
(2015) 03 KL CK 0304

In the High Court Of Kerala

Case No : Writ Petition (C). No. 28464 of 2010 (G)

Harilal J.

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 24-03-2015

Acts Referred:

Citation : (2015) 03 KL CK 0304

Hon'ble Judges : K. Surendra Mohan, J

Bench : Single Bench

Advocate : M.V. Thampan, for the Appellant; Abhijett Lessil, Government Pleader, Advocates for the Respondent

Final Decision : Allowed

Judgement

K. Surendra Mohan, J—This writ petition is filed by the petitioner who was originally appointed as an Upper Primary School Assistant (hereinafter referred to as "UPSA" for short) with effect from 1.6.1999. His appointment was also approved by the respondents. While the petitioner was continuing in service one Sri. N. Balakrishanan HSA (Malayalam) retired from service on 31.5.2006. The petitioner being the senior most qualified UPSA was promoted to the resultant vacancy with effect from 5.6.2006, as per Ext. P1 order. The petitioner thereupon took charge as HSA and has been working as such, ever since. The petitioner's complaint is that, though he was promoted as HSA, his appointment was not approved by the educational authorities. The petitioner's appointment was not approved for the reason that, one Sri. K. Sidharthan who was the approved Manager at that time, was not a validly appointed Manager of the School. His appointment was found to be invalid by the Munsiff's Court, Karunagappalli in its judgment dated 28.2.2007 in O.S. No. 354 of 2005. The approval to the petitioner's appointment was rejected according to him only on 4.6.2007, after the lapse of one year. Aggrieved by the rejection of the approval, the petitioner had filed a revision before the second respondent. However, the said revision was also rejected. Thereafter, the petitioner approached the Government by

preferring a revision petition which was also rejected by Ext. P4.

2. In Ext. P4, it has been stated that the petitioner had stated that he was withdrawing the revision petition and that he would not claim salary from 5.6.2006 to 31.5.2007. However, according to the petitioner, he had made the statement under a mistaken impression that, the infirmity in the appointment of the Manager, who had appointed him, would invalidate his appointment. In view of the fact that, his appointment was protected by the defacto doctrine accepted by this Court as well as the Supreme Court, it is contended that it is just and necessary that his appointment is approved with effect from 5.6.2006. A counter affidavit has been filed by the fifth respondent contesting the statements made by the petitioner. According to Sri. A.N. Rajan Babu who appears for the fifth respondent, since Sri. K. Sidharthan was a usurper, as held by the Munsiff's Court in the judgment in O.S. No. 354 of 2005, which is produced as Ext. R5(d), the appointments made by the said person can have no legal sanctity or validity. Therefore, the promotion granted to the petitioner has been rightly rejected by the educational authorities. Thereafter, the petitioner had forgone his claim before the Director of Public Instruction and had accepted his promotion from a subsequent date. Therefore it is contended, that the petitioner is not entitled to any further relief.

3. A separate counter affidavit has been filed by the second respondent. It has been stated in the counter affidavit that, there was an established vacancy in the School in the post of HSA (Malayalam) from 5.6.2006 and he petitioner was the legitimate claimant to the said post.

4. According to the counsel for the petitioner, Sri. M.V. Thampan, there is no dispute regarding the fact that, the vacancy to which the petitioner was promoted, was established on 5.6.2006. The petitioner was a claimant under rule 43 of Chapter XIV A of the Kerala Education Rules. There was no other person staking a claim to his promotion. Therefore, his promotion could only be described as the conferring of a service benefit that was legitimately due to a teacher who was already working in the School. The fact that the promotion was given by the Manager, who was found later to have been incompetent to be the Manager cannot affect the claim of the petitioner. Reliance is placed on the decision of a Division Bench of this Court in Padmanabhan Nambiar v. Government of Kerala (1997 (2) KLT 725) to contend that such actions are legitimised by the defacto doctrine.

5. Heard. There is no dispute that the petitioner had been working as UPSA in the School from 1.6.1999 onwards. It is also not in dispute that, one Sri. N. Balakrishnan HSA (Malayalam) had retired from service on 31.5.2006. The petitioner being a claimant under rule 43 of chapter XIV A of the Kerala Education Rules was the rightful claimant for promotion to the said post. Therefore he was promoted by Ext. P1 order. However, the Manager who granted the promotion was Sri. K. Sidharthan, whose appointment was later on invalidated by the Munsiff's Court, Karunagappalli in the judgment dated

28.2.2007 in O.S. No. 354 of 2005. However, the fact remains that the appointment of Sri. K. Sidharthan as Manager had been approved by the DEO on 19.7.2005 and confirmed by the Government on 30.11.2005. Though the said order was under challenge before this Court, in W.P.(C) No. 33871 of 2005, this Court declined to interfere with the said proceedings. As per Ext. R5(c) judgment this Court directed that the parties shall abide by the decision of the Munsiff's Court in O.S. No. 354 of 2005, that was pending. Therefore the fact remains that Sri. K. Sidharthan had functioned as Manager of the School during the period from 19.7.2005 to the date of Ext. R5(d) i.e. 28.2.2007. The petitioner was granted promotion as HSA on 5.6.2006. In the above context, the statement in the counter affidavit filed by the second respondent assumes significance. Paragraph 8 of the counter affidavit reads as follows:

"8. With regard to para 6 of the writ petition it is submitted that the petitioner was working as HSA (Malayalam) with effect from 5.6.2006 without any break. As per the staff fixation the school, there is an established vacancy of HSA (Malayalam) in the school from 5.6.2006. The petitioner is a legitimate Rule 43 claimant to the above said post. The only reason for the rejection of approval as Sri. Harilal as HSA (Malayalam) is due to the management dispute in the above said school."

6. The above statement makes it clear that, the vacancy to which the petitioner had been promoted was established as on 5.6.2006. The petitioner was the rightful claimant for such promotion. There were no other rival claimants to the post. The only infirmity pointed out is that the Manager who had granted him promotion was the person who was held later, to be a usurper.

7. The counsel for the petitioner has placed reliance on the decision in Padmanabhan Nambiar v. Government of Kerala (1997 (2) KLT 725). In the said writ petition a similar question arose that the Manager of the School was removed from the managership. The issue has been considered by this Court in paragraph 11 of the judgment in the following words:

"11. In our opinion, the de facto doctrine can be suitably applied to the facts of the present case. Govindan Nambiar claimed that he was properly elected by the society as Secretary and the previous Secretary handed over charge to him. The educational authorities by virtue of the powers conferred on them under Chap.III R.4 approved Govindan Nambiar as the Manager of the School. An appeal was filed against this approval by Pamanabhan Nambiar. However, the approval was not set aside. Govindan Nambiar filed a suit before the Munsiff's Court, Koothuparamba for the declaration that he was the validly elected Secretary of the Society. The suit was dismissed and consequently Govindan Nambiar was removed from the Managership and Padmanabhan Nambiar was approved as the Manager of the School. The two appointments were made by Govindan Nambiar while he was acting as the Manager of the School. The appellant Padmanabhan Nambiar did not take any action to restrain Govindan Nambiar from discharging his official duties as Manager of the School. In the background of these facts it

cannot be said that Govindan Nambiar was an intruder or usurper to the office of the Manager of the School. Admittedly, Govindan Nambiar was the de facto Manager of the school during the relevant time of appointment of two teachers. When the two teachers sought appointment they could only approach the then Manager of the School for appointment. Even if the approval of Govindan Nambiar as the Manager of the school was found to be invalid whatever official duties discharged by him cannot be rendered as void. As observed by the Supreme Court the de facto doctrine is born of necessity and public policy is to prevent needless confusion and endless mischief under these circumstances."

8. To the same effect is the judgment of another Division Bench of this Court in Eliamma Simon Vs. Seven Seas Transportation Ltd., AIR 2002 Ker 219 : (2002) 1 ILR (Ker) 246 . The above decision has been rendered by following the dictum in Gokaraju Rangaraju Vs. State of Andhra Pradesh, AIR 1981 SC 1473 : (1981) CriLJ 876 : (1981) 1 SCALE 706 : (1981) 3 SCC 132 : (1981) SCC(Cri) 652 : (1981) 3 SCR 474 . In view of the above decisions, it has to be held that this is a case in which the defacto doctrine applies. Though, Sri. K. Sidharthan was not a person duly competent to function as the Manager of the School, his appointment had been duly approved by the educational authorities and he had functioned as the Manager from 19.7.2005 to 28.2.2007. The official acts performed by him cannot be held to be invalid merely for the reason that he was later on held to be incompetent to function as the Manager. Official acts done during the period that he had functioned as the approved Manager of the School cannot be invalidated for the mere reason that his appointment was later on set aside by the Munsiff's Court. It is not in dispute that the petitioner herein had worked from 5.6.2006 onwards, continuously as HSA. Therefore, he is entitled to the benefit of the said service and to all consequential benefits on the basis thereof. Such benefits cannot be denied even for the reason that he had forgone his contentions at the time when the revision was taken up for the consideration by the Director of Public Instruction. I accept the explanation of the petitioner that the said concession had been made by mistake, without knowing real position of law.

For the forging reasons, this petition is allowed. Ext. P4 is quashed. The fourth respondent is directed to approve the promotion of the petitioner as HSA (Malayalam) with effect from 5.6.2006 onwards.