

K. S. Kamalanathan

Vs

State of Tamil Nadu and Another

V. Palaniswamy

Vs

State of Tamil Nadu

Civil Appeal No. 994 of 1980

(K. Jagannatha Shetty, Kuldip Singh JJ)

01.03.1989

JUDGMENT

KULDIP SINGH, J. –

1. Facts necessary to decide this appeal and the connected writ petition are as under :

Panchayat Union Councils came into existence under Tamil Nadu Panchayats Act, 1958. Teachers were employed by the Panchayat Union Councils to run the schools established by these Councils all over the State of Tamil Nadu. Prior to 2nd October, 1970 there was no separate post of head master in these primary and middle standard schools. There was no separate cadre of head masters and both the posts carried the same scale of pay. Appointment to the post of head master was not considered promotion.

2. It was in February 1971 that separate higher scale of pay was sanctioned for the post of head master of middle schools and was made operative with effect from 2nd of October 1970. Two separate cadres having come into existence the government by Order No. 1722 dated October 6, 1971 directed that promotions to the post of head master be made from amongst the teachers on the basis of seniority. Consequently the existing incumbants in the posts of head master were reverted, wherever necessary, and promotions were made strictly in accordance with seniority.

3. Affected head masters challenged the validity of Government Order No. 1722 in Writ Petition 3622 of 1973 before the Madras High Court and the learned Single Judge allowed the writ petition holding that Government Order No. 1722 could only operate prospectively and would not affect those who were already functioning as head masters of middle schools irrespective of their seniority. Division Bench upheld the judgment.

4. In order to give effect to the directions contained in the judgment of the High Court, Government Order No. 1044 dated June 23, 1975 was issued. Under this Order, from October 6, 1971 onwards, promotions to the posts of head master were to be made on the basis of seniority amongst teachers and the head masters working as such till the afternoon of October 5, 1971 were to continue to hold

their positions irrespective of their seniority. Validity of this Order was also challenged by way of Writ Petition No. 5000 of 1975 before the Madras High Court. Learned Single Judge allowed the writ petition and set aside the government order as being contrary to Rule 22 of the Tamil Nadu Panchayat Union Councils Establishment Rules which provided that promotions to the post of middle school head master was to be made strictly on the basis of seniority. The learned Judge directed the Panchayat Union Commissioner to make promotions without reference to the government order and strictly in accordance with Rule 22 of the above mentioned Rules.

5. Acting in accordance with the judgment in Writ Petition No. 5000 of 1975, Government Order No. 1219 dated July 18, 1977 was issued. This Order provided that posts of middle school head masters be treated as promotional posts for the purpose of Rule 22 with effect from October 1, 1970. It was further provided that teachers who were holding the posts of head master on the basis of their seniority, be permitted to continue but others be reverted. Thus vacancies which arose after October 1, 1970 were to be filled on the basis of seniority alone. Again the government order was challenged by way of Writ Petitions No. 2422 of 1977 in the Madras High Court. The writ petition was dismissed in limine by the learned Single Judge, but the Division Bench in writ appeal directed the appellants before it to approach the government and place for government's consideration the details of the circumstances under which they were appointed as head masters and also the date from which and the period for which they had been working as such. The Bench also observed that it was not for the High Court to lay down the criteria and the government should dispose of the matter by following the guidelines given in the judgment.

6. In the light of the observations made by the High Court, Government Order No. 130 dated January 25, 1978 was issued but on reconsideration and after examining all the issues involved, the government, in modification of all earlier orders, finally issued Government Order No. 784 dated May 14, 1979. This is the government order which is under attack in the present proceedings. The operative part of the government order is reproduced hereunder :

(I) The post of the middle school head master and primary school head master In Panchayat Union schools should be treated as promotion posts for the purpose of Rule 22(a) of the Tamil Nadu Panchayat Union Council Establishment Rules, 1964 with effect from October 1, 1970, the date on which the new scale of pay for head masters of middle schools has been given effect. Hence 'Seniority' shall be the criterion for promotion of Secondary Grade Teachers as head masters of middle schools and primary schools. However due to issue of various government orders regulating the promotion to the post of head masters, middle school and orders of the court which resulted in promotion and reversion of both seniors and juniors from October 1, 1970, the government have decided to give effect to the decision for following strictly seniority for promotion to the posts of head master, middle school and primary school only with effect from June 1. 1979.

(II) The appointments made so far as head masters of middle schools from October 1, 1970 upto July 31, 1978 shall be regulated as follows : Illustrations to regulate the pay of the teachers are given in the annexure to the G. O.

(a) A Secondary Grade Teacher who acted as head master middle school on October 1, 1970 by virtue of seniority may be allowed to continue as head master, middle school and his pay refixed in accordance with the order issued in the G. O. seventh read above.

(b) A Secondary Grade Teacher who acted as head master middle school after October 1, 1970 by virtue of seniority and continued thereafter as head master without reversion may be allowed to continue as head master and his pay refixed according to the orders issued in the G. O. seventh read above, with effect from the date of his first promotion as middle school head master.

(c) A Secondary Grade Teacher promoted as head master middle school after October 1, 1970 by virtue of seniority but subsequently reverted with reference to government orders second and third read above may again be promoted on June 1, 1979. However, his pay be regulated as head master middle school from the date of his first promotion as if he continued as head master middle school according to the G. O. seventh read above without any claim for arrears during the period he actually worked as Secondary Grade Assistant.

(d) A Secondary Grade Teacher who acted as head master middle school on October 1, 1970 but not senior enough to be promoted as head master middle schools as on October 1, 1970 may be reverted as head master primary school, or as Secondary Grade Assistant on June 1, 1979 according to seniority but he should be allowed to draw pay in the scale of pay admissible to the head master middle school after his pay is regulated as per the G. O. seventh read above. However arrears of pay should be allowed only for the period during which he actually acted as head master. He shall not be allowed to draw the special pay attached to the post of head master middle school after reversion. The services put in by him as head master and Selection Grade teacher in the head master's scale of pay after reversion shall count as service in Selection Grade teacher's post for purposes of advancement to special grade.

(III) the pay of the senior shall not be stepped up to the level of the junior, if the junior happens to get more pay than the senior.

(IV) A Secondary Grade Teacher who is entitled to promotion as head master of middle school according to seniority as per the above two orders, but gives in writing in categorical terms declining to act as head master of middle school need not be promoted.

7. The abovesaid government order was challenged by way of several writ petitions before the Madras High Court. The Division Bench of the High Court, by its judgment dated November 2, 1979, dismissed the writ petitions. Civil Appeal No. 994 of 1980 is against the High Court judgment and Writ Petition 574 of 1980 has been filed by an association of middle school head masters on identical facts.

8. The only contention advanced by Mr. M. K. Ramamurthi learned counsel for the appellant and the writ petitioners is that teachers who were posted as head masters, under the government orders from time to time, have acquired a vested right and the same cannot be taken away by the impugned administrative order. According to him taking away accrued rights would amount to operating the government order with retrospective effect.

9. The proposition of law dehors the facts of this case is unexceptionable. There are no accrued or vested rights in any of the parties in this case. From 1970 uptil 1979 there has been continuous lis

between the head masters who were holding the posts on October 1, 1970 though junior in seniority and the others who were claiming those posts on the basis of higher seniority. There were several rounds of litigation in the Madras High Court and as a consequence number of government orders were issued from time to time. The rights of the parties were never crystalised. Finally, as a result of the directions of the High Court Government Order No. 784 dated May 14, 1979 was issued which settled the controversy for ever. It is thus incorrect to say that any rights got vested in any of the parties prior to the date of the impugned government order. The government order has been upheld by the Madras High Court and we find to infirmity in the judgment of the Division Bench. Far from being arbitrary, the government order is fair and does justice to all the parties. The government have provided pay protection to the junior teachers who have been reverted or are facing reversion by application of the rule of seniority. They would continue to get the pay admissible to the head masters of middle schools even after reversion to the post of teacher. There is thus no force in the argument advanced by the learned counsel. The appeal and the writ petition are dismissed. There will be no order as to costs.

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