

(1999) 11 KL CK 0015
In the High Court Of Kerala
Case No : W.A. No. 574 of 1993

Govindankutty, C. and Another

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 10-11-1999

Acts Referred:

Kerala Education Act, 1958 — Section 14(1), 14(8)

Citation : (1999) 11 KL CK 0015

Hon'ble Judges : Arijit Pasayat, C.J.;K.S. Radhakrishnan, J

Bench : Division Bench

Advocate : T.P. Kelu Nambiar and P.G. Rajappalan, Babu Varghese, P.C. Sasidharan and Narayanikutty Chettur, for the Appellant; C.T. Ravikumar, for the Respondent

Final Decision : Dismissed

Judgement

Arijit Pasayat, C.J.—In this appeal, Appellants have assailed correctness of judgment of the learned Single Judge in O.P. No. 3224 of 1998 dated 5th January 1993. Present Appellants, along with Respondent No. 3, had filed the original petition. They are teachers H.S.A. of Raja's High School, Kottakkal. Institution in question was a private school run by a trust. By notification No. 35040/N1/73/G. Edn, dated 7th August 1973, management of the school was taken over by Government in public interest for a period of five years from 20th September 1973 in exercise of powers conferred u/s 14(1) of the Kerala Education Act, 1958 (in short, the Act). Said period was to expire on 19th September 1978. In purported exercise of power conferred u/s 14(8) of the Act, by notification dated 20th September 1978, school was taken over in public interest. According to Appellants, there was no specific modality as regards absorption of staff serving in the institution. Director of Public Instructions (in short. D.P.I.) was requested by Government to sent detailed proposals regarding principles under which staff can be absorbed in Government services. By letter dated 12th October 1978 addressed by Special Secretary to Government in General Education Department

to D.P.I., details were called for. As nothing happened for a long time, first Appellant submitted a memorandum to Government for expeditious action. Government, with reference to letter of D.P.I., ordered in G.O. (Rt.) No. 4458/83/G. Edn., dated 22nd December 1983 that staff serving in the institution were treated to be absorbed into Government service with effect from 20th September 1978 following principles of absorption of staff of surrendered school which were earlier prescribed in G.O. (Ms.) No. 479/70/G. Edn., dated 18th November 1970. D.P.I. was to take steps accordingly. Said Government order dated 22nd December 1983 was challenged before this Court in O.P. No. 1546 of 1984. Same was disposed of with the observation that Government may incorporate appropriate provisions in the Kerala Education Rules, 1959 (in short, the Rules) for safeguarding interest of teachers in the schools taken over u/s 14(8) of the Act. Direction was also given to take a decision on the memorandum dated 25th June 1982 submitted by first Appellant. By Order G.O. (Rt.) No. 2941/87/G. Edn., dated 7th October 1987, request for fixation of seniority taking into account the period of service in aided institution was rejected. Said order was challenged in the Original Petition and by impugned order, same was rejected.

2. Learned Counsel for Appellants submitted that true import of judgment of apex Court in *State of Orissa and Another Vs. N.N. Swamy and Others*, was not duly taken note of. Exclusion of the period served in institutions prior to its take over is against principles laid down in *State of Orissa and Another Vs. N.N. Swamy and Others*, . Reliance was placed by Appellants in *State of Orissa and Another Vs. N.N. Swamy and Others*, as well as *Wing Commander J. Kumar Vs. Union of India (UOI) and Others*, and *K. Madhavan and Another Vs. Union of India (UOI) and Others*, . Counsel for Respondents 1 and 2, in support of judgment, stated that decision in *State of Orissa and Another Vs. N.N. Swamy and Others*, has no application to the facts of the case.

3. It is to be noted that in *State of Orissa and Another Vs. N.N. Swamy and Others*, eligibility of certain persons for appointment as readers was under consideration. Question was whether services rendered by them in a private institution, which had been taken over by State, could be taken into account in computing period of eligibility. In that context, it was observed by apex Court that teaching experience is not completely effaced to the extent that they will not be even eligible. In other two cases, question related to Government servants' transfer from one department to Anr. Basic consideration, which weighed with apex Court, was that there was no qualitative difference between services rendered earlier and after transfer.

4. As has been observed by learned Single Judge rightly, whether Petitioners could be given preference in appointment to higher posts in the same school was not dealt with in the impugned order of Government. What was observed was that they are not entitled to count their service in a private institution for the purpose of their seniority in Government service. As has been rightly contended by Respondents 1 and 2, there is no denial of monetary benefit on absorption.

Teachers, who were serving in the taken over institution, do not come to the lowest scale of pay in the entry cadre. They continue to get pay and allowances that they drew at the time of absorption. Subsequent annual increments and benefits of pay revision were also granted to them. Though for appointment to departmental school, one has to appear at the competitive examination conducted by Kerala Public Service Commission (in short, Commission), there was no such requirement for appointment to aided or private institutions. It may be noted here that question whether employees of a taken over school can be treated as fresh entrants was considered by apex Court in *State of Punjab v. Harnam Singh and Ors.* 1997 (1) S.C.C. 32 : 1998. It was held that the condition made it clear that such employees were to be treated as fresh entrants and it was intended to protect interest of existing teachers, and cannot be faulted. A reference was also made to *State of Punjab v. Dev Dutt Kaushal* 1995 4 S.C.C. 748, wherein a similar view was taken.

5. It has to be born in mind that decision of the Government impugned is a policy decision. In that context, scope of judicial review of such decisions has to be considered. It is not for the Court to determine whether a particular policy or particular decision taken in the fulfilment of that policy is fair. It is only concerned with the manner in which those decisions have been taken. Extent of the duty to act fairly will vary from case to case. Shortly put, grounds upon which an administrative action is subject to control by judicial review can be classified as under:

(a) Illegality: this means, decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it;

(b) Irrationality, namely, Wednesbury unreasonableness; and

(c) Procedural impropriety.

Applying the principles as delineated above, we find no scope for interfering with judgment of learned Single Judge. Writ appeal is dismissed.