Varkey Vs. State of Kerala

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Court : Kerala

Decided On : Mar-29-2005

Reported in : 2005(2)KLT468

Judge : M. Ramachandran and; K.P. Balachandran, JJ.

Acts : Kerala Educational Act - Sections 2(5); Kerala Educational Rules - Rules 14A(7), 44(1), 44(2) and 46; Constitution of India - Articles 12, 30 and 30(1); Kerala University Act

Appeal No. : W.P. Nos. 25418 and 26399 of 2004

Appellant : Varkey

Respondent : State of Kerala

Advocate for Def. : K.T. Thomas, Adv. and; Augustin Joseph, Government Pleader

Advocate for Pet/Ap. : V.M. Kurien,; A.V. Thomas and ; Mathew B. Kurian

Judgement :

M. Ramachandran, J.

1. Government Order dated 17.2.2004 and the follow up order passed by the Government, on an application for review thereof, dated 31.7.2004, marked as

Exts.P3 and P6 in W.P. (C) No. 25418 of 2004 are respectively marked as Exts. P8 and P10 in W.P.(C) No. 26399 of 2004. Mr. P.V. Varkey, a teacher working in the Sacred Heart Orphanage High School, Mookkannur, is the petitioner in the earlier Writ Petition. The school management is the 5th respondent therein. The Manager is the petitioner in the later proceedings, wherein Mr. P.V. Varkey is the 5th respondent. Taking notice of the circumstance that an interim order had been passed in the Writ Petition filed by the management, there was urgency shown by the teacher concerned to get the Writ Petitions disposed of. The effort of the teacher was to see that the orders, referred to earlier, were implemented and the attempt of the school management was to establish that such orders had been passed in violation of law, and deserve to be set aside. We may advert to the facts, as stated in W.P.(C) No. 26399 of 2004, with reference to the documents produced, for convenience.

2. In both the Writ Petitions, the 4th respondent is one C.A. Varghese, whose appointment as Headmaster of the High School, led to the contested proceedings.

3. According to the school management, Sacred Heart Orphanage High School is administered by the Christian Religious Congregation of St.Teresa of Lisieux (CST Brothers), Mookkannur. They claim that the congregation was founded in the year 1931. The school was established and administered by the minority Christian community. It is an aided school, as defined under the Act, meaning a private school which is recognised by and is receiving aid from the Government.

4. The Headmaster of the school had gone on retirement on 17.2.2003. By proceedings dated 17.2.2003, the Manager of the School had appointed Mr. C.A. Varghese (fourth respondent) a High School Assistant, as Headmaster. The appointment order (Ext.) P7 showed that this was subject to the provisions of the Kerala Educational Act and Rules. Although the order certified that there is no qualified teacher existing in service under the Educational agency, who is eligible for promotion to the vacancy for which the appointment was made, understandably this was only a formal recital in conformity with Form 27 of Rule XIV-A(7). Additionally, as if justifying the proceedings, the following sentence also had been recorded therein.

'This appointment is made invoking the right of the management under Article 30(1) of the Constitution of India'.

It appears that as required by the Rules, a copy of the order had been forwarded to District Educational Officer for approval of such appointment. On the very day of the order, Sri.P.V. Varkey (Petitioner in the connected Writ Petition), senior High School Assistant of the School, had filed an appeal under Rule 44(2) of Chapter XIV-A of the Kerala Education Rules against the appointment of Mr. Varghese as Headmaster. He contended that he had entered into service as High School Assistant from 15.7.1975 and was senior to Mr. C.A. Varghese. He had been exempted from test qualifications and therefore was eligible for appointment as Headmaster, as he possessed the prescribed qualifications. With reference to Rule 44(1) of Chapter XIV-A of the K.E.R., he urged that the appointment of Headmaster shall ordinarily be according to seniority from the seniority list prepared and maintained as per the Rules. He was senior as per the staff list prepared and there was no reason for departure from the normal rule. It was his right for being appointed. The invocation of minority rights under Article 30(1) of the Constitution was therefore irregular. He submitted that the school had never been declared as a minority institution and the competent authority for such declaration was the Government alone. He therefore, urged that the appointment conferred on Mr. Varghese should not be approved and there should be a direction to the Manager to appoint him in the vacancy, which had come.

5. From the documents produced, it could be seen that another High School Assistant (Mr. M.T. Varghese) also had put lip a petition before the District Educational Officer pointing out that being the senior most HSA, his claims should not have been overlooked.

6. Parties were heard by the District Educational Officer. He found that the management had not produced any materials to establish that they were having minority rights under Article 30(1) of the Constitution. The certificate produced from the Tahsildar could not have been accepted, according to him, because of the judgment in Writ Appeal No. 3032 of 2001, where it had been held that the Government should be the competent authority to issue certificate of such nature.

Taking notice of the chequered career of Mr. M.T. Varghese, the District Educational Officer found that it would have been possible for the management to take a decision to deny promotion to Mr. M.T. Varghese. But, it did not make the position better for the management, justifying giving promotion to Mr. C.A. Varghese 'outsripping the legitimate claims of Shri. P.V. Varkey, who is fully qualified and senior to the promotee'. The District Educational Officer thereupon rejected the appointment of Mr. C.A. Varghese as Headmaster, by Ext.P2 order dated 3.6.2003.

7. Mr. P.V. Varkey had thereafter filed a petition before the Deputy Director of Education urging that when the application for approval and rejected by the District Educational Officer, there should have been a consequential direction for appointing him as the Headmaster. The management of the school also had filed a statutory appeal on 12.6.2003 challenging the decision of the District Educational Officer. By Ext.P6 order dated 29.11.2003, the Deputy Director (Education), Ernakulam, however, reversed the order of the District Educational Officer and the appeal filed by the Manager of the School was allowed. The argument of the management was that minority schools have the right to appoint persons of their choice as Headmaster and this right is of paramount importance and interference with it will denude the right of administration reducing it to mere husk without grain. It seems that the version put up by the teacher practically had not been adverted to. The Deputy Director held that going through a similar case of the back file of his office, he had found that while disposing of a similar issue invoking minority rights of another institution, it was found that the Government had upheld the appointment carried out by the management. According to him, Mr. P.V. Varkey failed to establish that the school has no minority right. Order of the District Educational Officer, according to him, deserved to be set aside. The appeal was allowed. The DEO had been directed to approve the appointment of Mr. C.A. Varghese as Headmaster, as proposed by the Manager.

8. A revision petition had thereupon been filed by Mr. P.V. Varkey on 4.12.2003. This Court had directed that the matter may be expedited, by judgment in W.P. (C) No. 38660 of 2003. The Government had heard the parties on 31.1.2004. The claim of the school management was that they were having minority right under

Article 30(1) of the Constitution, and they had every right to appoint a duly qualified hand as per their choice. On behalf of the superseded teacher, it had been urged that the school did not have minority status, and in any case, promotion given to Mr. C.A. Varghese was against the principles declared by the judgment of the Supreme Court in T.M.A. Pai Foundation v. State of Karnataka, (2002) 8 SCC 481) and Dr. Varghese M. Mathunni v. State of Kerala, 2003 (2) KLT 858 = ILR Kerala 2003 (3) 346.

9. By Ext.P8 order, the Government held that there was nothing to show that the school was run by a minority organisation as certificate in this regard, from appropriate authority competent to decide the issue, had not forthcome. But, the Government held that this was not immaterial, in view of the judgment in T.M.A. Pai Foundation's case. Government understood the judgment as categorically holding that the State would be entitled to make regulations relating to the terms and conditions of teaching and non-teaching staff of an aided institution. Only unaided institutions were entitled to autonomy in their administration, but in respect of aided institutions the Government can put fetters in the matter of administration and management of the institution. Advertence was also made to the case reported as Rev. Fr. Daniel Kuzhithadathil v. Jose, 2003 (2) KLT 858, where the Court had considered the relevance of the Supreme Court judgment while deciding a case in relation to appointment of Principal of an aided College. The principle had been accepted as relevant. According to the Government, this could be so irrespective of whether or not the institution is being administered by a minority community. Regulations could be validly laid down governing the conditions of service of teachers of private aided schools and therefore, rules prescribed by the Kerala Education Rules had full application. It was noticed that there was nothing pointed out by the school management to allege or substantiate the unsuitability of Mr. Varkey and therefore the contentions raised in the revision petition deserved acceptance and consideration. Resultantly, the earlier order of the District Educational Officer was upheld and the proceedings of the Appellate Authority was thereby considered as having been set aside.

10. The beneficiary of the management's condescension (4th respondent) had thereupon filed a review petition challenging the Government Order. As an interim

stay had been granted for some time more, Ext.P8 was kept in abeyance. But, ultimately on 31.7.2004 the review application had been rejected after hearing the parties. Mr. Varkey had filed a Writ Petition for enforcement of the order as above, and for consequential reliefs, but the veracity of the orders was subjected to challenge by the school management.

11. A learned Judge, who had occasion to hear the matter, felt that taking notice of the decision in Dr. Varghese Mathunny's case as also T.M.A. Pai Foundation case, it is appropriate that the matter be heard by a Bench.

12. We had been taken to the judgments wherein this issue had been subjected to active consideration by various Courts. The point of law as to the right of the minority institutions of exercising their discretion in the matter of conferment of promotion to the post of Headmaster had come up before a Full Bench of this Court in Aldo Maria Patroni v. E.C. Kesavan, 1964 KLT 791. Court had held that although because of Rule 44(1) of Chapter XIV-A of the KER, appointment of Headmasters were ordinarily to be on the basis of seniority as recorded in the seniority list, this did not disable the management of a minority institution to make a departure. This, the Court held, was as a consequence of the pivotal role played by him in the administration of the school. Although a different note had been struck in the later judgments in Joseph v. State of Kerala, 1985 KLT 946, and Dr. Francis v. Dist. Educational Officer, 1988 (2) KLT 403, a Division Bench of this Court, in O.P.No. 5477 of 1989 (Manager, Corporate Educational Agency v. State of Kerala and Ors., 1990 (2) KLT 240, had overruled the above decisions, holding that the Full Bench decision in Patroni's case had to receive obedience, pointing out that the later cases and especially, St. Xavier 's College v. State of Gujarath, AIR 1974 SC 1389, laid down the position with clarity.

13. According to Mr. Kurien, the right to appoint the Headmaster of a school or the Principal of a College, is one of prime importance in the administration of the Institution. The right of the minority to administer an educational institution of its choice requires the presence of a person in whom they can repose confidence, who will carry out their directions, and to whom they can look forward to maintain the traditions, discipline and the efficiency of the teaching. It was of paramount

importance of minority that any interference, otherwise than by prescribing qualifications and experience, will denude the right of administration of its content, reducing it to mere husk, without the grain. According to him, it has been consistently held that such an inroad cannot be saved as a regulation which the State might impose for furthering the standards of education.

14. Although Mr. K.P. Dandapani, appearing for the 5th respondent, submitted that the school management cannot be considered as a minority institution because of want of a proper declaration by competent authorities, and therefore, they had not satisfied the twin test of Article 30 of the Constitution that the institution was not only to be established, but also had to be administered by a minority so as to claim the benefit of protection, we do not think it necessary to go to any such length, since basically the administration of educational institution by a minority has been admitted and therefore established. As far as we could see, serious contentions of this aspect are not warranted. The Christian congregation is running the school and they are accepted as a minority, as far as the Kerala State is concerned. As has been held by the Supreme Court in N. Ammad v. Manager, Emjay High School, AIR 1999 SC 50, there is no argument possible that a minority institution could be accepted as one of such nature, only after a formal declaration. The declaration, if at all, can be only a formal acknowledgment of what it was. Further, as pointed out by Mr. Kurian, appearing for the management, there was no serious dispute about the position as could be gatherable from the earlier appeal filed as Ext.P1, for the argument was that there was no formal declaration. The definition of 'minority schools', under Section 2(5) of the Kerala Education Act, is that there should be schools of the choice of the minority, established and administered, or administered by them as emanating from the right conferred on them under Article 30(1) of the Constitution. Further, in paragraph 4 of the counter affidavit filed by the 5th respondent dated 5.10.2004, he admits that the documents produced by the management only indicate that 'the school is now administered by a minority Christian community'.

15. We will have also to take notice of a recent judgment of a Division Bench of this Court in Haji Abdul Salam v. State of Kerala, 2004 (3) KLT 826, holding that the benefit of Article 30(1) of the Constitution is available to a single philanthropic

individual, if, he being a member of the minority community, has established and maintained an institution. Of course, reliance on the decision of the Supreme Court in State of Kerala v. V.R.M. Provincial, (1970) 2 SCC 417, followed by St.Thomas U.P.School v. Commissioner and Secretary to Government, 2002 (1) KLT 655 (SC), was made therein. Therefore, we have to uphold the claims as had been urged by the management of the school that it is in all sense a minority institution, as recognized by the Kerala Education Act, with reference to Article 30(1) of the Constitution of India, as acceptable.

16. However, the question is whether the right of absolute discretion enjoyed by a minority management in the matter of selection of Headmaster, which stood accepted for decades continue even as of now. As doubted by the learned Single Judge, Justice Thottathil B. Radhakrishnan, perhaps a fresh look might be warranted because of the weighty observations made by a 11 member Bench of the Supreme Court in T.M.A. Pai Foundation v. State of Karnataka, (2002) 8 SCC 481. In the matter of appointment to the post of a Principal under the Kerala University Act, applying the principles laid down by the Supreme Court in Mathunny's case (cited supra), a Division Bench had held that in respect of aided institutions, the Government or the State agency can put fetters on the freedom, in the matter of administration and management of the institution. The Division Bench further held that the inevitable inference from the observations is that acceptance of aid by the institution takes away its right to claim immunity from interference. Aid carries a price tag. The institution has to give up a part of its independence. This is so despite the fact that the institution is being administered by a minority community. Reliance was placed by the Government while passing Ext.P8 on the above said two judgments. (It may be pointed out that the decision relied on, namely Rev. Fr. Daniel Kuzhithadathil v. Jose, 2003 (2) KLT 898, is the very same, as reported in ILR Kerala 2003 (3) 346 (Mathunny's case), since six Original Petitions had been disposed of by a common judgment).

17. Learned counsel for the school management submits that the Division Bench judgment can give no guidance as it concerned an issue of appointment of a Principal under the Kerala University Act and the present issue is one concerning appointment of Headmaster under the Kerala Education Act and Rules.

18. Therefore, we may examine the rival contentions with reference to the Kerala Education Rules in the light of the Supreme Court judgment in T.M.A. Pai Foundation's case. Rule 44(1), as referred to earlier, provides that ordinarily appointment of Headmasters shall be according to seniority. The Manager is expected to appoint the Headmaster, as authorised by the stipulations as appearing in Chapter XIV-A of the Kerala Education Rules. Admittedly, the claims of senior employees had been overlooked and the appointment order (Ext.P7) specifically showed that it was by invocation of the rights under Article 30(1) of the Constitution of India. The consequential proceedings show that two senior superseded hands had objected to the appointment, namely Sri.P.V. Varkey (5th respondent herein) and Sri.M.T. Varghese. Sri.M.T. Varghese has backed out after suffering an adverse order at the earlier rounds and it could be presumed that he had resigned to his fate and was not interested in stating the claim. However, that is not the case with reference to the claims of Sri.P.V. Varkey; he had been doggedly pursuing it.

19. At the time of issuance of Ext.P7 order, and even on the date of the order of promotion, the judgment in T.M.A. Pai Foundation's case had come to be passed and the rights and obligations of the parties were to be governed by the law declared by the Court on 31.10.2002. The Government has understood the legal position, as above. The impugned order had specifically referred to paragraph 73 and 138 of the judgment, and we may examine whether the Government was right and justified on relying on the same.

20. In paragraph 72 of the judgment, the Supreme Court had dealt with cases of private aided institutions, which were in the category of non-minority. In the following paragraphs, it has been held that once aid is granted to such an institution, Government can put fetters on the freedom in the matter of administration and management of the institution. The State would also be under an obligation to protect the interest of the teaching and non-teaching staff. Paragraph 73 dealt with 'other aided institutions'. Although the institutions might have been established by philanthropists or other public-spirited persons, they may need aid from the Government. According to the Court, thereupon the Government will be entitled to make regulations relating to the terms and

conditions of employment of the teaching and non-teaching staff.

21. Thereafter, the Court had posed the question as following, in paragraph 93 of the judgment:

'93. Can Article 30(1) be so read as to mean that it contains an absolute right of the minorities, whether based on religion or language, to establish and administer educational institutions in any manner they desire, and without being obliged to comply with the provisions of any law? Does Article 30(1) give the religious or linguistic minorities a right to establish an educational institution that propagates religious or racial bigotry or ill will amongst the people? Can the right under Article 30(1) be so exercised that it is opposed to public morality or health? In the exercise of its right, would the minority while establishing educational institutions not be bound by town planning rules and regulations? Can they construct and maintain buildings in any manner they desire without complying with the provisions of the building bye-laws or health regulations?'

In due course, after an examination of the whole scenario, it was held in paragraph 107, that the right under Article 30(1) is not so absolute as to prevent the Government from making any regulation whatsoever. It was pointed out that it is, of course, true that Government regulations cannot destroy the minority character of the institution or make the right to establish and administer, a mere illusion. However, it was held that 'the right under Article 30 is not so absolute as to be above the law'. With approval, the observation of Chief Justice in Rev. Father W. Proost v. State of Bihar, AIR 1969 SC 465, was quoted. The right to administer is said to consist of four principal characteristics, namely the right to choose its managing or governing body, the right to choose its teachers, the right not to be compelled to refuse admission to students and the right to use its properties and assets for the benefit of such institution. However, the Court also had noted that the right to administer was not an absolute right nor to be set free from regulations. The learned Judges had summed up that the rights under Article 30(1) are not absolute. There were no reasons, according to the Supreme Court, as to why regulations or conditions concerning generally the welfare of the students and teachers should not be made applicable in order to provide a proper academic

administration, as such provisions do not in any way interfere with the right of administration or management under Article 30(1) of the Constitution.

22. Dilating on the issue, Court went on to observe that the said Article is a word of guarantee or assurance to the minority institutions of their rights to establish and administer educational institutions of their choice. Any law or rule or regulation that would put the educational institutions run by the minorities at a disadvantage, when compared to the institutions run by others will have to be struck down. At the same time, there also cannot be any reverse discrimination. With approval, the passage from St.Xavier's College case, referred to earlier, had been quoted.

'The whole object of conferring the right on minorities under Article 30 is to ensure that there will be equality between the majority and the minority. If the minorities do not have such special protection they will be denied equality'. (Para. 138)

23. In explicit terms, we find, the Apex Court had clarified that the essence of Article 30(1) is to ensure equal treatment between the majority and the minority institutions.

'No one type or category of institution should be disfavoured or for that matter, receive more favourable treatment than another. Laws of the land, including rules and regulations, must apply equally to the majority institutions as well as to the minority institutions. The minority institutions must be allowed to do what the non-minority institutions are permitted to do'.(Para. 138).

24. The concurring judgments of the other learned Judges on this point also had been relied on by the learned counsel appearing for the teacher. (See paras.395,404 and 449 of the judgment). Justice Ruma Pal apparently has given a dissenting note, in paragraph 364, but the printed text of the observation does not appear to tally with the conclusion of the majority opinion, as from the context and as could be gatherable. (Para. 138). 25. This opinion is not something starkingly new or nascent. We may quote a passage spoken by Justice Khanna from St.Xavier's case (AIR 1974 SC 1389): (Para. 138).

'The idea of giving some special rights to the minorities is not to have a kind of the privileged or pampered section of the population but to give to the minorities a sense of security and a feeling of confidence'.

Further, the quotation, referred to by Justice K.K. Mathew in the self same decision, extracted herein below appears to be prophetic.

'Ail rights tend to declare themselves absolute to their logical extreme. Yet all in fact are limited by the neighbourhood of principles of policy which are other than those on which the particular right is founded, and which become strong enough to hold either own when a certain point is reached'.

26. We are of the opinion that the pronouncement of the Full Bench in Patroni's case, 1964 KLT 791, therefore cannot any more be considered as binding precedents.

27. Mr. K.P. Dandapani, counsel for the teacher, submits that the pivotal role of a Headmaster, referred to by the Division Bench and Full Bench, in fact is based on an exaggerated misconception of the powers conferred by the Act and the Rules on the said teacher. According to him, as far as an aided school is concerned, the Manager is the seat of the power. He is the owner of the premises, buildings and furniture; has the power of appointment, power for initiating disciplinary action against teaching and non-teaching staff and is the custodian of every records. He is the only authority empowered to enter into correspondence with the Department and could wield policy or procedure. A Headmaster has only supremacy in the academic matters and discipline of students. Generally, under supervision of the Department, rules and departmental instructions issued from time to time are to be scrupulously obeyed by him. There is no scope for exercise of any discretion at the level of the Headmaster and is situated at a distance from actual seat of administration. He is not a part of the management. It is suggested that a Principal of a College, under the University Act, perhaps is part of the managing council and could be considered as having more initiative conferred on him at least on certain areas.

28. The submission appears to be factually justified on a cursory examination of the provisions of the Act and the rules. We are forced to observe that the pivotal role of a Headmaster can only be a blowed up myth but not found in practical life. In the anxiety of the Division Bench to follow the reasoning of the Full Bench decision, we notice that the Bench had gone to the extent of stating the following in paragraph 33:

'Necessarily, there will be contentment in teachers with a chance of promotion as Headmaster. But a teacher entering service in a minority institution knows full well, having regard to the decision in Patroni 's case, that he does not ordinarily have the right to be posted as Headmaster and that it will depend on the selection made by the management. Contentment in service in a minority educational institution is not therefore, affected by leaving the choice of Headmaster to the educational agency'.

29. Now that the basis of the observations has been washed out, we may point out that the remark as above made by the Division Bench was too uncharitable, A right for development of career and harbouring of aspirations, cannot be a sin. Hopes about future are likely to bring out the best in a person. The observations of the Bench may appear to support a position that a teacher of a minority institution, has to resign to his fate and always remain anxious about the good moods of the Manager, even careful not to cross his path, even when the rules but explicitly provide that career progression is upon seniority. The situation spoken to by the Division Bench relegates the position of a teacher to that of hare, in a smithy trapped beneath the hammer line of blacksmith. He is in perennial fear of the next blow which may smash his skull. We are sure that this position, in any case, does not go hand in hand with human dignity. Initiative is not intended to be wrested away, making the teacher an empty shell. He is entitled to equal protection of laws. Manager of a school is undoubtedly an authority amenable to writ jurisdiction though may not come under the purview of Article 12 of the Constitution of India (See 1984 Supp. SCC 540 (Manmohan Singh Jaitla v. Commissioner, Union Territory of Chandigarh) and (1989) 2 SCC 691 (Andi Mukta S.M.V.S.S.J.M.S. Trust v. V.R. Rudani). It will be a paradox that such a person can be the seat of arbitrariness, on the plea of rights of administration.

30. We also find that no reasons have been given by the management for superseding the claims of an experienced teacher, who had no black-mark in his career and who belongs to the same community, which is running the school. Note to Rule 44(1) requires the Manager to obtain a written contest from the senior claimant renouncing his claim permanently. The word used is 'renouncement' which obviously discloses the legislative intent. Article 30(1) of the Constitution could not have been employed so as to circumvent this right or obligation. Rule 46 of chapter XIV-A of K.E.R. requires express approval from the Director of Public Instructions, if there was deviation made from the rules, in the matter of confirmations and promotions. Scant respect has been shown to these provisions. The anxiety of the rule makers to see that arbitrariness was not practised, has been successfully circumvented, which we cannot at all endorse.

31. There is also another danger looming large, if we accept the contention of the management. Unbridled power is not to be given to every minority institutions for resorting to a right for selection overlooking the claims of eligible teachers in public interest. There has been number of decisions which show that minority rights can be claimed by an individual for establishing and maintaining an institution. Ipse dixit of such individual can mar the career prospects of a senior teachers, if we approve the argument that the right of supersession is absolute. As held by the learned Judges in T.M.A. Pai Foundation's case, predominently the spirit of the Article has to be imbibed. There was no intention to confer unbribled powers to minorities over and above or in excess of that was available to members of non-minority. The exercise of powers, we can see as in this case, has resulted in distrust, litigation and favouritism. A much needed whiff of fresh air has been brought in by the decision in T.M.A. Pai Foundation's case. The cob webs require to be cleaned up.

32. W.P.(C) No. 26399 of 2004 is therefore dismissed and Exts.P8 and P10 are upheld. We declare that the 4th respondent -- Sri.C.A. Varghese was not entitled to be appointed as Headmaster of the concerned school on 17.2.2003. Ext.P7 had been issued in excess of the powers that were vested in the Manager, and the District Educational Officer had rightly declined approval. The appellate order (Ext.P6) therefore was rightly set aside, as already done by the Government.

33. Since Sri.M.T. Varghese had withdrawn from the proceedings, we think it is appropriate that the 5th respondent herein is to be granted the fruits of his labour. He will be entitled to be treated as Headmaster effective from 17.2.2003, but of course notionally. As he had already reached the age of superannuation, and is to formally retire on 31.3.2005, we direct the respondents concerned to grant him a notional fixation of pay consequent to this declaration, which would reflect in his pensionary benefits as well. He need not be given any back wages nor issued with an order for appointment as Headmaster, as it is of no useful purpose. Fresh appointment order is to be issued to the 4th respondent, if he is the senior most person eligible for promotion as Headmaster in the vacancy which occurs on 1.4.2005, of course to be duly approved as and when made. As he had discharged the duties, during the pendency of these proceedings, he is to be permitted to retain the monetary benefits so far received. But, the service up to 31.3.2005 will be deemed for all other purposes, as rendered in the category of a HSA only.

34. Since we had upheld Exts.P8 and P10, no further orders are necessary to be passed in W.P.(C) No. 25418 of 2004 and the benefit of observations and directions made therein would be available to the petitioner herein. Consequential formal proceedings, incorporating the above directions are to be drawn up by the District Educational Officer, forthwith.

The Writ Petitions are disposed of -as above. Parties to suffer their costs.