
(1963) 10 KL CK 0041
In the High Court Of Kerala
Case No : W.A. No. 125 of 1962

Guptan

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 03-10-1963

Acts Referred:

Citation : (1963) KLJ 1200

Hon'ble Judges : M.S. Menon, C.J;M. Madhavan Nair, J

Bench : Division Bench

Advocate : V.R. Krishna Iyer and V. Sivaraman Nair, for the Appellant; V. Balakrishna Eradi for 2nd Respondent, for the Respondent

Final Decision : Allowed

Judgement

M.S. Menon, C.J.—The appellant was the Headmaster of an aided Lower Primary School at Mangalamkunnu. The 2nd respondent contended before the Director of Public Instruction that he was the legitimate claimant to that post. The contention was not accepted. The 2nd respondent then took up the matter before the Government and Ext. P. 2 is the order passed in his favor and impugned by the appellant - without success-in O.P. No. 118 of 1962. Ext. P. 2 reads as follows:

In his petition read as first paper above Shri Gopalan Nair (2nd respondent) has submitted before Government that he is the legitimate claimant to the post of Headmaster of the A.L.P.S. Mangalamkunnu, Ottapalam, Palghat which is now held by Shri Musali Guptan (appellant). He has stated that his case was represented before the departmental authorities including the D.P.I. and that the D.P.I. issued orders to the effect that Shri Musali Guptan (appellant) may continue to act as Headmaster in the said school. Shri Gopalan Nair (2nd respondent) in his petition appealed to Government that the above order of the D.P.I. may be re-examined.

2. Government have considered his appeal and carefully examined the whole

case. It is seen that Shri Gopalan Nair (2nd respondent) was eligible to hold the post of Headmaster in the said school when he vacated that post to undergo the T.T.C. Course and Shri Musali Guptan (appellant), who was an assistant teacher in the same school was given the post of Headmaster when Shri Gopalan Nair (2nd respondent) had gone for his training course and this was done in order to procure recognition for the school. From this it is evident that the above arrangement was only on a temporary measure. Further, it is seen that Shri Gopalan Nair (2nd respondent) is senior to Shri Musali Guptan (appellant).

3. In view of the facts stated in the preceding paragraph it becomes clear that Shri Gopalan Nair (2nd respondent) is the legitimate claimant for the post and therefore Government are pleased to order that Shri Gopalan Nair (2nd respondent) will be appointed as Headmaster of the above school reverting Shri Musali Guptan (appellant) as the assistant with effect from the date of Shri Gopalan Nair (2nd respondent) rejoined the school.

2. It is admitted that the Government gave no notice of the petition to the appellant and that he was not heard in the matter. The error is fundamental; it involves a violation of natural justice, and Ext. P. 2 has to be quashed on that ground.

3. One of the great rules of natural justice is the principle summed up in the phrase "audi alteram partem" or "hear the other side." As stated by Lord Reid in *Ridge v. Baldwin* (1963) 2 All E.R. 66:

The principle audi alteram partem goes back many centuries in our law and appears in a multitude of judgments of the highest authority. In modern times opinions have sometimes been expressed to the effect that natural justice is so vague as to be practically meaningless. But I would regard these as tainted by the perennial fallacy that because something cannot be cut and dried or nicely weighed or measured therefore it does not exist. The idea of negligence is equally unsuited to exact definition but what a reasonable man would regard as fair procedure in particular circumstances and what he would regard as negligence in particular circumstances are equally capable of serving as tests in law, and natural justice as it had been interpreted in the courts is much more definite than that.

4. In *Cooper v. Wandsworth Board of Works* (1863, 8 L.T. 278; 14 C.B.N.S. 180) Byles J. said that "although there are no positive words in a statute requiring that the party should be heard yet the justice of the common law would supply the omission of the legislature." And in *Wood v. Wood* (1874, 30 L.T. 815; L.R. 9 Ex. 190) Kelly C.B. observed that the rule is not confined "to the conduct of strictly legal tribunals but is applicable to every tribunal or body of persons invested with authority to adjudicate upon matters involving civil consequences to individuals."

5. An important question of administrative law is whether some principles of procedures are not so universal as to apply to all wielding of power, whether

judicial or administrative. And the answer that the courts have given over the years is that even when an executive body is given the power to decide something in its discretion the courts would still keep it in the leading strings of fair procedure.

6. As already indicated Ext. P. 2 has to be quashed on the ground that it violates the rudiments of fair procedure. We do so.

7. We also make it clear that the Government will be free to go into the matter afresh and pass such orders as it deems fit after giving the appellant an opportunity to present his case. Counsel for the 2nd respondent submitted that his client is now functioning as the Headmaster of the school and that he should not be disturbed during the pendency of the further proceedings. As to what should be the interim arrangement pending the final decision is a matter for the Government to decide and not for us to direct. The Writ Appeal is allowed as above. No costs.