

(2007) 07 KL CK 0017
In the High Court Of Kerala
Case No : W.A. No. 475 of 2006

Manager, S.S. Higher Secondary School	APPELLANT
Vs	
Lijin, G.S. and Others	RESPONDENT

Date of Decision : 25-07-2007

Acts Referred:

Constitution of India, 1950 — Article 30(1)

Citation : (2007) 07 KL CK 0017

Hon'ble Judges : K.S. Radhakrishnan, J;Antony Dominic, J

Bench : Division Bench

Advocate : M.M. Abdul Aziz and Babu Karukapadath, M.A. Abdul Hakhim and Jyothish J. Kallingal, for the Appellant; K.T. Shyamkumar, for 1st Respondent and Benny Gervasiz, for 2nd Respondent, for the Respondent

Final Decision : Dismissed

Judgement

K.S. Radhakrishnan, J.—Writ Petition was preferred by the first Respondent herein seeking a declaration that he is entitled to be appointed as Principal of St. Joseph's Higher Secondary School, Kozhikode in view of the declaration of law made by the Full Bench of this Court in Aided Higher Secondary School Teachers Association Vs. State of Kerala, and also for a direction to the third Respondent to forthwith revert the fourth Respondent from the post of Principal of St. Joseph's Higher Secondary School, Kozhikode and appoint the Petitioner as Principal-in-charge of the school in accordance with the Special Rules and also for other consequential reliefs. Learned Single Judge disposed of the writ petition with the following directions:

(i) The third Respondent is directed to revert the fourth Respondent to the post of H.S.S.T. in S.S. Higher Secondary School, Moorkanad.

(ii) The third Respondent will initiate selection process for the selection and appointment of a regular Principal in S.S. Higher Secondary School, Moorkanad and finalise the selection and appointment, within four months of his receiving a

copy of this judgment.

(iii) Till selection process is completed and regular Principal is selected and appointed, the third Respondent is directed to appoint the Petitioner as Principal-in-charge (as Ad hoc Principal) for S.S. Higher Secondary School, Moorkanad on the basis of Exts. P-1 and P-2 G.O. This he will do at the earliest and at any rate within one month of his receiving a copy of this judgment. Parties shall suffer their respective costs.

Management has come up with this appeal aggrieved by the above-mentioned directions.

2. Sri M.M. Abdul Aziz, Senior Counsel, appearing for the Management submitted that learned Single Judge was not justified in giving the above-mentioned directions since Petitioner's school is a minority institution entitled to protection guaranteed under Article 30(1) of the Constitution of India. Counsel submitted that even for appointment of Principal-in-charge of the school right of the minority community cannot be overlooked. Learned Counsel submitted that the Petitioner does not belong to the minority community to which the school belongs. Fourth Respondent, it is submitted, belongs to minority community and hence he was rightly preferred to the post of Principal-in-charge. In support of this contention considerable reliance was placed on the decision of a Full Bench of this Court in Kurian Lizy Vs. State of Kerala, and submitted that the Management of a minority institution has got the freedom to appoint an unqualified teacher of the community as Principal-in-charge till regular appointment is made.

3. Learned Counsel appearing for the first Respondent in the appeal submitted that there is no justification to interfere with the directions given by the learned Single Judge. Counsel submitted that the fourth Respondent in the writ petition is none other than the son-in-law of the Manager and is unqualified to hold the post of Principal or Principal-in-charge while admittedly Petitioner is the only seniormost qualified person to hold the post of Principal-in-charge even though he does not belong to that community. Learned Counsel placed considerable reliance on the Full Bench decision of this Court in Aided Higher Secondary School Teachers Association's case (supra) and submitted that appointment can be made only on the basis of the qualifications prescribed by the Special Rules. Learned Counsel also placed reliance on the Full Bench decision in Kurian Lizy's case and submitted that on the basis of Article 30(1) of the Constitution of India would not be a licence to act arbitrarily and against the Special Rules.

4. Indisputedly the fourth Respondent is not qualified to hold the post of Principal or to hold the post of Principal-in-charge. Under such circumstances, learned Single Judge directed the third Respondent to revert the fourth Respondent from the post of Principal-in-charge and appoint the Petitioner who is the seniormost qualified person though does not belong to that minority community. Further learned Judge ordered that it is open to the Management to make regular

appointment and till that time a senior qualified teacher be posted as Principal in-charge. This direction was given by the learned Judge in the absence of a qualified teacher from the minority community. We find no illegality in the said direction. We are of the view that even if fourth Respondent in the writ petition is a member of the minority community he should satisfy the qualification laid down in the Special Rules. Admittedly he has not satisfied the qualification and therefore even if he is a member of minority community he cannot hold the post of Principal-in-charge.

5. We are of the view that in the absence of a qualified teacher from the minority community the Management is bound to appoint the qualified seniormost teacher as Principal-in-charge even if he is not a member of the minority community. In other words, an unqualified teacher belonging to the minority community cannot be posted as Principal-in-charge. In such circumstances, Management has no other alternative but to appoint the seniormost qualified person even if he does not belong to minority community as Principal-in-charge of the school. Management has always got the freedom to make regular appointment to the post of Principal and it is open to the Management to appoint a person of that community. Till such time seniormost qualified teacher can only be put in charge of the Principal though he does not belong to that community.

6. We may in this connection refer to the following declaration of law made by the Full Bench in Kurian Lizy's case:

We notice that in many cases senior teachers belonging to the minority community, which runs the institution are superseded without assigning any reason. Article 30(1) of the Constitution of India is an armour to protect the minority against the legislative and executive actions of the State, which is normally controlled by the majority. The said armour cannot be used as a weapon against other members of the same minority community. The protection under Article 30(1) is to the minority community and for the minority community. The Manager may supersede the members of other communities and also members of the minority community, who are found unsuitable for promotion to the post of Headmaster. But there may be teachers, who are, in every respect, qualified and suitable to head a minority educational institution. The Management may select the best among them. The selection procedure should be fair, reasonable and transparent. The eligible members of the minority community may not have a feeling that they have been superseded without any valid grounds. So, all minority educational institutions, which propose to select the best person to the post of Headmaster/Principal of a School or College, as the case may be, ignoring seniority in the feeder category or ignoring the available teachers, should frame and publish regulations or bye-laws, containing a transparent procedure, governing such selection.

The above dictum laid down by the Full Bench is no more good law in the light of the decision of the apex Court in *The Secretary, Malankara Syrian Catholic College Vs. T. Jose and Others*, . Reversing the judgment of this Court in *Rev. Fr.*

Daniel Kuzhithadathil Vs. Jose, the apex Court held as follows:

It is contended that a minority institution cannot ignore the rights of eligible Lecturers belonging to the same community, senior to the person proposed to be selected, merely because the institution has the right to select a Principal of its choice. But this contention ignores the position that the right of the minority to select a Principal of its choice is with reference to the assessment of the person's outlook and philosophy and ability to implement its objects. The management is entitled to appoint the person, who according to them is most suited to head the institution, provided he possesses the qualifications prescribed for the posts. The career advancement prospects of the teaching staff, even those belonging to the same community; should have to yield to the right of the Management under Article 30(1) to establish and administer educational institutions.

In view of the above-mentioned principle laid down by the apex Court in Secretary, Malankara Syrian Catholic College's case, the dictum laid down by the Full Bench in Kurian Lizy's case is no more good law. The minority educational institution has got the freedom to appoint a person who according to them is the most suited, to head the institution, provided he possesses the qualifications for the post. Career advancement prospects of the members of non minority or minority community should have to yield to the right of the Management under Article 30(1) of the Constitution. But so far as this case is concerned fourth Respondent, though belongs to the minority community is not qualified to hold the post. In such circumstances, we find no reason to interfere with the directions given by the learned Single Judge. Appeal therefore lacks merits and the same would stand dismissed.