

Bhavani Vs. Bhanu

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Court : Kerala

Decided On : Aug-12-1959

Reported in : AIR1960Ker133

Judge : P.T. Raman Nayar, J.

Acts : Travancore-Cochin Private Secondary Schools Scheme - Rule 8(7);
[Contract Act, 1872](#) - Sections 70

Appeal No. : C.R.P. No. 719/1958

Appellant : Bhavani

Respondent : Bhanu

Advocate for Def. : S. Narayanan Potti,; K.R. Sridharan Nair,; N.K. Varkey

Advocate for Pet/Ap. : T.N. Subramonia Iyer, Adv.

Disposition : Petition allowed

Judgement :

ORDER

P.T. Raman Nayar, J.

1. I have no doubt that the court below erred in dismissing the revision petitioner's suit for arrears of salary, and to me, it seems clear that she must be given the

decree she sought.

2. Admittedly the defendant, who is the manager of a private school governed by what is known as the P. S. S. (Private Secondary Schools) Scheme, appointed the plaintiff as the headmistress of his school on a salary of Rs. 45/- per mensem inclusive of allowances. She worked as the headmis-tress for three months, the months of June, July and August 1956, at the end of which she resigned because her appointment was not approved by the Education Department of the Government as required by the Scheme--it is the common case that the appointment was in terms of the Scheme.

Admittedly again, the defendant has paid the plaintiff not a pie for her salary, and in dismissing the suit the court below has accepted his contention, that the appointment made by him was conditional on departmental approval so that, when that approval was declined, it was as if there was no appointment at all and as if the plaintiff had never worked at all. Further, that under the Scheme the obligation to pay the salary of the teachers of a private school is the obligation of the Government and not of the proprietor of the school.

3. The result is unjust enough to shock the judicial conscience and point to the unsoundness of the contention which seems to me to stem from a fundamental misconception of the scope and effect Of the Scheme. As I understand the Scheme, it does not create any relationship contractual or otherwise between the teachers in a private school and the Government though it is no doubt designed to improve the lot of the former and save them from unauthorised exactions and other harassment by the management. (See E. P. John v. State, 1956 Ker LT 391 : (AIR 1957 Trav-Co 265). Under the provisions of the Education Code, the entire salary of the teachers of a private recognised school js paid to the management by the Government as a teaching grant, and the P. S. S. Scheme only lays down the conditions to he satisfied for earning this grant.

One of the conditions is that the teachers shall possess certain prescribed qualifications and be paid according to the prescribed scales. Another, that their appointment shall be submitted to the department for approval. A third, that the management shall prepare a pay bill for its teaching staff, get it countersigned by

the inspecting officer, encash it lit the treasury, and disburse the salary to the teachers without making any deductions and obtain their acquittance. So, although the expense is, in the result, borne by the Government, so that in that sense it may be said that the Government pays the teachers, the statement is only an approximation.

In truth what happens is that the Government pays the management a teaching grant equivalent to the aggregate salary of the teachers, and tile management in turn pays the teachers their salary. As I have said the several rules in the Scheme lay down the conditions for earning the grant, and they see also to its proper application. The teachers are appointed by the management, in its own right and not on behalf of the Government, the departmental approval being only a condition for earning the grant; the teacher's contract of service is with the management and in no sense with the Government; he is the servant of the management and not of the Government; and the obligation to pay him his salary is the obligation of the management and not of the Gov-ernment, even if it is the Government that, under the Scheme and subject to its conditions, provides the management with the necessary funds.

4. The order of appointment issued by the defendant to the plaintiff is not in evidence, but, as we have seen, it is the common case that it was in accordance with the provisions of the Scheme, so that we have to go to the Scheme to find out what the terms of the contract of service are. Rule 8(7) of the Scheme requires the manager to issue an order of appointment in the given form to a teacher as soon as he is appointed and goes on to say that the appointment shall be effective from the date on which the teacher is admitted to duty, provided the appointment is duly approved.

This led the lower court to think that the appointment is a contingent appointment, contingent on due approval, so that, if that approval is withheld, there is no contract, no appointment, and no service. Of course, as I have already explained this is not what the rule means. What it means is that the appointment shall he effective, for the purpose of earning the grant, from the date the teacher joins duty provided the appointment is duly approved.

Approval is a condition of the grant and if, as in this case a manager appoints a person who is not qualified, he takes the risk of approval being withheld and consequently the grant. But that cannot in any way, affect his liability to pay the teacher he has appointed and whose services he has had. This is made clear by the form of the order of appointment given in the rule. It is to be signed by both the manager and the teacher at the time of appointment, and, later, by the departmental officer to signify approval.

But, as rule 8(9) expressly states, this order constitutes the agreement between the teacher and the management, and there is nothing either in the rule or in the language of the agreement to indicate that the agreement is contingent on approval. The agreement gives the name of the teacher, the post to which he is appointed and his pay and scale of pay and states whether the appointment is permanent, probationary, acting or temporary. And while it states that the appointment is liable to termination at one month's notice with the previous approval of the department, it nowhere says that the appointment is conditional on its approval by the department.

The true nature of the appointment is set out in the Government order dated 12-11-1951 by which the Scheme was sanctioned where, while pending approval the appointment is referred to as a provisional appointment. No doubt the manager has the right to terminate the appointment if approval is declined, but so long as the appointment lasts he is bound to pay the teacher the salary stipulated in the agreement of appointment. And even if, as contended by the defendant, the refusal of approval by the department had the effect not merely of terminating the appointment but of rendering the contract altogether non-existent one should have thought that the defendant would be liable to pay the plaintiff a proper salary for her services in accordance with the principle embodied in Section 70 of the Indian Contract Act.

It is clear that the plaintiff did not intend to render service gratuitously, but expected the salary stipulated. There can be no doubt that the service rendered was lawful. The defendant has no case that he is not the proprietor of the school and that in appointing the plaintiff and accepting her services he was merely acting

as an agent for somebody else. It follows that he has enjoyed the benefit of the plaintiff's service and must pay for it.

5. It is not disputed that the salary claimed by the plaintiff is the salary on which she was appointed or that the plaintiff is not entitled to the interest she has claimed on the salary wrongfully withheld.

6. I allow the petition and decree the plaintiff's suit with costs both here and in the court below.

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