
(2000) 06 KL CK 0044
In the High Court Of Kerala
Case No : O.P. No. 24333 of 1998

C. Babykutty

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 19-06-2000

Acts Referred:

Constitution of India, 1950 — Article 30(I)

Citation : (2000) 2 KLJ 226

Hon'ble Judges : K.A. Abdul Gafoor, J

Bench : Single Bench

Advocate : K.P. Satheesan, K.K. Gopinathan Nair, N.V. Ajayakumar, M.R. Jaya Prasad and K.K. Rajeev, for the Appellant; R. Rajasekharan Pillai and T.P. Sajan (Govt. Pleader), for the Respondent

Final Decision : Allowed

Judgement

K.A. Abdul Gafoor

1. The petitioner has approached this court seeking a direction to "Respondents 2 to 4 to pay all benefits due to the petitioner as Head Master with effect from 19-12-1994 as expeditiously as possible and at any rate within a time limit that may be fixed by this court with 18% interest on the amount due to the petitioner. It is not in dispute that there arose a vacancy of the Headmaster on 17--12-1994. It is also not in dispute that the petitioner was at that time senior most HSA duly qualified for promotion as Headmaster. It is also not in dispute that the petitioner was overlooked and another incumbent was appointed as Headmaster. Against the said appointment the petitioner filed an appeal before the third respondent. In the meantime, the petitioner approached this court by filing O.P. No. 1088/95. This court by judgment dated 23-1-1995, directed the third respondent herein to consider the appeal filed by the petitioner and to pass appropriate orders after hearing the interested parties. Pursuant to the judgment of this court, the third respondent heard the appeal and held that the petitioner is eligible for promotion as Headmaster with effect from 19-12-1994. Against this

order, the Manager of the school preferred an appeal before the Deputy Director of Education, Alappuzha. The said appeal was dismissed by the Deputy Director. The same was the fate of the revision filed before the second respondent. Again the petitioner approached this court by filing O.P. No. 14741 of 1996. This court passed an interim order directing the 4th respondent to promote the petitioner within three days. The Manager of the school took up the matter in Writ Appeal No. 535 of 1997 and the writ appeal was also dismissed by this court. Finally, left with no other option, the 4th respondent promoted the petitioner as Headmaster of the school. While working as Headmaster, the petitioner has retired from service. The petitioner has not been given his eligible salary from the date when he was as per law, entitled to be appointed as Headmaster. The order of the second respondent was challenged by the contesting incumbent before the Government in revision. That revision also failed. The manager of the school challenged that order before this court. But, that was dismissed on the submission of the manager himself that the manager will pursue the remedy before the Government agitating the right available to a minority community under Art. 30(I) of the Constitution of India. That matter is now pending before the Government. Even if that is ordered in favour of the Manager it cannot affect the petitioner who has now retired from service.

2. As on today, the petitioner's claim had been upheld. There is no reason to decline the relief to the petitioner. In such circumstances, the petitioner shall be paid all his dues from the date when he was entitled to be promoted as Headmaster. If the Manager did not appoint him as Headmaster, his entitlement and eligibility cannot be denied. The entitlement of a teacher denied by the Manager can be recovered from the Manager by resorting to even revenue recovery proceedings, as enabled in Chap.III Rule 7(4) of the Kerala Education Rules. Rule 7(4) provides that in case a Manager commits serious irregularities causing monetary loss to teachers/Government, the loss sustained by teachers/Government shall be recoverable from the Manager under the provisions of the Revenue Recovery Act.

3. This is an apt case where the Manager has committed serious irregularities by causing monetary loss to the petitioner denying him due promotion. Therefore, this is a situation where the said provision shall be invoked by the Government to recover the loss sustained by the petitioner.

4. The Original Petition is allowed with a direction to the Government and the Deputy Director concerned to recover the loss sustained by the petitioner from the Manager and to pay the same to the petitioner. The process shall be completed at the earliest at any rate, within six months from the date of receipt of a copy of this judgment. The original petition is allowed.