

Virendra Nath Gupta and Another

Vs

Delhi Administration and Others

Civil Appeal No. 3678 of 1984

(K. N. Singh, Dr. T. K. Thommen, N. M. Kasliwal JJ)

02.03.1990

JUDGMENT

SINGH, J. -

1. The two appellants, S/Sh. Virendra Nath Gupta and Mohammad Aslam Kidwai are teachers in the Kerala Education Society Senior Secondary School, New Delhi. They challenged the appointment of T. N. Vishwanathan Nair, respondent 5 as Vice-Principal of the Institution by means of a writ petition before the Delhi High Court under Article 226 of the Constitution of India. The High Court by its order dated January 5, 1982 dismissed the petition in limine. Hence this appeal by special leave.

2. The Kerala Education Society (hereinafter referred to as 'the Society') is a Society registered under the Societies Registration Act, 21 of 1960. The Society is running the Kerala Education Society Senior Secondary School in New Delhi. The Delhi Administration as well as the Education Authorities have recognised the institution as a linguistic minority school. The institution is aided and recognised by the Delhi Administration. The objects of the Society are : (i) to provide facility for the education of children in the Union territory of Delhi by making provision for suitable institutions; (ii) to promote the study of Malayalam. A sizeable number of persons belonging to State of Kerala who speak Malayalam are residents in Delhi and they constitute a linguistic minority. The Malayalees have their own language, script and culture, and in order to preserve the same they established the institution which is administered by the linguistic minority, with the primary purpose of promoting the study of Malayalam and also for preserving their culture, dance, music and other Kerala arts. Teaching of Malayalam in the aforesaid institution is compulsory from classes I to V, as the medium of instruction is Malayalam. However, Malayalam is an optional subject in VI to XII standard. The school has 1700 students and more than 60 per cent of parents and guardians belong to the lower income group of Malayalam speaking community.

3. The institution is regulated by the provisions of the Delhi School Education Act, 1973 (hereinafter referred to as 'the Act') and the Rules framed thereunder, namely, Delhi School Education Rules, 1973 (hereinafter referred to as 'the Rules'). One post of Vice-Principal was created in the institution in the pay scale of Rs. 650-1200 with effect from October 1, 1980. In March 1981 a Departmental Promotion Committee (hereinafter referred to as 'DPC') was constituted to make selection for appointment to the post of Vice-Principal in accordance with the recruitment rules made under Section 8(1) of the Act read with Rule 100 of the Rules issued on February 25, 1980 and published in the Delhi Gazette Extraordinary dated April 7, 1980. The DPC made selection from amongst the teachers of the institution to fill up the post of Vice-Principal by promotion in accordance with the aforesaid Rules. The DPC recommended the name of T. N.

Vishwanathan Nair, respondent 5 for promotion to the post of Vice-Principal although he did not fall within the zone of consideration as he was junior to the appellants at Sl. No. 10 in the seniority list. The management of the institution accepted the recommendation of the DPC and forwarded papers to the Director of Education for approval. Meanwhile, the appellants made representation to the Director of Education against the selection and appointment of respondent 5. The Director of Education rejected the management's proposal and refused to approve the selection and appointment of respondent 5 on the ground that he did not fall within the zone of consideration according to the Rules and further he did not possess the essential qualification of five years' experience as Post Graduate Teacher as required by the Recruitment Rules. Since no suitable candidate was available for promotion within the zone of consideration the Director of Education permitted the Managing Committee to advertise the post for filling the same by direct recruitment. Thereafter, advertisement was published on September 24, 1981 inviting applications for the post of Vice-Principal. The advertisement stated the essential qualifications being Master's Degree with second division, five years' teaching experience as Post Graduate Teacher or ten years' teaching experience as Trained Graduate Teacher, and also ability to speak and write Malayalam. Since the knowledge of Malayalam was prescribed as an essential qualification, the appellants were not eligible for selection or appointment as they could not speak or write Malayalam. On the recommendation of the Selection Committee respondent 5 was appointed as a direct recruit to the post of Vice-Principal and the Director of Education approved his appointment.

4. Learned counsel for the appellants assailed the validity of the appointment of respondent 5 on three grounds : (i) since under the Rules post of Vice-Principal was a promotional post, no direct recruitment was permissible; (ii) respondent 5 did not possess the essential qualification of Master's Degree in second division; (iii) the management mala fide introduced knowledge of Malayalam as an essential qualification with a view to favour respondent 5 and to oust the appellants even though the Rules did not permit knowledge of Malayalam as an essential qualification. We will deal with these submissions in seriatim.

5. There is no dispute that the recruitment/appointment to the post of Vice-Principal in the government aided schools and recognised schools in the Union territory of Delhi is regulated by the Rules published on April 7, 1980, a copy of which has been placed before us, framed under Section 8(1) of the Act read with Rule 100. Since the institution is an aided and recognised school the aforesaid Rules were applicable for the purpose of recruitment to the post of Vice-Principal. According to the Rules recruitment to the post of Vice-Principal is to be made by selection. The Rules prescribe educational and other qualifications. The Rules provide that the post of Vice-Principal should be filled by promotion failing which by direct recruitment as stated in column 8 of Annexure B to the Rules. As noticed earlier the management made attempt to fill the post by promotion and the DPC had considered the case of teachers of the institution for promotion to the post of Vice-Principal and it recommended respondent 5, but the same was not approved by the Director of Education. The Selection Committee, had considered the appellants also but it did not find them suitable for promotion, instead it recommended respondent 5 for promotion but the recommendation of the Selection Committee was not approved by the Director of Education. The Director of Education by his letter dated May 2, 1981 directed the management of the institution to fill the post by direct recruitment. Pursuant to that direction the management issued advertisement for making the recruitment. The Rules thus contain express provision for direct recruitment to the post of Vice-Principal and as such we find no merit in the submission made on behalf of the appellants.

6. Admittedly, respondent 5 did not possess Master's Degree in second division, which was an

essential qualification but column 5 to Annexure B to the Rules which prescribes essential qualifications, states : "Condition of second division relaxable in case of candidates belonging to the same school and also in case of Scheduled Castes/Scheduled Tribes." The Rules further contain a note : "Competent authority may relax the essential qualifications in exceptional cases of the candidates of the same school, after recording reasons therefor". The Selection Committee as well as the competent authority granted relaxation to respondent 5 as he belonged to the same school. Further he had ten years' experience as Trained Graduate Teacher and as such he was eligible for direct recruitment under the Rules. The appellants' plea that since the management was interested in appointing respondent 5 to the post of Vice-Principal, it manipulated to get his selection made for appointment to the said post, is without any foundation. The Selection Committee consisted five members out of which three were representatives of the Education Department appointed by the Director of Education. The Selection Committee made the selection in accordance with the Rules and found respondent 5 suitable for appointment to the said post. In this view there is no merit in the second submission made on behalf of the appellants.

7. The third submission made on behalf of the appellants is that the additional essential qualification regarding knowledge of Malayalam was prescribed in contravention of the Rules and this was done with a view to oust the appellants who were the senior teachers fully equipped with other essential qualifications for appointment to the post of Vice-Principal. While considering this question we cannot overlook the fact that the institution is a linguistic minority institution, its object is to promote the study of Malayalam and to promote and reserve Malayalee dance, culture and art. Article 29 of the Constitution of India guarantees right of linguistic minorities having a distinct language, script and culture of their own and, it also protects their right to conserve the same. Article 30 of the Constitution guarantees the right of minorities whether based on religion or language to establish and administer educational institutions of their choice. A linguistic minority has not only the right to establish and administer educational institution of its choice, but in addition to that it has further constitutional right to conserve its language, script and culture. In exercising this right a linguistic minority may take steps for the purpose of promoting its language, script or culture and in that process it may prescribe additional qualification for teachers employed in its institution. The rights conferred on linguistic minority under Articles 29 and 30 cannot be taken away by any law made by the legislature or by rule made by executive authorities. However, the management of a minority institution has no right to maladminister the institution, and it is permissible to the State to prescribe syllabus, curriculum of study and to regulate the appointment and terms and conditions of teachers with a view to maintain a minimum standard of efficiency in the educational institutions. This is the consistent view of this Court, as held in a number of decisions where the scope and extent of minority's right to manage its institutions were considered. See *In re the Kerala Education Bill, 1957* (1959 SCR 995 : AIR 1958 SC 956); *Ahmedabad St. Xaviers College Society v. State of Gujarat* ((1974) 1 SCC 717 : (1975) 1 SCR 173) *Lilly Kurian v. Sr. Lewina* ((1979) 2 SCC 124 : 1979 SCC (L&S) 134 : (1979) 1 SCR 820); *Frank Anthony Public School Employees' Association v. Union of India* ((1986) 4 SCC 707 : (1987) 2 ATC 35); *Y. Theclamma v. Union of India* ((1987) 2 SCC 516); *All Bihar Christian Schools Association v. State of Bihar* ((1988) 1 SCC 206) Though minority's right under Articles 29 and 30 is subject to the regulatory power of the State, but regulatory power cannot be exercised to impair the minority's right to conserve its language, script or culture while administering the educational institutions. An institution set up by the religious or linguistic minority is free to manage its affairs without any interference by the State but it must maintain educational standards so that the students coming out of that institution do not suffer in their career. But if the recognised minority institutions is recipient of government aid, it is subject to the regulatory provisions made by the State. But these regulatory

provisions cannot destroy the basic right of minority institutions as embodied under Articles 29 and 30.

8. The Kerala Education Society is a recognised and aided institution, it is subject to the regulatory provisions contained in the Delhi School Education Act 1973 and the Rules made thereunder. The question is whether the management of the institution could validly prescribe knowledge of Malayalam as an essential qualification for the post of Vice-Principal. Admittedly, the institution is for promotion of Malayalam language and as Malayalam is compulsory for students up to V standard and it is one of the optional subjects from VI to XII standard, it is not only proper but desirable that the incumbent holding the office of Principal; or Vice-Principal being administrative in nature should have knowledge of speaking and writing Malayalam. The requirement of knowledge of Malayalam is closely connected with the right of the linguistic minority to subserve (sic conserve) its script, language and culture. The management of the institution acted within its right in prescribing an additional essential qualification regarding knowledge of Malayalam and no exception can be taken to the same as it is the constitutional right of the linguistic minority to insist on the knowledge of the language, on the basis of which the linguistic minority is recognised. The provisions of the Act and the Rules are subject to the guarantees of constitutional rights of the minorities' institutions. In our opinion, the management acted within its constitutional right in insisting on the knowledge of Malayalam as an essential qualification for the post of Vice-Principal. The Education Department of Delhi Administration did not raise any objection to the management's action; on the other hand, the Selection Committee constituted by the Director of Education made its recommendation on the basis of the qualifications prescribed in the advertisement and the Director of Education approved the appointment of respondent 5. In this view we find no merit in the appellants' submission that the knowledge of Malayalam was prescribed mala fide with a view to oust them from consideration.

9. In view of the above discussion we find no legal infirmity in the appointment of respondent 5 as Vice-Principal. It appears that during the pendency of the appeal a vacancy arose in the post of Principal to which respondent 5 was promoted. Consequently there was a vacancy in the post of Vice-Principal to which K. D. Antony, another teacher of the school was appointed. The appellants filed an application for impleading K. D. Antony to the appeal but no relief was claimed against him. The application for impleading K. D. Antony is accordingly rejected.

10. The appeal fails and it is accordingly dismissed. There will be no order as to costs.

</html