

P.E Mathew Vs. State of Kerala

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Court : Kerala

Decided On : Jun-30-2015

Judge : Honourable Mr. Justice a.K.Jayasankaran Nambiar

Appellant : P.E Mathew

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR TUESDAY, THE 30^H DAY OF JUNE 2015 9TH ASHADHA, 1937 WP(C).No. 34022 of 2014 (C) ----- PETITIONER(S): -----

P.E MATHEW, AGED 55 YEARS, S/O.LATE M.C.EASOW MANAKATTU, ATTACHAKKAL P.O. KONNI - 689 692. BY ADVS.SRI.ARUN.B.VARGHESE SRI.JAYKAR.K.S. SMT.M.B.DHANYA BABU

RESPONDENT(S)/RESPONDENTS:-: -----

1. STATE OF KERALA, REPRESENTED BY SECRETARY GENERAL EDUCATION DEPARTMENT, GOVERNMENT SECRETARIAT THIRUVANANTHAPURAM - 695 001.

2. THE DIRECTOR OF PUBLIC INSTRUCTION, OFFICER OF D.P.I., THIRUVANANTHAPURAM - 695 014.

3. DEPUTY DIRECTOR OF EDUCATION, OFFICE OF DEPUTY DIRECTOR OF EDUCATION, THIRUVALLA PATHANAMTHITTA DISTRICT - 689 645.

4. DISTRICT EDUCATIONAL OFFICER, OFFICE OF THE DISTRICT EDUCATIONAL OFFICER PATHANAMTHITTA - 689 645.

5. MALANKARA SYRIAN CATHOLIC SCHOOLS, REPRESENTED BY MANAGER, PATHANAMTHITTA DIOCESE NANNUVAKADU, PATHANAMTHITTA - 689 645.

6. THE CORRESPONDENT, MALANKARA SYRIAN CATHOLIC SCHOOLS PATHANAMTHITTA - 689 645.

7. SACRED HEART HIGH SCHOOL, REPRESENTED BY ITS HEADMISTRESS, MYLAPRA, PATHANAMTHITTA - 689 645.

8. SHIRLEKUTTY DANIEL, HEADMISTRESS, SACRED HEART HIGH SCHOOL, MYLAPRA PATHANAMTHITTA - 689 645. R8 BY ADV. SRI.T.L.SREERAM R8 BY ADV. SRI.SAJIN JOSEPH R5-R7 BY ADV. SRI.BLAZE K.JOSE R BY GOVERNMENT PLEADER, SRI. RINNY STEPHEN CHAMAPARAMBIL THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 3006-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: WP(C).No. 34022 of 2014 (C) ----- APPENDIX PETITIONER(S)' EXHIBITS ----- EXHIBIT P1. TRUE COPY OF THE MEMO NO.138/PTA/2013-14 DATED 3103.2014 ISSUED BY THE 6H RESPONDENT. EXHIBIT P2. TRUE COPY OF THE REPRESENTATION DATED 0504.2014 SUBMITTED BEFORE THE 4H RESPONDENT. EXHIBIT P3. TRUE COPY OF THE

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DATED 2705.14 IN WP(C) NO.13011/14. EXHIBIT P4. TRUE COPY OF THE

ORDER

NO.B4/3755/14 DATED 1811.14 ISSUED BY THE 4H RESPONDENT. EXHIBIT P5. TRUE COPY OF THE APPOINTMENT

ORDER

DATED0104.14 ISSUED TO THE8H RESPONDENT. EXHIBIT P6. TRUE COPY OF THE REVISION PETITION DATED0312.14 SUBMITTED BY THE WRIT PETITIONER BEFORE THE1T RESPONDENT. EXHIBIT P7 TRUE COPY OF THE GO (RT) No.1012/2015/G.EDN. DATED1603.2015 ISSUED BY THE FIRST RESPONDENT. EXHIBIT P8 TRUE COPY OF THE APPLICATION DATED1010.2014 SUBMITTED BY THE WRIT PETITIONER UNDER THE RIGHT TO INFORMATION ACT. EXHIBIT P9 TRUE COPY OF THE REPLY No.A2/10509/14 DATED3010.2014 ISSUED BY THE PUBLIC INFORMATION OFFICER. RESPONDENT(S)' EXHIBITS ----- EXT. R6(a) TRUE COPY OF THE NOTICE PUBLISHED IN THE NOTICE BOARD DATED0502.2014. EXT.R6(b) TRUE COPY OF THE APPLICATION AND BIO-DATA SUBMITTED BY THE PETITIONER. EXT.R6(c) TRUE COPY OF THE APPLICATION SUBMITTED BY THE8H RESPONDENT AND HER BIO-DATA EXT.R6(d) TRUE COPY OF THE MINUTES OF THE MEETING OF THE EDUCATIONAL BOARD DATED1403.2014. EXT.R6(e) TRUE COPY OF THE EXPLANATION DATED1211.2014 SUBMITTED BY THIS RESPONDENT TO THE DEO. EXT.R6(f) TRUE COPY OF THE

ORDER

No.4/873/2015 DATED2602.2015 OF THE DEO PATHANAMTHITTA. // True copy // das PA to Judge A.K.JAYASANKARAN NAMBIAR, J.

===== W.P.(C). No. 34022 of
2014 ===== Dated
this the 30th day of June, 2015

JUDGMENT

The petitioner was working as an HSA (Malayalam) from 12.06.1989 onwards under the 5th respondent Corporate Manager. In the writ petition, the petitioner is aggrieved by the appointment of the 8th respondent as Head Mistress of the 7th respondent School allegedly overlooking the claim of the petitioner, who was also qualified in all respects to hold the post of Head Master. The facts in the writ petition would disclose that the 5th respondent Corporate Management is in the Management of Minority Educational Institutions and both the petitioner as well as

the 8th respondent belong to the same minority community. While the petitioner joined as HSA with effect from 12.06.1989, the 8th respondent joined the School as HSA on 20.06.1991. Going by the date of joining, the petitioner would be senior to the 8th respondent. It was ignoring this seniority that the 6th respondent appointed the 8th respondent as Head Mistress with effect from 01.04.2014. It is not in dispute that by Ext.P5 order, the appointment of the 8th respondent as Head Mistress with effect from 01.04.2014 was approved by the 4th respondent. While approving the appointment of the 8th respondent as Head Mistress, the 4th respondent also rejected the claim of the petitioner for appointment as Head Master -2- W.P.(C). No. 34022 of 2014 by Ext.P4 order. In the writ petition, the petitioner impugns Ext.P4 order of the 4th respondent to the extent it refused to set aside the appointment of the 8th respondent and direct the appointment of the petitioner to the post of Head Master. During the pendency of the writ petition, by an interim order, this Court directed the 1st respondent to consider and pass orders on Ext.P6 revision petition, that had been filed by the petitioner challenging Ext.P4 order of the 4th respondent. The 1st respondent thereafter proceeded to pass Ext.P7 order, finding that the 6th respondent had satisfied the 1st respondent that the selection criteria in the matter of selection to the post of Head Master had been duly followed and hence found that, there was no necessity to disturb the appointment of the 8th respondent as Head Mistress of the School.

2. The contention of the petitioner in the writ petition is essentially, that while consequent to Ext.P3 judgment, this Court had specifically directed the 4th respondent to consider the representation preferred by the petitioner, before granting approval to the appointment of the 8th respondent as Head Mistress, by considering inter alia the judgment of a Full Bench of -3- W.P.(C). No. 34022 of 2014 this Court in Kurian Lisy v. State of Kerala [2006(4) KLT264, the 4th respondent in Ext.P4 order, did not deem it necessary to set aside the appointment of the 8th respondent as Head Mistress, notwithstanding the fact that the 6th respondent had not produced any material before him to suggest that a fair and transparent procedure had been followed by the respondent in the matter of selection of candidates for the post of Head Master. It is contended that, although the 1st respondent in Ext.P7 order refers to the 6th respondent as having satisfied the 1st respondent with regard to the following of a transparent procedure, while

conducting the selection for the post of Head Mistress, there is no reference to any material on the basis of which the 1st respondent arrived at such a conclusion.

3. A counter affidavit has been filed on behalf of the 5th and 6th respondent. Therein, the specific stand taken by the respondents is that, there was in fact a procedure, that was followed by the 6th respondent, while conducting the selection to the post of Head Mistress. Exts.R6(a) to R6(e) have been produced as documents that were produced before the 1st respondent, at the time of hearing of the revision petition. -4- W.P.(C). No. 34022 of 2014 Reference is made to these documents to contend that there were in fact guidelines that were published, informing the teachers, of the norms that would govern the selection of a candidate to the post of Head Mistress. It is contended that, it was by adhering to the said norms that the 6th respondent eventually identified the 8th respondent as a candidate, who could be appointed to the post of Head Mistress. It is also contended that, on an assessment of merits of both the petitioner as well as the 8th respondent on the criteria indicated in the guidelines, it was found that the 8th respondent was more suitable for the post and it was under these circumstances that the 8th respondent was appointed as the Head Mistress of the School.

4. I have heard the learned counsel appearing for the petitioner, learned counsel for the 5th and 6th respondents and the learned Government Pleader for respondents 1 to 4, as well.

5. On a consideration of the facts and circumstances of the case and the submissions made across the bar, I find that this Court had by Ext.P3 judgment, specifically directed the 4th respondent to consider the representation preferred by the -5- W.P.(C). No. 34022 of 2014 petitioner, highlighting his grievance against the appointment of the 8th respondent as Head Mistress in the School, overlooking his claim for the same post. While issuing directions to the 4th respondent, this Court had specifically referred to the Full Bench decision in Kurian Lisy v. State of Kerala (cited supra) and directed the 4th respondent to examine the representation of the petitioner in the light of the said judgment of this Court. In Ext.P4 order of the 4th respondent, that was passed pursuant to the directions of this Court in Ext.P3 judgment, it is seen that the 4th respondent

specifically queried the 6th respondent on the following three aspects. Namely: (1) What is the procedure adopted by the manager and criteria for choosing teachers for the post of HM under the management ignoring their service seniority. (2) Whether above procedure is made available to each and every members of the teaching and non-teaching staff under the management and if so (3) In which way the above procedure is made available with the staff of the management.

6. The reply to the said queries given by the 6th respondent is produced as Ext.R6(e) along with the counter -6- W.P.(C). No. 34022 of 2014 affidavit of the 6th respondent. It is seen from the said reply, that while the 6th respondent has indicated the criteria, on the basis of which selection would be conducted for the purposes of identifying the candidates for the post of Head Master, there is no mention with regard to the information, regarding the procedure to be followed, having been made available to each and every member of the teaching and non-teaching staff under the Management. Despite the said fact, the 4th respondent rejected the request of the petitioner for setting aside the appointment of the 8th respondent and to appoint him as Head Master of the School in question. In Ext.P6 revision petition that was preferred by the petitioner, challenging Ext.P4 order, Ext.P7 order was passed by the 1st respondent. The said order was passed after hearing the petitioner, the 6th respondent and the 8th respondent. It is the stand of the 6th respondent in these proceedings that, before the 1st respondent it had produced a copy of Ext.R6(a) notice and a copy of the guidelines mentioned in the said notice. To verify these aspects, I had asked the learned Government Pleader to make available the files that were before the 1st respondent, while considering the revision petition. On a perusal of the said files, I note that before the 1st respondent, the 6th respondent had -7- W.P.(C). No. 34022 of 2014 produced a copy of Ext.R6(a) notice and documents stated to be the guidelines that was annexed along with the said notice. The question to be considered, however, is whether reliance can be placed on the said document, especially in view of the specific contention taken by the petitioner that there were no such guidelines that were published in the School prior to the selection process that was conducted for appointment of a Head Master. The said aspects assume significance because it is also the specific contention of the petitioner that, even before the 4th respondent, and in specific response to the queries of the 4th

respondent noted earlier, the 6th respondent had not produced these guidelines to substantiate his contentions with regard to publication of the procedure for selection. I find from Ext.P7 order that the 1st respondent has mechanically found that the 6th respondent had satisfied the 1st respondent with regard to its compliance with a fair and transparent procedure in the matter of selection of a Head Mistress for the School. From Ext.P7, I am unable to gather any information as regards the material that was perused by the 1st respondent to arrive at this satisfaction, that is seen recorded in Ext.P7 order. In my view, it would be incumbent upon the 1st respondent to enquire as to whether the 6th respondent had in fact, -8- W.P.(C). No. 34022 of 2014 adopted a fair and transparent procedure in the matter of selection of the Head Mistress of the School. For this purpose, the 1st respondent would have to collect material that would indicate that the guidelines, that were produced by the 6th respondent before him, were in fact published along with Ext.R6(a) notice, in a manner that would inform the teaching staff of the selection process that was contemplated. The enquiry of the 1st respondent would also have to take into account the fact that, pursuant to the query of the 4th respondent, the 6th respondent had not produced any material to show that there had been a publication of the guidelines at any stage before that. In my view, unless there is a finding on the issue of whether or not there was sufficient publication of the guidelines by the 6th respondent, there cannot be a consequential finding with regard to the transparency of the procedure followed by the 6th respondent in the matter of selection of Head Mistress. Thus, in order to enable the 1st respondent to have a fresh look into the matter, I quash Ext.P7 order and direct the 1st respondent to pass fresh orders on Ext.P6 revision petition preferred by the petitioner before him, after hearing the petitioner, the 6th respondent and the 8th respondent. The 1st respondent shall pass fresh orders in the matter, taking note of the -9- W.P.(C). No. 34022 of 2014 observations and directions in this judgment, within a period of three months from the date of receipt of a copy of this judgment. The 1st respondent shall also take note of the judgment of this Court in 2006 (4) KLT264(cited supra) while passing orders consequent to this judgment. The petitioner shall produce a copy of the writ petition, together with a copy of this judgment before the 1st respondent, for further action. The entitlement of the petitioner to any pecuniary benefits will depend upon the

decision taken by the 1st respondent pursuant to the directions issued in this judgment. The writ petition is disposed as above. Sd/- A.K.JAYASANKARAN
NAMBIAR JUDGE das

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