

(2014) 02 KL CK 0160
In the High Court Of Kerala
Case No : W.P. (C) No. 29260 of 2013

Samuel Joseph Philip

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 12-02-2014

Acts Referred:

Citation : (2014) 1 KHC 838 : (2014) 2 KLJ 666

Hon'ble Judges : C.K. Abdul Rehim, J

Bench : Single Bench

Advocate : Johnson Manayani, Benhur Joseph Manayani and Jeevan Mathew Manayani, Advocate for the Appellant; M.A. Fayaz, Government Pleader and P.V. Paulson, Advocate for the Respondent

Judgement

C.K. Abdul Rehim, J.—The petitioner is a minor represented by his mother as guardian. He is a student of the 5th respondent School in Standard IX. By virtue of Ext. P1 the 4th respondent had accorded sanction to the petitioner to learn "Additional English" under Part I and "Special English" under Part II of the 1st language, instead of studying the language of Malayalam. It is evident that Ext. P1 was issued on the basis of a request made by the guardian to exempt the student from studying the regional language, because the student had not studied Malayalam during the course of his earlier studies. On the basis of Ext. P1 the petitioner pursued his studies from Standard V to IX, without studying the language of Malayalam. In May 2012 the 2nd respondent had issued Ext. P2 circular, on the basis of a Government Order, GO (P) No. 183/11/G. Edn. dated 01/09/2011. In Ext. P2 circular direction was issued to all the schools within the State, on the basis of the Government Order referred above, to teach Malayalam as first language, in Clause 6 of Ext. P2 it is stated that, examination in the language of Malayalam is made compulsory in Standard VIII, IX, X from the academic years, 2012-13, 2013-14 and 2014-15, respectively. It is further mentioned that the schools which continues "Special English" should stop teaching the said language within 3 years, and instead should teach Malayalam. On the basis of Ext. P2, the 5th respondent had submitted Ext. P3 application

before the 4th respondent seeking exemption with respect to the petitioner. But no order of exemption was issued on the basis of Ext. P3. Under the above mentioned circumstances, the petitioner is seeking to quash Ext. P2 and also seeking declaration that the petitioner is entitled to complete his studies up to Standard X, on the basis of the exemption already granted under Ext. P1.

2. In a statement filed on behalf of the 3rd respondent it is mentioned that Ext. P2 circular was issued with a view to implement GO (P) No. 183/11, through which the study of Malayalam is insisted compulsory in all the schools within the State. According to the 3rd respondent, Ext. P1 exemption was granted only with respect to the Vth Standard and thereafter no exemption was granted to the petitioner from studying the language of Malayalam. The Government Order in question stipulates that, all the Schools functioning within the State, even affiliated to CBSE/ICSE, should take necessary steps to teach Malayalam compulsorily. The 3rd respondent is also relying on an earlier circular issued in the year 2009, copy of which is produced as Annexure-R3(a) in order to content that the exemption was not continuing. It is mentioned therein that, the students coming from other State/countries joining in Standard V to VII, who had not studied any one of the regional languages in the lower primary classes, will be allowed exemption on a temporary basis from year to year. According to the 3rd respondent Ext. P1 exemption was granted only on the basis of Annexure-R3(a) circular and it was granted only to the extent of exempting the student from studying the language of Malayalam only in Vth Standard. It is alleged that the petitioner had failed to obtain similar exemptions with respect to any further classes.

3. It remains undisputed that the petitioner was exempted by virtue of Ext. P1 from studying the language of Malayalam, instead he was permitted to learn "Additional English" and "Special English". Ext. P1 was issued in the year 2009, when the petitioner was studying in Vth standard in the 5th respondent School. As contended by learned counsel for the petitioner, Ext. P1 does not indicate anything to the effect that the exemption was confined only with respect to standard V or that the exemption was granted specifically for any particular academic year. Nor it mention anything about Ext. R3(a) circular or about any other Government Order or circular. It is true that Clause 2 contained in Annexure-R3(a) stipulates that temporary exemption can be granted for one year with respect to students who joins in Standard V to VII, on definite condition that the pupil should learn the language of Malayalam in the class in which he is joining. It is evident that the 4th respondent has not prescribed any such condition in Ext. P1, with respect to learning of the regional language in the class in which the petitioner was admitted. There was no insistence with respect to attending annual examination of that year, as mentioned in Annexure-R3(a). Hence Ext. P1 exemption cannot be construed as one issued on the basis of Annexure-R3(a). Therefore the authorities of the 5th respondent School was perfectly justified in permitting the petitioner to continue on the basis of Ext. P1 from Standard V to IX without studying the language of Malayalam and without

writing the annual examination on the said language in any of the classes from Standard V to IX.

4. It is to be noticed that, learning of Malayalam language was made compulsory in all the schools within the State, only on the basis of GO (P) No. 183/2011, which was introduced on 01/09/2011. Ext. P2 circular clarifies the terms on which the said Government Order is to be implemented. On a reading of Clause 6 in Ext. P2 it is revealed that the language of "Special English" was directed to be stopped in the schools in a phased manner in classes VIII to X from the academic year 2012-13 onwards. But the circular does not mention anything about permitting any student who has not studied Malayalam to join in classes VIII to X during the said years. So also it does not mention anything about the students who were already permitted to continue on the basis of exemptions granted upto Standard VIII. Nothing is mentioned in Clause 6 about exempting students studying or joining up to VIIIth Standard. Therefore it can only be presumed that, Ext. P2 circular is intended only to apply to those students who are being newly admitted to Schools within the State. Clause 6 of Ext. P2, is to be presumed as one intended to put a restriction in the matter of granting of exemption with respect to any new student joining in classes VIII to X. Any other interpretation to the effect that the said Clause is putting restrictions with respect to students who had joined during earlier years in classes below standard VIII, and who were exempted from studying the language of Malayalam, will be highly prejudicial to the interest of the students who were already exempted. A student who does not study the language of Malayalam and who had not learned the said language up to the standard IX, cannot be compelled to undergo examination in the said language in class IX for the first time. Both parties in this case had not produced GO (P) No. 183/2011, based on which Ext. P2 circular was issued, for perusal of the Court.

5. As already observed, this Court is of the considered opinion that continuation of the exemption enjoyed by the petitioner on the basis of Ext. P1 from Standard V to IX, cannot be nullified in any manner. Therefore compelling the petitioner to undergo examination in the language of Malayalam in Standards IX and X will be highly prejudicial and detrimental to his studies, since the student has not studied the said language in the earlier classes. While upholding the decision of the State Government to implement study of the language of Malayalam compulsorily in all the schools within the State, such a decision cannot be permitted to be imposed on a retroactive basis, putting the students who are already exempted to severe prejudice. It is for the Government as well as the 2nd respondent to formulated policy in a proper manner to implement the decision of the Government, in a phased manner, without affecting academic prospects of any students who were already exempted and continued studies on the basis of such exemptions granted. It is left open to the 2nd respondent to insist upon implementation of the decision of the Government by putting restriction on the schools from admitting new students permitting study of any other language in lieu of the regional language of Malayalam, on a prospective

basis, in a phased manner, with proper instruction to permit those students who were already exempted to continue and complete their studies based on such exemption.

6. Under the above mentioned circumstances, based on the findings rendered as above, it is declared that the petitioner is entitled for an equitable relief to the extent of permitting to pursue his studies on the basis of Ext. P1 exemption upto Standard X. The respondents 2 to 4 shall consider Ext. P3 and shall issue necessary directions to the 5th respondent permitting the petitioner to complete his studies upto Standard X within the next academic year of 2014-15 without insisting upon studying the regional language of Malayalam. Necessary orders in this regard shall be issued without any further delay, at any rate within a period of one month from the date of receipt of a copy of this judgment. It is made clear that, this Court has not expressed any opinion with respect to sustainability of GO 183/2011 dated 01/09/2011 or Ext. P2 circular and the relief is granted individually considering the special circumstances prevailing in this case, which cannot be treated as a precedent to claim exemption as a matter of right in any other case.