

ALEYAMMA MATHAI ALMEIDA

v.

STATE OF GOA AND ORS.

APRIL 13, 2007

[C.K. THAKKER AND V.S. SIRPURKAR, JJ.]

Service law:

Promotion—Vacancy arose in the School—Assistant teacher much junior to appellant appointed to the post of headmistress—Director of Education (DOE) disapproved the selection and recommended name of appellant—School appointed another person junior to appellant—DOE appointed Deputy Director to be member of DPC to ensure that School adheres to the Rules and Regulations—School challenged this on the ground that it was a minority institution and hence no such order could be passed—Both appellant and School filed writ petitions—High court did not consider the minority status of school and held that in facts writ petition filed by appellant is liable to be dismissed—On appeal held, High Court ought to have decided all the questions raised in the case including the question of minority status of school under Art.30 of the Constitution—Matter remitted to High Court—Goa School Education Rules, 1986—s.20.

The dispute relates to the promotion of appellant, Assistant Teacher to the post of Headmistress in Respondent No.3-School.

When the vacancy arose in the said School, Assistant Teacher much junior to the appellant was appointed to the post of Headmistress. Appellant filed writ petition during pendency of which, Headmistress retired and the writ petition became infructuous. Post again fell vacant and name of respondent No.4 was recommended who was also much junior to the appellant.

The Director of Education (DOE) disapproved selection of Respondent No.4 and informed School to reconsider the case of appellant. The DOE was of the opinion that the school had been victimizing the appellant and causing unhealthy situation in the School and thus issued showcause notice asking as to why management of the School be not taken over under s.20 of Goa School Education Act, 1984.

A An order was thereafter passed by the Government taking over the management of School, which was set aside in a writ petition filed by School. The DOE again asked School to fill up the vacant post. The DOE appointed Deputy Director of Education, South Zone as his representative in accordance with the provisions of Rule 74(3)(a) of the Goa School Education Rules, 1986

B to be one of the Members of DPC with a view to ensure that all Rules and Regulations are strictly adhered to. The said action was challenged by the respondent-School by filing Writ Petition on the ground that it was a minority institution and hence, no such order could have been made. The writ petition, however, was allowed to be 'withdrawn keeping open the contention that it was the minority institution' and therefore protected under Article 30 of the

C Constitution. By the interim order, the High Court directed that DPC meeting be convened as per the order of Directorate of Education. According to the appellant, DPC once again recommended the name of respondent No.4 which was disapproved by the DOE.

D Appellant again made representation to consider her for promotion. Thereafter she filed writ petition. School also challenged the order of DOE. The High Court did not consider the issue as to the 'minority' status of respondent No.3-School and held that in the facts and circumstances of the case, writ petition filed by the appellant was liable to be dismissed whereas the writ petition of the School Management was required to be allowed. Hence

E the present appeal.

Allowing the appeal and remitting the matter to High Court, the Court

F HELD: Considering the checkered history of the litigation and long period it has taken, it would be appropriate if the impugned order is set aside and the matter is remanded to the High Court to decide all questions including the question as to the status of respondent No.3-School. It has also come on record that the appellant has retired in 1998 and the question of appointing her as Head Mistress now does not arise. The case has to be considered on the basis of the relevant material and in accordance with law.

[Para 11] [154-D, E]

G CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1951 of 2007.

From the Judgment and Order dated 10.09.2003 of the High Court of Bombay at Goa in Writ Petition Nos. 202 and 206 of 1998.

H P. Venugopal, Venukumar and Harshad V Hameed (for M/S. K.J. John & Co.) for the Appellant.

Siddharth Bhatnagar and Rekha Palli for the Respondents. A

The Judgment of the Court was delivered by

C.K. THAKKER, J. 1. Leave granted.

2. The appeal arises out of a common judgment dated September 10, 2003 by the High Court of Judicature at Bombay (Goa Bench) in two petitions being Writ Petition Nos. 202 & 206 of 1998. B

3. Shortly stated the facts of the case are that Mrs. Aleyamma Mathai Almeida-appellant herein, was appointed as Assistant Teacher in St. Anthony's High School, Assolna Salcete, Goa in the year 1965. A vacancy of Head Master arose in the said School in 1981. One Mrs. Irane Ferreira, an Assistant Teacher, much junior to the appellant was appointed as the Head Mistress bypassing the appellant's claim to the said post. Aggrieved by the action, the appellant approached the High Court of Bombay, Goa Bench at Panaji by filing Writ Petition No. 56 of 1985 on June 24, 1985 which was admitted. But by the time the petition came up for hearing, Mrs. Ferreira retired from service, the petition became infructuous and rejected accordingly. But again, in view of vacancy for the post of Head Master, the Departmental Promotion Committee ('DPC' for short) met to select a candidate for the post of Head Master and one Mr. Conception Almeida-respondent No.4 herein was selected and recommended for the said post vide recommendation dated May 1, 1985. The said respondent No.4 was junior to the appellant. Thus, once again the claim of the appellant was bypassed, presumably on the ground that there were adverse entries in the Confidential Reports of the appellant. C D E

4. The Director of Education, Government of Goa-respondent No.2 herein, however, disapproved selection of respondent No.4 to the post of Head Master by the School. By a communication dated October 18/21, 1985, the Director of Education informed the Manager of respondent No.3-School to reconsider the case of the appellant for promotion to the post of Head Master (Head Mistress) ignoring adverse remarks made in her Confidential Reports. By a letter dated November 11, 1985, the respondent No.3-School informed the Director of Education that besides adverse Confidential Reports, there were other tangible reasons for not considering the appellant for appointment to the post of Head Master. In the light of the communication by the Director of Education, DPC was reconvened and again it selected respondent No.4 for the post of Head Master. The Director of Education once again rejected the F G H

- A recommendation made by the DPC on April 25, 1986. By a letter dated February 24, 1987, the Director of Education asked respondent No.3-School to fill up the post of Head Master on regular basis by following the prescribed procedure within 30 days of the communication failing which, action for imposing cut in maintenance grant or derecognizing the School as per Rules would be taken. In spite of such letter, the management of respondent No.3-School did not take any action within stipulated period. On September 22, 1987, the Director of Education imposed penalty of 25% cut in the maintenance grant of the school for the academic year 1987-88 or till the directives issued to the respondent No.3-School by the Directorate would be complied with. The School was further cautioned that non-compliance of the directives by the Directorate might result in severe penalty on respondent No.3-School including suspension/stoppage of entire maintenance grant or withdrawal of permission granted to run the Institution.

5. An appeal preferred by respondent No.3-School before the Administrative Tribunal, Goa, Daman and Diu against the order passed by the Directorate was allowed on the ground that the School had not been given proper show cause notice by the Directorate of Education before passing the order and was, therefore, liable to be set aside. The third respondent then replied to the show cause notice and also sought approval of the Director of Education for appointment of respondent No.4 as Head Master on the ground that the action of respondent No.3 management rejecting the appellant's claim who was the senior-most teacher in the school was proper. The Director, however, did not agree and issued a show cause notice to the School stating therein as to why the management of the School should not be taken over under Section 20 of the Goa School Education Act, 1984 for victimizing the appellant for more than a decade causing unhealthy situation in the School and creating un-conducive atmosphere for academic activities which would be prejudicial to the public interest. Reply was submitted by respondent No.3-School on May 8, 1993.

6. On June 10, 1994, the Government passed an order taking over the management of respondent No.3-School for a period of three years. Respondent No.3 challenged the said order by filing a writ petition which was allowed and the order of the Government was set aside. The appellant sought intervention in the said writ petition which was dismissed. Her Special Leave Petition before this Court was disposed of directing the Education Department to look into her grievance and to pass appropriate order in accordance with law.

H

7. In the light of the direction issued by this Court, the Director of Education asked respondent No.3-School to reconvene the meeting of DPC for filling up the post of Head Master of the School which fell vacant in 1985. The Director of Education appointed Deputy Director of Education, South Zone as his representative in accordance with the provisions of Rule 74(3)(a) of the Goa School Education Rules, 1986 to be one of the Members of DPC with a view to ensure that all Rules and Regulations are strictly adhered to. The said action was challenged by the third respondent-School by filing Writ Petition No. 124 of 1997 in the High Court of Bombay, Goa Bench at Panaji on the ground that it was a minority institution and hence, no such order could have been made. The writ petition, however, was allowed to be withdrawn keeping open the contention that it was the 'minority institution' and therefore protected under Article 30 of the Constitution. By the interim order, the High Court directed that DPC meeting be convened as per the order of Directorate of Education. According to the appellant, DPC once again recommended the name of respondent No.4 which was disapproved by the Director of Education.

8. On November 18, 1997, the appellant represented the Director of Education to order respondent No.3-School to promote her as Head Mistress of the School with effect from May 1, 1985 when the post fell vacant and to grant all consequential benefits. Since nothing was done in the matter and no order was passed by the Director of Education, the appellant filed Writ Petition No. 202 of 1997. The respondent No.3-School also filed Writ Petition No. 206 of 1998 against the order of Director of Education. Meanwhile, however, the appellant retired in 1998. Both the writ petitions came up for hearing before a Division Bench of the High Court and by the order impugned in the present appeals, they were disposed of. The High Court did not consider the issue as to the 'minority' status of respondent No.3-School and held that in the facts and circumstances of the case, writ petition filed by the appellant was liable to be dismissed, whereas the writ petition of the School Management was required to be allowed. Accordingly, Rule was discharged in the petition filed by the appellant-petitioner and Rule was made absolute in the petition filed by the School Management. The appellant has challenged the said order by filing the present appeals.

9. We have heard learned counsel for the parties.

10. It was contended that the order passed by the High Court deserves to be quashed and set aside. It was submitted that the appellant was senior-most Assistant Teacher appointed as early as in 1965 and in spite of her

- A seniority, she was not appointed as the Head Mistress though substantive vacancy had arisen in 1981. When Mrs. Ferreira was appointed as Head Mistress who was junior to the appellant, the appellant challenged the action by filing a writ petition. The High Court was satisfied that the grievance voiced by the appellant was well-founded and accordingly admitted the petition by issuing Rule nisi. Meanwhile, however, Mrs. Ferreira retired and the petition was disposed of by the High Court observing that it had become infructuous. Obviously, therefore, the appellant ought to have been appointed after the retirement of Mrs. Ferreira. Unfortunately, however, the DPC again did injustice and not selected her. Respondent No.4, who was much junior to the appellant, was selected and his name was recommended for appointment as Head Master.
- C Though several times recommendations were rejected by the Directorate of Education to do justice to the appellant, the orders had not been complied with by respondent No.3-School. While disposing the writ petitions, the High Court did not decide the status of respondent No.3-School and allowed the petition filed by respondent No.4. The grievance was that the High Court ought to have decided all the points including the status of respondent No.3-School.
- D

11. In our opinion, considering the checkered history of the litigation and long period it has taken, it would be appropriate if the impugned order is set aside and the matter is remanded to the High Court to decide all questions including the question as to the status of respondent No.3-School. It has also come on record that the appellant has retired in 1998 and the question of appointing her as Head Mistress now does not arise. The case has to be considered on the basis of the relevant material and in accordance with law.

F 12. For the foregoing reasons, the appeal deserves to be allowed and is accordingly allowed. The order passed by the High Court is set aside and the matter is remanded to the High Court for fresh disposal in accordance with law. The High Court may deal with all questions including the question as to minority status alleged to have been claimed by the respondent No.3-School. Since the matter is very old, the High Court is requested to take appropriate decision as expeditiously as possible preferably within six months from the date of receipt of this order. In the facts and circumstances of the case there shall be no order as to costs.

D.G.

Appeal is allowed.

H