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(1979) 01 KL CK 0007

In the High Court Of Kerala

Case No : O.P. No. 2087 of 1977 M

Chandrasekhara Panicker — APPELLANT

Vs

Government of Kerala and Others — RESPONDENT

Date of Decision : 11-01-1979

Acts Referred:
Kerala Education Rules, 1959 — Rule 12(7), 2(2), 3, 44(1), 44A

Citation : (1979) 01 KL CK 0007

Hon'ble Judges : T. Kochu Thommen, J

Bench : Single Bench

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

Final Decision : Allowed

Judgement

Kochu Thommen, J.—The question which arises for consideration is whether in the case of a graduate teacher of an Aided High School who was appointed prior to 15th October 1957, the period of his untrained service and training should be taken into account for the purpose of Rule 3 of Chapter XXVI of the Kerala Education Rules. This rule says that the Headmaster of an Aided High School shall be given the Departmental Headmaster''s scale of pay only if he has put in a minimum of 16 years of continuous service as a graduate teacher in schools recognised by the Department.

2. The Petitioner is now working as a Headmaster of an Aided High School. He was appointed as High School Assistant as early as 25th June 1956. He was a graduate at the time of his appointment, but had not obtained the B.Ed. training. He was sent by the Department for B.Ed. training on 10th July 1959 on a subsistence allowance of Rs. 50 per month. He completed his training on 4th April 1960 and rejoined duty on 5th May 1960. On 25th June 1968 the Petitioner was absorbed as a First Grade High School Assistant. He was appointed as Headmaster of an Aided High School on 26th June 1971. On 25th June 1972 the Petitioner completed 16 years of service as a graduate teacher. He submitted

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Ext. P-4 representation, dated 18th May 1972 before the 4th Respondent, the District Educational Officer, requesting him to fix the Petitioner''s scale of pay as a Headmaster in terms of Rule 3 of Chapter XXVI with effect from 25th June 1972. His request was refused by Ext. P-5 order on the ground that the period of his untrained service and training could not be taken into account in computing his total length of continuous service as a graduate teacher. Ext. P-5 order of the District Educational Officer was confirmed by Ext. P-7 order of the 3rd Respondent, the Regional, Deputy Director, Calicut, and by Ext. P-9 order of the 2nd Respondent, the Director of Public Instruction, Trivandrum. These orders are finally confirmed by the Government by Ext. P-11. The Petitioner now challenges Exts, P-5, P-7, P-9 and P-11.

3. Rule 3 of Chapter XXVI of the K.E.R. reads as follows:

3. The Headmaster of an Aided complete Secondary School/Training School shall be given the Departmental Headmaster''s scale of pay only if he has put in a minimum of 16 years of continuous service as graduate teacher in schools recognised by the Department....

This rule requires that the Headmaster of an Aided complete Secondary School (meaning an Aided High School) should have put in 16 years of continuous service as a graduate teacher to qualify for the salary of a Departmental Headmaster. The expression ''continuous service as graduate teacher'' is not defined in Chapter XXVI of the K.E.R. However the expression ''graduate service'' is defined for the purpose of Rule 44-A of Chapter XIV-A of the K.E.R. Rule 44-A reads as follows:

44-A(1) Subject to the provisions contained in Sub-rule (1) of Rule 44, the minimum service qualification for appointment as Headmaster, in Aided Complete High Schools/Training Schools shall be twelve years of continuous graduate service with a pass in the test in the Kerala Education Act and the Kerala Education Rules and a pass in Account Test (Lower) conducted by Kerala Public Service Commission.

....

Explanation: For the purpose of this rule, ''Graduate Service'' means all service of a teacher as High School Assistant, Training School Assistant, Headmaster of an incomplete High School, Headmaster of a complete Upper Primary School/Middle School or Headmaster of a Training School after acquisition of Collegiate training such as B.T., L.T. or B.Ed. But in the case of such teachers appointed prior to 15th October 1957 their untrained service after graduation shall also be reckoned as ''Graduate Service'' provided that their appointments were not in accordance with the Madras Education Rules.

....

According to this rule no teacher of an Aided High School is entitled to become the Headmaster of such a school unless he has put in 12 years of continuous

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graduate service. ''Graduate Service'' ordinarily means as stated in the Explanation to the rule, service after the acquisition of Collegiate training such as B.T., L.T., or B.Ed. The explanation however provides that in the case of teachers appointed prior to 15th October 1957, their untrained service after graduation can also be reckoned as ''graduate service''. The date 15th October 1957 is significant because it was only from that date that it was laid down by executive orders that training was a necessary requirement for appointment as a High School Assistant. This requirement is now statutorily provided under Rule 2(2) of Chapter XXXI, which came into force in 1972.

4. The Government Pleader submits that the definition of ''graduate service'' as provided under the explanation to Rule 44-A of Chapter XIV-A is confined to that rule alone; for, the explanation begins by saying "for the purpose of this rule." It is true that the Explanation is provided for the purpose of Rule 44-A which says, as I mentioned earlier, that a teacher of an Aided High School shall not be qualified to become the Headmaster of such a school unless he has put in 12 years of continuous graduate service. If in the case of such a teacher the requirement of training was dispensed with if he was appointed prior to 15th October 1957, I see no reason why the same Explanation should not be adopted to understand the meaning of a similar (though not identical) expression ''continuous service of graduate teacher'' appearing in Rule 3 of Chapter XXVI. If untrained service is reckoned as graduate service in the case of persons such as the Petitioner for the purpose of Rule 44-A, I am of the view that the same principle should be adopted for the purpose of Rule 3 of Chapter XXVI.

5. The impugned orders say that the period of training amounts to a break in service and therefore the period prior to the completion of training could not be reckoned for computing the total length of service. There is no provision under the Kerala Education Rules which says what happens to a teacher when he goes on training. According to the Government Pleader the period of training is a break in service. He is not able to place before me any provision of law or decision in support of this contention. On the contrary the principle adopted under the Kerala Service Rules is contrary to that submission. It is true that the Kerala Service Rules is not applicable in respect of Aided Schools except to the extent specifically adopted in the Kerala Education Rules. It is however of interest to note Rule 12(7) of Chapter II of the K.S.R. Part I, which defines ''duty'' as follows:

12(7) Duty: Duty includes:

....

(iii) A course of instruction or training which an officer undergoes specially ordered by Government to be treated as duty.

....

In a Note added to that sub-rule, as Note No. 5, by G.O. (P) 322/67/Fin., dated

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29th July 1967, (with effect from 1st November 1959) it is stated as follows:

Note 5: The period spent on training by teachers (both stipendiary and non-stipendiary) deputed for training from departmental schools to Training Colleges/ Training Schools may be treated as duty.

Although this principle has not been specifically adopted in respect of Aided Schools, I see no reason why, in the absence of any provision to the contrary, this just and salient principle should not be followed for the purpose of reckoning the total length of continuous graduate service for the purpose of Rule 3 of Chapter XXVI in the case of a teacher who was appointed prior to 15th October 1957 and sent by the Government for training.

6. In the circumstances, I am of the view, that the Petitioner who was appointed prior to 15th October 1957 is well justified in contending that his total length of graduate service includes the period of untrained service and the period spent on training. The impugned orders are accordingly quashed. The Respondents are, in the light of what is stated above, directed to pass appropriate orders in regard to the Petitioner''s claim on merits as expeditiously as possible.

The Original Petition is allowed in the above terms. The parties will bear their respective costs.

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