

(2022) 08 KL CK 0207

In the High Court Of Kerala

Case No : Writ Appeal No. 1162 Of 2022 & Writ Petition (C).No.24894 Of 2022

P.Ahammed Koya

APPELLANT

Vs

Director Of General Education, (Higher Secondary Education),
Housing Board Building, Santhi Nagar, Thiruvananthapuram
695001

RESPONDENT

Date of Decision : 26-08-2022

Acts Referred:

Citation : (2022) 08 KL CK 0207

Hon'ble Judges : Alexander Thomas, J;Shoba Annamma Eapen, J

Bench : Division Bench

Advocate : P.Ravindran, M.R.Sabu, Lakshmi Ramadas, Aparna Rajan, Sreedhar Ravindran, Saigi Jacob Palatty

Final Decision : Disposed Of

Judgement

Alexander Thomas, J.

1. The afore-captioned Writ Appeal No.1162 of 2022 arises out of the impugned interim order dated 11.08.2022 rendered by the learned Single Judge in W.P. (C).No.24894 of 2022. Both the Writ Appeal and the Writ Petition (Civil) have come up for consideration before us. Hence, both these cases are disposed of on the basis of this common judgment.

2. Heard Sri.P.Ravindran, learned Senior Counsel instructed by Sri.M.R.Sabu, learned counsel appearing for the appellant in W.A/petitioner in W.P.(C) and Sri.Saigi Jacob Palatty, learned Senior Government Pleader appearing for the respondents in W.P.(C).

3. The order under challenge in the instant writ proceedings is the one at Ext.P9 order dated 19.07.2022 rendered by the 1st respondent-The Director of General Education whereby, it has been ordered that 20% management quota seats for admissions to Aided Higher Secondary Schools mentioned in that order will stand merged with the open merit quota seats for the respective Schools, in view of

the pendency of the management dispute in those respective management Schools.

4. We have already taken a view as per the common judgment dated 25.08.2022 rendered in W.A.No.1138 of 2022 and W.P.(C).No.25095 of 2022 as well as the common judgment dated 25.08.2022 rendered in W.A.No.1042 of 2022 and W.P.(C).No.23858 of 2022 that, mere pendency of management dispute by itself may not be a valid ground for merger of the management quota seats with the open merit quota seats in those Schools, as the factum of the reality of the status of the management Schools, does not get obliterated merely on account of pendency of the management dispute. Further, we have also noted that, in such cases, endeavour could be made to evolve a reasonable criteria only for the purpose of filling up of the management quota seats in those Schools, so that the right conferred to them by the Government, by setting apart 20% management quota seats, is effectuated in a feasible manner.

5. The facts of these cases are broadly as follows: It is stated that the petitioner is the approved Manager of the Rahmania Higher Secondary School, Kozhikode and that he was appointed as the Manager of the School in the year 1977 and that he is continuing as such ever since. Further, it is stated that, the administration of the School and its property are now under a Receiver appointed by the Civil Court since 08.04.2010. It is also averred that, the Receiver has issued orders directing that the Manager is to continue in the Office. It is further noted that there has been change of Receivers, and all the Receivers so far appointed as well as the present Receiver appointed by the Civil Court now continuing in the office, have consistently intimated the 2nd respondent–District Educational Officer (DEO) that the petitioner, as the Manager, can continue in Office. Hence, it is seen that, change in the office of the Court Receiver has not affected the continuance of the Manager even now. Penultimate orders passed by the Court Receiver, directing continuance of the present Manager, is Ext.P7 rendered on 31/12/2018 and on this basis, the petitioner is continuing as the Manager even now. That thereafter, the 1st respondent – The Director of General Education has issued the impugned proceedings as per Ext.P9 dated 19/07/2022 directing that, in view of the pendency of management disputes, the 20% management quota seats for admission to Plus Two courses in the petitioner's School and certain other Schools will stand merged with the open merit quota seats. After the receipt of Ext.P9 dated 19/07/2022, it is seen that the Receiver, who is appointed by the Court and who is continuing in the office now, has sent Ext.P10 letter dated 29/07/2022 intimating the 2nd respondent – DEO that, the petitioner is even now continuing in the office of Manager and the said factum of his Manager's position is beyond any doubt or ambiguity. It appears that, inspite of Ext.P10 letter dated 29/07/2022 sent by the Court Receiver, the respondents have not responded to the same. Further, it appears that most of the management quota seats have now been filled up by the respondents in the open merit quota seats.

6. When the matter initially came up for consideration, the learned Senior Judge had passed an order dated 02/08/2022 in the WP(C), wherein the main contentions of the petitioner have been recorded, especially the one based on Ext.P7, and the plea that the petitioner is the Manager who is still continuing in the office and accordingly, time was granted to the respondents to furnish instructions. Later, when the matter came up on 11/08/2022, it was submitted by the respondents before the learned Single Judge that, management quota seats were converted to open merit quota seats on 01/08/2022 and allotment in the converted seats commenced on 03/08/2022. Further, it is also stated that the educational authorities have not formally approved the appointment of the petitioner as the Manager of the School concerned, and that it is only on the basis of the orders issued by the Receiver that the petitioner has been functioning as the Manager. Accordingly, this Court ordered that there is no scope for granting interim relief. Being aggrieved by the impugned interim order dated 11/08/2022 rendered in the W.P.(C), the petitioner has preferred the instant intra court appeal, which has resulted in W.A.No.1162/2022. Based on the submissions of the parties, both the Writ Appeal and the main matter in the W.P. (C) have been posted before us.

7. We had given time to the respondents to furnish instructions in the matter to the learned Senior Government Pleader as regards the vacancies available in the open merit quota seats. Today, when the matter has been taken up for consideration, it is submitted by Sri.Saigi Jacob Palatty, learned Senior Government Pleader, on the basis of the instructions of the respondents, that there are 4 courses at the Higher Secondary level in the petitioner's School, viz, (i) Bio-Maths (ii) Computer Science (iii) Humanities and (iv) Commerce, each having total sanctioned seats of 180, 180, 60 and 60 respectively. Further, it is pointed out that, thus the 20% management quota seats allotted to the petitioner's School would come to 36, 36, 12 and 12 seats respectively for each of these 4 courses. It is also stated before us that, as of now, no vacancies are available to fill up the management quota seats for Bio-Maths course and the vacancies available in Computer Science Course, Humanities Course and Commerce Course are 4, 7 and 4 seats respectively, that could be availed in the management quota.

8. A larger contention has been raised before us by Sri.P.Ravindran, learned Senior Counsel instructed by Sri.M.R.Sabu, learned counsel appearing for the petitioner/appellant, that the 1st respondent – The Director of General Education has no jurisdiction to pass the proceedings in the nature of Ext.P9 dated 19/07/2022 directing the merger of the management quota seats with the open merit quota seats, merely on the pendency of management dispute. The substratum of this argument is that, the abovesaid management quota seats have been conferred on the basis of a considered policy decision taken by the competent authority of the State Government as per G.O.(MS).No.121/2022/G.EDN dated 07/07/2022, and that since the said right is conferred by the State Government, none other than the State Government have the jurisdiction to take

away the said management quota seats by passing an order in the nature of Ext.P9, even if it is assumed that the decision is otherwise valid. Further that, the 1st respondent – The Director General Education, who is subordinate to the State Government, has no jurisdictional competence to take a decision in the nature of Ext.P9 unilaterally, and that the respondents do not have any case that the decision reflected in Ext.P9 is only a decision of the State Government and which is only communicated by the 1st respondent – The Director of General Education.

9. After hearing both sides, we are of the view that this larger contention need not be resolved by us in view of the orders proposed to be passed by us. This is primarily so, as there does not seem to be any doubt or dispute that the petitioner has been permitted to function as the Manager of the School even after appointment of the Court Receiver. All the Court Receivers appointed are former District Judges who have consistently taken the view that the petitioner can be permitted to continue as the Manager.

10. The case set up by the respondents is that, the appointment of the petitioner as the Manager of the School has not been formally approved by the educational authorities concerned. The learned Senior Counsel appearing for the petitioner would point out that, the appointment of the petitioner as the Manager of the School has been approved as early as on 25.03.1977 by the 2nd respondent-DEO as per Ext.P1 proceedings and the said proceedings at Ext.P1 have not been altered in the manner known to law, so as to disapprove or derecognize the approved managership of the petitioner. It is pointed out that, in view of litigative proceedings, the administration of the School was under a Court Receiver since the year, 2010. Further, we see that, all the Court Receivers appointed so far are former District Judges, who have concurrently taken the stand that the petitioner can continue as the Manager of the School. The penultimate intimation sent by the Court Receiver is the one at Ext.P7 letter dated 31.12.2018 addressed to the 2nd respondent-DEO, intimating that the petitioner is to continue as the Manager of the School. Even after the issuance of Ext.P9 order dated 19.07.2022 issued by the 1st respondent – The Director of General Education, the Court appointed Receiver has issued Ext.P10 letter dated 29.07.2022, making it clear like the day light that the petitioner is to function as the Manger of the School.

11. In the light of the above conspectus of facts, we fail to understand as to how the respondents can hold that there is a management dispute, so as to warrant the merger of the management quota seats in the open merit quota seats for admission to the Plus Two courses in the petitioner's School. Even assuming for a moment that, the approval of the petitioner as the Manager of the School, as per Ext.P1 issued as early as on 25.03.1977, has been subsequently affected by the management disputes, the Court Receiver appointed by the Civil Court has unambiguously held that the petitioner is to continue as the Manager in the School. In the light of these aspects, it is only to be held that, the view taken by the 1st respondent in Ext.P9 so as to detrimentally affect the petitioner's School

is, to say the least, unreasonable and arbitrary.

12. In that view of the matter, it is ordered that the impugned Ext.P9 order dated 19.07.2022 issued by the 1st respondent - The Director General of Education, to the limited extent, it is directed as against Serial No. 13 thereof, which is the petitioner's School, will stand quashed and set aside. However, in holding the relief, it may not be proper for this Court to direct the filling up of the management quota seats other than the one now available, as third party rights would be affected in respect of the students already admitted. Hence, it is ordered that the petitioner can fill up the abovesaid remaining available vacancies of 4 seats, 7 seats and 4 seats respectively in Computer Science Course, Humanities Course and Commerce Course as the management quota seats by admitting eligible students in terms of the prospectus. Action in this regard may be duly completed by the petitioner without any further delay. After filling up of the seats, intimation in that regard may be given by the petitioner, both to the Court Receiver as well as to the respondents, along with a copy of this judgment.

13. In the judgments rendered by us yesterday in the aforementioned cases, we had imposed certain conditions that the petitioners therein should sponsor 5 or 10 applicants, as the case may be, for each of the available vacancies in the management quota to the DEO, who was directed to make admissions on the basis of inter se merit of such applicants. We have not issued any such directions in this case, as we have quashed the impugned order herein at Ext.P9 on merits. This is so, primarily due to the following aspects viz.,

- (i) There is no rival claimant to the petitioner for the managership of the school;
- (ii) Ext.P1 order rendered as early as on 25.03.1977 by R2-DEO granting approval to the managership of the petitioner has not been altered till now in the manner known to law;
- (iii) All the Court Receivers appointed by the Civil Court have consistently intimated to the Department that the petitioner is to continue as the Manager of the School, as evident even from Ext.P7, and
- (iv) Even after the issuance of the impugned Ext.P7 order, the Court Receiver has issued Ext.P9 order intimating the respondents that the petitioner is to continue as the Manager of the School, etc.

With these observations and directions, both the Writ Appeal and the W.P.(C) will stand disposed of.