

V.Sruthi Vs. Sri.Ameri Padmanabhan

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Court : Kerala

Decided On : Oct-23-2013

Judge : Hon'Ble the Chief Justice Dr. Manjula Chellur

Appellant : V.Sruthi

Respondent : Sri.Ameri Padmanabhan

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HON'BLE THE CHIEF JUSTICE DR. MANJULA CHELLUR & THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN WEDNESDAY, THE 23D DAY OF OCTOBER 2013 1ST KARTHIKA, 1935 WP(C).No. 27424 of 2007 (M) ----- PETITIONER(S): ----- * V. SAVITHRI, SANSKRIT TEACHER, TERUR U.P. SCHOOL, P.O.EDAYANNUR, THALASSERI TALUK. *(CORRECTED) * PETITIONER'S NAME "V. SAVITHRI" CORRECTED AS "V. SRUTHI" AS PER

ORDER

DATED 30/05/2008 IN I.A.6464/2008. BY SRI.K.RAMAKUMAR, SENIOR ADVOCATE. ADVS.SRI.K.V.PAVITHRAN, SRI.JAYANANDAN MADAYI PUTHIYAVEETIL, RESPONDENT(S): ----- 1. SRI. AMERI PADMANABHAN, MANAGER, THERUR U.P.SCHOOL, P.O. EDAYANNUR, VIA. MATTANNUR, THALASSERI TALUK.

2. HEAD MASTER, THERUR U.P.SCHOOL, P.O. EDAYANNUR, VIA. MATTANNUR, THALASSERI TALUK.

3. THE ASSISTANT EDUCATIONAL OFFICER, MATTANNUR, P.O.MATTANNUR, THALASSERI TALUK.

4. SECRETARY TO THE GOVERNMENT, GENERAL EDUCATION, TRIVANDRUM.

5. V.R. BHASKARAN, S/O. ANANDAN NAMBIAR, P.O. EDAYANNUR, VIA. MATTANNUR, THALASSERI TALUK. WP(C).No. 27424 of 2007 (M) ** ADDL. R6 & R7 IMPEADED6 SMT.ANUPA. P.K.,SANSKRIT TEACHER, THERUR U.P.SCHOOL, P.O. EDAYANNUR, THALASSERY TALUK.

7. THE ADDITIONAL DIRECTOR OF PUBLIC INSTRUCTION (ACADEMIC), THIRUVANANTHAPURAM. ** ADDL. R6 AND R7 ARE IMPEADED AS PER

ORDER

DATED2707/2009 IN I.A. NO.8976/2009 IN WP(C).NO. 27424/2007. R1 BY ADVS. SRI.K.MOHANAKANNAN. SRI.ANIL.D.KAITHAKKAL R3, R4 & R7 BY SR. GOVT. PLEADER MR.P.I. DAVIS. R5 BY SRI.M.RAMESH CHANDER, SENIOR ADVOCATE ADV. SRI.ANEESH JOSEPH. R6 BY ADV. DR.GEORGE ABRAHAM. THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON1110-2013, ALONG WITH WP(C).NO. 26465 OF 2012 AND CONNECTED CASES,THE COURT ON2310/2013 DELIVERED THE FOLLOWING: rs. WP(C).No. 27424 of 2007 (M) APPENDIX PETITIONER'S EXHIBITS:- EXT.P1 COPY OF THE APPOINTMENT

ORDER

DATED0102/2007 ISSUED BY THE D.E.O. EXT.P2 COPY OF THE

ORDER

DATED2905/2004 OF AEO, MATTANNUR APPROVING THE6H RESPONDENT AS MANAGER. EXT.P3 COPY OF THE

JUDGMENT

DATED2909/2001 IN O.S.26/1995, O.S.547/1997, O.S.8/1998, O.S.37/1998 AND O.S.45/1998. EXT.P4 COPY OF THE

JUDGMENT

DATED3009/2003 IN A.S.130/2001 OF THE SUB COURT, THALASSERI. EXT.P5 COPY OF THE

JUDGMENT

DATED1702/2005 IN R.S.A.824/2004. EXT.P6 COPY OF THE

ORDER

OF THE AEO MATTANNUR DATED2607/2007 APPROVING1T RESPONDENT AS MANAGER OF TERUR U.P.SCHOOL. EXT.P6(a) COPY OF THE LETTER DATED1308/2007 REPORTING ASSUMPTION OF CHARGE BY1T RESPONDENT. EXT.P7 COPY OF THE LETTER DATED2006/2007 ISSUED BY1T RESPONDENT TO PETITIONER. EXT.P8 COPY OF THE REPLY GIVEN BY PETITIONER TO RESPONDENT DATED NIL. EXT.P9 COPY OF THE

ORDER

DATED0409/2007 ISSUED BY1T RESPONDENT TERMINATING THE PETITIONER WITH EFFECT FROM0102/2007. EXT.P10 COPY OF THE PROCEEDINGS OF ELECTION FOR THE YEAR199295. EXT.P11 COPY OF THE VOTERS LIST FOR THE ELECTION DATED0801/1998. EXT.P12 COPY OF THE AMENDMENT OF BYELAW DULY REGISTERED. EXT.P13 COPY OF THE TERMINATION

ORDER

OF1T RESPONDENT DATED0910/2007. EXT.P14 COPY OF THE

ORDER

IN APPOINTMENT ANUPA P.K. DATED0407/2009. RESPONDENT'S EXHIBITS:- EXT.R1(a) COPY OF THE

ORDER

DATED2709/2005 ISSUED BY THE DIRECTOR OF PUBLIC INSTRUCTIONS, THIRUVANANTHAPURAM. 2/-..... WP(C).No. 27424 of 2007 (M) EXT.R1(b)

COPY OF THE GOVERNMENT

ORDER

BEARING NO.G.O.(RT) NO.3861/06/G.EDN. DATED2908/2006. EXT.R1(c)
COPY OF THE INTERIM

ORDER

IN WP(C).NO. 19337/2004. EXT.R1(d) COPY OF THE

JUDGMENT

IN WP(C).NO. 19337/2004. EXT.R1(e) COPY OF THE

ORDER

OF THE DIRECTOR OF PUBLIC INSTRUCTION. EXT.R1(f) COPY OF THE
GOVT.

ORDER

NO.(RT) NO.3861/06/G.EDN. DATED2908/2006. EXT.R1(g) COPY OF THE

JUDGMENT

IN WP(C).NO. 24090/2006. EXT.R1(h) COPY OF THE

ORDER

DATED2607/2007 BY THE AEO. EXT.R6(a) COPY OF THE

ORDER

DATED2709/2005. EXT.R6(b) COPY OF THE

ORDER

DATED2908/2006. EXT.R6(c) COPY OF THE APPOINTMENT

ORDER

DATED0110/2007. EXT.R6(d) COPY OF THE

ORDER

DATED2604/2008. EXT.R6(e) COPY OF THE

ORDER

DATED 04/07/2009. //TRUE COPY// P.S. TO JUDGE rs. Manjula Chellur, C.J.

& K.Vinod Chandran, J.

----- W.P.(C).Nos.27424/2007 &
26465/2012 and W.A.Nos.2170/2012, 2179/2012 & 2192/2012 .
----- Dated this, the 23rd day of
October, 2013

JUDGMENT

K.Vinod Chandran, J.: Embroiled in the inter se disputes with respect to the appointment and approval of the Manager of Therur Upper Primary School (hereinafter referred to as "the School"), are two hapless teachers - P.K.Anupa and V.Sruthi - whose respective claims to the post of Sanskrit teacher in the school arises from the appointment made by rival claimants to the post of Manager of the school.

2. Since there are a number of Writ Petitions and Writ Appeals, we will refer to the names of the parties and the documents with reference to the respective paper books. W.P.(C). No.27424 of 2007 is a writ petition filed by V.Sruthi against her termination, which happened in 2007. The interim order passed in that case on 14.11.2012 modifying the earlier interim order is the subject matter of W.A.No.2179 of 2012, by V.Sruthi. W.P.(C). No.26465 of 2012 is by P.K.Anupa, challenging her termination of service in 2012. W.A.No.2170 of 2012 and 2192 of 2012 are both filed from an interim order passed by a learned Single Judge in W.P.(C).No.27424 of 2007 & - 2 - connected cases W.P.(C).No.26465 of 2012, wherein the learned Single Judge directed show cause as to why the provisions of the Contempt of Courts Act shall not be invoked against one V.R.Bhaskaran, one of the claimants to the post of Manager. The interim order also inter alia directed P.K.Anupa to be continued in the school and ordered an enquiry by the District Educational Officer, Thalasserry. W.A.No.2170 of 2012 is filed by V.R.Bhaskaran and W.A.No.2192 of 2012 is filed by V.Sruthi, the rival claimant of P.K.Anupa.

3. We are not in any way entering into the inter se dispute to the post of Manager, the latest appointment of which is made by virtue of an order No.B-3359/2006,

which is challenged by the rival claimant in W.P.(C).No.11157 of 2011, which though had been posted before us, has been sent back for being considered by the learned Single Judge, having roster.

4. The dispute, in the present Writ Appeals and the Writ Petitions, revolves around the appointments made by the rival claimants to the post of Manager and we are called upon to decide as to who is entitled to continue as the Sanskrit teacher in the School. V.R.Bhaskaran and Ameri Padmanabhan are the persons vying to the post of Manager of the school, which is managed by an educational agency, viz., a Trust. V.R.Bhaskaran appointed V.Sruthi W.P.(C).No.27424 of 2007 & - 3 - connected cases to the post of Sanskrit teacher in the school on 01.02.2007. Subsequently, Ameri Padmanabhan terminated her services on 25.06.2007 and appointed P.K.Anupa to the said post on 01.10.2007, in which post she was continued till 25.10.2012; when P.K.Anupa's services were terminated by V.R.Bhaskaran. The respective terminations of 25.06.2007 and 25.10.2012 were the subject matter of the writ petitions. The eligibility to claim the post of Sanskrit teacher in the school would depend on which of the persons vying to the post of Manager; was duly appointed and approved, as at the time of the respective appointments.

5. V.R.Bhaskaran claims to have taken charge as Manager in 2004, which is approved by order dated 29.05.2004 (Exhibit P2 in W.P.(C).No.27424 of 2007), for the period 2004-2007. The claim of Ameri Padmanabhan to the post of Manager is based on DPI's appellate order dated 27.09.2005, produced as Exhibit P2 in W.P.(C).No.26465/2012. As is evident, the appellate order obtained by Ameri Padmanabhan on 27.09.2005 was in reversal of the order of approval dated 29.05.2004. The DPI's order dated 27.09.2005, reversing the approval granted by the A.E.O. was challenged by V.R.Bhaskaran in revision before the Government. On the filing of the revision, the order of the DPI was kept in W.P.(C).No.27424 of 2007 & - 4 - connected cases abeyance, as is clear from the final order in revision produced as Exhibit P3 in W.P.(c).No.26465 of 2012. The Government in revision ultimately confirmed the order of the DPI, which again was challenged before this Court in W.P.(C).No.24090 of 2006, wherein a learned Single Judge passed an interim order dated 01.09.2006, directing V.R.Bhaskaran to continue as

Manager, if he was holding the post then. As was noticed earlier, V.R.Bhaskaran was appointed by order dated 29.05.2004, which was overturned by the DPI by order dated 27.09.2005; in favour of Ameri Padmanabhan. But the said order was stayed in revision filed by V.R.Bhaskaran before Government and though the revision went against V.R.Bhaskaran, status quo was directed by the interim order of this Court.

6. W.P.(C).No.24090/2006 eventually culminated in judgment dated 05.06.2007 holding that the concurrent findings of the educational authorities appointing and approving Ameri Padmanabhan does not call for any interference. The writ petition filed by V.R.Bhaskaran was dismissed, however, making it clear that the same would be without prejudice to the prosecution of O.S.No.78 of 2002. A Writ Appeal was filed, numbered as W.A.No.1728 of 2007, by V.R.Bhaskaran which also stood dismissed and no further proceedings were taken by W.P.(C).No.27424 of 2007 & - 5 - connected cases V.R.Bhaskaran. Hence, the appointment of Ameri Padmanabhan stands confirmed by this Court, subject however to the result of O.S.No.78 of 2002. But it is a fact that V.R.Bhaskaran continued on the strength of the order of the A.E.O. dated 29.05.2004 during the proceedings, before the DPI, the Government and this Court.

7. V.R.Bhaskaran further claims to have been appointed by an order dated 26.03.2007 produced as Exhibit R5(b) in W.A.No.2170 of 2012. By virtue of that order he could not have made an appointment on a prior date, i.e., 01.02.2007, when admittedly V.Sruthi was appointed. Exhibit R5(b) in W.P.(C). No.26465 of 2012 dated 26.03.2007 was never placed before the learned Single Judge in W.P.(C).No.24090 of 2006 or in W.A.No.1728 of 2007. We are not inclined to place any reliance on that order.

8. Before dealing further with the issue, we have to look briefly at the proceedings before the Civil Court, wherein the members of a trust, at loggerheads, were attempting to exercise their respective rights. It is admitted by both sides that the trust, by name "Therur Educational Society" by its bye-laws prescribed elections to the governing body, the tenure of which is 3 years. O.S.No.78 of 2002 was a suit for declaration and consequential W.P.(C).No.27424 of 2007 & - 6 - connected

cases injunction with respect to the election held in 2001. Ameri Padmanabhan and his followers were the plaintiffs in the suit. V.R.Bhaskaran was the 7th defendant in the said suit, which arrayed 68 persons as defendants. O.S.No.221/2006 was a suit filed by the Educational Society, represented by its President and V.R.Bhaskaran as the 2nd plaintiff against Ameri Padmanabhan and 8 others, with respect to an election held in 2004. The said suit was for declaration and injunction against the defendants from acting as governing body members. Elections, the subject matter of the suits, as is revealed from the records, were held on 08.10.2001 and 03.10.2004. O.S.Nos.78 of 2002 and 221 of 2006 were tried together and a common judgment dated 30.06.2010 was delivered, produced as Exhibit P19 in W.P.(C).No.26465 of 2012. The declaration and consequential injunction sought for in O.S.No.78 of 2002, as far as the election of 2001 was concerned, was rejected. O.S.No.78 of 2002 is only with respect to the governing body which was in office for three years from 2001 to 2004. The cause of action for the instant writ petitions was subsequent to the 2004 election. O.S.No.221 of 2006 is with respect to who was competent to conduct the affairs of the society, as an elected General Body, from 2004 onwards. This suit was dismissed as infructuous, since W.P.(C).No.27424 of 2007 & - 7 - connected cases the term of the elected General Body was three years and by the time the suit was disposed, the term of the Committee elected in 2004 was no more entitled to continue. The judgment in the two suits have no bearing on the adjudication of the dispute raised herein.

9. With the above facts in perspective, we look at the orders passed by the Educational Authorities under the KER. Though O.S.No.221 of 2006 filed by V.R.Bhaskaran to substantiate his claim to the General Body of the Trust from 2004 stood dismissed in 2010; his appointment as Manager was approved by the order of the A.E.O., Mattannur vide order dated 29.05.2004. He was continuing on the basis of such approval order, which stood reversed by the DPI in favour of Ameri Padmanabhan, by order dated 27.09.2005. The DPI's order was challenged in revision and by an interim order V.R.Bhaskaran was continuing in the post of Manager. The revision came to be dismissed by order dated 29.08.2006. This was the subject of challenge in W.P.(C).No.24090 of 2006. Again by an interim order of status quo, V.R.Bhaskaran continued. The writ petition concluded with Exhibit P4

judgment of this Court, wherein Ameri Padmanabhan's claim was upheld. The observations in the judgment were specifically noticed as not W.P.(C).No.27424 of 2007 & - 8 - connected cases prejudicial to the prosecution of O.S.No.78 of 2002. That would only mean that the election to the Governing Body is a matter to be decided independently.

10. Deciding the question of appointment of a teacher would depend on who was the Manager approved under the KER. Rule 9(1) of the KER is relevant; which we extract hereunder: "9(1) The appointment order shall not be affected by any change in the Educational Agency or the Manager". There is no dispute that V.R.Bhaskaran was appointed as Manager by order dated 29.05.2004; which appointment was overturned in appeal; and the appellate order was upheld in revision by the Government and by this Court in W.P.(C).No.24090 of 2006. But, however, it is pertinent that V.R.Bhaskaran took charge as Manager by order dated 29.05.2004 and continued in office by virtue of interim orders passed in the revision before the Government and the writ petition before this Court. In any event, Ameri Padmanabhan, by virtue of the orders passed by the DPI and the Government and confirmed by judgment in W.P.(C).No.24090 of 2006, took charge only on 13.08.2007; in pursuance of order of A.E.O. Dated 26.07.2007. Hence, V.Sruthi's appointment on W.P.(C).No.27424 of 2007 & - 9 - connected cases 01.02.2007 was before Ameri Padmanabhan took charge and while V.R.Bhaskaran continued as Manager on the strength of interim orders of this Court.

11. Now coming to the appointment of P.K.Anupa, she evidently was appointed only by order dated 01.10.2007 by Ameri Padmanabhan on the strength of W.P.(C).No.24090 of 2006 being allowed on 05.06.2007. P.K.Anupa's appointment was facilitated only by termination of V.Sruthi. Admittedly V.R.Bhaskaran continued as Manager from the date of his approval by the A.E.O. dated 29.05.2004 till 01.10.2007, the date on which Ameri Padmanabhan took charge based on the judgment in W.P.(C).No.24090 of 2006, confirmed in appeal by a Division Bench.

12. It is the contention of the respective parties that the order dated 27.09.2005 of the DPI approving the appointment of Ameri Padmanabhan as Manager was with retrospective effect and with effect from 30.09.2003 and P.K.Anupa has been validly appointed. The said order has now been overturned by order dated 07.02.2011, which is the subject of challenge in W.P.(C).No.11157 of 2011. Per contra, it is stated that the order dated 7.2.2011 again grants retrospective effect to the appointment of V.R.Bhaskaran with effect from 30.09.2003 and, hence, V.Sruthi's appointment has to be W.P.(C).No.27424 of 2007 & - 10 - connected cases upheld.

13. It is trite that the appointment of a Manager cannot have any retrospective effect and any appointment of Manager duly made, with approval of the Educational authorities; if subsequently upset by orders of Court or higher authorities, then the de facto doctrine has to be applied to give validity to the acts of the Manager when he held such post with due approval from statutory authorities. We are supported in taking such a view by the decision of another Division Bench in Manager, St.Mary's H.S. v. Beji Abraham [2002 (1) KLT406. When V.Sruthi was appointed on 01.02.2007, definitely V.R.Bhaskaran was continuing on the basis of approval order dated 29.05.2004 and though reversed in appeal, continued so, in the post, by virtue of interim orders passed in revision, as also in the writ petition before this Court. The order of approval, of V.R.Bhaskaran, passed by the A.E.O., Mattannur dated 29.05.2004 though stood reversed by the DPI's order dated 27.09.2004, Ameri Padmanabhan took charge as Manager only after the judgment in W.P.(C).No.24090 of 2006 on 05.06.2007. We are of the opinion that the retrospective operation given in the orders are of no avail with reference to the appointments and terminations which are the subject matter of the above cases. As a consequence, W.P.(C). W.P.(C).No.27424 of 2007 & - 11 - connected cases No.27424 of 2007 stands allowed. V.Sruthi's appointment dated 1.2.2007 is declared to be one validly made by a duly approved Manager under the KER. However, we make it clear that her appointment shall be approved only from the date of her appointment in 2012 and also with respect to the earlier period from 01.02.2007 till 25.06.2007, on which date she was terminated by Ameri Padmanabhan.

14. W.A.No.2179 of 2012 is filed against the interim order directing salary to be paid to P.K.Anupa. Since we are permitting P.K.Anupa to draw her salary during the period she worked in her writ petition, we close W.A.No.2179 of 2012. W.P.(C).No.26465 of 2012 challenged the termination of P.K.Anupa as Sanskrit teacher, which order is upheld. However P.K.Anupa has actually worked in the school from 01.10.2007 till she was terminated on 25.10.2012 and, hence, we hold her entitled to draw salary and other allowances for the said period. The present Manager as also the educational authorities shall do the needful to disburse such salary and allowances to P.K.Anupa within a period of three months from the date of receipt of a copy of this judgment. W.P.(C).No.26465 of 2012 is disposed of as above. W.P.(C).No.27424 of 2007 & - 12 - connected cases 15. In such circumstances, we leave all questions open with respect to the Managership of the school to be decided in W.P. (C).No.11157 of 2011, but however give the stamp of approval to the appointment of V.Sruthi, declining the same to P.K.Anupa. As a consequence of the above orders, we are of the opinion that the interim order dated 05.12.2012 passed by the learned Single Judge in W.P.(C).No.26465 of 2012 no longer survives. Consequently, W.A.Nos.2170 of 2012 and 2192 of 2012 are allowed, setting aside the impugned orders. Sd/- Manjula Chellur, Chief Justice Sd/- K.Vinod Chandran, Judge. vku/ (true copy)

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