
(1960) 01 KL CK 0027
In the High Court Of Kerala
Case No : O.P. No. 916 of 1959

K.R. Sadasiva Iyer

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 05-01-1960

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : AIR 1960 Ker 327

Hon'ble Judges : S. Velu Pillai, J

Bench : Single Bench

Advocate : T.S. Venkateswara Iyer and R. Krishnaswami Iyer, for the Appellant; Govt. Pleader for Respondent 1 and 2, K. Kuttikrishna Menon and V. Balakrishna Eradi for 3rd Respondent, for the Respondent

Final Decision : Dismissed

Judgement

S. Velu Pillai, J.—This is a petition under Article 226 of the Constitution to quash Exts. R-1, R-2, P-11 and P-12 orders. The petitioner was appointed as the Head-master of Oriental High School under the management of the third respondent, Deva-swom, by order, Ext. P-1, dated 17-5-1957, and he took charge as Head-master three days later. The period of appointment was one year from the date of taking charge. Normally, this would have expired on 20-5-1958; but by virtue of subsequent orders, Exts. P-4, P-5 and P-6, passed pursuant to Madras Educational Rules, it is the petitioner's case, that he had a right to continue in employment until 2-4-1959.

On 17-4-1958, the 3rd respondent terminated the service of the petitioner, with effect from 20-5-1958. This, it was complained, was in contravention of orders, Exts. P-4 P-5 and P-6. It is seen, that the second respondent, the Director of Public Instruction, made a clarification by Ext. P-8 on 27-4-1958, that the orders aforesaid had allowed no option to the management to terminate the services of persons like the petitioner who had been re-employed, and that the petitioner may therefore be reinstated in service. There had been subsequent petitions by

the petitioner to the second respondent complaining of his termination of service; the third respondent took the matter also to the first respondent, the Government, and finally, Ext. R-2 was passed by the second respondent on 10-7-1958 holding, that the provisions in Exts. P-4, P-5 and P-6 are not mandatory, and that the petitioner will be appointed as an Assistant in the school.

There had been a communication by the first respondent to the second respondent on 8-7-1958, placing this interpretation on the relevant orders on the subject. The first respondent also passed an order. Ext. R-1 on July 14, 1958, stating that the petitioner may be reinstated in service as an Assistant, if the management agreed to do so. Thereupon the third respondent passed an order, Ext. P-11 on 24-7-1958, appointing the petitioner as an Assistant in the school, subject to certain conditions which were not fulfilled by him. The petitioner then preferred an appeal against Ext. P-11 to the first respondent, on 27-8-1958, which was decided against him by Ext. P-12 on 27-7-1959. It is in these circumstances, that the petitioner has come up to this court for the relief aforesaid.

2. A preliminary objection was raised on behalf of respondents 1 and 2 by the learned Government Pleader, that the orders. Exts. P-4, P-5 and P-6, are merely executive instructions, a breach of which is not amenable to judicial review under Article 226. It has been ruled by a division bench of this court in *Rev. Fr. Joseph Valamangalam and Others Vs. State of Kerala*, that the Madras Educational Rules under which the aforesaid orders were issued, are only a body of executive orders and instructions. A similar view was taken of the Travancore Education Code in *T. M. Dasius v. State* 1956 KLT 238 : (AIR 1957 Trav Co. 214) where the learned Judge observed as follows :

"It is not a legislative enactment nor has it the force of a statute and it does not confer any right on private school teachers. Orders of Government in alleged infringement of the provisions of the Code cannot, therefore, be amenable to judicial review at the instance of private school teachers".

But it was contended on behalf of the petitioner, that under clause 10 of Appendix 28 of the Madras Educational Rules, setting out the form of agreement between managements and employees to be adopted by all aided managements, there is a right of appeal for the aggrieved party, in the event of a dispute between the management and himself, to the second respondent in the first instance, and then from his decision to the first respondent and that therefore the conferment of a right of appeal to the second respondent and of a right of second appeal to the first respondent, is sufficient to clothe the orders impugned, with a quasi-judicial character.

The learned Government Pleader had an answer to this contention, that the right of appeal was based on consensual jurisdiction, an order passed in the exercise of which is not liable to be challenged under Article 226, relying upon *Krishnan v. Divisional Inspector of Schools, Coimbatore*, 1957 Ker LT 739, but counsel for the petitioner relied on the observations to the contrary of *Rajagopalan, J.* in

Kalyanasundaram High School Educational Society, Tanjore v. Director of Public Instruction, Madras 1956 MWN 104. I do not propose to decide this point, as the preliminary objection has to be maintained on the footing, that the conferment of a right of appeal, assuming it to be by virtue of the Madras Educational Rules, is still not sufficient to import a judicial element into the orders which are Impugned in this case.

3. It is no doubt true, that even administrative orders may shed their character as such and may assume the garb of quasi-judicial orders at a later stage, where appeals are provided, and a prescribed procedure set for hearing them. The learned counsel for the petitioner relied on Nagendra Nath Bora and Another Vs. The Commissioner of Hills Division and Appeals, Assam and Others, but that was a case in which a right of appeal was conferred by Section 9 of the concerned statute, and elaborate rules of procedure were framed u/s 36 for hearing appeals. On a consideration of the provisions in the statute, and particularly of the rules framed thereunder., their Lordships came to the conclusion, that the authorities mentioned in Section 9 of the statute, were exercising quasi-judicial powers. The rule evolved was stated in these terms :

Whether or not administrative body or authority functions as a purely administrative one or in a quasi-judicial capacity, must be determined in each case, on an examination of the relevant statute and the rules framed thereunder."

I do not think, that the decision of the Supreme Court has any application to the present case, where the right of appeal is under the Madras Educational Rules which have not the force of law, and no procedure is prescribed for hearing the appeals. Rule 88 of the Kerala Education Rules, 1959, on which reliance was placed, only permitted all appeals pending at the time the Rules came into force, to be heard as appeals preferred under the Rules, and Rule 81, the only Rule, which could be deemed to have prescribed the procedure for hearing the appeal, in terms has no application to an appeal of the kind preferred to the first respondent, and even otherwise has prescribed notice of hearing of the appeal to issue to the party affected, only in the event of the penalty imposed on him, being enhanced. So even the Kerala Education Rules, 1959 under which the petitioner's appeal could be heard by the first respondent, have not prescribed a procedure for hearing.

4. The learned counsel then referred to the decision in Ramautar Sharma Vs. State of Bihar and Others, in which the question, whether the decision of the school committee in compliance with the school inspector's letter amounted to an executive order or not was considered or decided. In K. Ganganna v. Principal, Andhra Medical College AIR 1958 AP 470 the Government Pleader did raise an objection, that the order impugned was administrative in character, but the Court held, that it was not open to the Government to take that stand for a collateral reason, and overruled the objection and issued a writ of mandamus. These cases furnish no assistance to the learned counsel for the petitioner.

5. Then reliance was placed upon Clause (x), Chapter XIII of the Kerala Education Rules, 1959 which reads that "any person employed as a teacher in a Government or private school shall not be "eligible to continue as a teacher if he..... has completed the age of retirement fixed by the Rules or orders of the Government or the age of sixty whichever is less"". In my opinion this refers only to the age of retirement on superannuation, when read in the context of the note to that Rule and of Rule 62, which refer to retirement specifically. Even otherwise, the orders impugned have not prescribed the age of retirement within the meaning of this Rule, but have reference only to the period of re-employment. On the above grounds, it is not open to the petitioner to contend, that the decisions by respondents 1 and 2 constituted quasi-judicial orders, which could be quashed by certiorari.

6. It was contended, that even executive orders are hit by Article 14 of the Constitution. This Article has reference to "laws" which have a discriminatory effect. If, as held, the Madras Educational Rules have no statutory force, they have not the force of law, but are merely executive instructions and if so, they do not come within the scope of Article 14. The learned counsel referred to the decision of the Supreme Court in *Ram Krishna Dalmia Vs. Shri Justice S.R. Tendolkar and Others*, in order to contend, that Article 14 hits even a notification by Government; but the notification which was attacked, had the force of law having been issued under S, 3 of the Commissions of Inquiry Act, 1952. I therefore hold, that the argument based on Article 14 cannot prevail.

7. Lastly, the point was raised, that respondents 1 and 2 had no jurisdiction to pass the orders complained of. This was not taken as a specific ground in the petition, for an order under Article 226, even if the orders impugned are executive. I therefore decline to go into it. The learned counsel who appeared for the third respondent had other preliminary objections to raise as to the competency of this petition. In the view I have taken, it is unnecessary to consider them. On the foregoing discussion I hold that the petition is incompetent and is therefore dismissed, but without costs.