

Eliakutti (P.T.) Vs. St. Francis High School (by Manager) and ors.

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SooperKanoon Citation : sooperkanoon.com/723307

Court : Kerala

Decided On : May-23-1967

Reported in : (1968)ILLJ54Ker

Judge : V.P. Gopalan Nambiyar, J.

Appellant : Eliakutti (P.T.)

Respondent : St. Francis High School (by Manager) and ors.

Judgement :

V.P. Gopalan Nambiyar, J.

1. The petitioner was appointed as a temporary full-time teacher in the St. Francis High School, Mattom, from the academic year 1962-63 and continued year after year till the year 1964-66. For the year 1966-67 her appointment was not approved by respondent 2, the District Educational Officer, Chowghat. For the year 1966-67, a post of permanent full-time music teacher for the school was sanctioned and the petitioner was appointed thereto, by respondent 1 from 6 June 1966 and the department's approval was sought by Ex. P 1. It is the petitioner's case that respondent 3, the regional Deputy Director of Public Instruction, issued Ex. p. 2 communication dated 14 June 1966 to the manager, St. Francis High School, Mattom (respondent 1), with copy to respondent 3, stating that respondent 4 has a claim to be appointed full-time music teacher in the school and directing the manager to take appropriate action in the matter. Respondent 2 in turn addressed

the manager by Ex. P. 3 communication dated 26 August 1966. Therein, he referred to Ex. P. 2 o communication of respondent 3 and directed the manager that the full-time post of music teacher for 1963-67 should be filled by respondent 4. Respondent 1, the manager of the school, recited Exs. P. 2 and P. 3 communications, and by his Ex. P. 4 proceedings, ordered that he was 'constrained' to appoint respondent 4 and to relieve the petitioner for the year 1966-67. This writ petition is to quash Exs. P. 2, P. 3 and P. 4 and to direct respondent 2 to approve the appointment of the petitioner as music teacher for the years 1965-66 and 1966-67.

2. The main grounds urged by the petitioner's counsel were that Ex. P. 4 order was inspired and dictated by the educational authorities, respondent 2 in his turn having been directed by his official superior, respondent 3. It was also argued that the petitioner had a preferential claim for the post of music teacher and respondent 4 had no claim to be appointed to it.

3. A reading of Exs. P. 2, P. 3 and P. 4 orders leaves an impression in the first blush that Ex. P. 4 was passed under the influence of the directions contained in Exs. P. 2 and P. 3. But the facts disclosed in the counter-affidavit filed on behalf of respondents 1, 3 and 4 seems to dispel such an impression. The facts disclosed are as follows:

The petitioner was an unqualified hand who was working in the school, from 1962-63 onwards, purely on a temporary and provisional basis under Chap. XXC, Rule 2(1), of the Kerala Educational Rules. By the said rule, where qualified candidates are not available, the manager may, with the approval of the District Educational Officer, provisionally appoint unqualified hands till qualified hands became available. The duration of the appointment in is no case to go beyond the school-year in which the appointment is made, and availability of qualified hands is to be ascertained again, and the approval of the District Educational Officer obtained before the candidate is appointed again in the next school-year. The rule makes it clear that unqualified hands appointed thereunder have no preferential claim to future appointment. The petitioner's appointment for 1965-66 was admittedly not approved by the District Educational Officer (vide Para. 2 of the petitioner's

affidavit). The petitioner acquired the requisite qualification for appointment only on 1 August 1966. The appointment for the year 1966-67 was from 6 June 1966. Respondent 1 appointed the petitioner and sought approval of the appointment from 6 June 1966 by Ex. P. 1 communication. It has been alleged in the counter-affidavit of respondents 3 and 4, that the approval sought for was declined, by an order dated 16 September 1966 which was made available to me from the files by the counsel appearing for respondent 3. The petitioner has not chosen to challenge the order declining approval for her appointment for the year 1966-67. Nor has she challenged the order declining approval for 1965-66. Without doing so, the prayer for mandamus directing respondent 2 to approve, her appointment for the years 1965-66 and 1966-67 cannot be entertained.

4. It has been brought out that respondent 4 was a teacher, with a long and continuous service from 1952 in the St. Francis High School, Mattom, as a part-time music teacher. She was fully qualified to be a music teacher entitled to teach music in the upper primary classes. Till the year 1962-63, respondent 4 was working in the St. Francis High School and St. Mary's Convent Lower Primary School under a clubbing arrangement. For 1962-63 one permanent part-time music teacher and one temporary full-time music teacher were sanctioned for the St. Francis High School. Respondent 4 continued as part-time and the petitioner was appointed as a full-time music teacher on a temporary basis. For 1963-64, the staff provision for a part-time music teacher was disallowed, but the petitioner's deputation work was sanctioned by the District Educational Officer for the said year, and the petitioner continued to receive the salary for her part-time work.

5. But for 1964-65 she could not receive her salary although she was working in the school as per the directions of the management. She therefore represented to the department for her arrears of salary. Exhibit R. 5 dated 9 October 1964 is a copy of her representation. No action would appear to have been taken thereon but instead, the petitioner's appointment for the year was sanctioned by the District Educational Officer's proceedings dated 29 October 1964. Against the said reappointment, respondent 4 represented (vide Ex. P. 7 to the Regional Deputy Director of Public Instruction. The representation was endorsed by respondent 1's covering letter, a copy of which is Ex. P. 8. These are referred to in Ex. P. 2

communication of respondent 3. In the context, taken along with the fact that the approval of the petitioner's appointment for the year 1966-67, came to be refused by an order dated 15 September 1966, which remains unchallenged, I cannot accept the contention of the petitioner's counsel, that Ex P. 4 order has been influenced by dictation or direction from the educational authorities.

6. It is clear also that the petitioner was an unqualified hand who acquired the requisite qualification only on 1 August 1966. Her appointments in the prior years were pro-visorial under Chap. XXI, Rule 2(1), of the Kerala Educational Rules. They do not confer any preferential claim on the petitioner.

7. Respondent 4 counsel raised the contention that granting the prayers of the petitioner who is a teacher in a private aided school would amount virtually to specifically enforcing a contract of employment and the same ought not to be countenanced in writ proceedings. He has cited authorities in support of the propositions, but in the view I take, it is unnecessary to refer to them.

8. I dismiss the writ petition, but make no order as to costs.