

(1966) 12 KL CK 0017
In the High Court Of Kerala

Abdul Khader

APPELLANT

Vs

Regional Deputy Director of Public Instruction

RESPONDENT

Date of Decision : 12-12-1966

Acts Referred:

Constitution of India, 1950 — Article 311

Citation : (1967) 2 LLJ 643

Hon'ble Judges : K.K. Mathew, J

Bench : Single Bench

Judgement

K.K. Mathew, J.—Petitioner was appointed as a primary department teacher in the former State of Cochin by, the Staff Selection Board in 1122 M.E. Petitioner has been working in the Sree Rama Varma High School since 1954 and in the Sree Rama Varma Upper Primary School since 1961, after the bifurcation of upper primary and lower primary schools. On 13 October 1966, the respondent, the Regional Deputy Director of Public Instruction, received a copy of a letter dated 11 October 1966 from the Assistant Educational Officer, Ernakulam, addressed to the District Educational Officer, Ernakulam, stating inter alia that the Assistant Educational Officer has received a report from the headmaster of the Sree Rama Varma Upper Primary School, Ernakulam, where the petitioner was working as a primary department teacher, that the petitioner is not writing his notes of lessons in spite of specific Instructions Issued to him by the headmaster of the school in this regard, that the petitioner is refusing to comply with the lawful directions Issued by the headmaster of the school regarding the preparation and maintenance of notes of lessons on the ground that the teacher is not provided with necessary copies of text-books for reference, though the other teachers of the school are maintaining and writing notes of lessons properly without any complaint regarding non-avail ability of text-books, that there Is no reason why the petitioner should refuse to maintain notes of lessons on the technical ground that text-books are not supplied at Government cost, that allowing the petitioner alone to go on without notes of lessons will be setting a bad precedent and will also demoralize the other teachers In the school and

that under these circumstances necessary disciplinary action may be taken against the petitioner in the interests of the efficiency and discipline of the school. It receiving a copy of the said letter, the respondent by his memorandum dated 15 October 1986 directed the District Educational Officer, Ernakulam, to make necessary enquiries into the matter and submit a detailed report to the respondent. Accordingly, the District Educational Officer, Ernakulam, after making necessary enquiries into the matter sent a detailed report. In that report, he stated that the petitioner had been consistently refusing to prepare notes of lessons for the last three years and that in spite of the directions issued by the headmaster of the school to maintain notes of lessons, the petitioner was not preparing notes of lessons, that the petitioner's conduct, if further allowed to continue unchecked, will set a bad example to the other teachers of the school and will injuriously affect the pupils and will bring down the efficiency and discipline of the school. The District Educational Officer also recommended that disciplinary action should be taken against the petitioner. The respondent examined the report of the District Educational Officer and passed the order in question. By that order the petitioner was transferred and posted as primary department teacher in Government lower primary school, Santhanpara in Kanjirappally district and the headmaster of the Sree Rama Varma Upper Primary School, Ernakulam, was directed to relieve the petitioner forthwith with instructions to him to join duty in that school.

2. Petitioner questions this order on the ground that the transfer was by way of punishment and that no order for transfer could be passed for punishing a teacher as transfer is not one of the punishments provided in the Kerala Civil Services (Classification, Control and Appeal) Rules, 1960, and therefore, order for transfer ought to be quashed. The learned Government Pleader appearing on behalf of the respondent submitted that the order for transfer was passed not for punishing the petitioner but for administrative reasons and that the respondent had jurisdiction and justification to transfer the petitioner-teacher. Petitioner's counsel referred me to the ruling in *Sangam Lal Dube Vs. Director of Education and Another*, and submitted that if the order of transfer was passed with the idea of punishing the petitioner, transfer not being prescribed as a punishment, the order ought to be quashed. Paragraph 11 of that ruling is as follows:

The two orders of transfer do not mention that the transfer order had been passed as a measure of punishment against the petitioner, but it does appear that the order was on account of certain demi-official which was sent by the then Secretary to the Director of Education. In this order itself reference has been made to the demi-official of the Secretary dated 13 March 1953. This demi-official has been filed as an annexure D to the counter-affidavit filed by Sri Gothi.

In this Government order the attention of the Director has been invited to a report of Sri Sanyal, the predecessor of Sri Gothi, and it is mentioned that on the perusal of that report it appeared that Sri Sanyal was not satisfied with the work of the petitioner. The Secretary has also stated that during his own period he had

not heard any encouraging: report about the petitioner and in spite of the assurance given to him there had been no change in his work. The Secretary has also mentioned in his demi-official that in spite of all the efforts the character roll of the petitioner was not found in the office.

On these grounds the Secretary has prayed that the petitioner should be transferred to some other office. If the order is read along with the demi-official sent by the Secretary to the Director of Education, a copy of which has been filed along with the counter-affidavit itself, it is manifest that the transfer was on account of the complaint made by the Secretary against the work of the petitioner and an express desire that the petitioner should be transferred to some other office. It cannot, therefore, be argued by the State counsel that the transfer was purely on an administrative ground and did not cast any reflection on the character of the petitioner.

No particular significance can be attached to the use of the words "administrative measure" by the Director of Education in his order. Whether the order of transfer is by way of punishment or as a result of some administrative policy is a matter which will depend upon the circumstances of each case. The fact that the department chose to call it a transfer based on administrative grounds will not make the order as such and will not debar this Court from considering the matter on the evidence before it and come to its own conclusion whether the order was passed as a punishment or as an administrative measure.

In the present case when the order is read along with the demi-official of the Secretary it is manifestly clear that the order of transfer was based on the complaint made by the Secretary and as such it was made as a measure of punishment and not purely on administrative grounds.

The provisions of Article 311, therefore, are attracted and the petitioner is entitled to claim the protection given to an employee under the said article if he is able to establish that the transfer amounts in fact to reduction in rank.

3. In that case the order of transfer had the effect of reducing the rank of the petitioner and so it was held that the order was passed by way of punishment. In *Appukuttan Nair Vs. State of Kerala*, it was held that it is the inherent right of Government to transfer its employees from one service to another and that merely because an employee has been transferred from one service to another, he cannot complain in a Court about it. Assuming therefore, that Government has got the right to transfer its employees from one service to another, or from one school to another as in this case, for administrative reasons, let us look at the facts to see whether the transfer here was for administrative convenience. The averments in the counter-affidavit would indicate that the petitioner has neglected his duty in preparing the notes of lessons and it was thought that his continuance in that school would set a bad example to the other teachers. The District Educational Officer in his report definitely stated that disciplinary action should be taken against the petitioner. According to him the facts and omissions

of the petitioner were such as to warrant disciplinary proceedings against the petitioner. But the respondent was not satisfied that that was the proper course to be adopted. In view of the fact that the petitioner had a plausible explanation for not preparing the notes of lessons. In Para. 6 of the counter-affidavit by the respondent It is stated that he was satisfied that there was something in the explanation offered by the petitioner which merited consideration and that although he was not entirely satisfied with the explanation given by the petitioner he was of the view that the explanation was plausible and therefore thought that it was not advisable to take disciplinary proceedings against the petitioner. The learned Government Pleader submitted that this would indicate that the respondent did not pass the order with the idea of punishing the petitioner. He said that the respondent thought that the facts and circumstances proved in the case would not warrant disciplinary proceedings against the petitioner but that at the same time he was of the view that the continuance of the petitioner in the school in question would undermine the discipline of the school and set a bad example to the other teachers and therefore passed the order of transfer for administrative reasons. In *Merricks and Anr. v. Nott-Bower* and Ors. 1(1964) II W.L.R. 702 Lord Denning, M.R., observed:

In the light of these regulations, the plaintiffs say that the power of transfer is only to be used as part of the administrative machinery of the force so as to ensure efficiency. It cannot be used as a means of punishment. In their cases, they say, the power of transfer was misused and abused as it was used as a disciplinary measure to punish them, and, by misusing it in this way those in authority were able to by-pass all the disciplinary machinery so carefully set up to ensure a fair hearing. They were condemned and, punished, they say, without being heard.

Such being the case made, I am not prepared to say that it is unarguable. It is a well-known principle of our law that any powers conferred by statute or regulation on an executive or administrative authority must be exercised in good faith for the purpose for which they are granted. They must not be misused or abused by being applied to an ulterior purpose. Whether that principle applies here or not, I do not say: all I do say is that if the plaintiffs allege, as they do, that this was a misuse of the power of transfer—that it was used, not for the purpose of good administration and efficiency but for the motive of punishment—they have an arguable case which they are entitled to have tried by the Courts.

So, the narrow question for consideration is, whether the order of the respondent was passed with the motive of punishing the petitioner. If the transfer was intended or motivated to operate as a punishment, I do not think the order can stand. In deciding the question as to what was the motive operating in the mind of the respondent, one has to look into the circumstances under which the order was passed. The headmaster of the school in which the petitioner was working had warned the petitioner on several occasions about his conduct in not preparing the notes of lessons. In the explanation given by the petitioner to the

District Educational Officer he has stated that it is impossible for him to prepare notes of lessons as he was not furnished with text-books as required. Every school is bound to have a library and should keep all the text-books necessary for the purpose of teaching the students. In the school in question it so happened that the text-books were not available. But, in spite of it, the other teachers have been preparing notes of lessons. To allow the petitioner to continue in the school without compliance with the order of the headmaster that he should prepare the notes of lessons, would have set a bad example to the other teachers in the school, and therefore, the respondent thought that in the interests of better administration of the school and to maintain discipline in the school, the petitioner should be transferred. I do not think that the dominant motive of the respondent in passing the order was to punish the petitioner. I am inclined to take the view that the transfer was to ensure efficiency of administration in the school. Therefore, I see no reason to interfere.

4. The writ petition falls and is dismissed. No costs.