

Shaji Vs. Ramachandran

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Court : Kerala

Decided On : Feb-24-2003

Reported in : 2003(2)KLT814

Judge : Jawahar Lal Gupta, C.J. and; Kurian Joseph, J.

Acts : Kerala Education Rules, 1959 - Rule 1, 2, 5 and 6

Appeal No. : O.P. Nos. 28843, 11629 etc. of 2002

Appellant : Shaji

Respondent : Ramachandran

Advocate for Def. : N. Nandakumara Menon and; T.G. Rajendran, Advs. and; Abd

Advocate for Pet/Ap. : Benoy Thomas and; M.V. Bose, Advs.

Judgement :

Jawahar Lal Gupta, C.J.

1. Does a teacher have an indefeasible right to be appointed as the Headmaster/ Principal of the School merely on the basis of his seniority? Can the State Education Department compel the School Manager of an aided school to appoint the senior most teacher as the Head of the Institution despite the fact that criminal cases involving moral turpitude are pending against him? Primarily, these are the

issues that arise in this bunch of cases.

2. The post of Principal, S.N.V. Sanskrit Higher Secondary School, North Parur, is the bone of contention. The primary contestants are Mr. P.K. Ramachandran Nair (referred to as the petitioner) and Mr. M.V. Shaji (the sixth respondent). The contest between the two has led to these eight cases. Learned counsel for the parties are agreed that the facts as given in O.P. No. 28843 of 2002 may be noticed.

3. The petitioner was appointed as a High School Assistant on July 15, 1976. He has continued to hold this post. In the seniority list reflecting the position as on January 1, 2001, he is shown to be the senior most teacher in the school.

4. On April 1, 2002, the post of Headmaster in the School was likely to fall vacant on the retirement of the original incumbent. On March 22, 2002, the Deputy Director sent a communication to the Manager. He directed that the post be filled up according to seniority. A copy of this communication has been produced as Ext.P4. In anticipation of the coming events, the petitioner staked his claim. He submitted a representation dated March 28, 2002 claiming that he was entitled to be appointed as Headmaster on the retirement of the incumbent on March 31, 2002. However, the petitioner's request was not accepted. Vide order dated April 1, 2002, Mr. Shaji, the 6th respondent, was appointed as the Principal of the School. A copy of the order is Ext.P2. The case was forwarded to the District Educational Officer for approval. The petitioner submitted a representation challenging the validity of the order. His challenge was accepted by the District Educational Officer vide order dated May 17, 2002. A copy of the order has been produced as Ext.P5.

5. After having submitted the case for the approval of the appointment of respondent No. 6 as the Principal, the School Manager approached this Court through a petition under Article 226 of the Constitution. He prayed for the issue of a direction to the State of Kerala and others to accord approval to the appointment of the Principal. This petition was registered as O.P. No. 11629 of 2002. On July 22, 2002, a learned Single Judge of this Court gave an interim direction that the matter be considered and decided within one month. A copy of the order has been

produced as Ext.P6. The authority considered the matter. Vide order dated August 29, 2002, the proposal was rejected. A copy has been produced as Ext.P7.

6. After the Department had refused to approve the appointment of the 6th respondent as Principal, the petitioner submitted a representation dated September 21, 2002 to the School Manager, the 5th respondent herein. A copy of this representation has been produced as Ext.P8. Less than a week later, he submitted another representation dated September 27, 2002 to the 4th respondent viz. the District Education Officer. A copy is Ext.P9. On October 3, 2002, the District Educational Officer directed the School Manager to promote the senior most teacher as the Headmaster. A copy of this communication has been produced with a Miscellaneous Application as Ext.P10. On December 27, 2002, the Secretary to the Government addressed a communication to the 5th respondent directing that a suitable, qualified and senior most High School Assistant be appointed as Headmaster with additional charge as Principal. A copy of this communication was produced by the petitioner through a Civil Miscellaneous Petition as Ext.P11. However, finding that the respondents were not responding favourably, the petitioner approached this Court through the present petition with the prayer that a writ, order or direction be issued to the 5th respondent to promote and appoint him as 'Headmaster of the S.N.V. Sanskrit Higher Secondary School with the additional charge of the Principal of the School.' He further prayed that a direction be given restraining the 6th respondent from functioning as Headmaster/Principal.

7. The respondents contest the petitioner's claim. A counter affidavit has been filed by the 5th respondent. No reply was filed by the other respondents. In this counter affidavit, the School Manager has pointed out that the post had fallen vacant on April 1, 2002 after the original incumbent had retired on superannuation on March 31, 2002. The 6th respondent was selected by a duly constituted Selection Committee as the Principal of the School. Thus, the claim as made by the petitioner for appointment as Principal cannot be sustained. He further points out that vide communication dated December 27, 2002, the Government had directed him to appoint a suitable and qualified person as Headmaster. So far as the petitioner is concerned, he is not suitable. In this behalf, it was specifically

mentioned that he is 'involved in several criminal cases involving moral turpitude.' One of these was a case under Section 185 of the Motor Vehicles Act, 1988 and Section 279 of the Indian Penal Code. It is alleged that he was driving the vehicle in a rash and negligent manner while under the influence of alcohol. A copy of the First Information Report was produced as Ext.R5(A). A second case viz. Crime No. 188 of 1999 was stated to be pending in the Court of Judicial Magistrate First Class, Paravoor for an offence punishable under Section 354 of the Indian Penal Code. The petitioner was also involved in the Criminal Case No. 346 of 2001 before the Judicial Magistrate of the First Class, Aluva for an offence punishable under Sections 447 and 354 of the Indian Penal Code. An extract from the proceedings has been produced as Ext.R5(B). It was further pointed out that the petitioner used to remain absent from duty. His attendance in the School is 'very low'. He has not qualified the prescribed test. The post of Principal has academic and administrative responsibilities. The petitioner is not fit to hold the post. On the basis of the circular issued by the Department vide letter dated April 22, 1972, it is claimed that promotion could not be given to a person against whom any criminal case involving moral turpitude is pending. On this basis, it is prayed that the Writ Petition be dismissed and the 6th respondent be allowed to continue.

8. The petitioner has not filed any affidavit to controvert the averments as made in the counter affidavit.

9. A brief reference to the other cases may also be made. Besides the petition filed by the petitioner, the 6th respondent has filed a petition under Article 226 of the Constitution with the prayer that a writ of mandamus be issued to the Department directing that his appointment be approved. This petition has been registered as O.P. No. 28764 of 2002. The 5th respondent has filed two petitions viz. O.P. Nos. 35406 and 36574 of 2002 regarding the release of salary and permission to the 6th respondent to issue the salary bills etc. These cases are also fixed for hearing with the present petition.

10. The petitioner filed various miscellaneous applications praying for an interim direction regarding his appointment. The matter was considered by the learned Single Judge. Vide order dated January 16, 2003, the objections taken by the

Manager regarding the appointment of the petitioner were virtually over-ruled and it was observed that the petitioner was eligible to be considered for appointment as Headmaster in the light of Rule 44 read with Rule 44A. Accordingly, the miscellaneous petitions were allowed and a direction for his appointment was given. Aggrieved by the interim order passed by the learned Single Judge, the School Manager (5th respondent in the Original Petition) has filed Writ Appeal No. 193 of 2003. The 6th respondent has filed Writ Appeal No. 204 of 2003. Still further, the petitioner has filed C.C.C. No. 125 of 2003 for the non-compliance of the order passed by the learned Single Judge on January 16, 2003. Thus, we have these eight cases.

11. We have heard learned counsel for the parties primarily in O.P. No. 28843/2002 filed by the petitioner with the prayer that a direction for his appointment as Headmaster of the S.N.V. Sanskrit Higher Secondary School with the additional charge of Principal be issued. Mr. Nandakumara Menon, learned counsel for the petitioner, has contended that in view of the provisions contained in Rule 44 of Chap.XIV(A) of the Kerala Education Rules, the post of Headmaster has to be filled up by promotion from amongst the High School Assistants 'according to seniority.' Since the petitioner is the senior most teacher in the School, he has a right to be promoted as Headmaster. Learned counsel has pointed out that despite directions from the Secretary, the 5th respondent has failed to perform his duty. Thus, he should be compelled to do so by the issue of a writ of mandamus. Mr. Rahim, learned Senior Government Pleader, has supported the claim as made by the counsel for the petitioner primarily on the ground that the post of Principal in the Higher Secondary School has not been sanctioned. He has also placed reliance on the order issued by the Government of Kerala vide circular dated February 1, 1991. It has been provided that the Headmaster will be re-designated as Principal and paid Rs. 250 per month as special pay. Mr. Rahim submits that in view of this circular, the claim as made by the petitioner deserves to be accepted.

12. On the other hand, Mr. M.V. Bose, learned counsel appearing for the School Manager, has contended that the petitioner is not qualified to act as the Principal of a Higher Secondary School. His record is not good. He is not suitable. Thus, he cannot be appointed. He has further submitted that the 6th respondent was duly

selected by regularly constituted Selection Committee. The representatives of the Department, Mr. Vidyadharan, Assistant Project Officer, District Rural Development Agency and Mr. K.S. Radhakrishnan had attended the meeting. Thus, the appointment of the 6th respondent should have been approved by the Department. He prays that a direction for the approval of the appointment of the 6th respondent may be issued. This claim has been endorsed by Mr. Benoy Thomas, learned counsel for the 6th respondent.

13. After hearing learned counsel for the parties, we find that the following two questions arise for the consideration of the Court:-

(1) Is the petitioner in O.P. No. 28843/2002 qualified to act as the Principal of the respondent School?

(ii) Whether the respondents had acted illegally in refusing to approve the appointment of the 6th respondent?

Regarding (i)

14. On behalf of the petitioner, it has been contended that he is a trained graduate. He has passed B.A., B.Ed. examinations. He has more than 12 years of experience. Thus, he is eligible for appointment as Headmaster and to discharge the additional duties of the Office of Principal. This claim has been controverted by the learned counsel for respondent Nos. 5 and 6.

15. Admittedly, the 5th respondent is managing the Higher Secondary School. The method of appointment and qualifications of Teachers in the Aided Higher Secondary Schools is governed by the statutory provisions. These rules were promulgated in pursuance to the directions given by their Lordships of the Supreme Court in M.M. Delichan and Ors. v. State of Kerala and Ors. (JT 2000 (Suppl. 2) SC 571). The Rules were actually published in the Kerala Government Gazette of November 12, 2001. These are embodied in Chap.XXXII of the Kerala Education Act and Rules. Rule 1 gives the definitions. It defines a 'Principal' in Clause (f) as under:

'Principal' means the teacher who acts as the academic and administrative head of the Higher Secondary School.'

16. In Rule 2, it has been provided that the method of appointment and qualifications of the teaching staff in the Aided Higher Secondary School shall be 'as prescribed in this Chapter.' Rule 3 provides that 'the service of every aided Higher Secondary School shall consist of all or any of the following categories of posts as the Director may sanction.' In category 1, the post of Principal is mentioned. In category 2, provision has been made for Higher Secondary School Teachers in 39 subjects. Category 3 relates to the appointment of Higher Secondary School Teachers in the junior scale. Categories 4 to 8 relate to various other categories of posts like Librarian, Laboratory Assistant etc. The method of appointment is regulated by Rule 4. So far as the post of Principal is concerned, it has been inter alia provided that it can be filled up by promotion from amongst the Higher Secondary School Teachers who fall in category 2 or by transfer of a qualified Headmaster of an Aided High School 'under the respective educational agency'. Three 'notes' have been added. It has been inter alia provided that the post of Principal shall be a selection post. The appointment shall be made on the basis of recommendation of a Selection Committee. The constitution of the Selection Committee has been laid down. Even a ratio of 2:1 in which the posts shall be filled up has been prescribed. So far as Higher Secondary School Teachers are concerned, the provision is contained at Sl.No. 2 in Rule 4. Similar provisions have been made for the other categories of posts also. The Manager has been designated as the competent authority for making appointments under Rule 5. The appointment requires the approval of the Director of Higher Secondary Education. Rule 6 lays down the qualifications. It has been inter alia provided as under:-

'6. Qualifications:- No person shall be eligible for appointment to the category in column (2) in the table below under methods specified in column (3) unless he possesses the qualification prescribed in the corresponding entry in column (4) thereof.

Sl. No.

Category

Method of appointment

Qualification

(1)

(2)

(3)

(4)

1.

Principal

By promotion

1. Master's Degree with not less than 50% marks.

2. B.Ed. Degree from any of the Universities in Kerala or qualification recognised as equivalent thereto by any University in Kerala.

3. Minimum approved teaching experience of 12 years.

Note : Preference shall be given based on the teaching experience at Higher Secondary level.

2.

Higher Secondary School Teacher and Higher Secondary School

By transfer and by direct appointment

(i) Masters Degree in the concerned subject with not less than 50% marks from any of Universities in Kerala or a Qualification recognised as equivalent thereto in the respective subject by any University in Kerala.

Teacher(Junior) in

(ii)

(1)B.Ed. in the concerned subject acquired after a regular course of study from any of the Universities in Kerala or a qualification recognised as equivalent thereto by a University in Kerala.

(1)English

(2)Communicative English

(3)Malayalam

(4)Hindi

(5)Arabic

(6)Urdu

(2)In the absence of persons with B.Ed. Degree in the concerned subject B.Ed.Degree acquired in any one of the subjects under the concerned faculty as specified in the Acts/Statutes of any of the Universities in Kerala.

(7)Tamil

(8)Kannada

(9)Sanskrit

(3)In the absence of person with B.Ed. Degree as specified in items (1) and (2)above, persons with B.Ed. degree in any subject acquired after a regular course of study from any of the Universities in Kerala or a qualification recognised as equivalent thereto by any one of the Universities in Kerala.

(iii)

Passin the State Eligibility Test for the post of Higher Secondary School Teacherconducted by Government of Kerala or by the agency authorised by the StateGovernment.'

17. A perusal of the above provisions would show that the Principal is the Head of the Higher Secondary School. The office of the Principal can be filled up by promotion from amongst the Higher Secondary School Teachers. The minimum qualification for appointment of a Higher Secondary School Teacher is a Master's Degree in the concerned subject with not less than 50% marks. Besides that, he has also to possess the qualification of B.Ed. and teaching experience. Does the petitioner fulfill these qualifications?

18. Admittedly, the petitioner does not have a Post-graduate Degree in any subject. He is not qualified for appointment as a Higher Secondary Teacher even in the junior scale. He is only a Graduate. Still further, it is also the admitted position that when the 5th respondent had issued a notice regarding the appointment of a Principal, he had not even submitted an application. In fact, only two persons had submitted applications including the 6th respondent Why? The obvious reason was that the petitioner did not fulfill the prescribed qualifications.

19. Mr. Menon submits that in view of the letter dated February 1, 1991, the petitioner is qualified to work as a Principal in an aided School. This letter inter alia provides as under:

'In the G.O. read first Government have ordered that the Higher Secondary Course (Plus Two Course) will be introduced in 31 Government Schools in the State during the year 1990-91. After watching the progress of Plus Two Education for one year the scheme will be extended stage by stage to other High Schools in the State.

2. Government propose to introduce Higher Secondary Course (Plus Two Course) in a few Government/Private High Schools during the year 1991-92 as particularised below and they order accordingly. One Higher Secondary School each will be opened in the existing Legislative Assembly Constituencies where there are no Higher Secondary Schools and in one Anglo Indian High School. The

identification of the locality where new schools are to be opened/upgraded will be with reference to the optimum educational needs of the locality, backwardness of the area, availability of institutions offering higher study, etc. However, Plus Two Higher Secondary Course shall not ordinarily be started in schools where V.H.S.E. or T.H.S.E. Course are conducted.

xxx xxx xxxApplications: The Director of Higher Secondary Education will publish a notification inviting applications for opening Higher Secondary Course (Plus Two Course) in the Private Sector in the form appended to this orders. The notification will be published in the Gazette. He will issue a Press Release also inviting applications for information of all concerned.

Applicants: Government Schools:-The Deputy Director of Education of each District will forward necessary proposals. He will submit a list which should contain the names of three Government Schools in each Legislative Assembly Constituency where the Course has to be started, facilities available, etc.

'Private Schools: Only the Managers of Private Schools can apply.'

20. On the basis of the above, learned counsel submits that the Headmaster is entitled to be re-designated as Principal and paid Rs. 250 per month. Mr. Menon maintains that it was in view of this provision that the competent authority had directed the School authorities to appoint the petitioner as Headmaster and to give charge of the higher post of Principal of the School.

21. Firstly, it deserves notice that the aforesaid circular was issued on February 1,1991. At that time, the State Government was introducing the Higher Secondary Course in Government Schools. No Rule for appointment had been framed. Thus, it was making an interim arrangement by re-designating the Headmaster as Principal. Still further, even the qualifications for appointment as Principal were not laid down. Thus, the circular embodied only a temporary arrangement. Thereafter, it was in pursuance to the directions issued by their Lordships of the Supreme Court that the statutory rules were actually framed. In these rules, a provision for the post of Principal of a Higher Secondary School, the method of appointment thereto and the qualifications therefor were laid down. On a perusal of the rules, it

is clear that aPrincipal acts as the Academic and Administrative Head of a Higher Secondary School. No one other than the Principal can perform that function. The provision in the Rule categorically defines the term 'Principal'. It lays down the qualifications. These provisions cannot be circumvented by the Department by adopting the method of giving additional charge and appointing unqualified persons.

22. Mr. Rahim, learned Senior Government Pleader, submits that the post cannot be deemed to exist till the Director accords sanction in accordance with Rule 3. Is it so?

23. As already noticed Rule 3 provides that 'the service of every aided Higher Secondary School shall consist of all or any of the... categories of posts as the Director may sanction.' The post of Principal is a solitary post in category 1. Categories 2 and 3 relate to the appointment school teachers in two different scales. These relate to 39 subjects. Thus, the Rule clearly provides that there shall be a Principal and teachers. So far as the sanction of the post is concerned, in our view, the Director has no discretion in the matter of office of the Principal. He can only make a choice in respect of the other categories whereby he can lay down that there may be no teacher to teach the subjects like German, Latin, Russian languages or those in which the number of students is not adequate. However it shall not be open to the Director to say that the School shall function without a Principal who alone can be the Academic and Administrative Head. In view of this position, the contention that the appointment of the 6th respondent cannot be approved, as the post of Principal has not been sanctioned, is wholly untenable. It cannot be sustained.

24. It has been submitted by Mr. Rahim that till such time as the post is formally sanctioned, the Headmaster can act as the Principal. Under the Rule, the Director alone can sanction the post. Since, the sanction has not been given, the action is valid.

25. It is the admitted position that the post of the Head of the Institution had fallen vacant due to the retirement of the incumbent on March 31, 2002. On that day, the rules were already in force. Thus, the post of the Principal had to be filled up. The

petitioner does not fulfill the qualification. He could not have been appointed to head the institution. Whatever could not be done directly cannot be permitted to be achieved indirectly. This would be in violation of the Rules. In any event even while making a temporary arrangement, the department was not entitled to say that an ineligible person shall be the head of the institution and that the claim of the eligible person has to be ignored.

26. There is another aspect of the matter. The Manager had given detailed reasons for taking the view that the petitioner is not suitable. Since the criminal cases are still pending, we shall not make a specific reference to any of the matters. However, the facts taken into consideration by the Manager were relevant for determining the suitability. Even the Government's own direction as contained in the letter dated December 27, 2002 was that a suitable and qualified person should be appointed. The petitioner was not qualified. He was not considered suitable by the 5th respondent. Thus, he could not have been appointed. The Manager had not acted illegally or arbitrarily in taking the view that the petitioner could not be appointed as the Academic and Administrative Head of a Higher Secondary School. Thus, the first question is answered against the petitioner.

Regarding (ii)

27. It was contended on behalf of the 6th respondent, who is also the petitioner in O.P. No. 28843/2002, that the Director of Higher Secondary Education had erred in refusing to approve the appointment of the 6th respondent. The claim was controverted by Mr. Rahim primarily on the ground that under the instructions issued by the Government, the senior most High School Assistant had to be promoted as the Headmaster and given the additional charge of the Office of Principal.

28. As already observed, only a Principal can be the Academic and Administrative Head of a Higher Secondary School. It is not disputed that the respondent's school was upgraded from a High School to the Higher Secondary level. Thus, a Principal has to be appointed. This being the position, no one who does not fulfill the qualifications for the office of Principal can be asked to perform the duties of that post. This is precisely what the Secretary to the Government had observed in his

communication dated December 27, 2002. He had specifically ordered that a suitable and qualified person may be appointed. The petitioner, Mr. Ramachandran Nair, as already observed, was not eligible to perform the duties of the Head of the Office. This being the factual position, the person to be appointed had to fulfill the qualifications as prescribed in Rule 6 in Chap. XXXII. Admittedly, the 6th respondent viz. Mr.M.V. Shaji, fulfils the prescribed qualifications. His claim had been duly considered by the Selection Committee. It has not been found that the Selection Committee was not properly constituted or that he was not eligible. Yet, his appointment was not approved only because the senior most teacher had not been promoted as Headmaster. This, in our view, was not in conformity with the Rules. Resultantly, the second question has to be answered in favour of the 6th respondent.

29. Mr. Menon submits that Rule 44 of Chap.XIV-A provides for the post of Headmaster. It is undoubtedly so. However, a perusal of the Rules shows that a Headmaster can only be an Academic Head in a High School and not in a Higher Secondary School. Still further, it has not been shown either with reference to any rule or order that different Headmasters or Principals have to be appointed for different sections in a school. To illustrate: A school may have a Primary section, an Upper Primary section, a High School section and a Higher Secondary section. Surely, the Department cannot insist that a separate Head has to be appointed for each section. In any event, so far as the present case is concerned, it is the admitted position that there is only one school and all the sections are part of that school. Thus, it can have only one Academic and Administrative Head, viz. the Principal. None else. He will exercise all the powers of the Head of the Institution including those, which were initially meant to be performed by the Headmaster of a High School. Thus, the contention raised by Mr.Menon cannot be accepted.

30. There is another aspect of the matter. It is the admitted position that the petitioner does not possess even the basic qualifications as prescribed under the statutory Rules. Still more, various cases are pending against him. It has been inter alia alleged that he is undergoing trial for different offences including rash and negligent driving under the influence of alcohol. Should such a person be really foisted by the Director on a Higher Secondary School as an Academic and

Administrative Head? Should the Director force the School Manager to ignore the person who is duly qualified and has been selected by a duly constituted selection committee? Such a person cannot be a good example for the young students to emulate. The decision of the Director is apparently arbitrary and unfair. In fact, it appears that the procedure of appointing a Headmaster to perform, the duties of the Principal is a device to ignore the eligible. It cannot be sustained. It is academically improper, administratively unsound and legally untenable.

31. No other point has been raised.

32. In view of the above, the order dated August 29, 2002, a copy of which has been produced as Ext.P7 in O.P. No. 28843/2002 and Ext.P10 in O.P. No. 28764/2002 is quashed. It is directed that the claim of the 6th respondent viz. Mr. M.V. Shaji for approval of his appointment as Principal shall be considered and decided by the competent authority within one month from the date of receipt of a copy of this judgment. O.P. No.28843/2002 is dismissed. W.A. Nos. 193 and 204 of 2003 are allowed. C.C.C. No. 125/2003 filed by the petitioner is dismissed. The other four petitions viz. O.P. Nos. 11629, 28764, 35406 and 36574 of 2002 are disposed of in the above terms. In the circumstances, there will be no order as to costs.