

(2012) 06 KL CK 0240
In the High Court Of Kerala
Case No : W.A. No. 734 of 2012

Susamma Thomas

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 05-06-2012

Acts Referred:

Constitution of India, 1950 — Article 30(1)

Citation : (2012) 3 KLJ 414

Hon'ble Judges : C.N. Ramachandran Nair, J;C.K. Abdul Rehim, J

Bench : Division Bench

Advocate : P.K. Suresh Kumar and M.R. Sreelatha, for the Appellant; P. Nandakumar and George Mecheril, GP, for the Respondent

Judgement

C.N. Ramachandran Nair, J.—The appellant was the senior-most teacher in the High School run by the 4th respondent when the vacancy of Headmistress arose on 1.4.2004. Going by Rule 43 of the K.E.R. appellant being the senior-most teacher should have been appointed as the Headmistress of the school. However, it so happened that the 4th respondent is a minority institution run by nuns which by virtue of the privilege available under Article 30(1) of the Constitution is free to choose a Headmistress of their choice from among qualified teachers. The practice of the management as stated by counsel is to appoint always a nun as the Headmistress of the school so that the financial benefits earned by the Headmistress goes to the congregation which is the management. However, when the vacancy of Headmistress arose on 1.4.2004, the management did not get a qualified nun for appointment as Headmistress either from the very same school or from outside. In fact, the 5th respondent who is a nun selected by the management for appointment as Headmistress acquired the qualification with the required experience only on 3.8.2004 i.e. four months after the date of occurrence of vacancy. In fact, on acquiring qualification the 5th respondent was appointed as Headmistress which was approved by the D.E.O. on 13.10.2004. The 5th respondent is stated to have joined the school on 16.10.2004, while the senior-most teacher, the appellant herein was made to continue as a teacher

until she retired on 31.5.2007. When the appellant challenged the appointment of the 5th respondent who was not qualified as on the date of occurrence of vacancy of Headmistress, the learned Single Judge held that in principle appellant's contention is correct but the direction issued to the management is to choose an eligible teacher with qualification as on 1.4.2004 for appointment as Headmistress on notional basis. According to the 4th respondent, they have selected another person junior to the appellant for notional promotion as Headmistress which has no significance because that person is also retired. It is against this judgment of the learned Single Judge the Writ Appeal is filed by the appellant. After hearing counsel for the appellant, counsel appearing for the management and also Government Pleader for the Educational authorities, we are of the view that the learned Single rightly held that the 5th respondent should not have been considered for appointment as Headmistress in the vacancy that arose on 1.4.2004 because on that day she was not qualified to be appointed as Headmistress and admittedly she acquired the required qualification only on 3.8.2004. The learned Single Judge also rightly held that the normal rule for appointment of Headmistress going by Rule 43 of Chapter XIV-A K.E.R. is appointment by promotion based on seniority. So much so, appellant being the senior-most teacher as on 1.4.2004 should have been the normal choice for appointment as Headmistress. This is certainly subject to the privilege of the 4th respondent as a minority institution to appoint from among qualified persons a teacher of their choice as Headmistress. In this case the management has no case that the appellant or any of the senior teachers qualified to be appointed as Headmistress are not eligible for appointment. All what they wanted was to go by the practice of appointing from the school, if available, or from outside, a qualified nun as Headmistress of the school. The question, therefore, is when the management could not find a suitable nun for appointment as Headmistress, shouldn't they have appointed the senior-most teacher as Headmistress as provided under Rule 43 extracted above. It is in this context we have to consider the legality and correctness of the direction issued by the learned Single Judge to the management to select a qualified teacher of their choice for appointment as Headmistress on notional basis after appellant and the other senior teachers retired from service. We do not think the privilege available under Article 30(1) to appoint a Headmistress of the choice of the Minority Management is a right to be exercised notionally after failing to appoint Headmistress in exercise of such right when the vacancy arose. Minority right under Article 30(1) is a privilege to achieve an objective that is, to run the school under a Headmaster/Headmistress of the choice of the management and not a right on the management to confer notional benefits on teachers of their choice after their retirement. Therefore, when the right under Article 30(1) of the Constitution is not exercised by the management when the vacancy of Headmistress arose, they forfeit their privilege once for all and for notional promotion and benefits, normal Rule for appointment takes over. The management did not want to appoint a qualified teacher from the school as Headmistress is evident from the fact that when the vacancy arose on 1.4.2004, they did not choose any such teacher or promote such teacher to the

post of Headmistress. So much so, we do not think they are entitled to exercise the privilege in the appointment of Headmistress on a notional basis now only to defeat the claim of the appellant. Since the 4th respondent had no choice among any of the qualified teachers of the school for promotion as Headmistress and they were only keen to appoint a qualified nun as Headmistress which they did not get until the selected nun acquired the qualification on 3.8.2004, we feel the appellant who was the senior-most teacher was entitled under Rule 43 to be appointed as Headmistress on notional basis and only she is entitled to get consequential benefits. We, therefore, allow the Writ Appeal in part by vacating the direction issued by the learned Single Judge to the 4th respondent to select a Headmistress of their choice notionally for appointment with effect from 1.4.2004 and direct the management to grant notional appointment to the appellant as Headmistress on 1.4.2004 which will be approved by educational authorities. The educational authorities are directed to treat the appellant as having served as Headmistress from 1.4.2004 till the date of her retirement i.e. 31.5.2007 and give her terminal benefits and fix eligible pension in the scale of pay of Headmistress. However, since appellant has not served as Headmistress, she shall not be entitled to any arrears of pay applicable to Headmistress. Consequently there will be direction to the D.E.O. to approve appointment of 5th respondent as Headmistress with effect from 1.6.2007. If any salary or financial benefit is drawn by the 5th respondent in the post of Headmistress until 31.5.2007, the same shall be recovered by the Government from the 4th respondent within two months from date of receipt of copy of this judgment.