

State of Kerala Vs. E.C. Elsy and ors.

State of Kerala Vs. E.C. Elsy and ors.

SooperKanoon Citation : sooperkanoon.com/717334

Court : Kerala

Decided On : Nov-06-1987

Reported in : AIR1988Ker69

Judge : V.S. Malimath, C.J.,; P.C. Balakrishna Menon and; V. Bhaskaran Nambiar, JJ.

Acts : Kerala Education Act, 1959 - Sections 9(1); Kerala Education Rules, 1959 - Rules 7 and 51A

Appeal No. : Writ Appeal No. 668 of 1983

Appellant : State of Kerala

Respondent : E.C. Elsy and ors.

Advocate for Def. : T.K. Chandrasekhar Das and; P. Vijayamma, Advs.

Advocate for Pet/Ap. : Govt. Pleader

Disposition : Appeal allowed

Judgement :

Maumath, C. J.

1. The short point that arises for consideration in this appeal is whether the State is liable to pay salary to a teacher whose preferential right for appointment under

Rule 51A of Chap. XIV A Kerala Education Rules is denied by the Manager of the aided school by appointing someone else in that vacancy and the said teacher drawing his salary from the Government.

2. We shall now briefly state the necessary facts. The first respondent was appointed by the respondent 5 Manager, J. P. E. High School, Trichur which receives aid from the Government under the Kerala Education Act, 1958, (hereinafter referred to as the 'Act') and the Rules made thereunder, as High School Assistant. For want of vacancy, the services of the first respondent stood terminated with effect from 15-7-1969. An additional post of High School Assistant was sanctioned for the said school with effect from 15-7-1977. The first respondent, by virtue of Rule 51A of Chap. XIV A of the Rules had a preferential right for appointment to the newly sanctioned post. But the respondent 5 appointed Smt. U. K. Thankamma in the said vacancy of High School Assistant ignoring the preferential right of the first respondent; The first respondent, therefore, approached the State Government for the redressal of her grievances. The State Government, after being satisfied that the appointment of Smt. U. K. Thankamma ignoring the claims of the first respondent is illegal, passed an order on 9-2-1979 as per Ext. P5. By the said order, the State Government held that the first respondent was entitled to be appointed as High School Assistant in preference to Smt. U. K. Thankamma with effect from 15-7-1977. Consequently, it was declared that the first respondent shall be deemed to have been appointed as High School Assistant in the 5th respondent's school from the date of sanctioning of the additional post of High School Assistant, viz., 15-7-1977; but without the benefit of arrears of salary. The District Educational Officer, Trichur was directed to take necessary action to reappoint the first respondent. The request of the 5th respondent Manager to approve the appointment of Smt. U. K. Thankamma was also rejected. In obedience to the said order, the respondent 5 Manager appointed the first respondent by order dt/- 8-3-1979 on which date the first respondent also reported for duty. The Said appointment of the first respondent was approved by the District Educational Officer by Ext. P6 dt/-16-1-1980 with effect from 15-7-1977; but without the benefit of arrears of salary till 7-3-1979. Thereupon, the first respondent made a representation on 12-2-1981 as per Ext. P7 to the Minister for Education, requesting him to review the earlier order Ext. P5 which denied the first

respondent the arrears of salary for the period during which she was wrongly deprived by the respondent 5 Manager of her right to hold the post. The State Government by order Ext. P8 dt/- 6-8-1982 rejected the said representation holding that she is not entitled to be paid salary for the period from 15-7-1977 to 7-3-1979 as she had not performed duty as High School Assistant during that period.

3. It was in this background that the first respondent filed O. P. No. 8560 of 1982 for quashing the directions contained in Exts. P5, P6 and P8 in so far as they denied her arrears of salary for the period during which she was wrongly denied appointment to the post of High School Assistant by the respondent 5 Manager. The learned single Judge by judgment dt/- 16-6-1983 allowed the original petition and directed the State Government to pay the remuneration due to the first respondent for the period from 15-7-1977 till the date of her joining duty on the basis of Ext. P5 order. Being aggrieved by the said judgment, the State has preferred this appeal.

4. The Division Bench before whom this appeal came up for final hearing being satisfied that an important question of law of general importance has arisen, referred the appeal to the Full Bench.

5. The learned High Court Government Pleader appearing for the appellant --State contends that the first respondent is not entitled to be paid any salary for the period from 15-7-1977 to 7-3-1979 during which she had not at all worked as High School Assistant in the 5th respondent's school and that in any case as the first respondent was denied appointment for the said period because of the illegal action of the respondent 5 Manager, the first respondent can claim relief in that behalf from the respondent 5 Manager and not from the State Government. The counsel for the first respondent, however, contends that the appellant --State having upheld her right to hold the post of High School Assistant with effect from the date on which Smt. U. K. Thankamma was illegally appointed, viz., 15-7-1977, the State cannot deny her the salary for that period, as under the Act and the Rules, it is only the State that is liable to pay salary to teachers of the Aided Schools.

6. The school in question is a private school which receives aid from the State Government in accordance with the provisions of the Act and the Rules made thereunder. Though the aided schools are governed by the Act, and the Rules, appointment of teachers is required to be made by the Manager under Section 11 of the Act. Rule 51 A of Chap. XIV A of the Rules requires the Manager to prefer for appointment to future vacancies in schools under the same Educational Agency qualified teachers who have been relieved as per Rule 49 or 52 or on account of termination of vacancies. Though the Manager of the school is thus required to act in accordance with Rule 51A of Chap. XIV A of the Rules, the power of appointment continues to vest with the Manager. A teacher appointed by the Manager does not become an employee of the State Govt. The State Government provides grants to aided schools and payment of salary to approved teachers of the aided schools is one form of such aid. Section 9(1) of the Act which provides that the Government shall pay the salary of all teachers in aided schools direct or through the Headmaster of the school, only imposes a -statutory liability on the State Govt. to pay salary to the teachers of the aided schools. This is not in recognition of any pre-existing right of such teachers against the Government. The liability imposed is only to pay salary to the approved teachers. The primary liability of paying salary is that of the employer, viz. the aided school. Therefore the provision imposing financial burden on the Government must be strictly construed.

7. What then is salary? The word 'salary' has not been defined in the Act or the Rules. The appropriate meaning of the word 'salary'. as commonly understood, can be gathered from the Black's Law Dictionary as : 'A reward or recompense for services performed'. Rule 7 of Chap. XIV A of the Rules provides that on the issue by the Manager of an order of appointment to a teacher, the appointment shall become effective from the date on which the teacher is admitted to duty, provided such appointment is duly approved. This provision makes it clear that the appointment of a teacher takes effect only from the date on which he reports for duty and not from any anterior date. What is relevant is not the date on which the teacher becomes entitled for appointment but the date on which he actually reports to duty. It is from that date the performance of his service commences. As salary is recompense for the service performed, he becomes entitled to receive salary with effect from the date on which he reports to duty. The claim for the

anterior period is not, therefore, for salary. The claim for the period during which the teacher was deprived of the appointment on account of the wrongful action of the respondent 5 Manager is not claim for salary. Though the first respondent describes her claim as one for salary, the legal character of the amount claimed by her is 'compensation' for the loss suffered on account of the wrongful conduct of the respondent 5 Manager in depriving her legitimate claim to hold the post of High School Assistant from the date on which the vacancy actually occurred, viz., 15-7-1977. That the amount claimed by the respondent 1 is equivalent to the salary for the said period does not alter the essential character of the amount claimed by her which is 'compensation' and not 'salary'. The liability of the State Government under Section 9(1) of the Act is limited to payment of salary and it does not authorise payment of compensation for the wrongful action of the Manager of an aided school in the matter of making appointments. We must, however, make it clear that the rights of a government servant stand on a different footing. There is no agreement to indemnify and such liability has not been imposed by the Statute. Section 32 of the Act provides that no action shall lie against the Government or any authority or any officer for anything done under the Act in good faith for any damage caused by any action taken in good faith in carrying out the provisions of the Act and the Rules made thereunder. We have, therefore, no hesitation in taking the view that a teacher whose claim for re-appointment was overlooked by the Manager of an aided school by appointing somebody else in that vacancy, is not entitled to claim any amount from the State Govt. for the period during which he was deprived of re-appointment by the wrongful action of the Manager. The same view was taken in a judgment rendered by Justice V. Balakrishnan Eradi (as he then was) on behalf of a Division Bench in Writ Appeal No. 209 of 1979 decided on 25th Sept. 1980. The Supreme Court had occasion to deal with a similar case in *Mary Oommen v. Manager, M.G.M. School, Kerala* AIR 1987 SC 1163. That was also a case in which the teacher was deprived of her right to preferential appointment conferred by Rule 51 A of Chap. XIV A of the Rules. The Supreme Court directed that the teacher shall be entitled to all the benefits as though she was appointed to the post when the vacancy in question arose. But, so far as the claim of the teacher for arrears of salary was concerned, the Supreme Court made it clear that their directions will not enable the teacher to draw salary

for the period she had not worked, but only other benefits such as seniority, increments, etc. It is obvious that such a direction was issued by the Supreme Court not because of any special facts of that case, but because the Supreme Court was satisfied that such a person cannot in law claim salary from the State Government for the period during which she had not actually worked. Following the decision of the Supreme Court, it has to be held that the State Govt. was right in denying the respondent 1 salary for the period during which she had not actually worked, viz., from 15-7-1977 to 7-3-1979.

8. The first respondent has received the emoluments for the period in dispute on the strength of the interim order. As she is now required to refund the said amount, to avoid undue hardship to her, we direct the authorities to deduct the same from her monthly salary in easy instalments.

For the reasons stated above, this appeal is allowed and the judgment of the learned single Judge is set aside and the original petition is dismissed. In the circumstances, the parties, shall bear their respective costs.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com