

(1955) 08 KL CK 0001
In the High Court Of Kerala
Case No : O.P. No. 20 of 1955

K.O. John

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 26-08-1955

Acts Referred:

Constitution of India, 1950 — Article 13, 14, 226, 366, 372

Citation : (1955) 08 KL CK 0001

Hon'ble Judges : Sankaran, J;Menon, J;Kumara Pillai, J

Bench : Full Bench

Advocate : K.S. Sebastian, for the Appellant; Government Pleader and V.U. Joseph, for the Respondent

Judgement

Menon, J.—The Petitioner is a teacher attached to the St. Joseph's Primary School Kadavanthara, an aided primary school under the management of the 2nd Respondent. The 1st Respondent is the State of Travancore-Cochin and relief is sought only as against the State. It is stated in the petition itself that the 2nd Respondent is "impleaded merely as a formal party and no relief is claimed as against him".

2. The prayers in the petition are for:

(a) a declaration

that Ext. A Order No. E.S. 43201/21 dated 20-11-1946 is a valid order still in force and binding upon the first Respondent.

(b) a writ of mandamus or other appropriate writ or order directing the first Respondent to act according to law and to pay dearness allowance "in full" (meaning dearness allowance at the same rate as is being paid for the time being to teachers, employed in Government primary schools) to the Petitioner, in compliance with the provisions of the existing orders Ext. A No. E.S. 43201/21 dated 20-11-1946 and Ext. B No. 1815/51/1 in. dated 12th July 1951, and

(c) such other orders or directions as may be deemed fit and proper by the High Court.

3. Ext. A was issued by the Government of Cochin. It reads as follows:

1. The following resolution was carried in the last Meenom sitting of the Legislative Council, This Council recommends to the Government that aided School Teachers may be paid dearness allowance in full by Government.

2. On considering the question in all aspects, Government are pleased to order that teachers of aided Primary Schools in the State will be paid dearness allowance in full by Government with effect from 1-1-1951.

4. On 12-7-1951 the Government of Travancore-Cochin issued an order Ext. B enhancing the dearness allowance payable to Government servants including the teachers in the Government Primary schools. That order is in the following terms:

The Officers of the Travancore and Cochin Branches are now getting different rates of dearness allowance. Of late the cost of living has gone up. With a view to unify the rate of dearness allowance and giving some relief to Officers affected, Government are pleased to sanction with effect from 1-4-1951 the following uniform rates of dearness allowance to their officers.

Rate of dearness allowance Upto and including Rs. 25/- Rs. 22/- From Rs. 26/- upto and including Rs. 45/- Rs. 27/- from Rs. 46/- upto and including Rs. 100/- Rs. 33/- from Rs. 101/- upto and including Rs. 175/- Rs. 35/- " 175/- " 325/- 20% " 325/- " 500/- 15%.

5. The St. Joseph's Primary School is a school in the Cochin area and the main contention of the Petitioner is that in view of Ext. A he is entitled to obtain dearness allowance at the increased rate sanctioned by Ext. B.

According to him the effect of Ext. A is to place the primary school teachers in the service of private institutions and of the State on the same footing and to assure the primary school teachers in private institutions the benefit (as well as the disadvantages) of all future revisions subsequent to Ext. A in the rates of dearness allowance admissible to the primary school teachers in the Government service.

6. According to the Petitioner Ext. A should also be considered as a piece of "existing law" saved by the Constitution and as it is agreed that it is still in force, compliance with its terms should be directed by this Court under Article 226 of the Constitution. Paragraphs 18, 19, and 20 of the petition which deal with this contention lead as follows:

As long as Ext. A order dated 20-11-1946 is in force (and it has not been rescinded as yet) the first Respondent is in law bound to respect it and pay dearness allowance to the Petitioner at the same rate as is being paid to teachers in Government schools, that is at present at the rates specified in the order Ext. B dated 12-7-1951.

Ext. A order is not a mere ministerial order carrying into effect the intent of a superior authority. It is a rule laying down a principle and in every sense a legislative order in that it really embodies a legislative intent and has, therefore, the sanctity of an existing law.

All the three organs of the State have power to create rights and liabilities which at the instance of an aggrieved party can be enforced by the Municipal Courts. And any action on the part of the State in derogation of such rights validly conferred on a person is an action against law coming within the orbit of the remedial powers of the judicial arm and particularly within the jurisdiction created by Article 226 of the Constitution of India.

7. The learned Counsel for the Petitioner frankly conceded that if our conclusion is that Ext. A is not a piece of "existing law" as defined in the Constitution, it is unnecessary for us to consider the true scope and effect of Ext. A as its mandate, even if it be what the Petitioner contends it to be will not be capable of enforcement under Article 226 of the Constitution.

We have considered the wording of Ext. A and the circumstances under which it was issued and we find it impossible to hold that it is anything other than a mere executive order which cannot possibly come under "existing law or "law in force" as defined in the Constitution, (See Articles. 13, 366 and 372 of the Constitution).

As pointed out by the Supreme Court in *The Edward Mills Co. Ltd., Beawar and Others Vs. The State of Ajmer and Another*, an order must be a legislative and not an executive order before it can come within the meaning of those definitions. Various decisions were cited before us but we do not understand any of them, including *The State of Madras Vs. Srimathi Champakam Dorairajan*, on Which great reliance was placed, as indicating a view that is different.

8. The only other contention that was urged before us is based on Article 14 of the Constitution. This contention is stated as follows in para 23 of the petition:

The present action of the first Respondent, in refusing to pay full dearness allowance to the Petitioner is in violation of the Petitioner's fundamental rights under Article 14 of the Constitution and is to be corrected by this Hon''ble Court by the issue of an appropriate writ or order.

The short answer to this contention is that the Petitioners are admittedly not the servants of the first Respondent but of the second and that no discrimination by the State can possibly arise in such a case.

In this view it is unnecessary for us to consider the contention of the learned Government Pleader that even if the primary school teacher in the aided schools are deemed to be Government servants the differences in their conditions of recruitment and service will provide an ample justification for a differential treatment.

Some of the differences are detailed in para 4 of the affidavit filed on behalf of

the first Respondent. It is stated therein that whereas the teachers in the aided primary schools are chosen by the managers, the teachers in the Government Primary Schools are selected by the Public Service Commission, that whereas the age of superannuation for the teachers in the aided primary schools is 60 the age of superannuation for the teachers in the Government primary schools are prohibited from holding any such office.

In the light of what is stated above this petition must fail and should be dismissed. Order accordingly. In the circumstances of the case, however, there will be no direction as to costs.