

Abdul Rahman Vs. State of Kerala

Abdul Rahman Vs. State of Kerala

SooperKanoon Citation : sooperkanoon.com/725078

Court : Kerala

Decided On : Apr-26-2005

Reported in : 2005(3)KLT250

Judge : A.K. Basheer, J.

Acts : Kerala Education Rules, 1959 - Rules 65, 65(1) and 75; Kerala Civil Service (Classification, Control and Appeal) Rules, 1960 - Rule 11(1)

Appeal No. : W.P. No. 26567 of 2003

Appellant : Abdul Rahman

Respondent : State of Kerala

Advocate for Def. : P.K. Shakeela, Government Pleader,; V. Chitambaresh and;

Advocate for Pet/Ap. : K. Jaju Babu and; M.U. Vijayalakshmi, Advs.

Judgement :

A.K. Basheer, J.

1. These two Writ Petitions are filed by a former Headmaster of an aided Upper Primary School. Since the issues involved in the two cases are closely interconnected, they are being disposed of by this common judgment.

2. Relevant facts may be briefly noticed.

3. The petitioner was placed under suspension by the Manager with effect from August 15, 2002 on certain allegations of misconduct, irregularities in implementing the Noon Feeding Scheme etc.

4. After the enquiry conducted by the Assistant Educational Officer under Rule 75 of Chapter XIV-A of the Kerala Education Rules, the Manager had proposed to dismiss the petitioner from service. However the District Educational Officer, Palakkad took the view that the proposed punishment was disproportionately high. Thereafter the Manager had passed an order (Ext.P-2) reverting the petitioner from the post of Headmaster to that of lower grade full time Arabic Teacher. Though the above order was challenged by the petitioner before the Appellate Authority and the Revisional Authority, the order passed by the Manager was confirmed. The petitioner has challenged the above orders in W.P.No. 35630/2003.

5. In W.P.No. 26567/2003 the primary prayer made by the petitioner is for a declaration that he is entitled to be posted as Headmaster with effect from August 1, 2003, since the period of six months had expired after issuance of Ext.P-2 order by the Manager imposing the punishment. According to the petitioner, he had pointed out to the Manager that since the order of reversion was not either permanent or temporary for a specified period, he could not be put in a lower post indefinitely. But his request to promote him to the post of Headmaster was not acceded to.

6. There is no dispute that the punishment of reduction in rank was imposed on the petitioner under Rule 65(1)(iv) of Chapter XIV-A of the K.E.R. Thus, the petitioner was reverted from the post of Headmaster to that of lower grade full time Arabic Teacher with effect from February 1, 2003, the date on which Ext.P-2 order was passed by the Manager. It is also beyond controversy that the Manager had not specified the period of reduction in rank. In other words, it was not indicated in Ext.P-2 order whether reduction to the lower post was either permanent or temporary for a specified period. The contention of the petitioner is that if the period of reduction to a lower rank in seniority list, or to a lower grade or post, or time scale is not specified in the order, the period of reduction shall be deemed to

be six months. The above contention is raised by the petitioner on the strength of the Note incorporated under Rule 65. The relevant rule and the Notes thereunder are extracted below:

'65(1)(iv): Reduction to a lower rank in seniority list or to a lower grade or post or time scale.

Note.-

(1) The reduction referred to may be either permanent or temporary for a specified period.

(2) Temporary period of reduction shall not be less than six months and not more than two years. If the period is not specified in the order, the period of reduction shall be deemed to be six months.'

A perusal of the above provision incorporated in the Note under Rule 65 undoubtedly shows that the contention of the petitioner deserves acceptance.

7. However it is contended on behalf of respondent No. 5, the Manager, that the order of reduction in the post was intended to be permanent. In fact, the Manager had proposed to dismiss the petitioner from service in the nature of the proved misconduct. But the petitioner could not be dismissed because the District Educational Officer took the view that such a punishment would be excessive. Learned counsel submits that Ext.P-2 order has to be read and construed in the above context. The petitioner had by his conduct and antecedents proved unworthy to continue as Headmaster. Therefore the Manager had reverted the petitioner to the lower post of language teacher.

8. It is further contended by the Manager that the request made by the petitioner to promote him as Headmaster was already rejected and the order was conveyed to the petitioner by communication dated August 16, 2003. A copy of the communication has been placed on record as Ext.R-5(e). It is contended by the learned counsel that in Ext.R-5(e) it was made clear that the reduction in rank was of a permanent nature. The said order/communication has not been challenged by the petitioner so far. It is therefore contended by the learned counsel that in view

of Ext.R-5(e) order the petitioner cannot contend that he is liable to be promoted after the expiry of six months from the date of Ext.P-2 order. The above contention raised by the Manager is wholly untenable. No sanctity or impunity can be attached to an action which has no statutory backing. Since the order of reduction did not specify the period, it has to be necessarily held that the said order shall be deemed to be in force only for a period of six months.

9. In *Sethu Jayasree Bhasker v. Travancore Devaswom Board*, 1993 (1) KLT 920, a Division Bench of this Court had occasion to consider an identical provision in Kerala Civil Service (Classification, Control and Appeal) Rules, 1960 viz., Rule 11(1)(v) and the Note appended thereunder, which are extracted below:

'11(1)(v): Reduction to a lower rank in the seniority list or to a lower grade or post or time scale whether in the same service or in another service, State or subordinate, or to a lower stage in a time scale;

Note.--(1) The period of reduction shall not be less than six months and not more than five years. If the period is not specified in the order, the period of reduction shall be deemed to be six months.'

10. Referring to the above Note, the Division Bench held that reduction to a lower rank in the seniority list or to a lower grade or post as the case may be, has to be restricted to six months, if the period is not specified in the order.

11. In any view of the matter, since there is no ambiguity in Note 2 to Rule 65(1)(iv), the Manager could not have refused to appoint the petitioner as Headmaster after the expiry of six months from the date of Ext.P-2 order.

12. Having regard to the entire facts and circumstances I have no hesitation to hold that the petitioner was entitled to be appointed as Headmaster with effect from August 1, 2003. It is declared so. Therefore the petitioner shall be deemed to have been in service in the school as Headmaster with effect from August 1, 2003 and he shall be entitled to get all the consequential benefits attached to the post.

13. In view of the finding in W.P. No. 26567/2003 that the petitioner was entitled to be promoted as Headmaster with effect from August 1, 2003, the reliefs prayed for

in W.P. No. 35630/2003 have become infructuous. Accordingly W.P. No. 35630/2003 is dismissed as infructuous.

W.P. No. 26567/2003 is allowed in the above terms.

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