

(1984) 04 KL CK 0025

High Court Of Kerala

Case No: O.P. No"s. 967/78, 1042/79, 2/80 1559.80 and 2522/80

Thankappan Nair and Others

APPELLANT

Vs

The State of Kerala and Others

RESPONDENT

Date of Decision: April 11, 1984

Citation: (1984) KLJ 510

Hon'ble Judges: K. Bhaskaran, Acting C.J.; S.K. Kader, J; M.P. Menon, J

Bench: Full Bench

Advocate: George Varghese Kannamthanam, P.C. Joseph, Abraham Vakkanah Kurian

George Kannathanam, M.V. Ibrahimkutty, K.J. Joseph, K. Mohammad and V.P.

Mohankumar, for the Appellant; Government Pleader, for the Respondent

Final Decision: Dismissed

Judgement

Bhaskaran, Ag. CJ.

1. The common question that arises for decision in these writ petitions is whether a promoted P.D. teacher for being treated as one promoted on a regular basis in terms of G.O.MS. No. 16/75/G. Edn. dated 10-1-1975 (Ext. P5 in O.P. No. 2/80 - Ext. R-3 produced along with the counter affidavit of the 1st respondent in O.P. No. 967/78), hereinafter referred to as G.O. 16/75, he should have been continuing as such on the crucial date, namely, 17-4-1969. Primary school Headmaster"s post, carrying with it responsibilities without corresponding monetary benefits, was of no attraction to most of the P.D. teachers till 1-6-1973 with effect from which date a separate higher pay scale of Rs. 175-315 was introduced for that post by G.O.M.S. No. 55/73/G. Edn. dated 24-4-1973, for short G.O. 55/73. The resulting position was that till 1-6-1973 many P.D. teachers shied away from the post; and their juniors promoted to be headmasters continued to be in that post till the crucial date, 17-4-1969, and even thereafter. We do not consider it necessary to make a detailed-scrutiny of the service records of the petitioners, as it would be sufficient to note that none of them was holding headmaster"s post on 17-4-1969. For the petitioners to succeed they have to establish that in spite of the fact that they had

not been holding the post of headmasters on 17-4-1969, they were entitled to get themselves appointed headmasters on the ground that they were seniors in the category of P.D. teachers, to those holding the headmaster's post in the respective cases; and in some cases they had been headmasters for certain periods prior to the crucial date, 17-4-1969. G.O.M.S. No. 32/71/S. Edn. dated 19-3-1971, hereinafter referred to as G.O. 32/71 (Ext. R-2 produced along with the counter affidavit of the 1st respondent in O.P. No. 967/78), prescribed the qualifications to be possessed by P.D. teachers for being appointed headmasters; and the note to the G.O. reads as follows:--

These orders will not apply to persons who were promoted as Headmasters on a regular basis. This will apply only to future vacancies which remain to be filled up on regular basis.

The Director of Public Instruction had issued Circular B (Spl.) 4-55459/69 dated 17-4-1969 (Ext. R-1 produced along with the counter affidavit of the 1st respondent in O.P. No. 967/78) prohibiting the filling up of the future vacancies in the posts of headmasters of Government L.P. and U.P. schools, as the question of prescribing qualifications for the post of headmasters of the Primary schools was under consideration. Thereafter, on the basis of representations from senior P.D. teachers, and in the light of the judgment of this Court in O.P. No. 5326 of 1972 etc., the Government reviewed the question of promotion of P.D. teachers to be headmasters; and issued orders, G.O.M.S. No. 80/74/G. Edn. dated 4-5-1974, hereinafter referred to as G.O. 80/74, which provided that the posts of Headmasters of Primary schools would be treated vacant on 1-6-1973, the date of introduction of the scale of pay of Rs. 175-315 for Primary headmasters by G.O. 55/73; and that promotions of P.D. teachers to the posts of headmasters would be made on the basis of a strict revenue district-wise seniority.

2. A Division Bench of this Court, which considered of Chief Justice Govindan Nair and Justice Subramonian Poti (as he then was), however, set aside. G.O. 80/74 referred to above by the judgment dated 26-9-1974 in O.P. No. 2262/74 and connected cases (marked Ext. P-4 in O.P. No. 2/80), giving certain directions to the Government as to the manner in which the representations of the P.D. teachers claiming the headmasters' post had to be dealt with. It was in this background that the Government issued G.O. 16/75 stating inter alia that all promotions of P.D. teachers to the post of Headmasters made before 17-4-1969 would be treated as promotions made on a regular basis as the Circular B (Spl.) 4-55459/69 of the Director of Public Instruction prohibiting the filling up of the posts of headmasters of Government L.P. and U.P. schools was issued on 17-4-1969; that for the same reason P.D. teachers posted to be teachers in charge of the duties of headmasters on or after 17-4-1969 would be reverted; that posts of headmasters would be filled up by P.D. teachers according to strict Revenue District-wise seniority; and that those who were to be teachers in charge on or after 17-4-1969 and who by virtue of

their district-wise seniority among P.D. teachers and their qualifications were entitled to promotion to the post of primary headmasters on 1-6-1973, the date of the introduction of the new scale of pay for the headmasters under G.O. 55/73, however, would be deemed to have been promoted to be headmasters with effect from 1-6-1973. It has also to be noticed that G.O. 16/75 had also provided that appointment of headmasters, if any, made before 17-4-1969 to be teachers-in-charge of the duties of the headmaster or appointments to the post of headmasters made before that date, which had been contested, would be reviewed and decided according to the merits of the case if representations were made to, the Government in that behalf by the affected parties.

3. The claim for the benefits of G.O. 16/75 by a P.D. teacher who held the post of headmaster way back from 24-10-1960, but was reverted on 5-12-1964, came up for consideration before our learned brother Justice Khalid (as he then was) in O.P. No. 3701 of 1976-G. The question as to whether the primary headmaster reverted before 17-4-1969 would be entitled to claim the benefits of G.O. 16/75 was not, however, decided in that case (vide Judgment dated 9-8-1977) (Ext. P-5 in O.P. No. 967 of 1978), the learned Judge preferring to leave it to the Government with the following direction:--

In view of the hard case of the petitioner..... to pass appropriate order in the light of the relevant G.O. and the judgment in O.P. 2262/74 and connected O.Ps. of this Court.

In the judgment in O.P. No. 3064 of 1977 dated 5-6-1979 (Ext. P8 in O.P. No. 2 of 1980), to which reference is made by Khalid J. in the order of reference in these cases, and in the judgment dated 18-9-1978 in O.P. No. 4063 of 1976 (Ext. P4 in O.P. No. 2522/80-a) one of us (Bhaskaran J.) had directed the Government to clarify the question as to whether it was the intention of the Government that to claim the benefit of G.O. 16/75 the claimant should have been holding the post of headmaster on the crucial date, namely, 17-4-1969. The direction given in paragraph 4 of the judgment in O.P. No. 4063 of 1976 reads as follows:--

I would, therefore, direct the Government to consider the matter afresh with pointed reference to two questions, namely, (1) whether it was Intended that for a teacher to claim benefit of clause (iii) of paragraph 2 of Ext. P-6, it was absolutely necessary that he should have been holding the post of headmaster or assistant-in-charge of the duties of the headmaster as on 17-4-1969; and (2) at any rate, whether the petitioner's claim that the Headmaster's post with respect to which he laid claim was a contested matter in the light of the averments made in Ext. P-8, giving a detailed account of the facts.

4. In O.P. No. 4060 of 1976 the short facts were: There were certain disciplinary proceedings against the petitioner, and he was debarred for a period of three years from headmastership, from 18-3-1967 to 17-3-1970. After this period was over he

sought to rejoin in the post of headmaster, but was prevented from doing so on the ground that after the prescription of qualifications for headmaster, and during the interval when he had been debarred, there had been many who had acquired qualifications. Though the petitioner made representation, it was rejected, taking the view that he would not have been posted to be the headmaster on 17-4-1969, the date of the Director of Public Instruction's Circular, and, therefore, he was not entitled to request for being appointed headmaster. Subramoniah Poti, J. (As he was then) by judgment dated 16-1-1979 dismissed the writ petition holding inter alia that during the time when the appellant was debarred from headmastership, there were seniors who had qualified to be headmasters, and therefore, the petitioner could not claim to be headmaster. In the judgment it was also stated that adjudged by the test in G.O. 16/75, the petitioner would not, strictly speaking, come within the scope of that order. W.A. No. 68 of 1979 filed against the judgment in O.P. No. 4060 of 1976 was disposed of by a Division Bench of this Court consisting of Gopalan Nambiar, C.J. and Balagangadharan Nair, J., by the judgment dated 13-7-1979 (Ext. P5 in O.P. No. 1569 of 1980). After having adverted to the facts and circumstances leading to the institution of the appeal in paragraphs 2 and 3 of the judgment, Gopalan Nambiar C.J., who spoke for the Bench, stated as follows:--

With this latter statement of the learned Judge, we cannot agree. The material part of Ext. P-4 is as follows:-

(Reference to "this latter statement of the learned Judge" is to the statement by Subramonian Poti, J.--"adjudged by the test in Ext. P4 he would not, strictly speaking, come within the scope of that order")

In this judgment disposing of the batch of writ petitions (O.P. 2264/74 etc.) the High Court of Kerala has set aside G.O.M.S. 80/74 G. Edn. D/4-5-1974 with certain directions to Govt. In pursuance to these directions, Govt. are pleased to issue the following orders.

1. All promotions of P.D. teachers as Primary Headmasters made before 17-4-1969 shall be treated as promotions made on a regular basis as the Circular B (Spl.) 4-55459/69 of the Director of Public Instructions, prohibiting the filling of post of Headmasters/Headmistresses of Govt. L.P. Schools was issued on 17-4-1969.

This portion of Ext. P4 which is what is material only requires that a promotion made before 17-4-1969 is to be treated as a promotion made on a regular basis. The appellant had been promoted in 1962 which is before the date indicated in Ext. P4. He was, no doubt, debarred for three years in consequence of certain disciplinary proceedings taken against him (Ext. P2). The consequence of the happenings during this period may have to be separately adjudged and dealt with. But the clause in Ext. P4 extracted supra does not justify the denial of a benefit of regular promotion to one, who was not a headmaster on 17-4-1969. Its language is unqualified and comprehensive that all promotion effected prior to 17-4-1969 were to be treated as

regular. The appellant was appointed prior to 17-4-1969 and cannot be denied the benefit of a regular promotion on the basis of Ext, P4.

In the judgment dated 9-10-1980 in O.P. No. 1415 of 1978-B, Narendran, J. expressed the view--

The petitioner's claim for the post of Headmaster was rightly declined by the 1st respondent by Ext. P9. As per G.O.M.S. 16/75; G. Edn. dated 10-1-1975 only those P.D. teachers who were appointed as Headmasters, before 17-4-1969 and who continued as Headmasters can be treated as regular Headmasters as on 17-4-1969, As the petitioner will not come under the above category, the petitioner's claim was rightly rejected by the department.

The Government with reference to the direction given by one of us (Bhaskaran, J.) in the judgment in O.P. No. 4063 of 1976-A dated 18-9-1978 (Ext. P4 in O.P. No. 2522(80) by G.O.M.S. No. 209/79/G. Edn. dated 12-12-1979 a true copy of which is Ext. P10 in O.P. No. 2 of 1980), clarified that for deriving the benefits under paragraphs 2(i) and (iii) of G.O. 16/75 the concerned P.D. Headmasters/teachers-in-charge should have continued as such on the crucial date, 17-4-1969, also. Thereafter, in the judgment dated 20-3-1980 in O.P. No. 2205 of 1979-K (Ext. P7 in O.P. No. 1559 of 1980-B) one of us (Bhaskaran, J.) had quoted the following passage from the judgment dated 13-7-1979 in Writ Appeal No. 88 of 1979:--

The language is unqualified and comprehensive that all promotions effected prior to 17-4-1969 were to be treated as regular. The appellant was appointed prior to 17-4-1969 and cannot be denied the benefit of a regular promotion on the basis of Ext. P4.

and held that the meaning of G.O. 16/75 prior to the clarification by G.O. 209/79 was that even though on 17-4-1969 the person concerned was not holding the post of headmaster, if he had already been promoted prior to that date, he would be entitled to that benefit. It is in this background that Khalid, J., as he then was, passed the reference order in O.P. No. 2 of 1980, doubting the correctness of the decision by one of us (Bhaskaran, J.) in O.P. No. 2205 of 1979-A following the Division Bench ruling in W.A. No. 88 of 1979.

5. In retrospect, on a careful consideration of all aspects of the matter, we are convinced that the correct legal position is that only those who had actually been holding the post of primary headmasters on the crucial date, 17-4-1969, would be entitled to the benefits of G.O. 16/75, and that probably the Division Bench ruling of this Court in W.A. No. 88 of 1979 could have been distinguished on facts, inasmuch as whatever was said by the Division Bench has to be read and understood in the context of the fact that the appellant therein who was a primary headmaster was debarred from holding that post between the period 18-3-1967 and 17-3-1970 on account of the disciplinary action against him; and that might have weighed with the

Division Bench though Poti, J., (as he then was) in the judgment which gave rise to that appeal, had taken a contrary view.

6. There is yet another reason why it has to be construed that the intention of the Government from the beginning was to confer benefits of G.O. 16/75 only to those P.D. teachers who were holding the post of headmasters on 17-4-1969 as it is in the nature of a clarification in response to the direction given by one of us (Bhaskaran, J.) in the judgment in O.P. No. 4063 of 1976-A that by G.O. 209179 the Government stated that the intention of the Government was that for deriving the benefits under paragraphs 2(i) and (iii) of G.O. 16/75 P.D. headmasters/teachers-in-charge should have continued as such on the crucial date, 17-4-1969, also. A clarification by itself does not confer a new right. It only restates a right which had been in existence. Therefore, after this clarification, there is no justification in taking a view contrary to the declared intention of the Government. We may also have to bear in mind the background in which the concerned Government orders happened to be passed. By his Circular No. B (Spl.) 4-55459/69 dated 17-4-1969 the Director of Public Instruction prohibited the filling up of the future vacancies in the post of headmasters of Government L.P. and U.P. schools, as the question prescribing qualifications for the headmasters of primary schools was under consideration. It was thereafter, by G.O. 55/73 dated 24-4-1973, a separate higher pay scale was sanctioned for the primary headmasters. Evidently it does not appear to have been the intention of the Government to confer this benefit of higher pay scale on those who had shied away from the headmasters' post, which meant responsibilities without corresponding monetary benefit, allowing their juniors to shoulder the responsibilities. It is only reasonable to hold that the intention of the Government was to confer the benefit of higher pay scale on those who had been holding the post of headmasters on the crucial date, 17-4-1969, on which date the Director of Public Instruction issued the Circular mentioned above. Any other view is not only unwarranted by the wordings of the G.O. (G.O. 16/75) as clarified by G.O. 209/79, but also would be unjust and unfair to those P.D. teachers who offered themselves to discharge the onerous responsibilities of primary headmasters when their seniors shirked those responsibilities, as the post then did not offer any incentive. For the foregoing reasons we dismiss the writ petitions, however, without any order as to costs.