
(1956) 01 KL CK 0016
In the High Court Of Kerala
Case No : O.P. No. 186 of 1955

B.P. John

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 30-01-1956

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1956) 01 KL CK 0016

Hon'ble Judges : Varadaraja Iyengar, J

Bench : Single Bench

Advocate : K.K. Mathew, for the Appellant; Government Pleader, for the Respondent

Judgement

Varadaraja Iyengar, J.—This is a petition under Article 226 of the Constitution by a private school teacher against the State of Travancore-Cochin complaining against the refusal to him of a higher initial salary under the Private Secondary School Scheme recently adopted by the State.

2. The Petitioner was attached to St. Berchman's High School Changanacherry, continuously from 11-1-1933 until 21-5-1947 when he joined service in the St. Joseph's High School, Piravom. This transfer of his service was with the consent of the Managers concerned and with a view to serve better the interest of the State Scout Organization in which he was then functioning as the Deputy Organizing Commissioner. It would appear that the management at Piravom undertook specially to continue his old service in the St. Berchman's High School and to transfer his provident fund contribution from that school.

According to the Petitioner he should be deemed to have put in a continuous service in the new school even from 11-1-1933 for purpose of fixing the higher initial pay under Rule 12 (4) of the revised rules under the Private Secondary School Scheme. In view, however, of the defines of "previous service" contained in Rule 12 (3),"die Petitioner was denied the benefit of the higher initial pay by order of the Director of Public Instruction dated 23-3-1955. His subsequent

petition before the Minister for Education requesting a review of the order was turned down by order dated 21-7-1955, Petitioner says that this Rule 12 (3) is discriminatory and unconstitutional, and he is entitled to relief by issue "of a writ of mandamus or other appropriate writ.

3. The Respondent-State has contested the petition by counter-affidavit filed on its behalf, by the Assistant Secretary, Education, A and B Sections. The contention is raised that there was no undertaking- by the present school, of the .nature pleaded by the Petitioner, and that such -undertaking even if true was irrelevant in the light of the distinction formulated under Rule 12 (3) between continuous and non-continuous service for purpose of a practical working of the scheme in question. The ground was also taken that the Respondent-State had no public duty or statutory obligation to satisfy the claim made by the Petitioner who was only an employee of a private school.

4. It may be conceded at the outset that the documents filed by the Petitioner amply prove tile undertaking alleged by him that his service in the previous school should be taken as continued in the present school. But the question still is whether such undertaking could serve any useful purpose in the light .of the Rules governing the implementations of the scheme and accepted by both the management and the Slate. The object of the scheme was to secure the improvements of service conditions of teachers of Secondary School under private management. The adoption of uniform rules and procedure in such matters as service records, claims for higher initial pay, leave and permanent establishment etc., was provided for under tile various Rules. Rule 12 dealt with higher initial pay. Clause (i) of that rule provided that the initial salary of a teacher shall be fixed on the basis of the teacher"s "previous service", if any, Clause (2) said that the "previous service" shall be taken to mean the aggregate period of service of a teacher put in till the commencement of his service under the scheme. Clause 3 naturally followed and said previous service shall be deemed to consist of two parts namely (i) continuous service which me and the aggregate service without any break earned in the present school or in school within the State under the same management as the present school and (ii) non-continuous service which means the aggregate of all other services not included in (i); Clause (4) then said that full credit shall be given for "continuous service" in the post in which initial salary is to be fixed, and half credit for "non-continuous service" in that post as defined in Clause 3, that is to say, continuous service shall be added to one-half of non-continuous service and the period so arrived at shall be taken as the service qualifying for higher initial pay under Clause 7 in tile scale sanctioned for the post.

5. Learned Counsel says that the distinction adopted in Clause 3 of Rule 12 above between continuous and non-continuous service affords no reasonable basis for classification and therefore deserved to be struck down. The criticism as, levelled here appears to me however to be un-i justified. For a classification is. quite reasonable if it is not based on an arbitrary selection but; rests on

difference pertinent to the subject in res-1 post of which the classification is made. And it" cannot be said that the loyalty of a teacher to a" management which impels him to put in a continuous service in the same institution or institutions under the same management has no place in a scheme governing the contractual relationship of the management and the teacher entertained by it. It is not denied that inequality is" produced by the application of Clause 3. But as observed in *Arkansas Natural Gas Co. v. Arkansas Railroad Commission* (1923) 261 U.S. 379 (384 : 67 Law Ed 705 (A) and referred to by Basu at P. 113 of the 3rd Edition of his Commentaries, "The inequality produced, in order to encounter the challenge of the Constitution, must be actually and palpably unreasonable and arbitrary". Reference may be made in this connection to the observations of Das, J. in *The State of West Bengal Vs. Anwar Ali Sarkar*, :

The classification must not be arbitrary but must be rational, that is to say, it must not only be based on some qualities or characteristics which are to be found in all the persons grouped together and not in others who are left out but those qualities or- characteristics must have a reasonable relation to the object of the legislation. In order to pass the test, two conditions must be fulfilled, namely as held in *St. Louis & San Francisco R. Co. v. Mathews*, (1897) 165 US 1: 41 Law Ed. 611 (C) that the classification must be founded on an intelligible differential which distinguishes those that are grouped together from others and as held in *Re Lockwood* (1894) 154 US 116: 38 Law Ed. 929 (D) that that differential must have a rational relation to the object sought to be achieved by the Act. The differential which is the basis of the classification and the object of the Act are distinct things and what is necessary is that there must be a nexus between them.

I therefore overrule; the objection. raised on the ground of unreasonable discrimination.

6. Further the Petitioner herein has no locus standi to raise any objection to the Rules as framed for the private, school teacher has- no contractual or other relationship with the Government giving rise to a legal right capable of enforcement in a court of law. A scheme framed by Government with the avowed object of the betterment of the private school teachers in consultation with the management may in the opinion of some teachers be not fully satisfying. But that cannot give a cause of action in favour of the teacher as against the Government. The jurisdiction of the Director of Public Instruction and the Government to decide questions connected with the service conditions of teachers of. private schools, their salary, etc., are not indeed" vested in them by any Statute or Law, and in this view it is certainly not open to a private school teacher as the Petitioner herein to claim that particular rule governing his school could have taken different shape.

7. The petition fails and is therefore dismissed with costs. Advocate's fee Rs. 100/-.