
(1982) 04 KL CK 0001
In the High Court Of Kerala
Case No : O.P. No. 1463 of 1982-C

K.P. Mohammed

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 05-04-1982

Acts Referred:

Constitution of India, 1950 — Article 12, 226
Penal Code, 1860 (IPC) — Section 34, 427, 448

Citation : (1982) 04 KL CK 0001

Hon'ble Judges : U.L. Bhat, J

Bench : Single Bench

Advocate : V.R. Venkitakrishnan, for the Appellant; K.K. Usha and N.D. Premachandran, for the Respondent

Judgement

U.L. Bhat, J.—The Petitioner, a teacher working in A.M.U.P. School, Vengoor under the management of the second Respondent, was suspended by the Manager with effect from 21st April 1979 on the ground of his being involved in a criminal case and the suspension was continued after 15 days with the requisite permission from the Assistant Educational Officer, Perintalmanna, who is the 3rd Respondent in this case. On 16th October 1980 the Petitioner along with others was convicted under sections 448 and 427 I.P.C. read with Section 34 I.P.C. and sentenced to pay a fine of Rs. 50 with a default sentence. Thereafter, the 3rd Respondent appears to have requested or directed the second Respondent to reinstate the Petitioner on the ground that the criminal case ended only in a sentence of fine but not a sentence of imprisonment. The relevant letters are Exts. P-3, P-4, P-5 and P-6 to which the second Respondent sent replies, Exts. R-2 to R-4. It appears that on 20th August 1981 the Director of Public instruction, Trivandrum passed an order directing the Headmaster of the school to prepare arrear bills regarding the pay and allowances due to the Petitioner with effect from 28th January 1981. Thereupon, the second Respondent filed Ext. P-1 petition before the then Hon'ble Minister for Education. The Petitioner filed objections as evidenced by Ext. P-8. The Government on 9th September 1981

under Ext. P-2 order passed orders staying the order, dated 20th August 1981 of the Director of Public Instruction. On 14th April 1981 the second Respondent issued Ext. P-7 letter stating, inter alia, that the Petitioner would complete 55 years on 14th July 1981 and in view of the criminal case he is not eligible to continue in service till the end of the academic year as contemplated by the Rules. In Ext. P-7 it was further stated that on attaining the age of superannuation, viz., 55 years, his services are terminated with effect from 14th July 1981. The conviction entered against the petition was challenged by him in Criminal Appeal No. 74 of 1980 before the concerned appellate court and the appeal was allowed as per Judgment, dated 30th November 1981 acquitting the Petitioners and others. Under Ext. P-9 the Petitioner brought the fact regarding acquittal to the notice of the Government. In this background the Petitioner has filed this Original Petition under Article 226 of the Constitution of India praying for the following reliefs:

- (i) to issue a writ of Mandamus or other appropriate writ, direction or order, commanding the first Respondent to dispose of Exts. P-1 and P-2 immediately.
- (ii) to issue a further writ of mandamus to the second Respondent to reinstate the Petitioner forth with in the A.M.U.P. School, Vengoor without any further delay;
- (iii) to issue a direction that the Petitioner be paid the salary and allowances legally due to him from 21st April 1979; and
- (iv) to quash Ext. P-7 letter sent by the second Respondent (This prayer was incorporated by way of amendment).

2. There is no dispute between the parties regarding the first prayer. Both sides are anxious that Ext. P-1 be disposed of at the earliest. Such a direction will be issued. Regarding the prayer No. 3 there is some dispute between the parties. So far as the Petitioner is concerned the liability for payment of pay and allowances rests with Education Department. The first Respondent will be directed to issue appropriate orders or directions in this matter while disposing of Ext. P-1.

3. Relief No. 4 relates to Ext. P-7 letter sent by the second Respondent to the Petitioner indicating that the Petitioner would complete 55 years of age on 14th July 1981. The letter also mentions that his services are terminated with effect from that date. The letter does not make any meaning at all. Either the Petitioner retires on superannuation on the date indicated, in which case the question of terminating his services does not arise, or he does not retire on superannuation on that day in which case alone the question of terminating his services arises. However, both these cannot co-exist at the same time. Under these circumstances, I do not think, it is necessary to quash Ext. P-7 at all. Ext. P-7 is ineffective.

4. The main controversy relates to the second prayer regarding the issue of writ of mandamus directing the second Respondent to reinstate the Petitioner. The

learned Counsel for the second Respondent raised a contention that such a writ cannot be issued against the Manager of an aided school under Article 226 of the Constitution of India and for this purpose, reliance is placed on the decision of a Full Bench of this Court reported in *Madhavan Pillai v. Balan* Ors. 1979 KLT 220 (F.B.).

5. The learned Counsel for the Petitioner, on the other hand, relied on a line of decisions of the Supreme Court reported in *Sukhdev Singh, Oil and Natural Gas Commission, Life Insurance Corporation, Industrial Finance Corporation Employees Associations Vs. Bhagat Ram, Association of Clause II. Officers, Shyam Lal, Industrial Finance Corporation, , Ramana Dayaram Shetty Vs. International Airport Authority of India and Others, , Managing Director, Uttar Pradesh Warehousing Corporation and Another Vs. Vijay Narayan Vajpayee, , and Om Prakash v. Union of India* AIR 1981 S.C. 212. These are leading cases decided by the Supreme Court explaining the exact connotation of "authority of State" or "instrumentality of State" for the purpose of Article 12 of the Constitution. These decisions have laid down more or less similar tests to decide whether a particular body corporation or organisation is or is not an "instrumentality or authority of State" for the purpose of Article 12 of the Constitution.

6. I do not think that the above referred decisions will help the Petitioner to establish that the Manager of an aided school is an "instrumentality or authority of State" so as to enable this Court to exercise the jurisdiction under Article 226 of the Constitution. There is no dispute that the school in question is an aided private school and it belongs to a private individual and under private management. It is the contention of the Petitioner that various provisions of the Kerala Education Act and the Kerala Education Rules have, so to say, converted the aided private school into an instrumentality or authority of State for the purpose of Article 12 of the Constitution. The arguments is based on the fact that in exercise of the powers in relation to the administration and management of educational institutions and in the dealing with the teachers appointed in such aided educational institutions, the powers of the Manager of such institutions are circumscribed by the various provisions of the Kerala Education Act and the Rules thereunder and his orders are enabled to be challenged by the affected teachers by way of appeals, etc. before one of the other authority of the education department and ultimately before the Government.

7. It is true that the Act and the Rules contain provisions which, to a considerable degree, control the powers of the Manager and also regulate the manner in which these powers are to be exercised. In view of the Act and the Rules it can only be said that the Manager of an aided private school has no untrammelled powers in regard to the Management of the school. In various matters and in various areas these powers are defined, controlled and regulated. This is so, not only in regard to aided private schools, but also in regard to various other private institutions in this State and in this Country. If we take the

case of private business house, it may be a shop for the purpose of Shops and Commercial Establishments Act and the dismissal of an employee by the owner or the Manager is liable to be challenged in appeal before the statutory authority. Similarly, take the example of a private industry, wholly in private hands. From the moment of its establishment and during the course of its management, its power are controlled and regulated by various laws, such as laws relating to licensing, Factories Act, Industrial Disputes Act, Minimum Wages Act and a host of other statutes. Even a dismissal order issued by the private industrialist to his employee is liable to be challenged under the provisions of the Industrial Disputes Act before the appropriate adjudicatory forum. So also in regard to change in conditions of service of employees. Even the liberty which the private industrialists had some time ago to regulate his production and sales are also to a large extent controlled by various statutes and regulations. All this cannot have the effect of converting such a private body into an "instrumentality or authority of State" within the meaning of Article 12 of the Act.

8. There is a basic difference between the institutions dealt with by the Supreme Court in the line of decisions referred to above and in the instant case. The school in question is an aided private school, conceived in the private sector, continuing in the private sector and being managed by a private manager, subject of course to the control made under some regulations or law; in the cases dealt with by the Supreme Court the institutions are conceived in the public sector by either the Central Government or other public institutions. In regard to such a body, the various tests formulated by the Supreme Court would have to be applied to decide whether the body is an "instrumentality of the State or not". In these days of planning and the State's intervention in various sectors, the mere fact that an aided school or a private industry is aided by the Government to some extent or that these institutions are controlled to some extent by the Government would not be sufficient to hold that they are "instrumentalities of State" within the meaning of Article 12 of the Constitution. In spite of the aid given by the Government and the control and regulation by various statutes they remain essentially private institutions or organisations. Under these circumstances, I cannot agree with the contention of the Petitioner that the school involved in this case is an "instrumentality of State" and that jurisdiction under Article 226 of the constitution could be exercised. Therefore, the writ of mandamus cannot be issued to the second Respondent directing him to reinstate the Petitioner. In this view it become unnecessary for me to consider the merits of the case relating to reinstatement canvassed by both sides.

In the result, this Original Petition is disposed of by directing the first Respondent to dispose of Ext. P-1 petition as expeditiously as possible, and at any rate, within ten days of the receipt of the copy of this order and further directing that in so disposing of Ext. P-1 petition, the first Respondent will consider and pass orders regarding the claim of the Petitioner for pay and allowances for the period from 21st April 1979 onwards. Under the circumstances of the case, the parties will bear their respective costs in the Original Petition.

Issue carbon copy of this judgment to the learned Counsels appearing on both sides on usual terms. Send a copy of this judgment to the first Respondent forthwith.