
(2021) 01 KL CK 0562

In the High Court Of Kerala

Case No : Writ Petition (C) No. 16052, 28547 Of 2020

P.K. Sukumara Panicker And Ors

APPELLANT

Vs

State Of Kerala And Ors

RESPONDENT

Date of Decision : 25-01-2021

Acts Referred:

Citation : (2021) 01 KL CK 0562

Hon'ble Judges : Devan Ramachandran, J

Bench : Single Bench

Advocate : B. Krishnan, R. Parthasarathy, Sunil Kumar Kuriakose

Final Decision : Allowed

Judgement

1. I am considering these two writ petitions together since they involve common questions regarding the managership and the appointments made in

â??A.U.P. School,â?? Chiramangalam, Malappuram .

2. W.P.(C) No.16052/2020 has been filed by Sri. P.K. Sukumara Panicker, who stakes a claim to be the Manager of the School; while W.P.(C)

No.28547/2020 has been filed by three teachers appointed to the said School as Upper Primary School Teacher and Lower Primary School Teachers.

3. Sri. Sukumara Panicker claims that he is solely entitled to be the Manager of the School, but that the Additional Director of General Education

(ADGE) has issued Ext.P8 order produced in W.P.(C) No. 16052/2020 refusing to grant him approval, saying that the Bye-laws and the Trust Deed

with respect to the management, signed by all the legal heirs of the deceased father of the petitioner, must be first produced. Sri. Sukumara Panicker

submits that these directions in Ext.P8 are egregiously improper, since, through Exts. P1 and P7 judgments of this Court, it had been made it clear that

those legal heirs of his father, namely the siblings, who are not willing to sign the Trust Deed or the Bye-laws need not be included in the management

and that if, after they are heard by the competent Educational Authority, it is found that they are either unwilling to join the Trust or if they do not

respond to a notice for such hearing, then necessary action with respect to the management of the School must be taken forward, which is to mean

that the petitioner must be approved.

4. The petitioner says that, however, without adverting to any of the directions in Exts. P1 and P7 judgments and in particular the fact that Ext. P2

Trust Deed with respect to the management of the School - has already been placed before this Court, the ADGE has now rejected his claim for

specious reasons, as recorded in Ext. P8 order. Sri. Sukumara Panicker, therefore, prays that Ext. P8 in W.P.(C) No. 16052/2020 be set aside and

that he be directed to be approved as the Manager of the School.

5. As far as the petitioners in W.P.(C) No.28547/2020 is concerned, they claim that they were appointed as Upper Primary School Teacher and

Lower Primary School Teachers respectively on various dates in the academic year 2016-2017. According to them, even though their appointments

are fully eligible to be approved, the Educational Authorities have rejected the same, finally culminating in Ext. P9 order, wherein the only reason

stated is that since they have been accommodated against additional division vacancies - into which only protected teachers could have been appointed

- their approval cannot be granted, unless they are reappointed to the retirement vacancies which are now available. They say that in this order it has

been clearly recorded that there is one vacancy in the post of Lower Primary School Teacher and three in the post of Upper Primary School Teacher

available in the School and therefore, pray that the Manager be directed to appoint them into these and the official respondents be ordered to approve

their appointments at the earliest.

6. I have heard Sri. R. Parthasarathy, learned counsel appearing for Sri. P.K. Sukumara Panicker - petitioner in W.P.(C) No. 16052/2020; Sri. S.M.

Prem, appearing for the petitioners in W.P.(C) No. 28547/2020 and Sri. Sunil Kumar Kuriakose, learned Government Pleader appearing on behalf of

the official respondents.

7. I find substantial force in the submissions Sri. Parthasarathy as far as the

claim of Sri. P.K. Sukumara Panicker is concerned, because in Ext.P1 judgment, a learned Judge of this Court has recorded that the disputes between the legal heirs of the petitioner's father, namely late Krishna Panicker, have been settled and that they have all agreed to manage the School in terms of a Bye-law to be presented before the Educational Authorities and to be got approved. It appears that, later, Ext.P2 Bye-laws was presented before the Authorities, but there was some confusion as to whether it can be approved because five of the legal heirs of late Krishna Panicker had not signed the same. The petitioner contends that those siblings who did not sign Ext.P2 are not interested in running the School and therefore, that he approached this Court again and obtained Ext.P7 judgment, wherein, directions were issued to the Director of Public Instructions [subsequently redesignated as the Director of General Education (DGE)] to hear all the legal heirs of late Krishna Panicker, thus leading to a decision as to if Ext. P2 can be approved. He says that it was also made clear in Ext. P7 that if any of the legal heirs do not respond to the notices of the Director of Public Instructions, to be issued for this purpose, or conveys that they have no objection to the formation of the Trust without them being on it, said Authority must take a final decision thereon as per law.

8. However, in spite of the afore specific directions, Ext. P8 has been now issued by the ADGE, whereby, he has directed the District Educational Officer (DEO) to produce the Trust Deed signed by all the legal heirs of late Krishna Panicker, as also the Bye-laws and certain other documents. Obviously, therefore, this is clearly contrary to the directions in Exts.P1 and P7 judgments and I cannot, hence, grant approval to the said order.

9. That said, as is also manifest from Ext.P8, the notices issued by the ADGE to the siblings of the petitioner, who have not signed Ext.P2 Bye-laws, appear to have been not responded to; and perspicuously, therefore, the said Authority ought to have complied with the directions in Ext.P7 judgment and ought to have granted approval to Ext. P2 Bye-laws. This, not having been done, I certainly cannot find favour with Ext. P8 order in W.P.(C).

No.16052/2020.

10. Now coming to W.P.(C) No.28547/2020, the only objection raised against granting approval to the appointments of the petitioners therein is that the Manager had appointed them to additional division vacancies and that unless

they are re-appointed to available retirement vacancies, such benefits cannot be granted. It is also stated in Ext. P9 of the said writ petition that since there is a dispute regarding the management of the School, the DEO is unable to offer approval to the petitioners' appointments.

11. When I consider the conspectus of the circumstances available in both these cases, it is limpid that the question of managership of the School cannot be now allowed to hang fire on account of the specific directions in Exts. P1 and P7 judgments, produced along with W.P.(C) No.16052/2020, especially because, in Ext. P8 order therein, it is recorded that all the legal heirs of late Krishna Panicker have been notified and that some of them did not respond. Ineluctably, hence, the ADGE ought to have granted approval to Ext. P2 Bye-laws rather than have issued Ext. P8 therein.

12. That being so said, when the approval of late Sukumara Panicker is now incumbent, it is only in the fairness of things that he be directed to consider the appointments of the petitioners to the retirement vacancies as per law and subject to their possessing necessary qualifications and credentials, so that the objections in Ext.P9 in W.P.(C) No. 28547/2020 can be allayed.

I also record the submission of Sri. Parthsarathy that if his client is approved as the Manager of the school, he is willing to take all necessary steps to have the appointments of the petitioners in W.P.(C) No.28547/2020 approved, if necessary, by reappointing them to the available retirement vacancies in the School.

In the afore circumstances, I order these writ petitions in the following manner:

a) W.P.(C) No. 16052/2020 is allowed, setting aside Ext. P8 order therein; with a consequential direction to the DGE/ADGE to approve the appointment of the petitioner as the Manager, in terms of the directions in Exts. P1 and P7 judgments. This exercise shall be completed by the DGE/ADGE as expeditiously as is possible, but not later than three weeks from the date of receipt of a copy of this judgment.

b) On Sri. Sukumara Panicker being so approved as the Manager, he shall immediately issue orders-subject to the qualifications and credentials of the petitioners in W.P.(C) No.28547/2020 - to appoint them in the available retirement vacancies and will forward the proposals for their approval to the DEO without any delay, but not later than one month from the date on which he

assumes charge as the Manager, in terms of my directions afore.

c) On Sri. Sukumara Panicker forwarding the proposals for approval of the teachers in W.P.(C) No. 28547/2020 as afore, the DEO will take

necessary action thereon and will communicate the resultant order to the parties without any delay, but not later than two months from the date on

which the proposals are received by him.