
(1972) 01 KL CK 0004
In the High Court Of Kerala

C.T. Gracy

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 07-01-1972

Acts Referred:

Kerala Education Rules, 1959 — Rule 12, 6F

Citation : (1972) 2 LLJ 307

Hon'ble Judges : P. Subramonian Poti, J

Bench : Single Bench

Judgement

P. Subramonian Poti, J.—The petitioner, having passed the S.S.L.C. examination and acquired training qualification prescribed for appointment as a teacher in Hindi in the high schools, was appointed in a vacancy of high school assistant in Hindi in the Pengamuk High School under the management of the 4th respondent for the period from 20-1-1970 to 31-3-1970. That appointment is said to have been approved.

2. The Pengamuk High School has besides high school classes, an upper primary section also attached to it. For the year 1970-71 the District Educational Officer, Chowghat, the 3rd respondent in the petition, sanctioned one permanent post of high school assistant in Hindi, one permanent post of junior Hindi teacher and one temporary post of junior Hindi teacher under the staff fixation order contemplated by Rule 12 of Chapter XXIII of the Kerala Education Rules. During the year 1970-71, one Unnikrishna Panicker holding the post of a permanent junior Hindi teacher went on leave for training purposes and the petitioner was appointed in that vacancy from 3-8-1970 to 13-4-1971.

3. The post of junior Hindi teacher is intended for taking upper primary classes and training qualification is not a necessary requisite. But that is necessary for teaching in high school classes. The petitioner was actually qualified for taking high school classes. But since during the year 1970-71 the vacancy was of a junior Hindi teacher the petitioner was appointed to that vacancy. During the year 1971-72 in the staff fixation the same pattern was followed. By that time

the teacher who had gone for training returned and that meant that one of the junior teachers had to go out and the petitioner was the one who was so of stead. Now the petitioner claims in the petition that she was entitled to continue in the school as a high school assistant. This is based upon her case that if, instead of sanctioning one post of high school assistant for Hindi and two posts of junior Hindi teachers, two posts of high school assistants and one post of junior Hindi teacher were sanctioned, she would be appointed in the school as high school assistant as the other two were not qualified to hold the post of high school assistant. Even that assumption does not appear to be quite correct as one of them was qualified by passing training and at least from that date he too would be a person qualified to be a high school assistant. Whatever that be the petitioner's case is founded upon and only upon the argument that under the relevant rules the staff fixation ought to have been different from what it actually turned out to be, that in place of one high school assistant there should have been two high school assistants. If this had been done one of the existing teachers in the school whose claim is definitely better than that of the petitioner by reason of seniority would have to be ousted. But if the rule requires that two places must be that of high school assistants and if neither of the two others in service were qualified for that post, necessarily the consequence that the senior is ousted may not be relevant. Therefore, the question is whether the petitioner's contention that there should have been two posts of high school assistants sanctioned in the staff fixation order for the year 1971-72 is sustainable.

4. Rule 8 in Chapter XXIII of the Kerala Education Rules was deleted with effect from 13-9-1971. This deletion may not be material for the purpose of the case since the staff fixation order was passed prior to that date. It was actually passed on 15-7-1971, as it ought to be. In fact Rule 12 of Chapter XXIII requires that the fixation of staff shall be finalised by the Educational Officer not later than the 15th July every year or such other date as may be fixed by the director from time to time for the purpose. There is no case that the director fixed any other time. Therefore, in the instant case, the staff fixation for 1971-72 was due before 15th July of 1971, and, therefore, Rule 8 as it stood then would apply.

5. On 3-7-1971, Rules 6C to 6H were added in Chapter XXIII by notification, dated 3-7-1971, published in the Gazette, dated 3-8-1971. There is controversy as to whether that rule will have application to the facts of the case. The contention of the first respondent is based upon the premises that Rule 6F on which reliance was placed came into force on 3-7-1971, which is the date of the notification and not on 3-8-1971, which is the date of its publication in the Gazette. If it came into force on 3-8 1971, it will not be of avail to the 1st respondent for the purpose of contending that Rule 6F operated at that time and under the provisions of that rule it was open to the department to fix the strength of the staff. Particular reliance is placed on proviso to Rule 6F which reads thus:

Provided further that in sanctioning posts as per Sub-rules (i) to (iii), qualified teachers working against sanctioned posts shall not be affected.

Based on this it is contended that in the staff fixation of the previous year there was provision for only one high school assistant and two junior language teachers and actually also there were one high school assistant and two junior language teachers functioning. One of them would have been displaced in case staff fixation was made in the manner suggested by the petitioner, namely, two high school assistants and one junior language teacher. In other words, it is the saving by the proviso which would enable qualified teachers working earlier to continue that is relied on by the first respondent. This proviso would be available only if Rule 6F was in force on the relevant date. There was no such proviso in Rule 8 of the same Chapter which was in force at the relevant time. As I pointed out earlier, under that rule also two high school assistants and one junior language teacher would be the proper pattern, as it would be the case under Rule 6F but for the proviso to Rule 6F. Therefore, if the proviso was not available, then Rule 8 of Chapter XXIII will necessarily operate to render the fixation made for that year wrong. That is how the question whether Rule 6F was operative on the relevant date assumes significance.

6. The Kerala Education Act provides in Section 36 that the Government may make rules for the purpose of carrying into effect the provisions of this Act. The matters in regard to which such rules may be made are provided in Sub-section (2) of the section. That section does not provide as to how the rules should be published nor does any other provision in the Act give a guidance in this behalf. Section 37 of the Act provides that all rules made under the Act shall be laid for not less than fourteen days before the Legislative Assembly, as soon as possible, after they are made and shall be subject to such modifications as the Legislative Assembly may make during the session in which they are so laid. This Court has held, in the decision in *Poulose v. A.E.O.* (1967) KLT 1021, that the requirement specified in Section 37 is only directory in character and that the failure to lay the notification before the Legislative Assembly does not affect the validity of the rule. The operation of the rule is not postponed to such time as it is laid before the Assembly.

7. The Kerala Education Rules also do not indicate as to whether the rules framed by the Government are to be published in any particular manner. But the preamble to the rules framed in 1959 indicates that the rules come into force on such date as the Government may, by notification in the Gazette, appoint and different dates may be appointed for different provisions of this Act. Therefore, what is contemplated is the prospective operation of existing rules from the date of notification to be made in the Gazette.

8. Statutes passed by the Legislature and law made by authorities to whom power of legislation is delegated by statutes call for compliance by those to whom they are directed and, therefore, it is necessary that there should be publicity in regard to such laws so as to bind those whom they govern.

Legislations by way of statutes are "often accompanied by a fan-fair of publicity". During the process of its motion through the legislative anvil there is publicity for the measure. The matter is debated in the Legislature and discussed in the press and sometimes in the platforms. But this is not the case with subordinate legislation which often issues from the Secretariat of the Government or other offices. The citizen to whom it is directed is not expected to have notice of it automatically so as to call for his obedience to it unless it is accompanied by such publicity as would normally bring it to his notice. It is open to the statute under which such subordinate legislation is made to prescribe the mode in which publication is to be made. In the absence of any such direction in the parent statute such subordinate legislation would become operative only on publication in one or other modes which is being normally resorted to. The publication in the Gazette is the usual mode in which such legislation is notified to the public and under ordinary circumstances that should be taken to be the proper or the normal course. In fact, even the notifications which are to bring into force the rules in the Kerala Education Rules, 1959, are to be published in the Gazette as provided in the preamble to the rules. That mode would be the proper mode for publication of any rule and until it is so published the rule cannot be said to have come into operation.

9. There may be instances where mode of publication prescribed may be such as may not be reasonably sufficient to bring the rules to the notice of the public. In such cases the question may arise whether the provision in the statute concerning the mode of publication may not be sufficient. If it is found that the publication is not such as would reasonably be enough to give notice to persons whose compliance is intended the Courts may hold that the rules have nevertheless not come into operation.

10. The Supreme Court in the decision in *State of Maharashtra Vs. Hans George*, , has observed thus:

There is undoubtedly a certain amount of uncertainty in the law except in cases where specific provision in that behalf is made in individual statutes as to (a) when subordinate legislation could be said to have been passed, and (b) when it comes into effect.

The learned Judges further observed:

We consider that it would be conducive to clarity as well as to the avoidance of unnecessary technical objections giving occasion for litigation if an enactment on the lines of the U.K. Statutory Instruments Act, 1946 were made in India either by an amendment of the General Clauses Act or by independent legislation keeping in mind the difficulties of construction to which the U.K. enactment has given rise.

In the case with which their Lordships of the Supreme Court were concerned the question was whether a notification by the Reserve Bank of India was contravened. That depended on the question as to when the notification became

effective and dealing with this question their Lordships said thus:

Where there is a statutory requirement as to the mode or form of publication and they are such that, in the circumstances, the Court holds to be mandatory, a failure to comply with those requirements might result in there being no effective order the contravention of which could be the subject of prosecution but where there is no statutory requirement we conceive the rule to be that it is necessary that it should be published in the usual form, i.e., by publication within the country in such media as generally adopted to notify to all the persons concerned the making of rules. In most of the Indian statutes, including the Act now under consideration, there is provision for the rules made being published in the Official Gazette. It, therefore, stands to reason that publication in the Official Gazette, viz, the Gazette of India is the ordinary method of bringing a rule or subordinate legislation to the notice of the persons concerned.

11. Chinnappa Reddy, J., of the Andhra Pradesh High Court in *Narayana Reddy v. State of A.P.* 1961 1 A.W.R. 77, dealing with a case that a promotion made was in contravention of a rule had to consider as to whether the rule had come into force on the relevant date. That rule was published in the Gazette on 6-4-1967 but it was contended by the petitioner in the case that the rules came into force on 1-3-1967, which was the date of the Government order relating to the rules. The learned Judge attempted to answer the question raised in the case thus:

Though, generally introduced unobtrusively and seldom attended by the flourish of bugles, delegated or subordinate legislation is all pervasive and there is hardly any field of activity where governance by delegated legislative powers is not as important, if not more important, than governance by Parliamentary legislation. One has only to go through any issue of the Official Gazette to realise how much we are governed by subordinate legislation. Is it then not just those that are governed that they should be informed of the law that governs them ? Justice Vivian Bose called this a principle of natural justice, though, I have no doubt, that the learned Judge did not mean to add to the two great principles of natural justice, *Nemo iudex in causasua* and *audi alteram partem*. What the learned Judge meant was that the principle that there can be no law that is not published or promulgated is as true a principle of justice and fair-play as any principle of natural justice. Judges in India are brought to administer law according to the principle of justice, equity and good conscience. In *Harla v. State of Rajasthan*, the facts were these. During the minority of the Maharaja of Jaipur, a Council of Ministers appointed by the Crown Representative was authorised to make laws for the State. On 11th December, 1923, the Council of Ministers passed a resolution purporting to enact the Jaipur Opium Act. The Act was never promulgated or published in the Gazette or made known to the public by other means. The question arose whether the mere passing of the resolution was sufficient to make it law. Vivian Bose, J., with whom agreed Mahajan, J., was of the emphatic opinion that it was not. He observed:

In the absence of any special law or custom, we are of opinion that it would be

against the principles of natural justice to permit the subjects of a State to be punished or penalised by laws of which they had no knowledge and of which they could not even with the exercise of reasonable diligence have acquired any knowledge. Natural justice requires that before a law can become operative it must be promulgated or published. It must be broadcast in some recognisable way so that all men may know what it is, or, at the very least, there must be some special rule or regulation or customary channel by or through which such knowledge can be acquired with the exercise of due and reasonable diligence. The thought that a decision reached in the secret recesses of a chamber to which the public have no access and to which even their accredited representatives have no access and of which they can normally know nothing, can nevertheless affect their lives, liberty and property by the mere passing of a resolution without anything more is abhorrent to civilised man. It shocks his conscience. In the absence, therefore, of any law, rule, regulation or custom, we hold that a law cannot come into being in this way. Promulgation or publication of some reasonable sort is essential.

I most respectfully agree that the idea that a person may be governed by a law that cannot be known by him because it is not published or promulgated is revolting to judicial conscience and civilised thought. It has with it a strong odour of totalitarianism and of the Gestapo. It is repugnant to the Principles of Justice, Freedom, Equality and Fraternity, cherished by all lovers of Democracy and enshrined in our Constitution.

12. As indicated by me earlier, I am in respectful agreement with the views expressed by Chinnappa Reddy, J., in the decision adverted to. The amendment of the Kerala Education Rules by incorporation of Rule 6F of Chapter XXIII would be operative only from 3-8-1971, when the rule was published in the Gazette and that would mean that on the relevant date the rule was not in force. If that be the case, the petitioner's contention has to be accepted and it has to be found that the staff fixation statement for the relevant year should have been 2 high school assistants and a junior language teacher.

13. The prayer in the original petition is to quash Ext. P2 which is the order passed by the Regional Deputy Director, Ernakulam, reversing the order of the District Educational Officer fixing the staff pattern as comprising posts of 2 high school assistants and a junior language teacher. I direct that Ext. P2 will not be operative and that the staff fixation by the District Educational Officer, namely, that of two high school assistants and one junior language teacher should be the pattern. Disposed of as above. In the circumstances the parties will suffer costs.