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(1958) 12 KL CK 0024

High Court Of Kerala

Case No: O.P. No"s. 113, 127 and 128 of 1957

Narayanan and Others	APPELLANT
Vs	
State of Kerala and Another	RESPONDENT

Date of Decision: Dec. 9, 1958

Acts Referred:

- Constitution of India, 1950 - Article 226

Citation: (1959) KLJ 197

Hon'ble Judges: C.A. Vaidialingam, J

Bench: Single Bench

Advocate: T.L. Govinda Iyer in O. Ps. 113, 127 and 128 of 1957, for the Appellant; G.B. Pai, P. Govindan Nair and K.V.R. Shenoi For 2nd Respondent, for the Respondent

Final Decision: Dismissed

Judgement

Vaidialingam J.

1. All the three applications filed under Art. 226 of the Constitution, raise substantially the same point and ask for identical reliefs. In the view that I take about the maintainability of these applications and the reliefs that would be granted in applications under Art. 226, it is unnecessary to go into the several contentions raised by Mr. T.L. Govinda Iyer, learned counsel for the petitioner regarding the interpretation to be placed on a surrender deed executed between the Government, the first respondent and the former Management of the School namely, the second respondent and evidenced by Ext. F in these proceedings. The applications prayed for a writ of mandamus or other proceedings against the first respondent, the State of Kerala and also as against the second respondent namely, Kannan Devan Hills Produce Co. Ltd., represented by its General Manager, W.M. Mayne, Munnar. The question is whether the petitioner in each of these applications is entitled to invoke the jurisdiction of this court to get the reliefs prayed for.

2. It will be seen that prayers contained in clauses (a), (b) and (d) of paragraph No. 3 In all these applications are to the effect that the first respondent is to be called upon for producing the records in connection with this matter and for the second respondent being called upon by appropriate directions to produce before this court the records relating to the surrender of the school, and the second respondent Company being directed by a writ in the nature of mandamus or other appropriate directions or order to restore to the petitioners the benefits under clause 3(b) (i), 3(b)(ii), 3(b)(iii) and 3(b)(iv) in the surrender-deed, Ext. F.

3. I may straightway say that in view of the decision of the Supreme Court reported in Sohan Lal v. The Union of India (1957 S.C. Reports 738), it is not possible for me to grant a writ of mandamus or other proceedings against the second respondent which is more or less a private party. At page 744 of the reports, their Lordships of the Supreme Court observed as follows:-

"Normally, a writ of mandamus does not issue to or an order in the nature of mandamus is not made against a private individual. Such an order is made against a person directing him to do some particular thing, specified in the order which appertains to his office and is in the nature of a public duty -(see Halsbury"s Laws of England Vol. II, Lord Simonds Edition, p. 84")

Their Lordships further say that there was no evidence before them and no finding of the High Court that the appellant before the learned Judges was in collusion with the Union of India or that he had knowledge that the eviction of a party there was illegal. In these circumstances, their Lordships held that no writ of mandamus or other directions can issue against a private individual. In view of the principles laid down by the Supreme Court in this decision, it follows that prayers Nos. (a), (b) and (d) contained in each of these applications, will have to be rejected, and here is no allegation of any collusion in this case. Then we are left with prayer (c) in paragraph 3 of the application namely,

"That the 1st respondent State be directed by a writ in the nature of mandamus or other appropriate writ, direction or order to make the suitable amendments to clause 3(g) in the surrender deed giving the benefits to non-pensionable teachers up to the age of 60 with regard to payment of excess of basic salary etc...."

The agreement referred to in this clause is Ext. F dated 23-11-55. Under clause 3(g) of the agreement, the persons who retired on attaining the age of 55, are not entitled to the benefits of the several matters mentioned therein. The attempt by these proceedings by the petitioner is to ask this court to direct the first respondent State to change the agreement entered into with the second respondent namely, by altering clause 3(g) so as to include teachers who have not attained the age of 60. Mr. Govinda Iyer, learned counsel for the petitioner, has not been able to place any decision of any of the courts to show that a High Court exercising its powers under Art. 226 of the Constitution can compel the Government to enter into a contract with a third party to benefit the petitioners

in the writ application. I am not satisfied that this court has got the power to compel the first respondent the State to enter into a fresh agreement to suit the convenience of the petitioner or to alter an agreement already entered into by the first respondent with the second respondent to the liking "of the petitioner. Entering into a contract depends upon a volition of two consenting parties and I do not think that it is possible for me to compel by way of mandamus the first respondent to alter the terms of a contract already entered into. The clause is very clear and the clause gives right only to the type of people mentioned in the said agreement and who have not completed the age of 55 years.

4. It is not necessary for me to consider why exactly this particular clause was entered into, though Mr. Govinda Iyer will submit that it must have been a pure mistake on the part of the two contracting parties in fixing the age as 55. As mentioned earlier, it is not in my province to consider the motives that may have operated between the respondents 1 and 2 in fixing the age as 60.

5. The same reasoning will apply of course on the assumption that these applications are maintainable against the 2nd respondent. As I am not satisfied that a writ of mandamus can issue compelling the Government to alter a contract entered into by them with the second respondent, these applications fail and in each of these applications the petitioner will pay a sum of Rs. 100/- to each of the respondents therein.