

(2016) 02 KL CK 0176
In the High Court Of Kerala
Case No : W.P.(C) No. 25037 of 2015 (D)

Safna T.I.

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 29-02-2016

Acts Referred:

Constitution of India, 1950 — Article 30(1)

Citation : (2016) 02 KL CK 0176

Hon'ble Judges : K. Vinod Chandran, J.

Bench : Single Bench

Advocate : M.V. Bose, Vinod Madhavan and Nisha Bose, Advocates, for the Appellant; M.A. Fayaz, Senior Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

K. Vinod Chandran, J.—1. The petitioner is concerned with her promotion under Rule 43 of Chapter XIV-A of Kerala Education Rules, 1959 [for brevity "KER"].

2. The petitioner admittedly was appointed as Full-time Menial as per Exhibit P1 on 02.12.2013 and her probation was declared on 02.12.2014. An Office Attendant/Peon working in the school retired on 31.03.2015 and a vacancy arose on 01.04.2015. The petitioner stakes claim for the said vacancy. The petitioner also had approached the Assistant Educational Officer, who had directed that the petitioner should be appointed to the arising vacancy under Rule 43 of KER, as is evidenced by Exhibit P4. The petitioner seeks implementation of the same.

3. The Management has filed a counter affidavit, raising a contention that the 5th respondent is a minority institution as is indicated at Exhibit R5(a) and the management of a minority institution has absolute discretion in the matter of effecting appointments and promotions. The management also contends that the petitioner is a pardanashin lady and, hence, the Manager would find it difficult to depute the petitioner, outside the school, for the various duties which have to be carried out by a Peon.

4. This Court is of the opinion that both the aforesaid contentions are not sustainable. The status of a minority institution and that too an aided school established and maintained by a minority institution, cannot exempt an aided school from the entire provisions of the KER. What was held by the Hon''ble Supreme Court in *Malankara Syrian Catholic College v. Jose* [, 2007 (1) KLT 22 (SC)], following the earlier decisions of the Hon''ble Supreme Court and also of this Court, specifically a Full Bench decision in *Aldo Maria Patroni v. E.C. Kesavan* [, 1964 KLT 791 (F.B.)], was that the Manager would have the absolute right to choose a qualified person to head the institution, i.e., the post of Headmaster or Principal. The person appointed should have the confidence of the Management, since the post is a pivotal one. The said declaration cannot be taken as an exemption with respect to the other conditions in the KER, specifically Rule 43.

5. The petitioner has relied on the general principles relating to establishment and administration of educational institution by minorities, which were summarised by the Hon''ble Supreme Court in the aforesaid decision. Specific reference is made to paragraph 19((i)(b)), which reads as under:

"(b) To appoint teaching staff (Teachers/Lecturers and Head-masters/Principals) as also non-teaching staff; and to take action if there is dereliction of duty on the part of any of its employees".

This is not intended to override the provisions of the KER. The Hon''ble Supreme Court in paragraph 25 of the said judgment relied on an earlier decision of the Hon''ble Supreme Court and a Full Bench of this Court:

"25. In *N. Ammad* (supra) the appellant contended that he being the senior-most graduate teacher of an aided minority school, he should be appointed as the Headmaster and none else. He relied on R. 44A of the Kerala Education Rules which provided that appointment of Headmaster shall ordinarily be according to seniority, from the seniority list prepared and maintained under clauses (a) and (b) of R. 34. This Court held:

"Selection and appointment of Headmaster in a school (or Principal of a college) are of prime importance in administration of that educational institution. The Headmaster is the key post in the running of the school. He is the hub on which all the spokes of the school are set around whom they rotate to generate result. A school is personified through its Headmaster and he is the focal point on which outsiders look at the school. A bad Headmaster can spoil the entire institution, an efficient and honest Headmaster can improve it by leaps and bounds. The functional efficacy of a school very much depends upon the efficiency and dedication of its Headmaster. This pristine precept remains unchanged despite many changes taking place in the structural patterns of education over the years."

How important is the post of Headmaster of a school has been pithily stated by a Full Bench of the Kerala High Court in *Aldo Maria Patroni v. E.C. Kesavan* (, 1964 KLT 791 (F.B.) : AIR 1965 Ker.75). Chief Justice M.S. Menon has, in a style which

is inimitable, stated thus:

"The post of the headmaster is of pivotal importance in the life of a school. Around him wheels the tone and temper of the institution; on him depends the continuity of its traditions, the maintenance of discipline and the efficiency of its teaching. The right to choose the headmaster is perhaps the most important facet of the right to administer a school, and we must hold that the imposition of any trammel thereon --except to the extent of prescribing the requisite qualifications and experience-- cannot but be considered as a violation of the right guaranteed by Art.30(1) of the Constitution. To hold otherwise will be to make the right "a teasing illusion, a promise of unreality"."

Thereafter, this Court concluded that the management of minority institution is free to find out a qualified person either from the staff of the same institution or from outside, to fill up the vacancy; and that the management's right to choose a qualified person as the Headmaster of the school is well insulated by the protective cover of Art.30(1) of the Constitution and it cannot be chiselled out through any legislative act or executive rule except for fixing up the qualifications and conditions of service for the post; and that any such statutory or executive feat would be violative of the fundamental right enshrined in Art.30(1) and would therefore be void. This Court further observed that if the management of the school is not given the wide freedom to choose the person for holding the key-post of Principal subject, of course, to the restriction regarding qualifications to be prescribed by the State, the right to administer the School would get much diminished".

The freedom so granted is to ensure the proper exercise of the right granted to a minority institution under Art.30(1) of the Constitution to administer such institution and cannot be extended to every promotion in the school, herein to the post of peon, which has to be under Rule 43 of the KER.

6. Further contention with respect to the petitioner being a pardanashin lady is strangely raised by the 5th respondent, which has its minority status only because of the school being managed by a minority community, of which the petitioner is a member and by its religious tenets the petitioner has chosen to be a pardanashin lady. Though a member of a minority community need not necessarily be preferred by the management which is from the very same community; it cannot result in a member of the community being denied of her rightful claim, where such minority rights of administration cannot be applied. It is also to be noticed that the order at Exhibit P4 passed on 07.07.2015 has not been challenged by the Manager.

For all the above reasons, the various grounds of defense raised by the management are found to be untenable. The writ petition is allowed and it is directed that the petitioner be promoted with effect from 01.04.2015 to the post of Office Attendant and the pay and allowances due to her shall be first paid by the Government to the petitioner with effect from 01.04.2015 and will be

recovered from the Manager under Rule 7 of Chapter III of KER, for the period, till the petitioner is so appointed. Parties are left to suffer their respective costs.