

(2001) 03 KL CK 0068
In the High Court Of Kerala
Case No : W.A. No. 2424 and 2435 of 2000

Sr. Cleta

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 08-03-2001

Acts Referred:

Constitution of India, 1950 — Article 30, 30(1)

Kerala Education Act, 1958 — Section 2(5), 2(8), 3, 3(3)(c), 3(5)

Citation : (2001) 1 KLJ 674

Hon'ble Judges : K.S. Radhakrishnan, J;G. Sasidharan, J

Bench : Division Bench

Advocate : S.M. Prem and K.P. Santhi, for the Appellant; K.B. Suresh and C.K. Ravikrishnan Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Radhakrishnan, J.—The question that arises for consideration in this case is whether an unaided recognised school under the Kerala Education Act and Rules could appoint a teacher who has crossed 60 years of age as Headmistress of the school. The age of retirement of teachers in Government as well as aided school is 55 years. It is seen that Association of Managers of Unaided Recognised Schools made request before the State Government for extension of age of retirement of teachers in unaided recognised school to 60 years. The matter was discussed with the Manager's Association on 26-6-1985. Government then issued letter No. 63653/JI/85/G.Edn. dated 14-7-1986 addressed to the Director of Public Instruction directing that no retired teacher if appointed in recognised schools be allowed to continue in service beyond the age of 60 years. District Educational Officer, Thiruvananthapuram received a complaint of the continuance of Sr. Stella as the Headmistress of Carmel Girls' High School, beyond 60 years of age. It was noticed that she was 69 years of age. District Educational Officer therefore making reference to the abovementioned letter dated 14-7-1986 directed the manager not to allow the teacher to continue beyond 60 years of age. Manager was requested to appoint another teacher as Headmaster of the school replacing

Sr. Stella since she is more than 60 years of age.

2. This writ petition was filed by the manager of the school challenging the direction given by the District Educational Officer. O.P. 23373/2000 was filed on behalf of parents of the students of Carmel Girls' High School for implementation of the order passed by the District Educational Officer. There is some controversy with regard to the identity of some of the petitioners in O.P. 23373/2000. There are allegations and contra-allegations against each other. We are of the view that those issues need not be gone into by this Court since counsel on either side have not pressed those issues for consideration. We are therefore not examining those disputed questions.

3. We may therefore examine the question as to whether manager of the unaided recognised school has got the power to appoint a teacher who has crossed 60 years of age. Recognised school is defined as private school recognised by the Government under the Kerala Education Act. Recognised school is defined u/s 2(8) of the Kerala Education Act. Section 3 of the Act deals with establishment and recognition of schools which says that Government may regulate the primary and other stages of education and courses of instructions in Government and private schools. We may extract the said provision for easy reference.

3. Establishment and recognition of schools: (1) The Government may regulate the primary and other stages of education and courses of instructions in Government and private schools.

(2) The Government shall take, from time to time, such steps as they may consider necessary or expedient, for the purpose of providing facilities for general education, special education and for the training of teachers.

(3) The Government may for the purpose of providing such facilities:-

(a) establish and maintain schools;

(b) permit any person or body of persons to establish and maintain aided schools; or

(c) recognise any school established and maintained by any person or body of persons.

(d) recognise any school established and maintained by any person or body of persons.

(4) All existing schools shall be deemed to have been established in accordance with the Act:

Provided that the educational agency of an aided school existing at the commencement of this section may, at any time within one month of such commencement, after giving notice to the Government of its intention so to do, opt to run the school as a recognised school, subject to the condition that the

services of the teachers and other members of the staff of the school shall not be dispensed with or their conditions of service under the management varied to their disadvantage on account of the exercise of this option.

(5) After the commencement of this Act, the establishment of a new school or the opening of a higher class in any private school shall be subject to the provision of this Act, and the rules made there under and any school or higher class established or opened otherwise than in accordance with such provisions shall not be entitled to be recognised by the Government.

Section 3(3)(c) states that the government may, for the purpose of providing such facilities, recognise any school established and maintained by any person or body of persons. Section 3(5) says that after the commencement of Kerala Education Act, the establishment of a new school or the opening of a higher class in any private school shall be subject to the provisions of the Act and the Rules made there under and any school or higher class established or opened otherwise than in accordance with such provisions shall not be entitled to be recognised by the Government. Rule 29 of Chapter XII enables the educational authorities to restrict the collection of tuition fee from the pupils in recognised schools.

4. Chapter XIV (AA) deals with conditions of service of teaching and non-teaching staff of recognised unaided schools. Rule 1(a) states that Managers of Recognised Unaided Schools shall appoint only such candidates as teaching and non-teaching staff who possess the qualifications prescribed for the respective posts in Government Schools. It is also provided under rule 1 (c) that the age limit and the relaxation thereof for appointment as applicable to candidates for appointment under Government Schools/Aided Schools shall mutatis mutandis apply to the candidates for appointment as member of staff of these schools.

5. Counsel for the appellant Sri. S.M. Prem submitted that petitioner-school is a minority school as defined u/s 2 (5) of the Kerala Education Act, 1958 and the management of the school has got right to establish and administer the school by appointing persons of their choice as guaranteed under Article 30 of the Constitution of India. Counsel submitted Ext. P2 letter violates the fundamental rights guaranteed to the petitioner under Article 30(1) of the Constitution of India. Reference was also made to the decision of the Apex Court in *Ammad v. Emjay High School*, 1998 (2) KLT 828 and contended the right guaranteed under Article 30(1) is a right that is absolute and any law or executive direction which infringes that right is void to the extent of infringement.

6. Learned Government Pleader Sri. C.K. Pavithran as well as counsel appearing for the respondents in W.A. 2435/2000 Sri. K.B. Suresh on the other hand, contended that the petitioner management is bound by the terms and conditions laid down by the Government as well as under the Kerala Education Act and Rules for getting recognition of the school. Counsel submitted if those conditions are not satisfied the educational authorities are not bound to grant recognition to

those schools.

7. We are of the view that the petitioner school is bound by the terms and conditions laid down under Chapter XIV (AA) of the Kerala Education Rules. Section 3(5) read with Chapter XIV(AA) of the K.E.R. stipulates that the establishment of a new school or the opening of a higher class in any private school shall be subject to the provisions of the Kerala Education Act and Rules made there under and any school or higher class established or opened otherwise than in accordance with such provision shall not be entitled to be recognised by the Government. Rule 1 (c) of Chapter XIV (AA) stipulates the age limit and the relaxation thereof for appointment as applicable to candidates for appointment under Government Schools/Aided Schools shall mutatis mutandis apply to the candidates for appointment as member of staff of the unaided recognised schools. We have indicated that in the case of Government as well as aided schools the age of retirement of teachers is 55 on the basis of rule 1 (c) of Chapter XIV(AA). The said provision shall mutatis mutandis apply in the case of unaided recognised school as well. Therefore the normal age of retirement of teacher or headmaster of unaided recognised school is 55 years. We notice on the basis of various representations made by the managers' association of unaided recognised schools Government have passed an order, which we have referred to earlier, permitting the teacher to continue up to the age of 60 years. Therefore beyond the age of 60 years unaided recognised schools have no legal right to employ any teacher. If they appoint any teacher beyond the age of 60 years of age Government could withdraw the recognition since the same is violative of the Government directives. Directions given by the Government under the Kerala Education Act and the Rules framed there under are conditions for recognition. The contention of the counsel for the petitioner that since the school is a minority institution, Government have no legal right to issue any direction cannot be accepted. Kerala Education Act and Rules itself deal with the case of unaided recognised schools. Petitioner is bound by those rules. State has no legal obligation to recognise any unaided school whether minority or otherwise if the school has not satisfied the conditions laid down under the Kerala Education Act and Rules. They have no legal right to insist that Government should recognise the school. Under such circumstance the contention that being a minority institution they can appoint teachers of their choice even contrary to the provisions of Kerala Education Act and Rules cannot be sustained. Under such circumstance we find no infirmity in the order of the District Educational Officer to be interfered with in these appeals.

Appeal lacks merits and the same are dismissed.