

(1976) 10 KL CK 0011

In the High Court Of Kerala

Case No : O.P. No's. 409 and 4672 of 1976

Admanabhan Adiyodi and Another

APPELLANT

Vs

The Manager, Corporate Educational Agency, R.C. Diocese of
Calicut and Others

RESPONDENT

Date of Decision : 29-10-1976

Acts Referred:

Constitution of India, 1950 — Article 30
Kerala Education Rules, 1959 — Rule 37, 43

Citation : (1976) 10 KL CK 0011

Hon'ble Judges : Balakrishna Eradi, J

Bench : Single Bench

Advocate : Govind Bharathan, in O.P. 409/76 and Joseph Vithayathil, in O.P. 4672/76 and 1st Respondent in O.P. 409/76, for the appearing parties; B. Moosakutty, Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Balakrishna Eradi, J.—The Petitioner in O.P. No. 409 of 1976 is working as a lower grade Hindi Pandit in the St. Joseph's Boys High School managed by the Corporate Educational Agency of the Roman Catholic Diocese of Calicut. The 2nd Respondent who was also working as a lower grade Hindi Pandit under the same Corporate Educational Agency was promoted by the management as a High School Assistant (Hindi) by an order dated 28th July, 1975, a copy of which has been produced and marked as Ext. P-1 in this case. Thereupon the Petitioner preferred an appeal to the District Educational Officer, Calicut (3rd Respondent) contending that he was the rightful claimant for promotion to the said vacancy of High School Assistant in as much as the Petitioner had much greater length of service than the 2nd Respondent in the category of lower grade Hindi Pandits. Relying on the provisions contained in Rule 37 of Chapter XIV(A) of the Kerala Education Rules the Petitioner contended before the 3rd Respondent that he was senior in service in relation to the 2nd Respondent and that the management had acted illegally in superseding him and promoting the 2nd Respondent as High

School Assistant (Hindi). The 3rd Respondent rejected the Petitioner's appeal on the sole ground that in the approved provisional seniority list of language teachers of the primary section under the Corporate Educational Agency of the Roman Catholic Diocese, Calicut the 2nd Respondent had been shown as senior to the writ Petitioner. Ext. P-4 is a copy of the communication sent to the Petitioner by the 3rd Respondent intimating the Petitioner that the Petitioner's representation was rejected and that the appointment of the 2nd Respondent as High School Assistant had been approved by the 3rd Respondent with effect from 1st August 1975. Aggrieved by the order Ext. P-4 the Petitioner preferred a further appeal before the Regional Deputy Director of Public Instruction, Kozhikode (4th Respondent). Ext. P-3 is a copy of the said appeal petition. Without waiting for the disposal of that appeal the Petitioner came up to this Court by filing this writ petition praying that the orders Exts. P-1 and P-4 should be quashed and that a writ of mandamus should be issued directing the Respondents to promote the Petitioner as Higher Grade Hindi Pandit in the vacancy in which the 2nd Respondent had been granted a promotion.

2. When this petition came up for final hearing before this Court on 5th August 1976, on its being brought to the notice of this Court that an appeal filed by the Petitioner was pending consideration before the 4th Respondent this Court considered it appropriate that the further hearing of the case should be postponed until final orders were passed by the 4th Respondent in the said appeal. Accordingly a direction was issued by this Court on that date to the 4th Respondent to dispose of the appeal preferred by the Petitioner within six weeks from that date and the further hearing of the original petition was adjourned.

3. Pursuant to the above direction given by this Court the 4th Respondent took up the Petitioner's appeal for consideration and passed final orders therein on 10th September 1976 declaring that the Petitioner was the rightful claimant for promotion as High School Assistant (Hindi) in the vacancy that had arisen in the Roman Catholic High School, Chundale with effect from 1st August 1975. Accordingly the 4th Respondent incorporated in that order a direction to the management to promote the Petitioner as High School Assistant in the said vacancy with effect from the date of promotion of the 2nd Respondent with the further stipulation that monetary benefit of fixation of pay on such promotion need be given to the writ Petitioner only from the date of actual assumption of charge as High School Assistant (Hindi).

4. The corporate management of the Roman Catholic Diocese of Calicut has challenged the legality and validity of the aforesaid order passed by the 4th Respondent by filing the connected writ petition O.P. No. 4672 of 1976. A copy of the proceedings of the 4th Respondent has been produced and marked in that writ petition as Ext. P-3 and the relief claimed in O.P. No. 4672 of 1976 is that Ext. P-3 should be quashed.

5. In as much as the contentions put forward by the writ Petitioner in O.P. No. 409 of 1976 have been upheld by the department in the order Ext. P-3 passed by

the Regional Deputy Director it has become unnecessary for the writ Petitioner in O.P. No. 409 of 1976 to pursue the said writ petition any further before this Court. But, since the legality of the order Ext. P-3 has been called in question in O.P. No. 4672 of 1976 the writ Petitioner in O.P. No. 409 of 1976 is vitally interested in defending the validity of that order and hence both the writ petitions were heard together. The further discussion in this judgment will relate to the question of validity of the appellate order passed by the Regional Deputy Director (which has been produced as Ext. P-3 in O.P. No. 4672 of 1976).

6. The parties will hereinafter be referred to on the basis of their ranking and array in O.P. No. 409 of 1976, the writ Petitioner therein being mentioned as the Petitioner and the rival claimant as the 2nd Respondent. The Corporate Educational Agency will be referred to as the management and the District Educational Officer and the Regional Deputy Director of Public Instruction as 3rd and 4th Respondents respectively.

7. The first point urged on behalf of the management is that in the seniority list prepared by the management and which had been provisionally approved by the Educational Officer the 2nd Respondent, had been shown as senior to the Petitioner and even though the said list had been circulated among all the teachers no objections had been preferred by the Petitioner against his ranking in that list. Hence it is contended that the Petitioner is precluded from urging that he is entitled to preference over the 2nd Respondent in the matter of promotion to the category of High School Assistant on the basis of seniority. Counsel for the management argued that so long as the provisional seniority list was in force it was legally incumbent on the management to follow the said list for the purpose of effecting promotions from a lower category to a higher category. It was submitted on behalf of the management that the reasons stated by the 3rd Respondent in the order Ext. P-4 for rejecting the Petitioner's representation were perfectly valid and sound and no interference ought to have been made with the said order by the 4th Respondent. Another contention put forward by the management is that it was as the result of an irregularity committed by the local manager of the school wherein the Petitioner was working that the Petitioner came to be appointed as a full-time lower grade Hindi teacher in 1962 and that the said appointment had been made by that local manager without due authority. Pursuing this argument it was urged by the counsel for the management that based on the said irregular appointment made by the local manager the Petitioner is not entitled to put forward any claim for seniority over the 2nd Respondent. It was also urged on behalf of the management that no distinction is made under the Kerala Education Rules as between part-time language teachers and full-time language teachers and that hence both must be taken as belonging to one and the same category so that in reckoning the seniority of a person in the category of lower grade language teachers account should be taken of the entirety of the service put in by such a teacher irrespective of whether it was in a part-time post or in a full-time post. This argument has been necessitated by the fact that the 2nd Respondent had

continuous service as a full-time lower grade Hindi teacher only from 1971 whereas the Petitioner had been working continuously as a full-time lower grade Hindi teacher from June 1962 onwards. Lastly, it was contended by counsel for the management that under Article 30 of the Constitution of India the management had full freedom to fill up the vacancy of High School Assistant (Hindi) by promoting any of the qualified hands from amongst the persons working as lower grade Hindi teachers and that this freedom of choice cannot be fettered by imposing any restriction that only the senior-most person from amongst the lower grade Hindi teachers working under the management should be appointed to the vacancy in question. According to the Petitioner the direction issued by the 4th Respondent in the order Ext. P-3 that the management should appoint the Petitioner into the vacancy that arose in the Roman Catholic High School, Chundale displacing the 2nd Respondent whom the management had promoted into that vacancy with effect from 1st August 1975 constitutes an unauthorised interference with the fundamental right guaranteed to the minority community represented by the management under Article 30 of the Constitution of India.

8. In my opinion none of the above contentions put forward on behalf of the management can be accepted as valid or tenable. It is true that a seniority list which had been provisionally approved by the 3rd Respondent had been circulated amongst the teachers working under the management and that no objections had been filed by the Petitioner against the ranking assigned to him in the said list below the 2nd Respondent. But it is admitted that the Petitioner and the 2nd Respondent were working in different schools situated far away from one Anr. and that those schools were brought under the corporate educational agency of the Roman Catholic Diocese of Calicut only in 1973. It was in that same year that the provisional seniority list was drawn up and circulated amongst the teachers. The 4th Respondent has stated in the impugned order Ext. P-3 that the said provisional seniority list did not contain the requisite particulars regarding the length of service put in by the 2nd Respondent as full-time second grade language teacher or the date of commencement of such service of the 2nd Respondent and that therefore the Petitioner could not have an opportunity to know about the injustice done to him by the assignment of a higher rank to the 2nd Respondent. In my opinion the view taken by the 4th Respondent is perfectly correct. The provisional seniority list had been circulated at a time when the two schools situated far away from one Anr. had only just been brought under a corporate educational agency and the teachers working in any one school could not be expected to know the service particulars of all the persons who were working as upper primary school assistants or lower grade language teachers in other schools which had come under the same corporate management. Since no data was furnished in the provisional seniority list regarding the dates of commencement of continuous service in the particular category in respect of the various persons included in that list it would not have been possible at all for any person to find out from the said list whether any

error or injustice had been committed in the matter of fixation of his rank. In such circumstances it would not be just or right to regard the Petitioner as being estopped from putting forward his legitimate claims for seniority and for promotion based on such seniority merely on account of the Petitioner's failure to prefer any objections against the provisional seniority list.

9. The next point that was urged on behalf of the management is that no distinction is to be made between part-time service and full-time service of language teachers and that in reckoning seniority of a lower grade language teacher the entirety of service put in by such a teacher is to be taken into account irrespective of whether it was only in a part-time service or service rendered in a full-time post. I do not find it possible to accept this contention because under Rule 37 of Chapter XIV(A) of the Kerala Education Rules the seniority is to be determined with reference to the length of service put in by the person in the particular grade. Admittedly the grade applicable to a part-time teacher is lower in comparison to the grade applicable to a full-time post of language teacher. There is also clear indication in Rule 43 of the same Chapter that the post of part-time teacher is to be treated as belonging to a separate class from which absorption to a full-time post is in the nature of the grant of a promotion. My attention has been invited by counsel for the Respondents to a recent judgment of my learned brother Narendran, J. in *Suseela v. The - Manager, Sreenarayana Dharmasangam School and Ors.* 1976 KLT 670 where it has been held that part-time language teachers and full-time language teachers form different categories or classes. I am in respectful agreement with the said view. It must therefore follow that the contention put forward by the management that the 2nd Respondent is entitled to be treated as senior in relation to the Petitioner by clubbing together the periods of part-time service and full-time service put in by him as lower grade Hindi Pandit cannot be accepted as correct.

10. Another plea that was faintly advanced by the learned advocate for the management is that an irregularity had been committed by the local manager of the St. Joseph's Boys High School, Tellicherry in appointing the Petitioner as a full-time lower grade Hindi teacher in the primary section of the said school in 1962 and that the said action of the local manager was unauthorised and it cannot therefore operate to confer any right for seniority on the 2nd Respondent. Apart from the fact that there is absolutely no factual basis presented before me in support of this contention, I do not see how it is open to the corporate management which has come into being only in 1973 to attempt to disrupt the appointment of a teacher made as early as in 1962 by the then management of a school that has been taken over by the corporate educational agency eleven years thereafter. This contention of the management is also therefore rejected.

11. The last point urged on behalf of the management is that the corporate educational agency in this case being the Roman Catholic Diocese of Calicut, Article 30 of the Constitution is attracted and hence it was not open to the

Regional Deputy Director to direct the management to promote the Petitioner as High School Assistant (Hindi) in the place of the 2nd Respondent who had been appointed by the management in the vacancy that had arisen in the Roman Catholic High School, Chundale with effect from 1st August 1975. I see no merit in this contention. The direction issued in the impugned order Ext. P-3 is in respect of the appointment of a lower grade Hindi Pandit in the school which can in no sense be regarded as a pivotal post akin to that of Headmaster or the Principal of an institution. As observed by the Supreme Court in the *The Gandhi Faiz-E-Am College, Shahjahanpur Vs. University of Agra and Another*, Article 30 does not invalidate provisions of a regulatory character which are intended to secure the better administration of an institution. The provision contained in Rule 43 of Chapter XIV(A) of the Kerala Education Rules that vacancies in a higher grade of pay have to be filled up by promotions from the lower grade according to seniority embodies, in my view, a wholesome principle of a regulatory character, the purpose and intendment of which is manifestly to secure the better administration of an educational institution by avoidance of arbitrariness in the matter of promotions to ordinary teaching posts. That such provisions incorporated in the Kerala Education Rules with intent to secure to the teachers a limited amount of security and freedom from arbitrariness in relation to service conditions are constitutionally valid and do not offend Article 30 has been clearly laid down by the Supreme Court in the advisory opinion recorded by it in *In Re The Kerala Education Bill, 1957* A.I.R.1958 S.C.956. It is now well-established that the right conferred on the religious and linguistic minorities to administer educational institutions of their choice is not an absolute right and that it can be subjected to regulation. What we have to see is whether the impugned provision in Rule 43 interferes substantially with the autonomy of the religious minority to administer the educational institution. Looked at from that angle I have no hesitation to hold that the object of the said provision is only to improve the tone and temper of the administration and that there is nothing contained therein which can be said to affect the core of the right that is guaranteed to the minorities under Article 30 of the Constitution.

12. In the result both these writ petitions are dismissed. There will be no direction regarding costs.