
(2001) 12 KL CK 0025
In the High Court Of Kerala
Case No : W.A. No. 2915 of 2001

Manager, St. Mary's High School

APPELLANT

Vs

Beji Abraham

RESPONDENT

Date of Decision : 21-12-2001

Acts Referred:

Constitution of India, 1950 — Article 233
Kerala Education Act, 1958 — Section 10, 11, 7
Kerala Education Rules, 1959 — Rule 2(4), 3, 4, 51A, 9

Citation : (2002) 3 ILR (Ker) 100

Hon'ble Judges : K.S. Radhakrishnan, J;K. Balakrishnan Nair, J

Bench : Division Bench

Advocate : Biju Abraham and B.G. Bhaskar, for the Appellant; M.A. Thomaskutty, Government Pleader, V.A. Muhammed, K.E. Hamsa, T.V. Vijayarajan and P.A. Augustine, for the Respondent

Final Decision : Dismissed

Judgement

K.S. Radhakrishnan, J.—This appeal is preferred by the Manager of an aided school aggrieved by the judgment of the learned single Judge upholding Rule 51-A claim of the writ petitioner for appointment to the post of High School Assistant (Mathematics) in the vacancy which arose in the school on 6.6.2001. Appellant - Manager took up the stand that writ petitioner was appointed by an incompetent Manager. Consequently the very appointment of the Writ Petitioner earlier was illegal and irregular.

2. Counsel for the Writ Petitioner - first respondent herein placed reliance on the decision of a Division Bench of this Court in Padmanabhan Nambiar v. Government of Kerala (1997 (2) KLT 725). Writ Petitioner was appointed by one N.K. Poulouse, then approved Manager of the School in a leave vacancy which arose from 17.11.1997 to 17.11.1998 by appointment order dated 17.11.1997. That appointment was approved by the District Educational Officer on 16.2.1998. Vacancy of H.S.A. (Mathematics) arose in the school with effect from 6.6.2001.

Writ Petitioner expected since he was a Rule 51A claimant he would be appointed in the said vacancy by the present Manager. Instead, Manager invited applications from candidates by publication. The Writ Petitioner then sent a letter dated 25.5.2001 to the Manager claiming appointment to the post of H.S.A. (Mathematics). Disregarding his claim, Manager appointed third respondent in the vacancy which arose on 6.6.2001. Aggrieved by the same Writ Petition has been preferred. Learned Single Judge disposed of the Writ Petition on 14.6.2001 directing the District Educational Officer to consider the claim raised by the Writ Petition with notice to him as well as the Manager and the appointee. It was ordered that till orders are passed, appointment of third respondent would not be approved.

3. When the matter came up for hearing counsel on either side submitted that this Court should decide the matter finally rather than driving the parties to the District Educational Officer. Certain facts are not disputed in this case. The fact that N.K. Poulose was approved Manager of the school is not denied. Case put up by the present Manager was that N.K. Poulose was incompetent to function as Manager since he was not appointed by the Vicar of the church. St Mary's High School, managership of which was in dispute at the relevant time, was owned by St. Mary's Church, Kandanad. With regard to ownership of the Church etc. there was litigation between the two factions of the church, namely Catholicos faction and Patriarch faction. Contention was raised by the present Manager that N.K. Poulose was illegally elected Manager in a meeting held on 8.9.1996 by the priest who was not the Vicar of the church. Based on the decision taken in the meeting held on 8.9.1996 N.K. Poulose got his appointment as Manager approved by the District Educational Officer on 11.9.1996. Present Manager of the school filed O.S. No. 30 of 1997 seeking declaration that he is lawfully elected Manager of St. Mary's High School and that N.K. Poulose was not validly elected Manager. Injunction was also sought for restraining him from functioning as Manager of the school. Injunction was granted by the District Court in I.A. No. 2217 of 1997 on 6.4.1998 restraining N.K. Poulose from acting as Manager of the school and also restraining one Father John Punnachalil from functioning as Vicar of St. Marthoma Orthodox Syrian Church, Kandanad till the disposal of the suit. Suit is still pending consideration. Pending consideration. Pending suit Poulose died.

4. Counsel for the appellant - second respondent contended that since Poulose was not legally elected Manager of the school, appointments effected by him during his tenure are illegal and irregular. Counsel for the Writ Petitioner, as we have already indicated, placed reliance on the decision of this Court in Padmanabhan Nambiar's case, supra (1997 (2) KLT 725). Counsel also submitted that Poulose was the approved Manager of the School. Even though appeal was filed against the order of approval by the District Educational Officer to the Deputy Director of Education, the said order has not been reversed.

5. We find Writ Petitioner was appointed by the then Manager in a leave vacancy which arose from 17.11.1997 to 17.1.1998. When Writ Petitioner was appointed,

admittedly Poulouse was the approved Manager even though the manner in which he was appointed was questioned before the Civil Court. Appointment of the Writ Petitioner was also subsequently approved by the District Educational Officer on 16.2.1998.

6. Section 7 of the Kerala Education Act authorises the educational agency to appoint any person to be the Manager of an aided school subject to approval of the educational authorities authorised by the Government. Manager shall be responsible for the conduct of the school in accordance with the provisions of the Act and Rules framed thereunder. Section 11 deals with appointment of teachers in aided schools, which says that subject to the rules and conditions laid down by the Government teachers of aided schools shall be appointed by the Managers of such schools from among persons who possess the qualifications prescribed u/s 10 of the Act. Rule 3 of Chapter III of the Kerala Education Rules says that management of every aided school may be vested by the Educational Agency in a person who shall be referred to as the Manager and who shall be responsible to the department for the management of the institution. In the case of aided institutions under individual management the individual proprietor may be the Manager. In the case of aided institutions under Corporate management the proprietary body may choose the Manager in accordance with the rules in that behalf referred to in Rule 2. Sub-rule (4) says that the Educational Agency shall be bound by the acts of the Manager. Rule 4 deals with approval of appointment of Managers. Educational authorities shall be competent to approve the appointment of Managers by Educational authorities shall be competent to approve the appointment of Managers Rule 9 prescribes the duties and powers of the Managers of aided schools. Manager shall also abide by the orders that may be issued from time to time by the Government and the Department. He shall also sign all the bills relating to the maintenance and other grants specifically granted to the Management. managers shall appoint candidates who posses the requisite qualifications under the Rules as teachers. Rule 9 of Chapter XIV-A stipulates that appointment order shall not be affected any change in the Educational Agency or the Manager. It is compliance with the aforementioned statutory provisions Poulouse who was the approved Manager appointed the Writ Petitioner in a leave vacancy. Appointment of the Writ Petitioner was also approved by the District Educational Officer. Since he has got approved service and since he was relieved he has got a claim under Rule 51A for future appointment. Therefore when vacancy arose on 6.6.2001 he was the legitimate person to be considered for appointment int hat vacancy.

7. We are of the view mere fact that the appointment of the Manager was subsequently found to be illegal or irregular could not take away the rights of the appointees. As far as appointees are concerned, they are appointed by approved Manager. They are not concerned with the dispute with regard to the managership of the school. There was no order either from the court or from the educational authorities restraining the then Manager from appointing the Writ Petitioner. Even if there is some illegality or irregularity int he appointment of the

Manager, action taken by him during the tenure of his managership would not be illegal or irregular. All rights and liabilities flowed from those actions would be saved by the de facto doctrine. This principle has been upheld by this Court in Padmandabhan Nambiar's case, supra.

8. Counsel for the appellant Sri. B.G. Bhaskar contended that since Poulouse happened to be an intruder to the office of the Manager, all actions taken by him during his tenure as Manager will have to be declared as null and void. Counsel submitted that N.K. Poulouse was elected to the post of Manager by a person who has no legal right to conduct election. Counsel tried to distinguish the aforementioned decision of the Division Bench stating that de facto doctrine would not apply since that was a case where there was a joint application by both the Managers to effect appointment. He tried to distinguish the said decision on facts.

9. De factor doctrine saves the acts of the officers de facto performed within the scope of their assumed official authority. Whatever defects there may be in the nature of their appointment it is based upon the principle of public policy and necessity. Such a doctrine was introduced into the law as a matter of policy and necessity, to protect the interest of the public and the individual whose interests were involved in the official acts of persons exercising the duties of an office without being lawful officers. Aforementioned doctrine was applied by a Full Bench of this Court in P.S. Menon Vs. State of Kerala and Others, and held as follows:

"The doctrine was engrafted as a matter of policy and necessity to protect the interest of the public and individuals involved in the official acts of persons exercising the duty of an officer without actually being one in strict point of law. But although these officers are not officers de jure they are by virtue of the particular circumstances, officers, in fact, whose acts, public policy requires should be considered valid".

The judgment of the Full Bench was quoted with approval by the Apex Court in Gokaraju Rangaraju Vs. State of Andhra Pradesh, . That was a case where appointment of Sessions Judge was subsequently declared as invalid on the ground that the appointment was in violation of Article 233 of the Constitution of India. The Apex Court held that the judgments pronounced by him and acts done by him when he was clothed with the powers and functions of the office, albeit unlawfully, have the same efficacy as judgments pronounced and acts done by a Judge de jure. Above decision was subsequently followed by the Apex Court in C. Rangaswamaiah and Others Vs. Karnataka Lokayukta and Others, . The Apex Court in a recent decision in Union of India and Another Vs. Charanjit S. Gill and Others, upheld the de facto doctrine and held that the doctrine is bone out of necessity. United States Supreme Court in New Zealand and Norton v. Shelby County (1886 118 US 425) while dealing with doctrine and held as follows:

"Where an office exists under the law, it matters not how the appointment of the

incumbent is made, so far as the validity of his acts are concerned. It is enough that he is clothed with the insignia of the office, and exercises its powers and functions. The official acts of such persons are recognised as valid on grounds of public policy, and for the protection of those having official business to transact".

It is apposite to refer to the pronouncement of Lord Denning. The observations of Lord Denning are as follows:

"He sits into the seat of a Judge. He wears the robes of a Judge. He holds the office of a Judge. May be he was not validly appointed. But still he holds the office. It is the office that matters, not the incumbent so long as the man holds the office and exercises it duly and in accordance with law, his orders are not a nullity. If they are erroneous they may be upset on appeal. But if not erroneous they should be upheld". (Re James (An Insolvent) 1977 (1) All E.R. 364 (CA)

10. In the instant case we find Manager was elected and the same was approved by the educational authorities. Appointment effected by the Manager in a leave vacancy was also approved by the educational authorities. If appointment was not effected at that time in a leave vacancy students would have been adversely affected. Manager and the educational authorities were legally obliged to protect the interest of the students. It will not be in the interest of the students to keep the leave vacancy open till the dispute with regard to the managership is resolved. We have already pointed out public interest demands that the post of High School Assistant (Mathematics) be not kept unfilled till the dispute with regard to the Managership is resolved, instead that post has been filled up by the erstwhile Manager even if his appointment was irregular. We are of the view whatever right accrued to the appointee on the basis of that appointment would enure to his benefit and in our view would not be lost. We therefore, hold that Writ Petitioner has got a claim and protection under Rule 51A of Chapter XIV-A of the Kerala Education Rules. Rights are declared. Writ Petitioner is the eligible person to be appointed in the vacancy which arose in the school on 6.6.2001. Writ Appeal is accordingly dismissed.