
(2005) 02 KL CK 0038

In the High Court Of Kerala

Case No : Writ Petition No. 20461 of 2004

Rosamma

APPELLANT

Vs

Director of Public Instruction

RESPONDENT

Date of Decision : 08-02-2005

Acts Referred:

Kerala Education Rules, 1959 — Rule 4, 7

Citation : (2005) 2 KLT 538

Hon'ble Judges : Thottathil B. Radhakrishnan, J

Bench : Single Bench

Advocate : P.N. Santhosh and K.P. Geetha Mani, for the Appellant; Baby Issac Illickal and P.K. Shakeela Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Thottathil B. Radhakrishnan, J.—This is an unfortunate case of a mite against the might.

2. The petitioner is a lady Drawing Teacher. She reached this Court some time in 1992 instituting a Writ Petition which led to Ext.P1 judgment. It was found categorically by this Court in that judgment that the 4th respondent, the Manager of a corporate educational agency, is liable to pay the amounts due to the petitioner by way of salary from 16.6.1983 to 4.9.1992 after deducting whatever amounts she would have received by salary from the school. That judgment was rendered in two connected Writ Petitions. The Manager, the State and the petitioner were among the parties to those cases. It was contended by the Corporate Manager before the learned Judge at the hearing of the cases leading to Ext.P1 judgment that even if the petitioner had any claim by virtue of Rule 51A of Chapter XIV-A since she had not intimated the 4th respondent (the Corporate Manager) about her anxiety to join in the school, she has to suffer the loss for her inaction. On behalf of the Government it was urged before the learned Judge that the Government had already paid salary to the teacher whom the Corporate Manager had appointed (5th respondent in O.P.7796/1992) for the

period from 15.6.1983 and that being so, even if O.P.7796/1992 (the Writ Petition filed by the petitioner herein) is allowed, the Government may not be directed to meet the financial consequences and since the present situation has arisen only because of the lapses on the part of the Corporate Manager, it is for the said Corporate Educational Agency to bear the loss.

3. Unfortunately, it is pointed out on behalf of the Corporate Educational Agency before me that the said judgment was rendered without hearing them as regards any liability to compensate. I say so because one of the main contentions in opposition to this Writ Petition is that Ext.P1 judgment was rendered without any claim being made against the Manager and without any such issue being raised. Ext.P1 judgment was issued by this Court by holding that the claim of the petitioner is that she must be paid salary from 16.6.1983 to 4.9.1992 and that the answer to the question whether it is for the Government to pay the said amount, is in the negative. The Government had already paid the salary for the said period to the 5th respondent and the Government cannot be asked to pay over again. Accordingly, the learned Judge ordered that "it is for the 4th respondent who has to face the music and make good the payment". The learned Judge disposed of the said case as per Ext.P1 as follows:

"In this view of the matter, O.P.No. 7796 of 1992 is allowed to the extent indicated above and O.P.No. 6934 of 1992 is dismissed."

4. Though it is now urged on behalf of the Corporate Manager that there were no directions in Ext.P1 judgment requiring the Corporate Manager to pay and O.P.No. 7796/1992 did not contain any relief being sought to such effect, I am clear in my mind that the Corporate Manager had understood the judgment then, in a different way. This is so because he chose to file an appeal against Ext.P1 judgment. He did that specifically challenging the last line in paragraph 11 of Ext.P1 judgment. This resulted in Ext.P2 judgment being delivered by the Division Bench on 10.10.2002 in W.A.No. 185 of 1999. Noticing that, by Ext.P1 judgment, the claim was answered by stating that the liability cannot be fastened on the Government and that as the Government had already paid salary to the person appointed by the Corporate Manager, who did not have the right for appointment at the relevant time, it is for the 4th respondent who had to face the music, the Division Bench went further and said "really the fourth respondent, appellant had denied him timely appointment. So, whatever resulting out of such denial should be made good by the 4th respondent". The reference made as "him" is to the Writ Petitioner.

5. Though Ext.P2 judgment was rendered on 10.10.2002, the petitioner had been scouting between the statutory authorities as if destined to run from pillar to post. Until now, not a pie has been paid to her in terms of Exts.P1 and P2. Not only that, for want of such regularisation, her service is not counted as having commenced with effect from 15.6.1983 and this has resulted even in her continuing to get salary only on the basis of the minimum basic pay, without any increment. This is the sad plight of a teacher in an aided school who is now

shown to be aged 45 years.

6. In spite of repeated directions being issued, as evidenced by Exts.P3 to P5, the Corporate Manager did not give effect to Exts. P1 and P2 judgments. Instead, Ext.P6 was issued by the Corporate Manager through the power of attorney directing the petitioner to be present at 11 a.m. on 20.2.2004 to receive a sum of Rs. 50,000/- being compensation for denial of appointment on 15.6.1983. This is against an amount of Rs.99,821/- that was due as on 3.1.1992.

7. The petitioner filed this Writ Petition without receiving that amount since even by the terms of Ext.P6, she ought to receive the entire amount due as compensation on settlement of the case.

8. After this matter was admitted, a counter-affidavit has been placed on record by the 2nd respondent, Deputy Director of Education stating that the amount is due to the petitioner and that the Manager has not complied with the directions from the Department as well as the directions in the judgment of this Court and accordingly the Manager was informed that steps will be initiated against him under R.7 of Chapter III of K.E.R.

9. This Writ Petition is filed seeking a mandamus to the statutory authorities to take recourse to Sub-rules (1) and (4)(a) of Rule 7 of Chapter III K.E.R.; for a direction to the 2nd respondent to recover the arrears of salary with interest due to the petitioner and for a further direction to the 2nd respondent to refix the pay of the petitioner by treating the period from 15.6.1983 to 4.9.1992 as duty.

10. Having regard to the nature of the reliefs sought for in the Writ Petition, I issued the following interim order on I.A. 229/2005 on 7.1.2005:

"Learned counsel for the 3rd respondent states that without a copy of the counter-affidavit filed on behalf of the State, he may not be able to appropriately meet the contentions stated therein. The learned counsel for the petitioner offers a copy of the said counter-affidavit and therefore, now the 3rd respondent is duly served with a copy of the counter-affidavit of the Department. It is stated in the counter-affidavit filed by the Deputy Director of Education that the amount due to the petitioner as per Exts.P1 and P2 judgments totals up to Rs.99,821/-. This amount is obviously due as on 3.1.1992. The 3rd respondent may also file a short affidavit for the very limited purpose of pointing out why, in the event of this Court coming to the finding that the 3rd respondent is liable to pay the amount to the petitioner, an order for interest on the said amount from 1992 shall also not be issued. In this view of the matter, at the request of the learned counsel for the 3rd respondent, the matter is adjourned, to 24.1.2005".

11. Consequently the Corporate Manager has placed an additional affidavit and has also produced Ext.R3(a), a Government Order dated 7.5.1992 by which the Government is shown to have issued the said order blaming the petitioner of having failed to watch future course of action and that such failure itself is a lapse on her part, which cannot be set right due to the passage of time. The

Government accordingly concluded that the writ petitioner is not entitled to any compensation or any monetary relief prayed for. It is unfortunate that the 3rd respondent, after having suffered Ext.P1 and P2 judgments in December, 1998 and October 2002, has pressed Ext.R3(a) dated 7.5.1992 into service in opposition to this Writ Petition. Though the findings in Ext.R3(a) may call for sheer criticism at the hands of this Court, I do not venture to do so since it would suffice to say that it is unworthy to be acted upon, after Exts.P1 and P2 judgments have been rendered by this Court.

12. The learned counsel for the 3rd respondent canvassed before me a contention that Sub-rule (4) of Rule 7 of Chapter III K.E.R. was brought into the statute book only by an insertion made on 10.2.1989, much after the period for which the petitioner seeks compensation and therefore, recourse to the revenue recovery proceedings provided for by the said rule cannot be pressed against the Manager since the said rule is not merely one which is prospective in nature but is one which has the characteristics of substantive law and procedural law. In advancing the said contention, learned counsel for the 3rd respondent referred to Salmond on Jurisprudence and Maxwell on Interpretation of Statutes to urge that, when in a particular provision, characteristics of statutory law and procedural law intertwine, such provisions shall, except in exceptional circumstances, be read as only having prospective application. Retrospectivity is not to be read into in cases where retrospectivity is not explicitly given by the statute.

13. Per contra, the learned counsel for the writ petitioner, relying on the decision in union of india (UOI) Vs. Sukumar Pyne, , urged that the aforesaid principle urged on behalf of the 3rd respondent has been construed by the Supreme Court and their Lordships have held that none has a vested right in such matters.

14. Be that as it may, in my considered view, Sub-rule (4) of Rule 7 of Chapter III cannot be treated as a law that lays down any liability for the first time. The liability of a Manager to compensate for a wrong done to a claimant under Rule 51A is a claim by the one who has suffered on account of such inaction by the Manager, ie., a cause of action for which, under a common law, remedy was available to the sufferer. This means that the right of a Rule 51A claimant in such a situation to compensation was available to be agitated before a Civil Court. The liability to make good such a loss is also one that emanates out of such principles. In this view of the matter, there is no liability that has been dictated on a Manager for the first time by the State in exercise of the rule-making power which had introduced Sub-rule (4) in Rule 7 of Chapter III. This takes us to the question as to what is the effect of Sub-rule (4) on the facts of this case. In my considered view, all that remains is the entitlement of the petitioner to have recovery effected by recourse to revenue recovery proceedings in substitution to the other remedies which were available earlier. Hence, there is no such substantive law in Sub-rule (4) of Rule 7 of Chapter III which requires to read the said sub-rule to apply only to those cases which arises after the introduction

of the said sub-rule.

15. That part, the issue requires to be considered from yet another angle. This is that the question as to whether it is for the Government to pay or for the Manager to make good, was decided by this Court as per Ext.P1 judgment dated 2.12.1998. Sub-rule (4) was well in the statute book much before that. Therefore, the question whether the right of the petitioner under Ext.P1 judgment can be enforced by the statutory authorities by recourse to Rule 7(4) of Chapter XIV-A K.E.R. has to be answered only in favour of the petitioner. I do so.

16. Having regard to the aforesaid interim order that I had passed on 7.1.2005 and having regard to the facts stated in the additional affidavit filed by the 3rd respondent consequent on that order and having regard to the totality of the facts and circumstances, it is now to be considered as to what are the reliefs to be granted in this Writ Petition. Having found that there is no reason why the 3rd respondent ought not to have paid to the petitioner the amounts due as salary for the period from 16.6.1983 to 4.9.1992, there is no reason why the 3rd respondent shall not be liable for reasonable interest on the said amount.

17. In the result, this Writ Petition is allowed in the following terms:

- i. The 3rd respondent shall pay to the petitioner the entire amount due to her salary for the period from 16.6.1983 to 4.9.1992, less any amount that she has already received. The amount so due shall carry interest at the rate of 12% per annum from 2.12.1998 (the date of Ext.P1 judgment) till date of payment.
- ii. The amount due towards salary and the amount due as interest as above shall be worked out by the 2nd respondent and intimated to the 3rd respondent under registered post within a period of two weeks from the date of receipt of a certified copy of this judgment.
- iii. On intimation as aforesaid, payment shall be made by the 3rd respondent to the petitioner within a period of two weeks thereafter. It is sufficient that remittance be made by demand draft payable in favour of the petitioner.
- iv. Consequently, the 2nd respondent will take all due action as to refix the salary of the petitioner and all arrears due on such count shall also be released within two months of receipt of a certified copy of this judgment.
- v. Consequential service benefits and due promotions will also be duly considered and granted and the 2nd respondent will ensure that all such necessary actions are taken at his level and by the 3rd respondent Manager in accordance with law, within a period of six months from the date of receipt of a copy of this judgment.
- vi. The 3rd respondent shall pay the costs of this proceedings to the petitioner, which is fixed as Rs. 10,000/-.