. Kunhi Raman this may be taken as a sufficient reason for accepting Mr. Kunhi Raman as eligible for election.

The question, accordingly arises:-

Is Mr. Kunhi Raman a member of the teaching staff of the Law college and therefore eligible for election?

I have, therefore, the honour to request that H.E. the Chancellor may give his ruling with reference to these two questions.

I have the honour to be,
Sir,
Your most obedient servant,

William McLean
Registrar.

*M 4-6
info*

*This is no
argument. The
question must be
decided in-
dependently of
the Principal's
opinion*



UNIVERSITY OF MADRAS.

No. 2334

SENATE HOUSE, 10 MAR 1925

Enclosures.

FROM

THE REGISTRAR,

University of Madras.

To

The Private Secretary

to H.E. the Chancellor,

University of Madras.

Sir,

I have the honour, by direction of the Syndicate, to request you to submit to H.E. the Chancellor, under Section 41 of the Madras University Act, questions which arise in connection with the election of the Rev. Dr. A. Moffat to the Academic Council of the University on 2nd March 1925.

The Rev. Dr. A. Moffat was Acting Principal of the Madras Christian College till March 2 1925, when the Rev. Dr. W. Meston, Principal of the College, returned from leave, and as acting Principal he was an ex-officio member of the Academic Council.

As a member of the Academic Council, Dr. Moffat was elected by that body a member of the Syndicate, by the Faculty of Science President of the Faculty and by the Board of Studies in ~~PHYSICS~~ Physics Chairman of the Board.

On 19th February Mr. F.W. Henderson, who was one of the representatives of the teaching staff of the Madras Christian College on the Academic Council, resigned, and I sent an intimation to Dr. Moffat, as Acting Principal, to hold an election forthwith to fill the vacancy.

On 27th February Dr. Moffat informed me that he had been elected to fill the vacancy, his election to take effect from the time when he gave over charge of the Principalship and ceased to be an ex-officio member of the Academic Council.

-2- 5

On 3rd March, Dr. Meston intimated that on 2nd March he had returned from leave and resumed the duties of Principal of the Madras Christian College.

In consequence of this, questions arise as to the validity of Dr. Moffat's election to the Academic Council and the continuity of his membership of that body.

(1) Is an ex-officio member of the Academic Council eligible for election with effect from the date when he ceases to be an ex-officio member?

Section 23 of the Act gives as the only condition for eligibility that the person elected is a member of the teaching staff of the College.

Chapter VI. para 2 of the Laws of the University shows that it does not conflict with the principle of representation by election to have an election in anticipation of a contingency.

Chapter VI. para 74 states that the election shall be conducted in such manner as the Principal of the college may determine.

It may be argued that Dr. Moffat's election conflicts with the ruling that a person cannot be a member of a University Authority in two capacities. This ruling, however, does not apply. I have been informed that the method of election followed in this case was that of inviting written nominations to be lodged before a certain date, with a view to an election. The only nomination paper received was one in which Mr. Sabhesan, on behalf of the staff, signed the following statement:-

" I hereby nominate the Rev. Dr. A. Moffat for election by the teaching staff of the Madras Christian College to the Academic Council of the University of Madras, the election to take effect at the time when he gives over charge of the Principalship of the Madras Christian College to the Rev. W. Meston and ceases to be an ex-officio member of the Academic Council."

Mr. Manikkam seconded this nomination and Dr. Moffat signed a statement that he was willing to continue to serve on the Academic Council. Since this was the only nomination paper received, Dr. Moffat declared himself elected with effect from the time specified in the nomination paper. This being the intention of the elector

-3- 6

and Dr. Moffat accepting their election, Dr. Moffat's election dates from 2nd March 1925, and his membership of the Academic Council as an elected member does not overlap his membership as an ex-officio member.

(2) If the answer to the first question is in the affirmative, this further question arises:-

Is Dr. Moffat's membership of the Academic Council continuous?

If it is, Dr. Moffat remains a member of the Syndicate, the President of the Faculty of Science and Chairman of the Board of Studies in Physics. It appears that an analogous case would be that of the Principal of a Government College in Madras being transferred from one college to another. If, for example, Mr. Green who has been transferred from the Principalship of the Muhammadan college to the Principalship of the Teachers' College had been a member of the Syndicate, it may be presumed that he would not lose his seat on the Syndicate because of the imaginary break in time between his laying down the one office and assuming the other. Similarly, it appears reasonable that Dr. Moffat should not lose his seat on the Syndicate because his membership of the Academic Council is due to his being an ex-officio member and then, when he ceases to be an ex-officio member, a member by election.

I have, therefore, the honour to request that H.E. the Chancellor may give his ruling with reference to these two questions.

I have the honour to be,

Sir,

Your most obedient servant,

William McLean
REGISTRAR.

Law (Edn) Sept

The questions for consideration in the two cases referred by the University for the decision of the ~~Vice~~ Chancellor are:

(i) Whether an election to a prospective vacancy may be held;

(ii) Whether an ex-officio member of the Academic Council ^{to the Council} may stand for election as a member of the teaching staff from the date when he ceases to be ex-officio member;

(iii) whether, in case such an election is held valid, and the person is elected as a representative of the Academic Council, his membership in the Council is continuous;

and

(iv) ~~in the case of whether~~ Mr Kunhiraman is a member of the teaching staff of the college.

2 The last question may at once be answered in the affirmative with reference to the Advocate General's ruling on pages 13-14 of G.O. no. 1645 Law (Edn) D. 21.11.23 and paragraph 3 of Chapter

p. 5 ante

the acting principal ceases to be ex-officio member when the permanent Principal resumes duty -
Adv. G.O. no. 1663
p. 7 of G.O. no.

1663 (D)

20.10.24

p. 5 ante

X. Opinion no. 159 D

8.10.23

(2)

Chapter III of the laws of the University.

The fact that attendance at his lectures is not compulsory and does not count for purposes of certificates of attendance does not affect his eligibility for election as a member of the teaching staff.

f. 3 ante

The first question may also be answered in the affirmative with

reference to paragraph 2 of Chapter VI

p. 14 of pamphlet

of the laws of the University. Questions (ii) and (iii) ~~are~~ require consideration.

3 The real point to be decided

Question (i)

is whether a Principal who is

an ex-officio member of the Academic

Council may stand for election ~~as~~ as a representative of the teaching staff when he is an ~~ex-officio~~

~~member of the teaching staff~~

staff when he has not

ceased to be an ex-officio member.

In case the election of a such a

member is considered valid,

the membership ^{in the Academic Council} in the two cases

in question should naturally

be considered continuous. to

Question (ii)

The point is not free from doubt, ~~and~~ ^{Adv. Gen. u. o. 8416/25-1}

the Advocate General may be

consulted ~~u. o.~~

17.3.25 18.3.25

19.3.25

V.T.F. 20.3

Adv. Gen. u. o.

23/3/25



(with a copy of the Laws of the University to be returned immediately)

OPINION.

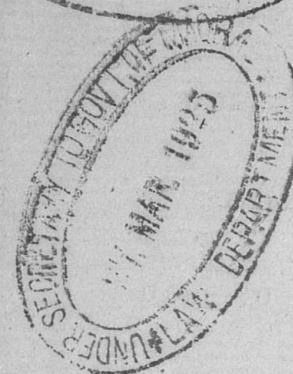
In Re Mr. Kunhiraman.

When a vacancy occurs and the electorate is asked to fill up the vacancy, it must elect an eligible person. No electorate has the power to elect a person not then eligible with a recommendation that the election should take effect from the day he becomes eligible.

2. Nomination is part of an election. If only one was nominated, the nomination itself operates as election. Nomination of a person not qualified to stand for election on the date of the nomination is invalid, even if he might possibly become qualified before the date of the election. Nomination and election of a person not qualified up to the close of the election is invalid a fortiori.

3. A member ex officio of the Academic Council cannot stand for election to that body. No one can be member of the body in two capacities, and as a member virtute officii cannot divest himself of his membership except by vacating the office and as the ex officio membership must prevail (if both kinds of membership could become combined in one individual) the result is that a member ex officio cannot stand for election.

4. To apply these principles to the particular case:-
If Mr. Kunhiraman was acting Principal at the time of the



A

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election, he was already a member of the Academic Council and could not be nominated or elected to it. The difficulty could not be got over by a recommendation of the electorate that the election should take effect from the moment that he ceased to be acting Principal.

5. Continuity of the membership of the Academic Council cannot be achieved in any case. If the election is to be held valid, it can only be by conceiving that the election was held just after the membership ex officio and came to an end/that Mr. Kunhiraman being then eligible was rightly elected. The cessation of the ex officio membership with all its consequences must be viewed as antecedent to the election in order to uphold the election itself as valid.

6. So far I have proceeded on the view that Mr. Kunhiraman was a member of the Teaching Staff and was qualified to stand for election. I do not think that those who have undertaken to deliver special lectures at the Law College can be said to belong to the Teaching Staff. Attendance at the lectures is not compulsory. It does not count for attendance certificate. I find it difficult to entertain the idea that the Chief Justice is now one of the Teaching Staff of the Law College. It is not necessary to decide this matter finally in the

11
view I have taken of the other points in this case,
but I have no doubt in my own mind even on this point.

Madras,

26th March 1925.

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Ho Sth
ADVOCATE GENERAL.

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O P I N I O N .

In Re Dr. Moffat.

231
p. 9 ante
The principles on which the point raised in this case has to be decided, I have stated in the first three paragraphs of my opinion in re Kunhiraman.

As in that case so in this ~~case~~ also, Dr. Moffat was eligible neither at the time of the nomination nor of the election. The recommendation that the election should take effect from the time he became qualified is ineffectual.

If the election were held valid, it will still be impossible for the reasons given in the other case to hold that there is continuity of membership so as to preserve to him all the capacities which he held in consequence of his membership *virtute officii* of the Academic Council.

The case of a person who passes from the principalship of one College to that of another might be different. I do not at present offer any opinion as to that. But whatever may be the correct view in regard to that matter I have no doubt that a person who loses the membership *ex officio* and acquires the membership arising from election cannot rely on an imagined continuity of membership for retaining those capacities that were consequent on the membership *ex officio* and must cease with its cessation.

Madras,
26th March 1925.

Forster
ADVOCATE GENERAL.



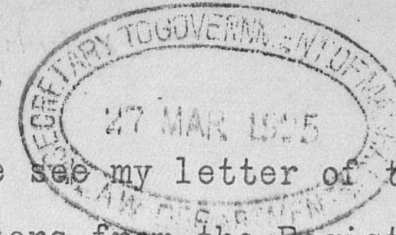
*I asked
Adigen! personally
to send this at once.
Has he not done so?*

Vtk/27.3

GOVERNMENT HOUSE.

Madras, 26th March 1925.

Dear Mr. Krishnamachari,



Please see my letter of the
11th enclosing two letters from the Registrar
of the University regarding the election of
Mr. C. Kunhiraman and Dr. A. Moffat to the Academic
Council. Will you please expedite your reply?

Yours sincerely,

M. R. Ry Rao Bahadur V. T. Krishnama Achariyar Avl.,

Secretary to Government,

Law Department, Fort St. George.

*Mr 2-6
ante*

pp 9+12 Cases the election was invalid.

ante

VTK
27.3

Consequently the questions as to whether Mr. Kunhiraman could be deemed a teacher for the purpose of election and whether the membership ^{in the Academic Council} in the two cases is continuous do not arise.

2 The Advocate General holds

that Mr. Kunhiraman is not a member of the teaching staff of the college. His view is in conflict with that taken by Mr. Madhavan Nair - please see pages

(2)

13-14 of G.O. 1645 of 21.11.23. As the question does not arise in the present case, it need not be considered now. It ~~may~~ will be noted for consideration in connection with the question of amending the Act ^{which will be} taken up in May next.

The file may be sent to the P.S.G. no with reference to his D.O. on page 1 ante.

§ 27.3.25
§ 27.3.25
§ 27.3.25

Please put up today a draft of the letter to be sent in reply to the Vice Chancellor's to

VTK
27.3.

I do not think the present opinion is correct. Mr. Madhavan Nair is correct

VTK

To separate file.

definition of teacher & relevant election rules will have to be considered.

15

A draft letter to the Vice-Chancellor
is submitted for approval.

ENCLOSURE

27.3.25
If H.E. the Chancellor
approves, I shall send a reply
to the Vice Chancellor as in the
Draft letter put up below.

Law En no 848C-1
27-3-25

P.S.G. u.o.

Many thanks, P.S.G.

With regards, P.S.G.

28.iii.25

May be

Order 454 Recorded

1-4-25
30/3/25

University

Madras

Academic Council

Do Moffat

Mr. Kunhiraman

ex-officio members

election

validity

answered

VTK
31.3.

16

	Initials.	Date.
Received in Fair-copying Section.		
Copied	..	
Examined	..	
Signed	..	
Despatched	..	

Letter

To

The Vice-Chancellor,
University of Madras.

Sir,

Validity of certain elections
to the Academic Council.

Registrar's letters Nos. 2333
and 2334 dated 10-3-1925.

In the letters quoted above
the following questions are raised:-

(1) whether the elections of
Dr. Moffat and Mr. Kunhiraman to the
Academic Council with effect from the
dates on which they ceased to be mem-
bers ex-officio of the Council were
valid;

(2) whether, in case the
elections in both the cases were held
valid, the membership of the two gentle-
men on the Academic Council would be
continuous; and

(3) whether Mr. Kunhiraman
could be considered a member of the
teaching staff of the Law College and
eligible in that capacity for elect-
ion.

2. His Excellency the Chan-
cellor of the opinion that no
electorate has the power to elect a
person not eligible at the time for
election with a recommendation that
the election should take effect from
a subsequent date on which he becomes
eligible. A member ex-officio of the

p. 5 of notes

p. 6 of notes

p. 3 of notes

para 1
p. 9 of notes

17
Academic Council cannot stand for election to that body.

No person can be member of ~~the~~ body in two capacities, and as a member virtue officii cannot divest himself of his membership except by vacating office and as the ex-officio membership must prevail, (if both kinds of membership could become combined in one individual) the result is that a member ex-officio cannot stand for election.

3. On these grounds His Excellency the Chancellor considers that the election in both the cases in question was invalid. The second and third questions do not ~~arise~~ ^{therefore} ~~now~~ for consideration ~~now~~.

I have etc.

G.N.
27-3-25

V.T.K./ 27-3-25

E.A.V.
27-3-25

para 3, p. 9 of notes

14
When given for copying _____
When copied _____ } 192
When examined _____
When signed _____

READ AGAIN G.O. No. _____, DATED _____
192

CURRENT No.

ENCLOSURES TO G. No.

ORDER OF GOVERNMENT

A A A A A A A

LETTER OF GOVERNMENT.

STATEMENT WITH DITTO.

PAPERS NOT FILED OF, BEING MEANT FOR DESPATCH
IN ORIGINAL.

N.B.—

A = Copy in full.
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Q = Copy heading only.