
(2009) 12 KL CK 0077
In the High Court Of Kerala
Case No : WA. No. 2776 of 2009

Smt. Santhakumari M.A.

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 14-12-2009

Acts Referred:

Constitution of India, 1950 — Article 30(1)

Kerala Education Rules, 1959 — Rule 37(1)

Travancore-Cochin Interpretation and General Clauses Act, 1125 — Section 13(2)

Citation : (2009) 12 KL CK 0077

Hon'ble Judges : P. Bhavadasan, J;K. Balakrishnan Nair, J

Bench : Division Bench

Advocate : M.P. Krishnan Nair, for the Appellant; No Appearance, for the Respondent

Judgement

Balakrishnan Nair, J.—The writ petitioner is the appellant. She approached this Court mainly challenging Ext.P8 order of the 8th respondent, as per which, her claim for promotion to the post of Headmistress of the 5th respondent's school, in preference to the 6th respondent, has been rejected. The facts of the case are not in dispute. The appellant joined the school on inter-management transfer on 2.6.1977. It is the admitted position that 6th respondent has joined the said school earlier and therefore, she is senior to the appellant. But, the appellant claimed promotion, relying on her past service in the school, from which she was transferred, from 2.6.1975 to 2.6.1977. She had also another stint of service from 9.1.1974 to 20.3.1975 in that school. The seniority of a teacher in a school is governed by Rule 37(1) of Chapter XIVA of the Kerala Education Rules. The said rule reads as follows:

37. (1) Seniority of a teacher in any grade in any unit shall be decided with reference to the length of continuous service in that grade in that unit provided he is duly qualified for the post. Going by the date of commencement of continuous service of the appellant and the 6th respondent, the 6th respondent has longer continuous service in the school and therefore, she was rightly held to

be senior.

2. Secondly, the appellant raised a contention that the 5th respondent's school is a minority institution and even assuming that the appellant is junior, the manager is competent to appoint her. The said contention has been dealt with in paragraph 8 of the judgment, which reads as follows:

8. Having failed to impress the court about the contention, the counsel for the petitioner raises a very feeble contention that the school is a minority institution and therefore the Manager has a right to appoint a person of his choice as headmaster even overlooking seniority. The law is settled to the effect that in the case of a minority school the manager can appoint a person of his choice among the qualified teachers as headmaster. But unfortunately for the petitioner, the Manager has not claimed minority status for the school. In fact, earlier, such a contention was repelled in Ext.P3. Although Ext.P3 was subjected to challenge in W.P.(C) No. 5669 of 2006 that issue was not raised at all by the petitioner and by Ext.P5 judgment, this Court only directed consideration of the petitioner's claim in the light of Sasidharan Nair's case (supra). In any event, the Manager has not chosen to claim minority status for the school. Moreover, the petitioner has not been able to place before me any material whatsoever to show that the school is a minority institution. A school is entitled to minority status only if the school has been established and is being administered by a minority community. Absolutely no material whatsoever is placed before me to show that school had been established by a minority community and is being administered by a minority community. In the above circumstances, I do not find any merit in that contention of the petitioner also. In the above circumstances, the writ petition is without any merit and accordingly the same is dismissed.

We notice that by Ext.P3, the claim regarding minority status of the 5th respondent was rejected by the Government. Though that order was challenged before this Court, the learned Single Judge by Ext.P5 judgment directed the Director of Public Instruction to consider the claim of the appellant relying on the decision of this Court in *Sasidharan Nair v. State of Kerala* 2003 (1) KLT 1998. The learned Single Judge also allowed the appellant to raise other contentions available to her under law. But, we notice that the right of the 5th respondent under Article 30(1) of the Constitution of India was not raised before the Director of Public Instruction and therefore, the said point was not considered in Ext.P8. If that be so, the appellant is precluded from raising that point before this Court.

3. Finally, the appellant submitted that this Court directed the Director of Public Instruction to take the decision. But, the decision in Ext.P8 has been taken by the Additional Director of Public Instruction, who is an officer not competent to take the decision. But, we notice that u/s 13(2) of the Interpretation and General Clauses Act, 1125 M.E., an officer in charge of an office is entitled to exercise all the powers and functions attached to that office. Section 13(2) of the Interpretation and General Clauses Act, 1125 M.E. is quoted below, for convenient reference.

13(2). Where, an Act confers a power or imposes a duty, on the holder of an office, as such, then, unless the contrary intention appears, the power may be exercised and the duty shall be performed by the holder of the office for the time being or by a person duly appointed to act for him or to be in charge of powers and duties of that office.

4. In the light of the above provision, the contention that the 8th respondent lacks competence to pass the impugned order is also untenable. In the result, the Writ Appeal fails and it is, accordingly, dismissed.