
(1957) 08 KL CK 0023
In the High Court Of Kerala
Case No : W. P. No. 1258 of 1956 (M)

Krishnan

APPELLANT

Vs

Divisional Inspector of Schools Coimbatore and Another

RESPONDENT

Date of Decision : 06-08-1957

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1957) KLJ 712

Hon'ble Judges : M.S. Menon, J

Bench : Single Bench

Advocate : T.C. Raghavan, for the Appellant; V. Rama Shenoi For 1st Respondent, S. Narayanan Potti For 2nd Respondent, for the Respondent

Judgement

M.S. Menon, J.—The petitioner is the Correspondent of the National High School, Engandiyur. The 2nd respondent was a teacher in that school. The 1st respondent is the Divisional Inspector of Schools, Coimbatore. The agreement entered into between the petitioner and the 2nd respondent is Ext. P. 6 dated 7-6-1955. Chapter III of the Madras Educational Rules contains the rules for Secondary Schools, and Rule 12 (j) which occurs in that Chapter provides:

12. The recognition of secondary schools shall vest in the Director and it may be refused or withdrawn if he is not satisfied as regards any of the following, besides the other matters specified in this chapter:-

(j) The terms on which the teachers are engaged, including the execution of a written agreement between the management and each teacher as prescribed in Appendix 28.

Ext. P. 6 is in the form given in Appendix 28 for adoption by aided Managements.

2. Clause 7 (4) of Ext. P. 6 is in the following terms :

That in respect of the teacher appointed temporarily or to act on probation, the school authority shall have power to terminate the services of any such teacher-

(i) Without notice for any or all of the following reasons; wilful neglect of duty, serious misconduct, gross insubordination, mental unfitness, suspension or cancellation of teachers' certificate by the Director of Public Instruction under the Madras Educational Rules;

(ii) With notice of two months or two months' salary in lieu thereof for the following reasons:-Incompetence, retrenchment, physical unfitness or any other good Cause.

3. The notice given by the petitioner to the 2nd respondent and others is Ext. P. 2 dated 26-3-1956 :

As it is understood that new Secondary Schools are being opened at Talikulam, Mukkadi and Vadanappally, it is feared that the strength of the school will be seriously affected from the next academic year. As such, it has become necessary for the undersigned to serve notices of discharge on the following Teachers of the school. Your services may not be required as and from 1st June 1956:

If vacancies exist your case will be considered for reappointment, provided you apply for re-appointment at the proper time.

4. According to the petitioner the 2nd respondent did not apply for reappointment and as a result she was not taken back into service. The 2nd respondent was no doubt allowed to sign the attendance register on the date on which the school re-opened; but that according to the petitioner did not spell reappointment or a continuation of her service. She was permitted to sign the register on that day only in order to enable her to get her salary for the period of the vacation. These contentions of the petitioner are stated as follows in paragraph 4 of the affidavit in support of the petition:

Most of the other teachers who were served with notice on 26-3-1956 applied for reappointment. But the second respondent and another teacher, Sri C.K. Sekharan did not apply for such reappointment. The teachers who applied for reappointment were reappointed but the case of the 2nd respondent and Sri C.K. Sekharan was not considered as they did not apply. The second respondent signed the roll on the re-opening day of the School in June 1956 as she had to receive the Vacation salary. Sri C.K. Sekharan also did the same on the re-opening day.

5. According to the 2nd respondent she did apply for re-appointment on 28-4-1956 and the petitioner promised to continue her in service. Her case is that she signed the attendance register on the re-opening day in token of her rejoining duty but she was not allowed to sign the register in the afternoon and was prevented thereafter from working as a teacher in the school.

6. This is a dispute on a pure question of fact which it is impossible to resolve in proceedings like this or on the affidavits and papers filed before me. The 2nd respondent's version has apparently been accepted in Ext. P. 1 as can be seen

from the sentence:

In that event, the teachers who were served with notice of discharge should have been continued in the service including the appellant as she had also intimated that she would be willing to be appointed in the school in her application dated 28-4-56.

7. Ext. P. 1 dated 27-8-1956 is the order of the 1st respondent in the appeal filed by the 2nd:

It is seen that the Correspondent of the above school issued a group notice of termination of services on teachers (including the appellant) on 26-3-56 apprehending that due to the opening of schools in nearby places the strength of the school would be seriously affected from the academic year 56-57. But events have proved that the apprehension was baseless. In that event, the teachers who were served with notice of discharge should have been continued in the service including the appellant as she had also intimated that she would be willing to be appointed in the school in her application dated 28-4-56. But her case was not considered and another raw hand was appointed. This is contrary to the rules issued in App. 28 of the M. E. R. and the appeal preferred by the teacher is admitted and the correspondent is requested to reinstate the appellant forthwith. The appellant is referred to the Correspondent for orders.

8. Ext. P. 1 does not indicate what action, if any, the 1st respondent will take in case his request is ignored by the petitioner. The petitioner contents that Ext. P. 1 is unsustainable and should be quashed by a writ of certiorari or other appropriate writ by this court. Clause (10) of Ext. P. 6 provides:

That in the event of either party to this agreement failing to observe the terms thereof the aggrieved party shall have a right to appeal to the Director of Public Instruction/Divisional Inspector and the orders of the Director/Divisional Inspector shall be final and binding on the parties.

and the learned Government Pleader submits that Ext. P. 1 is only an order passed in pursuance of clause 10, that is on the basis of a consensual jurisdiction, and such an order is not amenable to review or correction by this court under article 226 of the Constitution. It is common ground that the rules with which I am concerned have no statutory force or backing.

9. That no writ can issue against a person or body exercising a consensual jurisdiction is well settled. In (1952) 2 O. B. 329 Denning, L. J., said:

The remedy by certiorari does not lie to domestic tribunals" and in (1953) 1 A. E. L. R. 327 Lord Goddard, C. J., said:

I have never heard of certiorari or prohibition going to an arbitrator. Arbitration is a very old remedy in English law, but in all the centuries that have passed since the decisions of English courts first began there is no trace of an arbitrator being controlled by this court by writ of either prohibition or certiorari" and: There is no

instance of which I know in the books where certiorari or prohibition has gone to any arbitrator except a statutory arbitrator, and a statutory arbitrator is a person to whom, by statute, the parties must resort. It would be an enormous departure from the law relating to prerogative writs if we were to apply these remedies to an ordinary arbitrator, whether he be a single arbitrator or a body of gentlemen called a committee or council, and I am of opinion that we must dismiss these applications on the ground that they are wholly misconceived

10. The learned counsel for the petitioner has not drawn my attention to any section, rule or circumstance which will indicate that the jurisdiction exercised by the 1st respondent in passing Ext. P. 1 was anything other than consensual and based on clause 10 of Ext. P. 6. The petition must hence fail and has to be dismissed.

11. The "service order" issued to the 2nd respondent, Ext. P. 5 dated 7-6-1955, reads as follows:

Kumari V.S. Priyamvada is appointed as a Secondary Assistant on a purely temporary basis for the school year 1955 to 1956. She will draw Rs. 45/- plus Rs. 22/- dearness allowance. She is requested to join duty forthwith.

On the same day Ext. P. 6 was executed. That Ext. P. 6 was executed subsequent to Ext. P. 5 can be gathered from paragraph 2 of the affidavit in support of the petition:

The second respondent herein was appointed as a secondary assistant teacher in the above High School on a purely temporary basis for the school year 1955 to 1956 on the 7th June, 1955 and a Service Order (Order of Appointment) was issued to her on the same date. The same day an agreement was entered into between the second respondent and the Correspondent of the High School in terms of the form of agreement under Appendix 28 of the Madras Educational Rules.

As a result I have taken the view that the controversy in this case has to be resolved in the light of Ext. P. 6 and not of Ext. P. 5, and proceeded on that basis. As already stated the 1st respondent has not indicated the action, if any, that he will take in case Ext. P. 1 is ignored by the petitioner. I make it clear that nothing in this judgment will preclude the petitioner from moving this court afresh, if so advised, for redress against any order to his detriment passed in pursuance of Ext. P. 1.