
(2005) 06 KL CK 0096
In the High Court Of Kerala
Case No : W.A. No. 270 of 2005

Vijayan, N. and Others

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 28-06-2005

Acts Referred:

Kerala Education Rules, 1959 — Rule 19, 51A

Kerala Public Service Commission Rules of Procedure, 1976 — Rule 17, 7

Citation : (2005) 06 KL CK 0096

Hon'ble Judges : K.A. Adbul Gafoor, J;K. Hema, J

Bench : Division Bench

Advocate : S. Mohan Das, for the Appellant; D.P. Renu, Government Pleader for Respondents 1 to 6, K.P. Satheesan, Jino Antony, M.V. Thamban, Meera Gopinath, K.K. Gopinathan Nair, K.R. Jaya Prasad, K.K. Rajeev, Kamaljith and D. Kishore for Respondent Nos. 9 to 12 and P.C. Sasidharan for PSC for Respondent 7, for the Respondent

Final Decision : Allowed

Judgement

K.A. Adbul Gafoor, J.—The Appellants did not succeed in their writ petition challenging the order declining their request to sanction increments in the posts against which they were appointed as per Exts. P-2, P-5 and P-7 which had been duly approved by the concerned educational officer. Their probation was also declared as is revealed from Exts. P-4, P-6 and P-8 respectively. While they were thus before this Court claiming increments, stated to be based on a judgment of the Supreme Court rendered on 3-8-2004 in Civil Appeal No. 6753 of 2003 and connected cases, their services were terminated and in their place persons like Respondents Nos. 9 to 12 advised by the Public Service Commission were accommodated. Consequently, the Appellants amended their original petition impleading the Public Service Commission and the persons advised by the Commission as additional Respondents and incorporating challenge against the termination of their service. The Original Petition was dismissed on 14-1-2005. Therefore, this appeal, contending that the challenge against the termination

order and the grounds in support thereof as incorporated in the amended Original Petition had never been adverted to in the judgment impugned.

2. It is submitted that Exhibit P-1 is a common judgment in the Original Petitions filed by them wherein their claim under Rule 51A of Chapter XIV(A) K.E.R. had been upheld and directed to be followed. It is based on the said judgment, the appointment orders as referred to above had been issued to them and approval thereto was accorded and their probation was declared. In such circumstances, Ext. P-1 had become binding and conclusive between the parties; being an inter-party judgment and any subsequent declaration of law by the Supreme Court in similar matter, including judgment in Civil Appeal No. 6753 of 2003, cannot affect the parties. On that basis their services could not have been terminated, the Appellants contend.

3. In answer to this contention, it is submitted on behalf of the Panchayat, which appointed them, that the Appellants were appointed initially based on a Government Order dated 6-10-1995, which provides that the appointment made by the Panchayat other than by the advice of the Public Service Commission shall be only on temporary basis and any regular appointment made in the Panchayat Schools shall be effected only on advice by the Public Service Commission. Therefore, their initial appointments itself were on a stop-gap arrangement, wherefrom they cannot derive any benefit in terms of Rule 51A of Chapter XIV(A) K.E.R. for future appointment on regular basis. It is further submitted that in Ext. P-1 judgment there is no conclusive finding as to such right available to the Appellants for re-appointment to the school managed by the Panchayat. It is further submitted that the Supreme Court has declared the law disentitling the persons like the Appellants to claim appointment in terms of Rule 51A of Chapter XIV(A) K.E.R. Necessarily they have to face termination. That was what has been done in this case, counsel for the Panchayat contends.

4. It is contended by counsel for Respondents 10 to 12 that they have been appointed on advice by the Public Service Commission and they are now occupying the posts. So, they shall not be replaced.

5. It is submitted by counsel for the Public Service Commission that the advises have already been made based on the vacancies reported by the Panchayat. In case there is any adverse judgments against the persons advised by the Commission, they will be free to re-register their names in the Public Service Commission, in which case the Public Service Commission will advise them based on their turn actually arisen going by the last proviso to Rule 7 of the General Rules in Part II K.S. & S.S.R. and Rule 17 of the Public Service Commission Rules of Procedure.

6. A reading of the impugned judgment discloses that nothing relating to the alleged illegality of the termination of service of the Appellants/Petitioners and any of the averments contained in the amended original petition in relation to that aspect had been adverted to by the learned Single Judge. There is a

contention that such grounds were not urged before the learned Single Judge in the oral argument. Whatever that be, the matter being a legal issue, certainly will have to be dealt with at this appellate stage.

7. The legal issue thus canvassed is whether in the light of Ext. P-1 inter-party judgment, the Panchayat was justified in terminating the service of the Appellants-Petitioners or whether the said judgment contains a binding pronouncement between the parties.

8. The Appellants and some other persons filed the Original Petition which led to Ext. P-1 judgment. The point canvassed there was whether they shall be preferred for appointment to the subsequent vacancies that had arisen in the schools run by the Panchayat, on the strength of Rule 51A, Chapter XIV(A) K.E.R. In other words, to quote from Ext. P-1 itself, "as to whether Rule 51A of Chapter XIV(A) K.E.R. is applicable to the appointments made in the Panchayats". Re-affirming the earlier ruling of the very same learned Single Judge reported in *Vrindha and Anr. v. State of Kerala and Ors.* 2000 (1) K.L.J. 49, it was held that Rule 51(A) was applicable to the appointments made in the schools managed by the Panchayats. But, in the absence of details as to who among such rival claimants should be preferred against the then existing vacancies, after having found that the appointees in the Panchayat schools are entitled to the right under Rule 51A for re-appointment, the Panchayat was directed to decide as to "who is the rightful claimant to the respective posts applying the principles contained in Rule 51A of Chapter XIV(A) K.E.R.". It is based on this, the appointment orders like Exts. P-2, P-5 and P-7 were issued to the Appellants/writ Petitioners. Those appointments were approved by the Educational Officer. Subsequently, their probation was also duly declared as already mentioned above, by the Panchayat itself. Thus, in Ext. P-1 judgment there is a binding pronouncement between the parties, namely, the Appellants-writ Petitioners and the 5th Respondent Panchayat as to the right available to the former under Rule 51A of Chapter XIV(A) K.E.R. and the judgment has been given effect to, honouring their claim under the said rule.

9. It is true that the Supreme Court has made it clear on 3-8-2004 as per judgment in Civil Appeal No. 6753 of 2003 and connected cases that the persons like the Appellants appointed temporarily after 6-10-1995 in Panchayat schools cannot claim the right in terms of Rule 51A of Chapter XIV(A) K.E.R. The Appellants are not parties to the said Civil Appeal. It is a declaration of law later than the binding pronouncement contained in Ext. P-1 which had become final and been duly acted upon. So such declaration of law can necessarily be considered only as prospective in terms of the decision of the apex court in *Baburam Vs. C.C. Jacob and Others*, , and the decision of this Court in *Union of India v. Central Administrative Tribunal, Ernakulam Bench* 2002 (1) KLT 840 and *Muraleedharan v. Union of India* 2002 (2) KLT 45 Case No. 63.

10. The apex court in Baburam's case cited above held as follows:

The prospective declaration of law is a devise innovated by the apex court to avoid reopening of settled issues and to prevent multiplicity of proceedings. It is also a devise adopted to avoid uncertainty and avoidable litigation. By the very object of prospective declaration of law, it is deemed that all actions taken contrary to the declaration of law prior to its date of declaration are validated. This is done in the larger public interest. Therefore, the subordinate forums which are legally bound to apply the declaration of law made by this Court are also duty bound to apply such dictum to cases which would arise in future only. In matters where decisions opposed to the said principle have been taken prior to such declaration of law cannot be interfered with on the basis of such declaration of law.

11. The question that had come up before the Division Bench of this Court in the Central Administrative Tribunals case cited supra is "whether subsequent decision of the Supreme Court would have the effect of unsettling the binding decision of the Tribunal and confirmed by the Supreme Court by dismissing the Special Leave Petitions". This was answered expressing the view of the Bench that "judgments intra-parties which have attained finality cannot be nullified and set at naught by subsequent decision of the Supreme Court even though the issue involved was the same".

12. Yet another Division Bench in Muraleedharan's case cited supra found as follows:

Because of the interpretation of Rule 19 in some other proceeding by the Supreme Court taking a different view, it is not possible to disturb the operation of the judgment which has been fully implemented between the parties.

13. In the light of these binding authorities and based on our finding as to the binding nature of Ext. P-1, it has to be held that the Panchayat, relying on the judgment of the Apex Court dated 3-8-2004 in Civil Appeal No. 6753 of 2003, could not have unsettled the position and invaded the rights of the parties available in terms of the binding pronouncement in Ext. P-1 judgment dated 10-1-2000 which had been duly acted upon by issuing appointment orders like Exts. P-2, P-5 and P-7, which were duly approved.

14. Therefore the judgment under appeal is set aside allowing the Original Petition and quashing the orders terminating the appointment of the Appellants/writ Petitioners and directing them to be reaccommodated with continuity of service and all attendant benefits.

15. It is made clear that Respondents 9 to 12 who were advised by the Public Service Commission and who shall be thrown out because of the implementation of this judgment will be entitled to register their name with the Public Service Commission which shall deal with their case based on their turn or option, as the case may be, whichever is applicable to them beneficially, in case there are no other vacancies in the school managed by the Panchayat, 5th Respondent, to accommodate them. The counsel for the 5th Respondent at the end contended

that their right against Ext. P-1 shall be reserved. Whatever right available against Ext. P-1 as per law will always be available to them and are not foreclosed hereby.

Writ Appeal is allowed.