
(2009) 10 KL CK 0061

In the High Court Of Kerala

Case No : Writ Petition (C) . No. 36400 of 2008 (G)

Asha. V, High School Assistant (H.S.A.)

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 01-10-2009

Acts Referred:

Citation : (2009) 10 KL CK 0061

Hon'ble Judges : T.R. Ramachandran Nair, J

Bench : Single Bench

Advocate : K. Jaju Babu, for the Appellant; S.P. Aravindakshan Pillay, for the Respondent

Final Decision : Dismissed

Judgement

T.R. Ramachandran Nair, J.—These two writ petitions are filed challenging an order passed by the Government, produced as Ext. P9 in W.P.(C) No. 36400/2008 and Ext.P13 in W.P.(C) No. 37381/2008. Since common issues arise for consideration, they are disposed of by a common judgment

2. The order Ext.P13 in W.P.(C) No. 37381/2008 has been passed by the Government after hearing the parties, pursuant to Ext.P11 judgment rendered by this Court in W.P.(C) No. 24303/2007. Therefore, it is relevant to reiterate the entire history of the dispute.

3. The petitioners in W.P.(C) No. 37381/2008 are the Educational agency and the Manager respectively of Aravukad Higher Secondary School, Punnapra P.O., Alappuzha. The petitioner in W.P.(C) No. 36400/2008 was appointed as H.S.A. (Hindi) in the school and the 4th respondent in W.P.(C) No. 37381/2008 is the rival claimant in whose favour by Ext.P13, the Government has passed orders.

4. The first petitioner Aravukad Kshetrayogam is being administered as per Ext.P1 bye-laws, which includes various provisions for the administration of the Temple and the school. The famous Aravukad Devi Temple and its assets were once owned by a family by name "Aravukad Komarthussery Kudumbam" and the

educational agency was formed when the family found that the affairs of the temple and its assets could not be managed by them. As per the relevant clause in Ext.P1, the administration of the educational agency is vested in the managing committee, out of which two members are co-opted from the family. The total strength of the school managing committee is 13. As per Clause 115(b) of Ext.P1, the members of the Komarthussery family are entitled for preference in the matter of appointment as teachers as and when vacancies arise in the school.

5. There were various disputes pending before the civil court at the time when the second petitioner was elected as the manager. There was a dispute regarding the non-inclusion of two members of the Kudumbayogam in the school committee pending before the educational officers. The appointment of the second petitioner as manager was not approved by the District Educational Officer. Even though appeal was filed by the first petitioner, that was dismissed and challenging the same, W.P.(C) No. 37051/2004 was filed. W.P.(C) No. 17287/2007 was filed by the Secretary of one of the factions of the Kudumbayogam challenging the approval of appointment granted to certain teachers. Ultimately, the disputes were settled and the writ petitions were disposed of by Ext.P4 judgment. Thereafter, the second petitioner was approved as manager as per Ext.P5.

6. As regards the filling up of the post of H.S.A. (Hindi) is concerned, respondents 4 and 5 in W.P.(C) No. 37381/2008 were the applicants. The 5th respondent was appointed by the management as per Ext.P8 order. Approval was declined by Ext.P9 stating that the appointment of the manager has not been approved and the appeal was also rejected by Ext.P10. This was challenged in revision by the 5th respondent appointee who is the petitioner in W.P.(C) No. 36400/2008. The 4th respondent claimed preference for appointment, being a member of Komarthussery family and she filed W.P.(C) No. 24303/2007 which was disposed of by Ext.P11 judgment, whereby the 4th respondent was permitted to produce necessary records before the Government to prove that she is a member of the Komarthussery family at the relevant point of time. The Government passed Ext.P13, after accepting the documents relied on by the 4th respondent.

7. The challenge raised by the educational agency is on various grounds. According to them, the 4th respondent is not entitled for preference as she had not claimed any such preference at the time of submitting the application. The documents produced by the 4th respondent before the Government are all obtained subsequent to the judgment, Ext.P11. The Government relied upon a letter given by the then secretary of Komarthussery Kudumbayogam in favour of the 4th respondent, but at that point of time there was an order of injunction against him. Only persons who are residing within the area mentioned in Ext.P1 bye-laws are entitled for preference and the 4th respondent is not residing in the area and therefore she is not entitled for the appointment. The 5th respondent is better qualified, as she is a graduate in B.Ed. (Hindi) and 4th respondent is not a

graduate.

8. In W.P.(C) No. 36400/2008 it is mainly contended by the petitioner that the petitioner is better qualified and her selection and appointment ought to have been upheld. It is pointed out that the Government erred in allowing the preference claimed by the 5th respondent (4th respondent in W.P.(C) No. 37381/2008). The revision is one filed by the petitioner and no mention is made about the fate of the revision in the order passed by the Government. It is further pointed out that if at all the 5th respondent could be appointed, that can be only in a future vacancy, as evident from the order passed by the Government and therefore the appointment of the petitioner is liable to be approved.

9. Heard learned Counsel for the petitioners, the learned Counsel appearing for the 4th respondent (5th respondent in W.P.(C) No. 36400/2008) and the learned Govt. Pleader.

10. The 4th respondent has filed a detailed counter affidavit in both the writ petitions. It is mainly contended that the 4th respondent being a member of Komarthussery Kudumbayogam, she is entitled for preference. This claim cannot be ignored by the educational agency. As per Ext.R4(d) order dated 28.5.2004, the Deputy Director of Education, Alappuzha had directed the manager of the school to give priority to the member of the Komarthussery Kudumbam in the matter of appointment in the school. Even though that was cancelled by the Additional Director of Public Instruction by order dated 3.6.2004, the Government set aside that order and upheld Ext.R4(d), as per G.O.(Rt) No. 5222/04/G.Edn. dated 6.12.2004. This was under challenge in W.P.(C) No. 37051/2004 and since that writ petition was dismissed pursuant to the settlement, as withdrawn, the petitioners cannot now turn round and challenge Ext. P13 Govt. Order, as the earlier Govt. Order dated 6.12.2004 has become final. It is further pointed out, by relying upon Ext.R4(e), that the Deputy Director of Education, by the said order dated 19.3.2007 had directed the manager to appoint the 4th respondent in accordance with the directions contained in Ext.R4(d) and when the management again refused to comply with the same, she had approached this Court by filing W.P.(C) No. 24303/2007. It is also submitted that the 4th respondent had filed necessary documents before the Government to prove her claim that she is a member of Komarthussery Kudumbam. O.S. No. 48/2006 filed before the Additional Munsiff's Court, Alappuzha wherein there was an order of injunction against Shri M.K. Haridasan, Secretary, was dismissed on 22.1.2007, as evident from Ext.R4(i).

11. To appreciate the arguments raised by the parties, clauses 4 and 115(b) of Ext.P1 are relevant. Clause 4 of the bye-laws provides for membership in the Kshethrayogam. It is mentioned that any person who has completed 18 years of age and who is residing within the territorial jurisdiction mentioned therein, can become a member of the Kshethrayogam. Clause 115(b) is extracted below:

12. The vehement argument raised by the learned Counsel for the educational

agency is that unless the 4th respondent is one residing within the territorial area mentioned in Clause 4, she cannot claim any preference. A reading of the said clause in the bye-laws does not show that a member of the family who is entitled for preference in the matter of appointment, should be one residing within the territorial area mentioned in the said clause. Clause 4 only provides for membership in Kshethrayogam. It has nothing to do with the membership in Komarthussery family. It is therefore clear that for a member of the family to claim preference, he/she need not be a person residing within the territorial jurisdiction mentioned in Clause 4. Therefore, the said contention is rejected.

13. Evidently, Clause 115(b) of Ext.P1 provides for preference in the matter of appointment to members of Komarthussery family. The word " " emphasises only the name of the family, viz. Komarthussery family and it does not show that the applicant who is claiming preference should be one residing within the area of the Kshethrayogam. It is evident that the family was owning the temple earlier and large extents of properties were owned by the family and the temple. Therefore, the words " " do not mean that they should be residing within the area of the Kshethrayogam mentioned in Clause 4 of the bye-laws, for claiming preference.

14. While opposing the conclusions arrived at by the Government in Ext.P13, it is pointed by the learned Counsel for the petitioners that at the time of application, the 4th respondent did not claim any preference and did not produce any documents in support of the claim. Evidently, the educational authorities were approached by the 4th respondent and they had issued certain communications to the educational agency as per Exts. R4(d) and (e) in the matter. In Ext.R4(d), it was specified that the Kshethrayogam is bound to comply with the conditions with regard to granting of preference to the members of the family for appointment and include two members of the family in the managing committee. Ext.R4(d) is dated 28.5.2004. As earlier noticed, this was affirmed by the Government in a revision filed by the second petitioner. The said order passed by the Government is available in W.P.(C) No. 37051/2004 which is produced as Ext.P17 along with I.A. No. 8800/2009. The said Govt. Order is marked as Ext.P9 in W.P.(C) No. 37051/2004. It is evident from Ext.P4 judgment that the said writ petition was dismissed as withdrawn. Therefore, the said judgment has become final. In that view of the matter, the petitioners in W.P.(C) No. 37381/2008 are bound by the directions issued in Exts.R4(d) and R4(e) produced by the 4th respondent along with the counter affidavit. Ext.R4(e) is a consequential direction issued by the Deputy Director of Education, wherein on the basis of the complaint raised by the W4th respondent, the manager of the school has been directed to comply with the directions issued in Ext.R4(d).

15. Herein, two aspects are important. Nowhere in the grounds of the writ petition, viz. W.P.(C) No. 37381/2008, the petitioners have raised a contention that the 4th respondent is not a member of Komarthussery Kudumbayogam. Therefore, the technical contentions raised to object to the claim raised by the

4th respondent will have to fail. As already pointed out, one of the contentions raised is that she is not residing within the area provided in Clause 4. The second one is that she had not produced the relevant documents before the Government. Herein, a reading of Ext.P11 judgment is profitable. The said judgment is rendered in W.P.(C) No. 24303/2007 which was filed by the 4th respondent. After referring to the contentions of the parties, in para 5 this Court was of the view that the 4th respondent can be relegated to the revisional authority before which she can raise all her contentions as regards her eligibility or preferential claim for appointment to the post of H.S.A. (Hindi) in the school. It was made clear that "it will be open to the petitioner to produce the necessary documents, if any, available with her to prove that she is a member of the family at the relevant point of time. If a application is filed on behalf of the petitioner before the Government, she shall also be afforded opportunity to be heard." Ext.R4(g) is the copy of the application filed before the Government and Ext.R4(h) is the argument notes submitted before the Government by her. Hence, the argument raised by the learned Counsel for the Manager that, since the documents have not been produced before him along with or at the time of filing the application, no credence can be give to the claim for preference, cannot hold good.

16. The documents produced by the 4th respondent in support of the claim for preference would only reiterate her plea that she is a member of the family. Herein, the Government had mainly relied upon the communication given by the then Secretary to the educational agency and the manager requesting that the 4th respondent, a member of Komarthussery family, may be appointed. This communication is dated 14.10.2006. Relying upon the said communication, the Government has clearly found that the contention of the manager and the petitioner in W.P. (C) No. 36400/2008 that the 4th respondent is not a member of Komarthussery family, is not true to facts. The Government also relied upon the certificate issued by the Village Officer, Aryad South and the certificate issued by the Secretary of Aravukad Komarthussery Kudumbam. These certificates would, therefore, clearly support the fact that the 4th respondent is a member of Komarthussery family. As pointed out earlier, even the petitioners in W.P.(C) No. 37381/2008 have no case that the 4th respondent is not a member of Komarthussery Kudumbam. The preference in the matter of appointment is the substantial right conferred by the bye- laws, on a member of the family. That cannot be rejected on technical pleas which have no support from the ground realities. No documents to the contrary have been produced to show that she is not a member of the Komarthussery family.

17. Then the only other contention raised by the learned Counsel for the management is that at the time when the former Secretary Shri M.K. Haridasan sent the letter dated 14.10.2006 requesting the manager to appoint the 4th respondent, there was an injunction against him, issued by the Munsiff's Court. It is therefore submitted that the said certificate could not have been acted upon by the manager. Herein, as rightly pointed out by the learned Counsel for the 4th

respondent, the said suit was dismissed for default subsequently which is evident from Ext.R4(e). Further, the petitioners have produced as Ext.P2 an agreement which is signed by Shri M.K. Haridasan, Secretary, after the settlement of disputes, wherein as per Clause (2), it is mentioned that the school committee's offer that the qualified members of the Komarthussery family will be given appointment, is agreed to. Evidently, even going by the averments in the writ petition, it is on the basis of Ext.P2 and by Ext.P4 judgment that the second petitioner could get approval of appointment as manager. In these circumstances, no credence can be given to the argument raised by the learned Counsel for the manager that letter dated 14.10.2006 could not have been acted upon by the manager in the light of the interim order of injunction. Further, he was only communicating a fact that the 4th respondent, Smt. Sofia is entitled for preference in the matter of appointment and the injunction if at all, could not have disabled him from communicating the said aspect to the manager by a letter. Therefore, the said argument also cannot be sustained.

18. The Government has clearly found that apart from the letter dated 14.10.2006, the other documents produced before the Government clearly show that the 4th respondent belongs to the member of Komarthussery family at the relevant point of time. This is a finding of fact which the Government was empowered to arrive at, especially in the light of the directions issued in Ext.P11 judgment allowing the 4th respondent to produce documents before the Government itself. The petitioners could not succeed in establishing that the said finding of fact arrived at by the Government is not on the basis of relevant materials or that irrelevant considerations have been weighed with the Government in accepting the said documents. It can be safely concluded that the Government has arrived at the conclusions based on cogent evidence produced by the 4th respondent. The various contentions raised by the parties have also been adverted to by the Government in detail and it cannot be said that the relevant facts were not considered by the Government while passing the said order. The contentions of the petitioners have been referred to and considered by the Government while rendering the decision.

19. Learned Counsel for the petitioner in W.P.(C) No. 36400/2008 had raised an argument that nothing is mentioned in the Government Order about the revision filed by the said petitioner challenging the refusal to approve her appointment. In fact, the Government, in the present order, directed the educational officers and the manager to appoint the 4th respondent as H.S.A. (Hindi) with prospective effect. But there is only one vacancy in the school. The manager is found liable for any loss caused to the petitioner in W.P.(C) No. 36400/2008 also. It is clear that the revision filed by the petitioner in W.P.(C) No. 36400/2008 cannot survive in the light of the findings in favour of the 4th respondent. The main question before the Government was whether the 4th respondent Smt. Sofia was entitled for preference. Once it is found that she is entitled for preference, automatically the appointment of the petitioner in W.P.(C) No. 36400/2008, viz. Smt. Asha V. cannot be sustained. Already, the educational authorities have declined approval,

even though it was for want of approval of the manager. Therefore, the said contention also cannot be sustained. It is therefore not necessary to remit the matter back to the Government for fresh consideration. The 4th respondent, Smt. Sofia is also qualified for appointment as H.S.A. (Hindi) and once she is held to be entitled for preference, then even if another candidate is having a better qualification, the claim of Smt. Sofia cannot be defeated, since her qualification is sufficient for appointment as H.S.A. (Hindi).

20. For all these reasons, I find no reason to interfere with the order passed by the Government and the writ petitions are dismissed. The parties are directed to suffer their costs.