
(2001) 12 KL CK 0022
In the High Court Of Kerala
Case No : W.A. No. 3797 of 2001

Philomina C. Jacob

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 13-12-2001

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2001) 12 KL CK 0022

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

Bench : Division Bench

Advocate : N. Nandakumara Menon, for the Appellant; V.K. Beeran, A.A.G., K.M. Kurian and Sunil Jacob Jose, for the Respondent

Judgement

K.S. Radhakrishnan, J.—Principal of a Government Vocational Higher Secondary School has approached this Court invoking Article 226 of the Constitution of India complaining that she had been picked up for arbitrary transfer from G.V.H.S.S., Thodupuzha to Teachers Training Institute, Muvattupuzha. She is deeply hurt and humiliated by the manner by which she was transferred. She submitted some of the imputations made against her by the Transferring Authority would lower her status and reputation among her students, fellow teachers, staff and the general public. She was picked up for transfer during the middle of the academic year, which according to her was due to extraneous reasons. She has got only one year and five months to retire.

2. The Parent Teachers Association of the school after having come to know that there was a move to transfer the petitioner on the basis of order dated 28.8.2001 submitted a detailed representation to the Minister for Education as well as to the Director of Public Instruction. The Parent Teachers Association opposed the move of transferring the petitioner. They had only good things to narrate about the principal. A counter affidavit was filed on behalf of the second respondent justifying the transfer order dated 8.10.01. Learned Single Judge did not interfere with the order of transfer and relegated the petitioner to file

suitable representation before the Government. Aggrieved by the same this appeal has been preferred.

3. The transfer order Ext. P2 was passed on the basis of Government letter dated 28.8.2001 and 5.10.2001 therefore no purpose would be achieved by again approaching the Government. In order to examine the reason for the transfer we called for the Government files and perused the same. Files revealed that transfer order was issued on the basis of a letter written by the School Protection Council. We have also perused the letter written by the School Protection Council. Learned Government Pleader submitted that since transfer was effected in public interest this court under Article 226 of the Constitution shall not interfere with the order of transfer. As a general proposition the learned Government Pleader is right. But if the Court is convinced that the transfer order has been issued mala fide and due to extraneous reasons this court under Article 226 of the Constitution has got a statutory duty to redress the grievance of the petitioner. In the counter affidavit filed by second respondent following charges have been levelled against the petitioner.

"The petitioner's conduct as the Principal of Government Vocational Higher Secondary School, Thodupuzha was unbecoming of the head of an institution and serious allegations were made against her in relation to the constitution of Parent Teachers Association. Serious allegations were also made against the petitioner in connection with misappropriation of funds of the Parent Teachers Association of Government Vocational Higher Secondary School, Thodupuzha. Due to the conduct of the petitioner, the Parent Teachers Association in Government Vocational Higher Secondary School, Thodupuzha have been split into two groups which made the functioning of the said association also undesirable. In the meantime a mass petition from the School Protection Council of Vocational Higher Secondary School, Thodupuzha was received by the Government alleging serious charges against the petitioner and taking note of the seriousness in the allegations raised against the petitioner, the Government by order dated 5.10.2001 directed this respondent to conduct an enquiry against the petitioner, in relation to the allegations raised against her and to transfer her and to conduct an independent enquiry in the matter."

Affidavit has been filed by the Personal Assistant (General) Office of the Director of Public Instruction, Trivandrum. When the matter came up for hearing we directed the learned Additional Advocate General to explain under what circumstances and on what materials the averments have been made in the affidavit. Allegations are of serious nature. Counter affidavit stated that petitioner had misappropriated funds of the Parent Teachers Association. Due to the conduct of the petitioner the Parent Teachers Association have been split up into two groups which made the functioning of the said association undesirable. Learned Addl. Advocate General could not produce any materials based on which the above counter affidavit has been filed.

4. In the meantime an impleading petition was filed by the Parent Teachers

Association before this Court. Counsel appearing for the Parent Teachers Association Sri. Sunil Jacob Jose as well as counsel appearing for the writ petitioner strongly refuted the various allegations made in the counter affidavit. According to them there is absolutely no materials to impute those allegations. Counsel appearing for the President of the P.T.A. submitted that the Principal had not misappropriated any of the funds of Parent Teachers Association and had never tried to interfere with the activities of the Association on because of her conduct there was no split in the association. President of the Parent Teachers Association in the affidavit stated as follows:

"The G.V.H.S.S. was suffering a very bad name for the past several years in the field of education and other activities. The predecessor of the appellant was able to regain the lost glory of the school due to his efficient administration and co-operation from the staff and earlier P.T.A. The appellant took over as Principal of the School on 20.5.1999 and was able to continue the same attitude to maintain the standards achieved. During the SSLC exams of the year 1993 the school had 0% pass, mainly due to the mismanagement and the unwanted interference of the local politicians. The appellant was able to bring the pass percentage in SSLC exams to 45% and 94% in V.H.S. Section. Student strength was also increased in the V.H.S.S. The school was also placed 1st among the Govt. Schools in the Idukki District. It is further submitted that it was for the first time after the appellant took over as the Principal of the School, she was able to inculcate discipline and dedication in the students..... the functioning of the Parent Teachers Association of the School was handed over to the petitioner by her predecessor inducting life into it and the Principal has been running the school in the most effective manner with full co-operation of the students, staff and Parent Teachers Association..... There never arose any complaint regarding its constitution or its running nor the handling of the funds were complained off till date. The allegation that the PTA has been split into 2 group is incorrect. There exists no groupism in the P.T.A. As a matter of fact, it is the smooth functioning of the P.T.A. as one that helped the appellant to regain the lost glory of the school".

Faced with the above situation as well as the stand of the P.T.A. the Personal Assistant (General), Office of the Director of Public Instruction, Trivandrum filed an affidavit stating as follows:

"It is submitted that during the hearing of Writ Appeal No. 3797/2001 of 26.11.2001, this Hon"ble Court was pleased to express displeasure regarding certain statements made in Paragraph 3 of the Counter Affidavit sworn to by me in O.P.No. 30445/2001. Accordingly this Hon"ble Court was pleased to afford me an opportunity for tendering my unconditional apology in making the above statements in the Counter Affidavit. I sincerely express my regret in making allegations of misappropriation against the appellant herein with regard to the PTA funds and the properties owned by the School. The said statements were made on account of my oversight and it was never intended to harm the appellant or distort the versions before this Hon"ble Court. I hereby tender my

unconditional apology in making the said statements in paragraph 3 of the Counter Affidavit filed in O.P.No. 30445/2001. It is further submitted accepting my unconditional apology, the further proceedings in the matter may kindly be dropped".

Along with the affidavit he has also produced an order dated 26.11.01 retransferring the petitioner back as Principal of the G.V.H.S.S., Thodupuzha. After considering all facts and circumstances of the case and perusing the unconditional apology submitted by the Personal Assistant of the Office of the Director of Public Instructions we are dropping further proceedings as against him.

5. We may add types of statements made in the counter affidavit are capable of creating reasonable apprehension in the minds of the court that the order has been issued not on objective consideration but on invisible yet apparent pressure from extraneous source. When an affidavit is filed in the court of law there is a solemn affirmation that the facts contained in the affidavit to the best of knowledge information and belief are true. If the facts stated in the affidavit are questioned the person who has sworn the solemn affirmation and signed the affidavit has got legal obligation to disclose the source of information and belief. Before making a solemn affirmation before court he has got an obligation to examine the veracity or otherwise of the facts which are brought to his knowledge directly or indirectly. If reckless and unwanted allegations are made in the affidavit the person who swears the affidavit will have to do it at the risk of action for perjury. There is a difference between the solemn affirmation and an affidavit. When a person solemnly affirm as the statement made in the petition stating they are true to his knowledge and belief he should be able to prove the source of his knowledge and belief. In the instant case we have asked to disclose his source of information. The Government Official could not disclose it. Consequently he had to tender apology.

6. We are of the view Government Official should be careful when making solemn affidavit before this Court. His duty is to aid this Court in the dispensation of justice, disclosing true facts before the Court. We find that the transfer has been effected on the basis of complaint from "School Protection Council". We fail to see what is the status of the School Protection Council. Only the P.T.A. has been recognised by Government through its circular and executive orders. We are sorry to say, Government acted arbitrarily on the basis of the complaint filed by the School Protection Council and transferred the Principal. Since authorities have cancelled the transfer order we are dropping further proceedings. We further make it clear that the period for which petitioner was not on duty be treated as eligible leave and service be regularised accordingly.