
(2014) 12 KL CK 0096

In the High Court Of Kerala

Case No : Writ Appeal Nos. 1702, 1713, 1732 and 1793 of 2014

K. Bhuvaneswary Amma

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 02-12-2014

Acts Referred:

Constitution of India, 1950 — Article 30(1)

Citation : (2014) 12 KL CK 0096

Hon'ble Judges : Antony Dominic, J; Anil K. Narendran, J

Bench : Division Bench

Advocate : B. Mohanlal, Advocate for the Appellant; S. Jamal, Government Pleader, V.A. Muhammed and Rekha Vasudevan, Advocate for the Respondent

Judgement

Antony Dominic, J.—These appeals are filed against the common judgment of the learned Single Judge disposing of W.P.(C) No. 26289/2004, 29165/2007, 29422/07 and 18254/2008.

2. All controversies started with the occurrence of the vacancy of Headmistress in the Saliha Memorial High School, Kureepuzha, Kollam on 31.5.2000. Smt. K. Krishnamma, the appellant in W.A. No. 1702/14 and 1713/2014 being the seniormost HSA, though was eligible to be promoted to the post, was appointed by the Manager as the teacher-in-charge. By his order dated 23.4.2001, the District Educational Officer directed the Manager to promote the seniormost teacher as Headmistress. However, in spite of a reminder issued by the District Educational Officer, the Manager did not implement the direction.

3. This made the Deputy Director to issue show cause notice to the Manager under Rule 7 of Chapter III KER. At that stage, the Manager appointed Smt. K. Bhuvaneswari Amma, the appellant in W.A. No. 1793/2014 as the Headmistress on 5.4.2003 claiming minority right as provided under Article 30(1) of the Constitution of India.

4. In the meanwhile, memo of charges were issued to Smt. Krishnamma and she

was placed under suspension on 3.4.2003. While so, the District Educational Officer rejected approval of appointment of Smt. Bhuvaneshwari Amma, but allowed her to continue as teacher-in-charge. When matters stood thus, the Deputy Director cancelled the suspension of Krishnamma and directed that she be continued as teacher-in-charge.

5. The Manager challenged this order by filing a revision before the Government and finally, obtained an order directing finalisation of the disciplinary action initiated against Krishnamma, keeping her under suspension in the meanwhile. It was challenging that order, Smt. Krishnamma filed W.P.(C) No. 26289/2004 against the judgment in which W.A. No. 1713/2014 is filed by her.

6. Meanwhile, Manager filed an appeal against the order of the District Educational Officer rejecting approval of the appointment of Smt. Bhuvaneshwari Amma. On rejection of the appeal, the Manager filed a revision before the Government. While so, the Director of Public Instruction issued an order requiring the Manager to appoint Smt. Krishnamma as the Headmistress. But, however, the Government ordered to keep the DPI's order in abeyance till revision filed by the Manager is decided.

7. In the meanwhile, the District Educational Officer completed the enquiry and submitted a report, on which the Manager imposed a punishment on Krishnamma, permanently withholding her promotion. The District Educational Officer declined to ratify the punishment imposed by the Manager and challenging that order, Manager filed a revision to the Government. That revision was rejected by the Government with a direction to promote Smt. Krishnamma immediately. It was in such circumstances, W.P.(C) No. 29165/2007 and 29422/2007 were filed by the Manager and Bhuvaneshwari respectively.

8. During the pendency of the above Writ Petitions, W.P. (C) No. 18254/2008 was filed by Smt. Krishnamma, claiming promotion to the post of Headmistress with retrospective effect.

9. All the Writ Petitions were heard together and by a common judgment rendered on 11.4.2013, the learned Single Judge upheld the Government Order on the disciplinary action initiated against Krishnamma, but however declined her claim for retrospective promotion applying the principle no work no pay. On that basis, the Writ Petitions were all dismissed. It is in these circumstances, these Writ Appeals are filed.

10. We heard the learned counsel for the appellants, the learned counsel for the respective party respondents and also the learned Government Pleader.

11. W.A. No. 1732/2014 filed by the Manager is against the judgment in W.P.(C) No. 18254/08 filed by Krishnamma claiming retrospective promotion. It is against the very same judgment that Krishnamma herself has also filed W.A. No. 1702/2014.

12. Turning to W.A. No. 1793/2014, it is filed by Smt. Bhuvaneshwari Amma,

challenging the judgment of the learned Single Judge in W.P.(C) No. 29422/2007 and insofar as W.A. No. 1713/14 is concerned, that arises from the judgment of the learned Single Judge in W.P.(C) No. 26289/2004, which was filed by Krishnamma against the order of the Government permitting the Manager to keep her under suspension, pending finalisation of the disciplinary action.

13. The facts noticed above show that this is a case where the Manager bent upon preventing Krishnamma from getting promoted to the post of Headmistress of the school, in a vacancy that arose on 31.5.2000. As on that date, admittedly, she was the seniormost teacher and there was no disqualifying features, which could be projected against her. It was to avoid her from getting promotion to the post of Headmistress, the Manager initially appointed her as teacher-in-charge and in order to circumvent the repeated directions issued by the Educational authorities, including a show cause notice that was issued by the Deputy Director, disciplinary action was initiated against her. Although, the disciplinary action was concluded by the report of the District Educational Officer on which punishment was imposed, permanently withdrawing promotion, that action was not ratified by the District Educational Officer. This also has become final. In such circumstances, Smt. Krishnamma was the rightful claimant who ought to have been promoted to the post of Headmistress with effect from 31.5.2000. Thus, the rightful claimant was deliberately prevented by the Manager from becoming the Headmistress. In such a case, when she claims retrospectivity for her promotion as Headmistress, such a prayer made by the rightful claimant cannot be declined applying the principle no work no pay. Therefore, we cannot uphold the conclusion to that effect in the judgment of the learned Single Judge.

14. Insofar as the disciplinary action which is relied on by the Manager in W.A. No. 1732/2014 to contend that Krishnamma should never be made Headmistress in the school is concerned, as rightly concluded by the learned Single Judge, the departmental authorities have concluded on the innocence of Smt. Krishnamma and that conclusion of the departmental authorities cannot be said to be perverse. Therefore, we do not find any substance in the contention raised by the Manager in W.A. No. 1732/2014.

15. Insofar as W.A. No. 1793/2014 filed by Smt. Bhuvaneswari Amma is concerned, her claim is that she held the post of teacher-in-charge for the period from 5.4.2003 till 31.3.2011 and that for want of approval, she has not been paid salary for the said post. As we have already concluded, she is the beneficiary of the plot hatched by the Manager to deprive Smt. Krishnamma, the rightful claimant, the post of Headmistress and, therefore, once Krishnamma's entitlement is upheld, the claim of Bhuvaneswari Amma for the monetary benefit for the post of teacher-in-charge has to be declined. Therefore, we are not inclined to allow the prayer made by Bhuvaneswari Amma in W.A. No. 1793/2014.

16. Resultantly, W.A. No. 1732/2014 filed by the Manager and W.A. No. 1793/2014 filed by Smt. Bhuvaneswari Amma are dismissed. W.A. Nos. 1702/2013 and 1713/2013 filed by Smt. K. Krishnamma are disposed of, holding

that she will be entitled to retrospective promotion to the post of Headmistress in Saliha Memorial High School, Kureepuzha, Kollam with effect from 1.6.2000 and on that basis, her monetary benefits, if any, will be settled. The claim shall be settled, at any rate, within two months from the date of receipt of a copy of this judgment.

We also clarify that the additional liability, if any, that is caused to the Government as a result of this judgment will be recoverable from the Manager personally.