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(1963) 01 KL CK 0025

High Court Of Kerala

Case No: W.A. No. 43 of 1962

Rt. Rev. Aldo Maria Patroni and Another	APPELLANT
Vs	
Kesavan and Others	RESPONDENT

Date of Decision: Jan. 2, 1963

Acts Referred:

- Constitution of India, 1950 - Article 226

Citation: (1963) KLJ 367

Hon'ble Judges: M.S. Menon, C.J; P. Govindan Nair, J

Bench: Division Bench

Advocate: K.P. Abraham, George Kurien and E.M. Jacob, for the Appellant; K.P. Radhakrishna Menon for 1st Respondent and V.P. Gopalan Nambiar Advocate-General for Respondents 2 and 3, for the Respondent

Final Decision: Dismissed

Judgement

M.S. Menon, C.J.

This is an appeal by the petitioners in O.P. No. 329 of 1962. The 1st appellant (1st petitioner) is the Bishop of the Roman Catholic Diocese of Calicut and the 2nd appellant (2nd petitioner) is the Provincial of the Jesuit Province of Kerala to whom the right of management of the St. Joseph''s Boys'' High School, Calicut, was transferred by the 1st appellant in July 1961. The controversy relates to the appointment of the 4th respondent as the Headmaster of the School in preference to the 1st respondent. The 1st respondent filed an appeal under Rule 44 of Chapter XIV(A) of the Kerala Education Rules, B 59, Ext. P. 1 dated 4-7-1961. The appeal was addressed to the District Educational Officer, Calicut. Apparently the 1st respondent also filed another petition on 25-9-1961. That petition is not before us.

2. Ext. P. 3 dated 19-1-1962 is the order of the Regional Deputy Director of Public Instruction. Calicut. The concluding portion of that order reads as follows :

The Regional Deputy Director of Public Instruction, Kozhikode, hereby directs the Manager to appoint Sri E. C. Kesavan (1st respondent) as Headmaster of the School with effect from the date on which the post became vacant, under Rule 44 Chapter XIV A of the Kerala Education Rules 1959, and report the fact to this Office and the District Educational Officer, Kozhikode.

3. On receipt of Ext. P. 3 the 1st appellant filed Ext. P. 4 before the Regional Deputy Director of Public Instruction, Calicut, and requested a reconsideration of Ext. P. 3. Ext, P. 5 dated 2-2-1962 is the further order of the Regional Deputy Director of Public Instruction Calicut, rejecting the prayer of the 1st appellant and insisting on compliance with Ext. P. 3. O.P. No. 329 of 1962 sought a cancellation of Exts. P. 3 and P. 5.

4. In the judgment under appeal Vaidialingam J., came to the conclusion that neither the District Educational Officer, Calicut, nor the Regional Deputy Director of Public Instruction, Calicut, had any authority to pass Exts. P. 3 and P. 5 and directed that those orders be quashed under Article 226 of the Constitution. The learned Judge, however, went on to say that as no specific officer of the Department is mentioned in Rule 44 Ext. P. 1 should be heard and disposed of by the Director of Public Instruction, the Head of the Department concerned; and directed accordingly.

5. Rule 44 of Chapter XIV(A) of the Kerala Education Rules, 1959, reads as follows:-

Appointment of Headmasters shall ordinarily be according to seniority. The Manager will appoint the Headmaster subject to the Rules laid down in the matter. A teacher if he is aggrieved by such appointment will have the right of appeal to the Department. The appeal shall be preferred within one month of the date of the order appealed against.

According to Rule 2 of Chapter I of the Kerala Education Rules, 1959, "Department" means the Education Department of Kerala.

6. There is no indication, however, in the Rules as to which officer of the Department should hear and dispose of appeals under Rule 44 of Chapter XIV(A) of those Rules. In these circumstances we can only hold, as the learned Judge has done, that the officer competent to deal with the appeal is the Head of the Department concerned, namely, the Director of Public Instruction.

7. We are not prepared to agree with the suggestion of counsel for the appellants that an appeal under Rule 44 should be disposed of by the Government itself, that is, by the Minister in charge of education. The Rules make definite distinction between the Government and the Department and do not use the expressions "Government" and "Department" as if they were synonymous.

8. In the light of what is stated above this appeal should fail and has to be dismissed. We do so. No costs.