
(2002) 02 KL CK 0047
In the High Court Of Kerala
Case No : W.A. No. 430 of 2002

Sreeramachandran

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 25-02-2002

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2002) 02 KL CK 0047

Hon'ble Judges : K. Thankappan, J; Cyriac Joseph, J

Bench : Division Bench

Advocate : Kaleeswaram Raj, for the Appellant; P.K. Shakkeela, Government Pleader, K. Shri Hari Rao and U.P. Kunikullaya, for the Respondent

Final Decision : Dismissed

Judgement

Cyriac Joseph, J.—The appeal is against the judgment dated 23.1.2002 in O.P. No. 10466/2001 which was dismissed by the learned Single Judge. The appellant was the petitioner in the Original Petition.

2. The 4th respondent Shri Subrahmanya was promoted as Headmaster of A.U.P. School, Moovar by the Manager and the said appointment was approved by the second respondent Asst. Educational Officer, Kumbala. Subsequently, the approval granted by the second respondent was cancelled by him on the ground that the 4th respondent did not have the required qualification for being promoted as Headmaster. Against the cancellation of the approval, the 4th respondent filed appeal before the District Educational Officer, Kasaragod. But the said appeal was rejected by the District Educational Officer. Thereafter, the 4th respondent filed a revision before the Government and the said revision was allowed by the Government as per Ext. P3 order. In Ext. P3 order the Government held that the 4th respondent did have the required qualification for being promoted as Headmaster. The Government also rejected the contention of the appellant herein that the 4th respondent, being a protected teacher, was not entitled to be promoted as Headmaster. The said contention was rejected by the

Government on the ground that the 4th respondent was not a protected teacher but a full time Teacher appointed against a full time post of Hindi Teacher sanctioned in terms of G.O.(P) No. 62/73/G.Edn. dated 2.5.1973. Challenging Ext. P3 order of the Government the appellant filed O.P. No. 10468/2001 and it was dismissed by the learned Single Judge upholding Ext. P3 order passed by the Government.

3. Learned counsel for the appellant submits that he is not pressing the contention that the 4th respondent did not have the required qualification for being promoted as Headmaster. Hence, it is not necessary to consider the said contention.

4. However, learned counsel for the appellant vehemently argues that the distinction drawn by the learned Single Judge between a protected teacher and a teacher working in a protected post is incorrect and unwarranted. According to the learned counsel, the staff fixation orders specifically stated that the 4th respondent was a protected teacher. This contention is not correct. In the staff fixation orders (Exts. P4 to P12), in the column for name of post, after "Hindi" it is stated within brackets "protected". It only means that the post of Hindi teacher is protected in terms of G.O.(P) No. 62/73/G.Edn. dated 2.5.1973. This is clear from the entry in column 11. In column 11 it is stated: "One protected post of F.T. Hindi teacher is sanctioned to give full time benefit to Sri. Subramanya, Hindi teacher in terms of G.O. (Ms) 62/73/G.Edn. dated 2.5.73". Clause (vi) of the said Govt. Order provides as follows:

"(vi) Conversion of part-time language teachers into full-time

The formula for creating full-time posts in the independent high schools and U.P. schools attached to high schools will be extended to independent U.P. Schools and L.P. Schools and U.P. Schools with attached L.P. Schools. Besides this, part-time language teachers who have put in more than 5 years service and have 8 periods of work shall henceforth be made full-time. The utilisation of the services of these teachers for teaching regular classes and other subjects and giving them adequate work will be examined by the Director of Public Instruction. This will be with effect from the academic year 1973-74."

In clause (vi) of the above mentioned Government Order quoted above, there is no reference to any protection being given to the teacher. What is provided is for conversion of an existing part-time post to a full time post subject to certain conditions. If the said conditions are satisfied, the Educational Officer concerned is competent to convert a part-time post to a full time post and sanction the post of full time teacher. Therefore, strictly speaking, the Asst. Educational Officer was not justified in adding the word "protected" within brackets. Merely because the Asst. Educational Officer described the post as protected in the sense in which he used it to explain the position, it does not follow that the teacher appointed or accommodated against the full time post of Hindi teacher was a "protected teacher" as commonly understood or that he was subject to the liabilities of a

protected teacher. In Ext. P3 order the Government also have taken the view that the 4th respondent was not a protected teacher but a teacher working in a protected post.

5. In the above circumstances, the contention of the appellant that in view of the judgment in *Manager, Mar Sleeba U.P. School v. State of Kerala* (1990 (1) KLT 626) a protected teacher cannot be appointed as Headmaster, has no relevance to this case. Since the 4th respondent was not a protected teacher and since he was qualified for being promoted as Headmaster, Ext. P3 Government Order did not warrant any interference under Article 226 of the Constitution of India and the learned Single Judge was right in dismissing the Original Petition.

6. Hence, there is no merit in the appeal and the appeal is dismissed.