
(2015) 06 KL CK 0043

In the High Court Of Kerala

Case No : Writ Petition (C) No. 16096 of 2014

Jameela K.

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 01-06-2015

Acts Referred:

Constitution of India, 1950 — Article 30, 30(1)

Citation : (2015) 3 KHC 509 : (2015) 3 KLT 192

Hon'ble Judges : A. Muhamed Mustaque, J

Bench : Single Bench

Advocate : Kaleeswaram Raj, for the Appellant; K. Jaju Babu, Senior Advocate, K. Sunitha Vinod, Government Pleader, M.U. Vijayalakshmi and Brijesh Mohan, Advocates for the Respondent

Final Decision : Disposed off

Judgement

A. Muhamed Mustaque, J.—The right of a minority educational institution, in appointing a Headmaster, is the subject-matter of this writ petition. The petitioner, a senior-most teacher in a minority institute, who was suspended till 06/03/2013, is before this Court challenging appointment of the sixth respondent, a relatively junior, as Headmaster of the school with effect from 01/04/2013.

2. Though, in the writ petition, the petitioner had urged that the institution is not having minority status, there seems no such controversy at the time of arguments and the arguments mainly confined to the appointment of the sixth respondent on the ground that the institution failed to adhere to various dicta of this Court and the Hon"ble Supreme Court. The learned counsel for the petitioner Shri. Kaleeswaram Raj argued that appointment of the sixth respondent was by flouting law declared by the Hon"ble Supreme Court and this Court. Per contra, the learned Senior Counsel appearing for the institution, Shri. Jaju Babu defended the action of the institution and submitted that the selection of the sixth respondent is based on fair, reasonable and transparent procedure adopted

by a minority institution which has such a right to appoint suitable person as Headmaster under Article 30(1) of the Constitution of India.

3. There cannot be any controversy now at this point of time as to the right of minority institution to appoint a teacher of their own choice from among qualified teachers for appointment as Headmaster. This right flows from the Constitution and therefore, any ordinary law must yield to such constitutional right. Thus, prescription of seniority as envisaged under Rule 44(1) of Chapter XIVA of the Kerala Education Rules as such would not apply. Rule 44(1) mandates that Manager shall appoint Headmaster ordinarily according to seniority from the seniority list.

4. The right of the minority Management is a constitutional right. But they receive aid from the Government. Their right must sub-serve the purpose for which such right is protected in terms of the Constitution. It implies that minority educational institution has no unfettered freedom in making selection. The paramount consideration is to protect the institutional rights while carrying out their duty to attain the object of the institution.

5. This Court in *Kurian Lizy Vs. State of Kerala*, (2006) 3 ILR (Ker) 579 : (2006) 4 KLT 264 held that institution has to evolve a rationale procedure for selection of the Headmaster or Principal in the aided minority educational institutions.

6. In *The Secretary, Malankara Syrian Catholic College Vs. T. Jose and Others*, AIR 2007 SC 570 : (2006) 13 SCALE 1 : (2007) 1 SCC 386 : (2006) 9 SCR 644 Supp : (2007) 3 SLJ 74 the Hon"ble Supreme Court held that the right conferred on minorities under Article 30 of the Constitution is only to ensure equality with the majority and not intended to place the minorities in a more advantageous position vis-a-vis the majority. Therefore, minority institution has also to bear in mind that on account of any appointment being made as a Head of the institution, the education should not suffer.

7. In *Belsi Vs. Corporate Management of Latin Catholic Schools*, (2010) 2 ILR (Ker) 256 : (2010) 2 KLT 134 , the Full Bench of this Court after adverting to the *Malankara Syrian Catholic College's* case (supra) held that minority institutions are bound to follow a fair procedure while appointing a junior overlooking the senior.

8. In the light of law as above, the action of the minority Management has to be considered. There is no dispute that the sixth respondent is a junior to the petitioner.

9. The learned counsel Shri. Jaju Babu submits that the institution has devised fair mechanism and evaluated comparative merit of the petitioner with the sixth petitioner. It is further submitted that the sixth respondent is possessed of certain other qualifications and has also passed Obligatory Test under Rule 44A of Chapter XIVA of the Kerala Education Rules. It is further submitted that though the petitioner is eligible based on the fact that she is exempted on

account of age, nevertheless, comparative merit would swung in favour of the sixth respondent for appointment as Headmaster.

10. The learned Senior Counsel's argument on comparative merit though perhaps would appeal, nevertheless, nowhere in the counter-affidavit or otherwise it is seen that the institution has delineated the procedure evolved by them for selection of the candidates of their own choice. Defining a transparent and fair procedure is different from assimilating merits of different candidates based on the subjective satisfaction of the members of the Selection Committee or of the Management Committee. The defined procedure would reflect an objective way of selecting a candidate. No doubt, the outcome may be the same as rightly pointed out by the learned Senior Counsel Shri. Jaju Babu. But, mandate of the Kurian Lizy's case (supra) and Belsi's case (supra) would demand that management has to devise a fair and transparent procedure or mechanism. The very inbuilt mechanism of such direction is to annihilate opaqueness by leaving the matter to the vagaries of ethos and perception of those who are armed with a right to select a candidate. The procedure must be definite and appeal to the interest of the institution for which such protection is envisaged under the Constitution. There is no material on record that Management has devised any such mechanism. The petitioner retired on 31/05/2015. Though, this Court would have inclined to set aside the appointment of the sixth respondent for reconsideration by the Management after devising proper mechanism for selection, nevertheless, not inclined to grant such directions for the obvious reason that it cannot come to the aid of the petitioner. In that view of the matter, the writ petition is disposed with the following directions:

- i. The petitioner shall be given notional benefit of Headmaster for the purpose of pensionary benefits with effect from 01/04/2013. The service in the above post will be counted for the purpose of pension alone.
- ii. In view of the fact that the sixth respondent was discharging the post as Headmaster, the petitioner would not be entitled for any difference of salary due to notional promotion in the post of Headmaster. No costs.