
(1985) 07 AP CK 0009

In the Andhra Pradesh High Court

Case No : Writ Petition No. 6190 of 1984

R. Sugandamma

APPELLANT

Vs

District Educational Officer and Others

RESPONDENT

Date of Decision : 12-07-1985

Acts Referred:

Constitution of India, 1950 — Article 30(1)

Citation : (1999) 6 ALT 692

Hon'ble Judges : Jagannadha Rao, J

Bench : Single Bench

Advocate : B.S.A. Swamy, for the Appellant; Govt. Pleader for Respondent Nos. 1 and 2 and A.T.R. Ratnakar, for the Respondent

Final Decision : Allowed

Judgement

Jagannadha Rao, J.—This writ petition has been filed by the petitioner for the issue of a writ, quashing the order of the Deputy Inspector of Schools (2nd respondent) dated 7-1 -1984 and for a direction to the 1st respondent (District Educational Officer, Kurnool) and to the 2nd respondent to release the grant-in-aid for the post of Headmistress in the A.B.M. Elementary School, Gargeyapuram, Hindu range, Kurnool.

2. The 3rd respondent-The American Baptist Mission, Kurnool, represented by its Correspondent, is stated to be a minority institution running schools in several villages in Kurnool District, propagating its religion, after obtaining the necessary recognition from the competent authorities. It is stated that all the schools are located in the respective Church compounds in those villages and that the 3rd respondent-association has been receiving teaching grants and other grants from the Government under the Grant-in-Aid Rules for the time being in force. One Mr. R. Peter, who was working as Headmaster in the Elementary School run by the 3rd respondent at Gargeyapuram died on 30-11-1983. The petitioner, who is a retrenched employee in the 3rd respondent-organisation, submitted an application for consideration of her case for appointment as Headmistress. The

3rd respondent, in its proceedings dated 5-12-1983, appointed the petitioner as Headmistress in the vacancy of the said R. Peter and directed the petitioner to send joining report to the 2nd respondent also. The petitioner joined duty on 27-12-83 and took over charge from the Acting Headmistress. The petitioner sent her joining report to the 2nd respondent. On receiving the same, the 2nd respondent issued the impugned order dated 7-1-84 stating that no grant will be assessed on behalf of the petitioner, who has been appointed in the vacancy caused by the demise of Sri R. Peter, inasmuch as both the posts are outside the purview of the Correspondent. It is also stated that orders have to be issued only by the District Educational Officer, Kurnool. Copies of the same were despatched to the Correspondent and to the District Educational Officer as well as the petitioner. It is against this order that the petitioner has filed this writ petition.

3. In the counter-affidavit, it is admitted that the 3rd respondent organisation is a "minority" organisation. The former Headmaster Sri R. Peter used to get his salary through the Department instead of the Correspondent. It is stated that the petitioner's appointment is contrary to the proceedings of the Director of Public Instruction, Andhra Pradesh in Rc. No. 6496-B2/68, dated 26-6-69 and of the Government in G.O.Rt. No. 896, Education dated 16-6-68. Under the said G.O. the post of Headmistress/Headmaster in Aided Elementary Schools and Upper Primary Schools has to be filled up by the management, on the basis of seniority-cum-merit among the qualified teachers, working under the same management. It is also stated that, under the bye-laws of the 3rd respondent-association, the Executive Committee is competent to make appointments with the approval of the General Body but the Correspondent is not competent to appoint Headmistress/Headmaster or Teachers. In this case, the Executive Committee is said to have given a representation dated 10-11-1983 to the District Educational Officer, Kurnool, stating that the Correspondent had no power of appointment in the absence of approval of the General Body and the Executive Committee. It is stated that the Correspondent failed to produce the seniority list of teachers. It is further contended that, as per the proceedings of the Director of Public Instruction, Andhra Pradesh, in R.C. No. 3510/B1-2/73, dated 30-8-1973 the appointments made by the Management must be approved by the Department in all aided posts. The petitioner's appointment was not approved by the department, for the reasons above mentioned, and so the grant-in-aid cannot be released. The grant is to the institution and not to any individual and the petitioner has no claim as an individual. It is alleged that, under Article 30 of the Constitution of India, the protection is given to the minority institution but not to the individual employees of the institution.

4. The petitioner has been working in the 3rd respondent institution as Headmistress from 27-12-1983. She has not been paid her salary, on account of the above dispute. I passed an order on 8-7-1984, directing the respondents to release the grant and pay the petitioner her salary atleast from 1-4-84 onwards upto end of June, 1984, until further orders inasmuch as the respondents had failed to file a counter even after repeated adjournments. In W.P.M.P. No.

19909/84, I passed a further order on 14-12-1984 requiring the District Educational Officer to submit a report, after hearing the petitioner, mentioning the rule position correctly and the institution was directed to produce the relevant Minutes books etc. The purpose of the said order was to find out whether the Executive Committee and the General Body had approved the petitioner's appointment as Headmistress. The District Educational Officer, Kurnool, while submitting his report on 23-1-1985 raised several new contentions, which were not raised in the counter-affidavit filed earlier. The Minutes book and other documents have also been produced before me by the learned Counsel for the petitioner.

5. I am satisfied that, on 17-4-1983, the General Body of the 3rd respondent passed a resolution, approving the name of the petitioner for appointment in the vacancy that might arise in future. The record further shows that subsequently, after the death of Mr. Peter the Executive Committee met and passed a further resolution on 5-12-83 agreeing that the petitioner can be appointed as Headmistress in the said vacancy. On the same day, orders were issued by the Correspondent and the fact of appointment of the petitioner was communicated to the District Educational Officer, Kurnool, for approval. It is unfortunate that the above facts were not even adverted to by the District Educational Officer in his report submitted to this Court but instead several questions, which are not germane to this issue have been raised.

6. It is true that, according to the letter of the Director of Public Instruction dated 26-6-1969, the aided educational institutions have to follow G.O.Rt. No. 896, Education dated 16-6-68. The said G.O. no doubt states that appointment for the post of Headmaster in Elementary and Upper Primary Schools under the management of local bodies i.e., Municipalities and Panchayat Samithies are being made, according to the order of seniority and that in the case of Aided Elementary and Upper Primary Schools, the managements should follow the rule of seniority-cum-merit from among the qualified teachers working under the same management for the purpose of appointment as Headmaster. It is further stated therein that the Government have accepted the proposal of the Director of Public Instruction for amendment of Sub-para (v) of Rule 56 of the A.P. Educational Rules, so as to regulate the appointment of Headmasters in Aided Elementary and Upper Primary Schools. Formal orders amending the A.P. Educational Rules to the above effect were directed to be issued. There is another proceeding of the Director of Public Instruction in Rc. No. 3510/B1-2/72, dated 30-8-73 which states that it was brought to the notice of the Director that certain D.E.Os. are insisting that management should appoint teachers, drafting them through Employment Exchanges. It is therefore clarified that the D.E.Os. should not so insist and that it is for the Employment Exchanges concerned to see that the managements do not contravene the provisions of the Employment Exchange Act. It is further stated that the managements should ensure that the teachers appointed by them are fully qualified for the posts and that the appointments are approved.

7. It is contended by Sri B.S.A. Swamy, the learned Counsel for the petitioner that the above G.O. and the proceedings of the Director cannot be applied to minority institutions, in view of the provisions of Article 30 of the Constitution of India. On the other hand, it is contended by the learned Government Pleader Sri S.M. Quadri, that the institution in which the petitioner is working is not a minority institution and that, in any event, when the institution is drawing aid from the Government, it is obligatory to follow the directives of the Government and of the Director imposed, while granting such aid.

8. It is true that in *Chikkala Samuel v. D.E.O., Hyderabad, 1982 (1) ALT 50 Jeevan Reddy, J.*, has stated that, before an institution can claim to be a minority institution, it should be shown that it serves and/or promotes the interests of the minority community in some manner, whether by promoting the religious tenets, philosophy or culture of that community, or the language, culture or literature of that community, as the case may be, or otherwise. But, I am of the view that the learned Government Pleader cannot rely upon the aforesaid decision on the facts of the case for the reason that, in the counter-affidavit filed by the Government, it has been clearly accepted that the petitioner is working in a "minority" institution. I, therefore, hold that the institution in which the petitioner is working is a minority institution and no further enquiry is called for on that question.

9. The next question is: Whether it is open to the Government or the Director of Public Instruction to direct the minority institutions that the appointment of teachers should be subjected to the approval of the officers of the Government and whether the Government can also direct that the Headmaster/Headmistress should be selected from among the teachers working in the institutions on the basis of seniority-cum-merit. In the present case, as we have already seen, the petitioner's services were previously terminated and she was again appointed directly as Headmistress and the appointment has been approved by the General Body as well as the Executive Committee, and she is otherwise duly qualified.

10. In *State of Kerala, etc. Vs. Very Rev. Mother Provincial, etc.*, it was held that the provisions of Section 53(1) (2) and (3), which conferred on the Syndicate of the University the power to veto even the action of the governing body or the Managing Council in the selection of the Principal as also the provisions of Section 53(4) taking away from the management the right to select the teachers are ultra vires of Article 30 inasmuch as the power of selection is, under those provisions to be exercised not by the Educational Agency or the corporate management but by a distinct and autonomous body under the control of the Syndicate of the University. The insistence on merit in Sub-section (4) or on seniority-cum-fitness in Sub-section (7) did not save the situation.

11. In *The Ahmedabad St. Xavier's College Society and Another Vs. State of Gujarat and Another*, the Supreme Court observed that a law which interferes with a minority's choice of qualified teacher or its disciplinary control over teacher and other members of the staff of the institution is void as being violative of Article 30(1) of the Constitution of India. It is, of course, permissible

for the State and its educational authorities to prescribe the qualifications of teachers, but once the teachers possessing the requisite qualifications are selected by the minorities for their educational institutions, the State would have no right to veto the selection of these teachers. The selection and appointment of teachers for an educational institution is one of the essential ingredients of the right to manage the educational institution and the minorities can plainly be not denied such right of selection and appointment without infringing Article 30(1) of the Constitution of India. In that case, the Supreme Court approved the decision of the Kerala High Court in *State of Kerala v. Correspondent, Management of Schools*, 1970 KLT 232. In the latter case, the Government of Kerala issued an order under the Kerala Education Act, 1958 providing that, whenever a vacancy occurred in an aided school, the Managers should follow the directions issued by the Government from time to time for ascertaining the availability of qualified hands for appointment as teachers. The Managers had to advertise the vacancies of teachers in the prescribed form and in the approved dailies in two consecutive issues. Section 11 of the Kerala Education Act, 1958 provided that the teachers of the aided schools should be appointed by the Managers of such schools from among persons who possessed the qualifications prescribed u/s 16 and subject to the rules and conditions laid down by the Government. A Bench of the Kerala High Court, consisting of Madhavan Nair and Narayana Pillai, JJ., observed that the fundamental freedom to establish and administer educational institutions, referred to in *In Re Kerala Education Bill* AIR 1958 SC 956 should conserve the community's religion, language, or culture and also give a good general education to their children. To serve such double purpose, the management must have considerable freedom of choice of teachers to be employed in their schools. If the management is compelled to appoint qualified teachers, irrespective of their express aversion for their religion and culture of the community that has established the school, the right guaranteed by Article 30(1) of Constitution will be but a "teasing illusion" a promise of unreality vide *Rev. Sidhraj Bhai Sabbai v. State of Gujarat* AIR 1963 SC 540 .

12. My attention has not been invited to anything in the recent judgment of the Supreme Court in *All Saints High School, Hyderabad and Others Vs. Government of Andhra Pradesh and Others*, , which runs counter to the statement of law in the above two judgments, nor in *Managing Board of The Milli Talimi Mission, Bihar, Ranchi and Others Vs. State of Bihar and Others*, .

13. The above question also arose before Ramachandra Rao, J. (as he then was) in *Anjuman-E-Islamia, Kurnool v. The Government of A.P.* 1979 (1) APLJ 54 . In that case the Government directed the petitioner-minority institution (in that case) to recruit candidates to the post of Principal only through a Selection Committee, consisting of two representatives of the management and three members of whom two are to be nominated by the University and one by the Director of Higher Education. The learned Judge felt that the impugned orders, dealing with selection of teachers and Principals, completely takes away the right of the management of the minority institutions to select its own teachers or

Principals and imposes a restriction on that right. One of the important aspects of the rights of administration of an educational institution is, the right to select the teaching staff and the Principal of the institution. The impugned orders of the Government took away the right of the management to select teachers or Principals of its own choice and compelled the management to accept the selection made by a Selection Committee, prescribed by the Government. As such, the rights of the minority institutions are clearly infringed and the impugned orders in that case were declared to be violative of Article 30(1) of the Constitution of India.

14. A similar question arose in *Rt. Rev. Dr. Aldo Maria Patroni, S.J. and Another Vs. The Assistant Educational Officer and Others*, before Viswanatha Iyer, J. The learned Judge was dealing with Rules 44 and 45 of Chapter XIV-A of the Kerala Educational Rules. Rule 44 provided that ordinarily a Headmaster must be appointed by promotion of the seniormost teacher in the school. Rule 45 is an exception to that rule in the case of Upper Primary Schools and in order that the exception may apply the teacher so appointed as Headmaster must be a graduate with at least five years teaching experience and must have put in service equal to 1/3rd of the service put in by the seniormost teacher. The learned Judge held that these rules cannot be treated merely as fixing the qualification for appointment as Headmaster. While it is true that rules prescribing qualifications of teachers should be made even in respect of minority institutions still Rules 44 and 45 did not belong to that category. The learned Judge referred to the decision of the Full Bench of the Kerala High Court in *Aldo Maria Patroni and Another Vs. E.C. Kesavan and Others*, to the effect that the post of the Headmaster occupied a pivotal position inasmuch as the whole institution is controlled by him and therefore Rules 44 and 45 cannot be permitted to interfere with that freedom which the management has in appointing the Headmaster. The person appointed in that case however satisfied the requirements regarding qualifications. The learned Judge also referred to another Full Bench decision of the Kerala High Court in *V. Rev. Mother Provincial, Congregation of Mother of Carmel, Carmelite Provincial House, Kovilvattam Road, Ernakulam, Cochin and Others Vs. State of Kerala and Others*, and the ruling of the Supreme Court in *State of Kerala v. Mother Provincial* (2 *supra*) and pointed out that in these two cases the question directly arose whether the minority community had freedom to appoint an Headmaster of a school or Principal of a College and that, in dealing with that question, the Supreme Court and the Full Bench held that the position of a Headmaster or a Principal was a vital matter from the point of view of the administration of the institution and that the provisions, which, in any way interfered with that freedom were violative of Article 30 of the Constitution of India, were *ultra vires*. The management has the freedom to choose the person competent and qualified to appoint him or her in the institution.

15. The Madras High Court in *A. Thomas v. Dy. Inspector of Schools* AIR 1976 Mad. 214 considered the question whether the Government could insist on

teaching staff of their choice to be appointed in the case of educational institutions of minority communities, which were being granted aid by the Government. The said contention was rejected by a Division Bench consisting of Veeraswamy, C.J. and Natarajan, J. It was pointed out that the aid given by the Government does not clothe the Government with any right of appointment of teachers or to interfere with the selection of the teachers.

16. A similar question (again) arose in the Madras High Court again in Joseph's College Society v. Director of Collegiate Education 1983 (1) MLJ 418. In that case, the Government passed an order for utilisation of surplus teaching staff from one aided college in another college. The question arose whether the minority institution can appoint qualified teachers in vacancies without the prior approval of the Government. Holding that the Government order requiring such approval for selection was ultra vires of Article 30(1) of the Constitution of India, Padmanabhan, J. held that the management had the right to appoint teachers of their own choice. The learned Judge reviewed the entire previous case law on the subject.

17. The Gujarat High Court in Benson Enock Semual, Ahmedabad and etc. Vs. State of Gujarat and Others, also held that the provisions of the Bombay Primary Education Rules (Amended by Gujarat Amendment Rules, 1978), in so far as they provided for the constitution of a selection committee for selection of teachers for appointment in a school, the committee consisting of one representative of the Administrative Officer of the school Board of Government, the Headmaster of the school and one representative of Managing Body of the Trust or the Society, were ultra vires of Article 30(1) of the Constitution of India. It was held that it was a provision which made a deep inroad into the rights of the management of the minority institution and it may result in the right of the management being totally undermined in cases where the Headmaster of the school conferred with the Administrative Officer of the school board.

18. From the aforesaid rulings, the following principles can be summarised:

Under Article 30(1) of the Constitution of India, minority institution, whether based on religion or language shall have the right to establish and administer educational institution of their choice. One of the vital aspects of this right is the right to select and appoint teachers or Headmasters (or Principals) of the choice of the management and there can be no interference whatsoever with that right. The State has no right to insist that the selection should be made by a selection committee, consisting not only of the representatives of the management but also of the Government nor can the State assume a power to approve the choice of the candidate. All that the State can do is to prescribe qualifications for the post of teacher or Headmaster (or Principal) and see that those prescriptions are duly followed. The fact that the institution is receiving aid from the Government does not enable the Government from deviating from the above principles.

19. Following the aforesaid principles, I hold that the G.O.Rt. No. 896, dated

16-6-1968 as well as the letter of the Director of Public Instruction dated 26-6-1969 and the subsequent letter of the Director dated 30-8-1973 cannot be applied in the case of appointment of teachers or Headmasters of the Elementary and Upper Primary Schools, run by the minority institutions, which are entitled to protection under Article 30(1) of the Constitution of India, even in a case where the institutions are receiving aid from the Government, provided the appointee has the prescribed educational qualification.

20. I am therefore clearly of the view that the respondents 1 and 2 have acted illegally in passing the order dated 7-1-1984 and in not releasing the grant in favour of the petitioner-Headmistress from the date she joined duty on 27-12-1983. The petitioner is entitled for release of the grant applicable to the post of Headmistress and not that of an ordinary teacher in the school. The petitioner was not therefore obliged to receive anything less than what she would be entitled to as Headmistress of the school.

21. As already mentioned by me the other points made out in the report submitted by the District Educational Officer were absolutely irrelevant and I am also satisfied that there is no real substance in those subsidiary irregularities allegedly present. I am of the view that instead of answering the main questions arise in the case, the D.E.O. has raised several untenable contentions not germane to the case.

22. For all the above reasons this writ petition is allowed by declaring that the appointment of the petitioner as Headmistress of the School has been accepted by the Executive Committee and the General Body of the Management and that the petitioner is working in a minority institution entitled to protection under Article 30(1) of the Constitution of India, that she is duly qualified to be directly appointed as Headmistress, that it is not incumbent on the management to select one of the teachers working under the management on the basis of seniority-cum-merit and that it is also not necessary for the Correspondent to obtain the approval of the D.E.O., except for verifying the prescribed educational qualification of the appointee. It is not in dispute that the petitioner is duly qualified to hold the post according to the rules prescribed by the Government. There would therefore be a further direction that the respondents shall release the grant-in-aid payable to the petitioner with effect from 27-12-1983 as Headmistress of the school and take steps to pay her the same within one month of the receipt of this order. No costs. Advocate's fee - Rs. 200/-