(1995) 08 KAR CK 0059

In the Karnataka High Court

Case No : Writ Petition No. 29984 of 1995

Fathima Unnissa APPELLANT

Vs

State of Karnataka RESPONDENT

Date of Decision : 09-08-1995

Acts Referred:

Citation : (1995) ILR (Kar) 3236 : (1995) 5 KarLJ 660

Hon'ble Judges : M.F. Saldanha, J

Bench : Single Bench

Advocate : Basavaprabhu S. Patil, for the Appellant; Chidananda Ullal, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

M.F. Saldanha, J.—This is one more instance where the State has sought to put forward a justification for the plea that it is legally permissible to approve the appointment of a teacher and withhold the applicability of the requirement to reimburse the salary of that teacher. The petitioner is working since the year 1989 and as far as the facts of this case are concerned, there is no dispute about the fact that her appointment has been approved. She has stated on oath that because of the refusal on the part of the State to make the Grant-in-Aid applicable as far as her salary is concerned, that she is not receiving any salary. She had approached this Court on an earlier occasion and the Court directed the R4 to consider the petitioner''s case. As is typical and as is happening in case after case, the Government officer concerned takes the direction of the Court literally and passes an order that the case has been reconsidered and that the plea has once again been rejected. It is elementary that when the High Court directs the authority to reconsider the matter, what is implicit is that the authority had gone wrong on the earlier occasion and secondly, that the case must be freshly considered in the light of the fact that the Court was of the view that such a reconsideration was necessary in so far as the earlier rejection order did not appear to be correct. It almost borders on Contempt in cases where the

Government officer impertinently passes a mechanical order once again rejecting the application, thereby giving rise to one more round of litigation. This is precisely what has happened in the present case and the poor clerk is once again before the High Court.

2. The petitioner''s learned Advocate has submitted that the solitary ground given by the R4 is that the Government, has undoubtedly approved the posts, but that the condition stipulates that the Grant-in-Aid will not be made available. The R4 further states that certain other employees'' salary has been approved of and the Grant-in-Aid made applicable to them though they belong to the non-teaching staff, but that as far as the present petitioner is concerned, that since no such approval has been accorded by the Government, that the salary is still not reimbursable. The learned Advocate submits that the genesis of all this stems from a so called economy measure drive on the basis of which such orders had been passed. I do not propose to go backwards to examine the validity or otherwise of those measures that were implemented several years earlier. This Court has had occasion to deal with a situation identical to that of the present petitioner while disposing of W.P.No. 31702/94 DD 10.11.1994 - Kemparaju v. State and Ors. in a case once again relating to the Education Department wherein, in para 3 of the Judgment, this Court had observed as follows:-

"3. The ground for non-issue of salary grant as emerges from the record is that the Government at the relevant time was following what is politely described as "economy measures". Such economy measures prescribe that even those posts that have been approved, were being approved without the sanction of grant. To my mind, there is no legal sanction whatsoever for such partial approval in so far as once the post of appointment is approved of, it necessarily follows that the employee concerned is legally entitled to receive the salary benefits etc., and the obligation in law on the authorities is complete. This aspect of the matter will have some bearing in so far as even though admittedly the Government has relaxed the so called economy measures in the year 1993, the question that would arise is as to from what date the petitioner is entitled to receive his salary and allowances. There could be no ambiguity about the fact that the petitioner wilt be entitled to these with effect from the date of grant of approval to him which in the present case happens to be 23.12.1992."

3. The learned Government Advocate has stoutly defended the order. In the first instance, he submits that there are situations in which a Government may be required, because of financial constraints, to observe the economy drive. In such a situation, even if an approval to a post is granted, it is open to the Government to prescribe that the Grant-in-Aid will not apply to that post and the learned Government Advocate submits that if it is because of financial stringency, in other words the non-availability of the requisite finances, that a Court ought not to interfere with such a decision. His submission is that it is perfectly reasonable and justified to put down such a condition in so far as it is permissible within the framework of the Grant-in-Aid Code to impose conditions. Under these

circumstances, it is his contention that the refusal on the part of the Department which is on the basis of financial inability must be upheld.

4. As far as this argument of the learned Government Advocate is concerned, I need to observe that education is a priority commitment of the Government even as far as the Constitutional duties are concerned. This commitment presupposes that once the administration and control is retained by the Government, that the necessary provision will be found for this priority and vital area. As far as the eradication of illiteracy is concerned, it is now recognised, that education is virtually the basic right of the citizen and under these circumstances, it shall not be open to plead financial stringency. To my mind, this is nothing more than a lame excuse in so far as if a little bit of wasteful expenditure is avoided and proper budgetary control is adopted, there should be no difficulty in finding the little money that is required to pay the staff of these institutions. Under these circumstances, to my mind, the view taken by this Court that once an approval is granted, that the payment of salary becomes synonymous is reiterated and under these circumstances, the Petition is liable to be allowed.

5. There is one more aspect of the matter which the learned Government Advocate referred to and since these points are raised time and again in these Writ Petitions, it is necessary to settle the law once and for all.

6. The learned Government Advocate submitted that in the case of private institutions which are admitted in Grant-in-Aid, they are still managed by the private management under the supervision and control of the State. He submits that the relationship of master and servant exists vis-a-vis the management and the teacher or non-teaching staff and that as far as the Grant-in-Aid is concerned, that it is only a reimbursement to the management. The contention therefore, is that if the staff member is not receiving the salary, that the cause of action is exclusively vis-a-vis the management and that such a Petition ought not to be entertained. The learned Government Advocate submits that if the petitioner has a grievance regarding non-payment of salary, that the petitioner must enforce her claim vis-a-vis the management and not vis-a-vis the Department because, she is not an employee of the Department nor was she appointed by the Department, As far as this argument is concerned, the fallacy in it is that whereas it is true: that the petitioner was appointed by the management, the law takes cognizance of the fact that these institutions cannot be started without State approval and furthermore, they are completely supervised and controlled by the Education Department. It is in these circumstances, that approval becomes necessary and once the approval is granted, the vicarious liabilities of the State come in. That liability prescribes that the salary of the petitioner must be reimbursed by the Government. If the Government refuses to do it, as in the present case, to my mind, the petitioner does have a cause of action against the State or its officers who have failed in their duty. To this extent therefore, I am unable to uphold the submission that the present Petition is devoid of a cause of action or that the cause of action, if

any, can be directed exclusively against the private management and that a Writ is not maintainable.

7. Having regard to the aforesaid situation, the Petition succeeds. The Rule is made absolute. The respondents are directed to compute and pay to the petitioner the salary attached to her post with effect from the date on which her appointment was approved. As far as the monthly salary is concerned, the salary for the month of September 1995 shall be paid on or before the 10th of October 1995. The respondents shall continue to pay the petitioner''s salary from month to month thereafter, As far as the arrears are concerned, these shall be computed and paid to the petitioner within an outer limit of three months from today. In the event of default for whatever reason, the respondents shall be liable to pay interest at the rate of 18% p.a. compounded. The learned Government Advocate is requested to communicate to the Department in writing the directions of this Court.

The Petition is accordingly allowed. As a necessary consequence, the order Annexure ''A'' is quashed. No order as to costs.

