

(1990) 02 KL CK 0010
In the High Court Of Kerala
Case No : O.P. No. 1601 of 1988

K. Rajan Pillai

APPELLANT

Vs

State of Kerala and others

RESPONDENT

Date of Decision : 22-02-1990

Acts Referred:

Kerala Education Act, 1958 — Section 13

Citation : (1990) 1 KLJ 504

Hon'ble Judges : V. Sivaraman Nair, J

Bench : Single Bench

Advocate : K.K. Usha, for the Appellant; K.R.B. Kaimal, for the Respondent

Final Decision : Dismissed

Judgement

V. Sivaraman Nair, J.—Rule 6(viii) of Chapter V. of the Kerala Education Rules requires that every application shall be accompanied by-

an agreement duly executed by the applicant to the effect that he is prepared to absorb qualified teachers/non-teaching staff who, after putting in service of 2 years and drawing 2 vacation salaries, have been retrenched from any of the aided high schools in the Education district or aided primary schools in the Education Sub-district in which the applicant proposes to open/upgrade the school.

Petitioner was an applicant for permission to open a new High School. The first respondent sanctioned his application for the academic year 1984 85 in G. O. Ms. 143/84/G. Edn. dated 30-7-1984. The District Educational Officer in Ext P1 order dated 24-11-1984 accorded formal, sanction for opening Standard VIII in the new School with effect from 21-11-1984, as the Manager has satisfied all the conditions in the G.O. cited as 1st paper above.

2. Petitioner submits, that one of the conditions which he has complied with is the execution of the agreement mentioned in rule 6(viii) of Chapter V of the Kerala Education Rules (hereinafter to be referred to as the Rules). He also

appointed one Shri Chellappan Nair, a protected teacher of S.V.C.G. High School, Chirayinkeezhu with effect from 21-11-1984. Petitioner submits, that the third respondent having accorded due compliance with the conditions, including appointment of a protected teacher in Ext. P1 order, it was not open" to any of the respondents to require him to appoint another protected teacher in his School. In other words, he submits that he has agreed to appoint only one protected teacher and no more. He submits further that the power given to the respondents under the agreement is exhausted by its first exercise and therefore none of the respondents was competent to direct him to appoint another protected teacher in his school. That is the point to be decided in this Original Petition.

3. A few facts are necessary to understand the controversy involved in this Original Petition. In Ext. P4. G.O. Ms. 231/84/G. Edn. dated 27-10-1984, Government ordered that those teachers who have 15 years of service to their credit should be retained in their parent schools. In Ext. P5 G. O. Ms No. 22/85/G. Edn. dated 1-2-1985, Government slated that the cases of those protected hands appointed in the newly sanctioned or upgraded schools will not come under the purview of Ext P4 order. In Ext. P2 communication dated 16-1-1986, Government found that since Shri. Chellappan Nair had 15 years of service in his parent school, he was entitled to be retained in that school in terms of Ext. P4 order. On receipt of that letter, the Deputy Director of Education issued Ext. P3 order, directing the District Educational Officer to retain Shri. Chellappan Nair in his parent school. He also directed the District Educational Officer to request the petitioner to appoint a protected teacher during 1986-87. Shri Chellappan Nair had requested that he may either be appointed as Teacher-in-Charge of the petitioner's High School, or may be retained in his parent school. He, however, filed O.P. No. 568 of 1986, challenging the direction contained in Ext. P2 letter, to send him back to his parent school. This court disposed of that Original Petition by Ext. P6 judgment, in the light of the fact that Shri Chellappan Nair was due to retire in March, 1987, within less than a couple of months. Shri Chellappan Nair, however, had absented from service of the petitioner's school from I-7-1985 onwards. His leave applications were defective. The District Educational Officer regularised his absence and advised him to report for duty in the petitioner's school. He did not comply- Nor did he receive salary for the period upto 20-10-1986, the date of superannuation as is evident from Ext. P8.

4. In the meantime, the Manager appointed one Shri Thulasidharan Pillai as High School Assistant in the vacancy created by the retirement of Shri Chellappan Nair. The District Educational Officer approved that appointment in Ext. P9 order dated 30-7-1987. The same Officer had, in the meantime, issued Ext. P 10 dated 2-7-1987 requiring the petitioner to appoint a protected teacher during 1987 88 in the first a(sic) sing vacancy, Shri Chellappan Nair, who refused to join duty in the petitioner's school due to some personal differences between them and the Manager, had filed an application on 3-4-198.7 requesting to regularise his service, including periods of absence and to sanction his pensionary benefits.

Government passed Ext. P 11 order dated 7-5-1987, treating him as having been on duty for entire period from 24-11-1984 to the date of his retirement in his parent school. Government also ordered payment of his salary for that period as per rules. On receipt of Exts P10 and P11, petitioner filed Ext P 12 review petition before the state Government urging that the Manager having complied with the terms of the agreement under rule 6 (viii) of Chapter V of the Rules, the respondents have no competence to direct the Manager to absorb a protected teacher in his school and that the service of Shri Chellappan Nair ought not to have been regularised in his parent School since he had obtained Ext. P6 judgment objecting to such retention. Government disposed of that application in Ext. P13 order dated 22-2-1988, holding that the service of Shri Cheliappan Nair having been regularised in his parent school, notwithstanding his appointment in the petitioner's school for a short while, the petitioner was obliged to appoint a protected teacher as directed in Ext P10. Government also held, that instead of appointing a fresh candidate, "Shri Thulasidharan Pillai, the petitioner had to appoint a protected teacher. It was in the meantime that the Deputy Director of Education passed Ext. P14 order, directing a protected teacher, Smt. Sushama, to report in the High School. Karavaram petitioner seeks the issue of a writ of certiorari to quash Exts. P10, P13 and P14, and a writ of mandamus directing the third respondent to grant permanent recognition of the petitioner's school, without insisting on his appointing one more protected teacher from another management during the academic year 1989-88.

5. It is important to note that the School had only provisional recognition for a period of three years. Permanent recognition has not so far been granted. Counsel for petitioner submits, that the respondents had no jurisdiction to issue a direction to appoint one more protected teacher after the petitioner had duly complied with the obligation arising out of the agreement which he had executed in terms of rule 6 (viii) of Chapter V of the Rules. It is also her submission that the power given to the respondents under the agreement was exhausted by its first exercise and therefore the respondents had no competence to issue Exts. P10, P13 and P14 orders.,

6. Respondents submit that for all intents and purposes, the direction contained in Exts. P10 and P14 only amounts to the substitution of one protected teacher in the place of another whose appointment was not effective. It is submitted further, that what the petitioner seeks this court to do in this Original Petition is to interpret an agreement and that this may not be the appropriate proceeding to do so. The third submission is that the petitioner, who was benefited from the grant of permission to open a new school, subject to his obligation to absorb qualified teachers, is not entitled to restrict the number to-one and no more. It is submitted lastly, that the petitioner having obtained an advantage by reason of his agreement to absorb protected teachers, is not entitled to invoke the extraordinary jurisdiction of this court to avoid the consequences of the agreement.

7. Petitioner may not be entitled to any relief if any one of these submissions is

accepted. It appears to me, that the petitioner is not entitled to require this court assist him to wriggle out of the terms of the agreement which he entered into under rule 6 (viii) of Chapter V of the Rules. That agreement is not before me. If it is in terms of the rule, as it should be, petitioner must have undertaken to "absorb qualified teachers", who have been retrenched from any of the aided High Schools in the Educational District in which the applicant proposed to open the school. Willingness to absorb qualified teachers cannot be confined to one teacher alone. It can be more than one. The fact that at the initial stages the respondents required the petitioner to appoint only one teacher does not mean either that the respondents have exhausted their power or that they cannot require the Manager to appoint more than one teacher. I am also of the opinion that the petitioner, having obtained advantage by reason of consenting to absorb protected teachers, is not entitled to seek the assistance, of this court to avoid the consequences of the agreement. This position is fairly Clear from the decisions of this court in *Baton v. State of Kerala*, 1981 KLT 242 and *Rev. Kurlakose v. State of Kerala*, 1981 KLT (SN) 103.

8. Counsel for the petitioner urged, that after passing Ext. P1 order, the only manner in which recognition could be withheld is by withdrawal under rule 22, 22A or 23 of the Rules, after due compliance with the requirements of those rules. But rule 17 provides for conditions to be satisfied for grant of recognition. Sub-rule (iii) thereof requires, that teachers" must have been appointed in accordance with the relevant provisions in the Kerala Education Act and the Rules thereunder. Section 13 of the Kerala Education Act provides, that-

Where any retrenchment of teachers in any aided school is rendered necessary consequent on orders of the Government relating to the course of studies or scheme of teaching or of such other matters, it shall be competent for the Government or the manager of an aided school to appoint such teachers in any Government school or aided school, as the case may be

The Manager is obliged by reason of rule 17 (iii), which I have referred to above, to comply with the direction to appoint retrenched teachers of any aided school or Government school in his School. As long as the petitioner does not comply with that condition, he cannot insist upon grant of recognition.

The effect of Ext. P11 order seems to be clear. Shri Chellappan Nair was protected and retained in his parent school, on his request, apparently in an anxiety to regularise his service till the date of his superannuation and to enable him to draw retirement benefits. It was specifically mentioned in that order, that "he will be treated as having been on duty for the entire period from the date of relief, in the parent school to the date of his retirement and paid his salary as per rules It was also ordered, that he may be allowed grade as per rules ignoring the events at the new school. It was in view of this fact that the respondents directed the petitioner to absorb another protected teacher in a vacancy which was to arise in 1986-87. I am inclined to hold that the respondents had necessary power to substitute one protected teacher with another and the

Manager was bound by the terms of the agreement, which he executed under rule 6 (viii) of Chapter V of the rules to appoint that substitute, in view of the fact that the first appointment was not effective. I am also inclined to accept the alternative submission urged by Government, that the agreement which the petitioner executed, obliged him to absorb qualified retrenched teachers of aided schools in the educational district. The obligation was not confined to one teacher. The power which the petitioner gave by reason of executing the agreement to the respondents would not be exhausted by its first exercise. It is available for exercise as and when necessary. It was available on subsequent occasions as well. One of the conditions which the Manager had to satisfy to obtain recognition is that teachers must have been appointed in accordance with the relevant provisions under the Kerala Education Act and the Rules thereunder. Even without the assistance of the agreement, it was open to the respondents to require the Manager to appoint a teacher retrenched from an aided school consequent on orders of the Government relating to course of studies or scheme of teaching or such other matters. Petitioner- has, therefore, to comply with the direction contained in Ext. P10 as a pre-condition for obtaining permanent recognition.

For all these reasons. I hold that the petitioner is not entitled to any relief in this Original Petition. The same deserves to be and is hereby dismissed. Parties will suffer their respective costs.