
Mother Superior and Another Vs District Educational Officer

O.P. No"s. 3184 of 1974 and 3249 of 1975

Court: High Court Of Kerala

Date of Decision: Feb. 28, 1977

Acts Referred:

Constitution of India, 1950 " Article 226#Kerala Education Rules, 1959 " Rule 3#Kerala Service Rules, 1958 " Rule 74, 75, 77, 79, 80

Citation: (1977) 02 KL CK 0021

Hon'ble Judges: Viswanatha Iyer, J; Balakrishna Eradi, J

Bench: Division Bench

Advocate: P.C. Chacko and P. Krishnamoorthy, in O.P. 3184/74 and N.K. Varkey, Jacob Murikan, P.K. Joseph, John Koshy and P.C. John, in O.P. 3249/75, for the Appellant; Mustafa Ghani Rowther, Government Pleader, for the Respondent

Final Decision: Allowed

Judgement

Viswanatha Iyer, J.

These two original petitions are considered and disposed of together as a common question arises for consideration in

them. In O.P. No. 3184 of 1974 the facts are the following. The Petitioner is the Mother Superior of Adoration Convent, Kanjiramattam. This

Convent is one branch of a larger family of Sisters of the Adoration of the Blessed Sacrament governed by norms of Canon law and statutes

approved by the Head of the Church. At an early age one Mariakutty Thomas became a nun and became a member of this Convent. She took the

temporal vows in 1944 and the perpetual vows in 1949. After joining the order she was appointed as an L.P. School Assistant in L.F.L.P. School,

Kanjira-mattam. In due course she was promoted and appointed as High School Assistant in the school run under the management of the Diocese

of Palai. She continued in this job till her death on 24th June 1972. As per Rule 3 of Chapter XXVII B of the Kerala Education Rules, 1959,

teachers in aided schools are also governed by the Kerala Service Rules, Part III, as regards retirement benefits. According to Rule 80, Part III of

the Kerala Service Rules, every officer on completion of five years of qualifying service should nominate a person to receive any gratuity that may

be sanctioned under Rules 75 and 77 and any gratuity to which she is eligible under Rule 74 and not paid to her before death. In terms of the Rules

she nominated the Mother Superior, Adoration Convent, Kanjiramattam as the person entitled to receive any gratuity that may be sanctioned by

Government in the event of her death in service or after retirement without receipt of such benefits. In that nomination she had specifically

mentioned that she has no family in terms of Rule 79 of the Rules and therefore she is nominating the Mother Superior under Rule 80. After the

death of Sister Mariakutty Thomas the Petitioner herein applied before the D.E.O., Kottayam, to get the death-cum-retirement gratuity due to the

deceased. Along with the application she also forwarded a heirship certificate from the Tahsildar, Kottayam, to the effect that the Petitioner is the

person entitled to receive the amount due. This certificate was issued after due investigation and enquiry and publication in the Gazette of the

request made by the Petitioner for a heirship certificate. The District Educational Officer, Kottayam, by his order dated 18th June 1973 accorded

sanction to the Petitioner to receive the gratuity amount due to the deceased. But, the Accountant General objected to the disbursement of the

amount on the ground that the nomination of the Petitioner is not in order as the nominee does not come under the term "family" defined in Rule 79

of Part III, K.S.R. Following this the District Educational Officer, Kottayam, informed the Headmistress of the school that the Petitioner's request

for payment is inadmissible as per the K.S.R. Ext. P-5, dated 8th April 1974 is the copy of the order of the District Educational Officer. The order

of the Accountant-General and the consequential order of the D.E.O. rejecting the Petitioner's claim for payment are challenged in this original

petition as unsustainable in law for the reason that the deceased on joining the order and becoming a nun ceased to have any family as defined in

Rule 79, Part III, K.S.R. and therefore she was entitled to nominate the Petitioner to receive D.C.R. gratuity to which she is eligible. In this

connection the Petitioner does not challenge that the deceased has blood relations specified in Rule 79 as members of the family. But, according to

the Petitioner, consequent on Mariakutty Thomas becoming a nun and joining the holy order, category of persons specified in Rule 79, Part III,

K.S.R. have ceased to be her relatives included in the definition of the term "family" in the rules. The question for consideration is whether this

contention is sustainable in law.

2. The same question arises in O.P. No. 3249 of 1975. The Petitioner therein is the Mother Superior of St. Joseph's Convent, Tripunithura. One

Rev. Sister Mourina was a member of this Convent and was the Headmistress of St. Mary's L.P.S. Tripunithura. She retired from service on 21st

September 1971 and died on 25th November 1971 before she received the pension benefits. She had nominated the Petitioner to receive the

pension benefits and Ext. P-1 is copy of her nomination form nominating the Petitioner to receive the benefits. The Petitioner's application for the

disbursement of the pension benefits was rejected by the Government by their order dated 31st January 1974, Ext. P-2, on the ground that the

Petitioner does not come under the category of members who are reckoned as belonging to the family of the deceased under Rule 79, Part III,

K.S.R. This is challenged in this original petition.

3. So, the only question that arises for consideration is whether the nomination of the Petitioner in each of the cases is invalid for the reason that

there are persons alive who satisfy the definition of the word "family" in Rule 79, Part III, K.S.R. Rules 79 and 80 read as follows:

79. "Family" for the purposes of this section will include the following relatives of the officer:

- (a) wife, in the case of a male officer;
- (b) husband, in the case of a female officer;
- (c) sons;
- (d) unmarried, divorced and widowed daughters;
- (e) brothers below the age of 18 years and unmarried or widowed sisters;
- (f) father;
- (g) mother;
- (h) married daughters; and
- (i) children of a pre-deceased son.

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80. An officer shall, as soon as he completes five years of qualifying service, make a nomination conferring on one or more persons the right to

receive any gratuity that may be sanctioned under Rules 75 and 77 and any gratuity which having become admissible to him under Rule 74 has not

been paid to him before death. While a nomination as also any change therein will normally be made by an officer during service, he may make a

nomination after retirement but before getting payment, in case he so desires: Provided that, if at the time of making the nomination, the officer has

a family, the nomination shall not be in favour of any person or persons other than the members of his family.

4. As a preliminary to the question arising for consideration it is necessary to describe the formalities that are gone through by a person who takes

to the religious profession among the Catholics. Catholic Encyclopaedia, vol. 12, page 287, describes what is meant by a religious life. It is

described as a particular expression of the love of God through a following of Christ. It is approved by the Church as a public state of life by the

profession of poverty, chastity and obedience through public vows and by some form of separation from the world, practised for the sake and

service of the world. Religious profession is an act by which a person embraces the religious state by taking the three public vows of poverty,

chastity and obedience. This is really an agreement made with the religious order which, when accepted by the competent superior, creates a

whole series of reciprocal rights and obligations between the religious order and the religious. Before a person is admitted into this order he or she

is put on probation. "Postulantship" is intended to give the superiors an opportunity to observe the candidate and the candidate an opportunity of

becoming acquainted with the general obligations of the religious life. After the period of this probation the candidate is admitted to the novitiate.

Thereafter she is put to a canonical examination to make certain that she is acting with full knowledge of the case and with full liberty. If she gets

through the examination she is required to take a temporary vow which is generally for a period of three years. During this period the superior will

judge the fitness of the person to take the perpetual vow. After the expiry of the period of three years the religious shall either make his or her

perpetual profession or he or she can return to the world. Before the perpetual vow is taken the professed must renounce in favour of the person

whom he or she likes, all the property which he or she actually possesses on condition however of his solemn profession subsequently taking place.

After the solemn profession is taken all property which may come to the religious in any manner whatsoever accrues to the order according to the

constitution and if the order cannot acquire or own any property it becomes the property of the Holy See. The effect of taking a perpetual vow and

becoming a nun is described thus in Pollock and Maitland's History of English Law, vol. I, page 434:

A monk or nun cannot acquire or have any proprietary rights. When a man becomes "professed in religion" his heir at once inherits from him any

land that he has, and, if he has made a will, it takes effect at once as though he were naturally dead. If after this a kinsman of his dies leaving land

which according to the ordinary rules of inheritance would descend to him, he is overlooked as though he were no longer in the land of the living;

the inheritance misses him and passes to some more distant relative. The rule is not that what descends to him belongs to the house of which he is

an inmate; nothing descends to him for he is already dead. In the eye of ecclesiastical law the monk who became a proprietor, the monk, that is,

who arrogated to himself any proprietary rights or the separate enjoyment of any wealth, committed about as bad an offence as he could commit.

This fiction however has its own limits. If a monk or nun does wrong or suffers wrong he or she is dealt with as though he were only an ordained

clerk and tried by the ordinary courts. In respect of civil wrongs the rule is that the monk or nun could neither sue nor be sued without his or her

sovereign. A monk or nun could make no contract. But he or she is capable of acting as the agent of his or her sovereign and even in litigation he

or she could appear as the superior's attorney. In the History of French Private Law included in the Continental Legal History Series, vol. III, para

585, it is stated thus:

Entering Religious Orders resulted in the eyes of the Church in death to the world. From this it should have been concluded that from the time of

his entrance into a monastery the monk could not acquire anything, and that the possessions which he had at that time should pass to his heirs.

Thereafter the personality of the monk was absorbed by that of the monastery. He acted as a means of receiving for the benefit of the monastery.

Once he had entered a monastery, the monk, stripping off his own personality, could only receive for the benefit of his community. But the

monastery did not take those possessions which he had at the time of his entering it; he was regarded as being dead at that time and from this

fiction there arose two consequences; 1st, his inheritance vested for the benefit of his relatives: 2nd, he was thence forward incapable of inheriting

upon intestacy or by virtue of a will, either in his own interest or in the interest of the monastery. In this sense the civil death with which he was

affected was the equivalent of real death. Similarly, in History of Italian Law included in the Continental Legal History Series, vol. VIII, at page

512, para 299, it is stated thus:

A sort of civil death overtook one who took solemn religious vows, though limited in its effect to property and inheritance.

Again, in Catholic Encyclopaedia, page 329 the legal effects on taking to a religious profession as set forth in the Canon Law are stated with

reference to those who take temporary vows and who take the perpetual vow. It is stated at page 330 that any "religious" in simple minor vows,

must before joining the profession make a will disposing of all his or her property and cannot retain any property which later comes to them. It

automatically becomes the property of the order to which he or she belongs. This principle was followed in *Avasarala Kondal Row* and *Another*

Vs. Iswara Sanyasi Swamulavaru alias Avasarala Kamarazu and Others, to describe the status of a Sanyasi under Hindu Law also. In the case of

a Sanyasi entrance to a religious order generally operates as a civil death. The man who becomes an ascetic severs his connection with the

members of his natural family and being adopted by his preceptor becomes, so to say, a spiritual son of the latter. In *Sital Das Vs. Sant Ram* and

Others, Justice Mukherjea stated the law thus at page 613, pars 20:

It is well-known that entrance into a religious order generally operates as a civil death. The man who becomes an ascetic severs his connection

with the members of his natural family and being adopted by his preceptor becomes, so to say, a spiritual son of the latter. The other disciples of

his Guru are regarded as his brothers, while the co-disciples of his Guru are looked upon as uncles and in this way a spiritual family is established

on the analogy of a natural family.

5. This being the general consequence of becoming a monk or nun and joining the holy order it has to be taken that with the taking of the perpetual

vow the person concerned ceases to have any connection with the members of the natural family. So far as the natural family is concerned the

woman is taken as dead and therefore her parents and other members specified in Rule 79, Part III, K.S.R. are not taken as blood relations

thereafter. Consequently even though such category of persons are alive, the legal effect of a person becoming a nun is that she cannot thereafter

be considered as having a father or mother or other relatives mentioned in Rule 79. From this it follows that there is no impediment to nominate the

Petitioner under Rule 80 of Part III, K.S.R. The objection of the Accountant-General, therefore, against the nomination of the Mother Superior

(Petitioner in each of the cases) is legally unsustainable. The result is that the amount of pension and gratuity due to the deceased mentioned in each

of the cases is due to the Petitioner in each of the cases. The orders to the contrary passed by the Accountant-General, the District Educational

Officer and the Government are quashed and it is declared that the Petitioner in each of the cases is entitled to receive the gratuity and the pension

benefits due to the deceased. The Respondents are directed to pay the amount which the deceased was eligible to the Petitioner in each of the

cases. The original petitions are therefore allowed. But, in the circumstances, we make no order as to costs.