

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.T.SANKARAN

FRIDAY, THE 29TH SEPTEMBER 2006 / 7TH ASWINA 1928

OP.No. 36431 of 2000(K)

PETITIONER:

S.S.SUNILKUMAR, MANAGER,
M/S.RAGHAVANANDA CENTRAL SCHOOL, EDAVATTOM,
CHIRAKKARA P.O., KALLUVATHUKKAL, KOLLAM.

BY ADV. SRI.R.KRISHNA RAJ

RESPONDENTS:

1. RAJENDRAN PILLAI, GEETHALAYAM,
EDAVATTOM, CHIRAKKARA P.O.,
KALLUVATHUKKAL, KOLLAM.
2. ASSISTANT PROVIDENT FUND COMMISSIONER,
OFFICE OF THE REGIONAL COMMISSIONER,
EMPLOYEES PROVIDENT FUNDS, TRIVANDRUM.
3. REGIONAL PROVIDENT FUND COMMISSIONER,
OFFICE OF THE REGIONAL COMMISSIONER,
EMPLOYEES PROVIDENT FUNDS, TRIVANDRUM.

R2 & R3 BY ADV. SRI.N.N. SUGUNAPALAN, SC, P.F.

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON
29/09/2006, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

C.M.P.NO..62019/2000 IN O.P.NO.36431/2000K

DISMISSED

29.9.2006

SD/- K.T.SANKARAN, JUDGE

APPENDIX

PETITIONERS' EXHIBITS:

EXT.P1	TRUE COPY OF THE APPLICATION DT.20.5.1997
EXT.P2	COPY OF THE APPLICATION DATED 15.5.1997
EXT.P3	COPY OF THE APPLICATION DATED 14.5.1997
EXT.P4	COPY OF THE APPLICATION DATED 13.5.1997
EXT.P5	COPY OF THE APPLICATION DATED 14.5.1997
EXT.P6	COPY OF THE APPLICATION DATED 10.5.1997
EXT.P7	COPY OF THE APPLICATION DATED 13.5.1997
EXT.P8	COPY OF THE APPLICATION DATED 9.5.1997
EXT.P9	COPY OF THE APPLICATION DATED 19.5.1997
EXT.P10	COPY OF THE APPLICATION DATED 18.5.1997
EXT.P11	COPY OF THE APPLICATION DATED 16.5.1997
EXT.P12	COPY OF THE APPLICATION DATED 11.5.1997
EXT.P13	COPY OF THE APPLICATION DATED 8.5.1997
EXT.P14	COPY OF THE APPLICATION DATED 10.5.1997
EXT.P15	COPY OF THE APPLICATION DATED 12.5.1997
EXT.P16	COPY OF THE APPLICATION DATED 14.5.1997
EXT.P17	COPY OF THE APPLICATION DATED 14.5.1997
EXT.P18	COPY OF THE APPLICATION DATED 9.5.1997

EXT.P18(a) COPY OF THE APPOINTMENT ORDER DATED 2.6.1997

EXT.P18(b) COPY OF THE APPOINTMENT ORDER DATED 28.5.1997

EXT.P18(c) COPY OF THE APPOINTMENT ORDER DATED 27.5.1997

EXT.P18(d) COPY OF THE APPOINTMENT ORDER DATED 30.5.1997

EXT.P18(e) COPY OF THE APPOINTMENT ORDER DATED 26.5.1997

EXT.P18(f) COPY OF THE APPOINTMENT ORDER DATED 28.5.1997

EXT.P18(g) COPY OF THE APPOINTMENT ORDER DATED 30.5.1997

EXT.P18(h) COPY OF THE APPOINTMENT ORDER DATED 23.5.1997

EXT.P18(i) COPY OF THE APPOINTMENT ORDER DATED 2.6.1997

EXT.P18(j) COPY OF THE APPOINTMENT ORDER DATED 30.5.1997

EXT.P18(k) COPY OF THE APPOINTMENT ORDER DATED 2.6.1997

EXT.P18(l) COPY OF THE APPOINTMENT ORDER DATED 27.5.1997

EXT.P18(m) COPY OF THE APPOINTMENT ORDER DATED 20.5.1997

EXT.P18(n) COPY OF THE APPOINTMENT ORDER DATED 23.5.1997

EXT.P18(o) COPY OF THE APPOINTMENT ORDER DATED 26.5.1997

EXT.P18(p) COPY OF THE APPOINTMENT ORDER DATED 24.5.1997

EXT.P18(q) COPY OF THE APPOINTMENT ORDER DATED 29.5.1997

EXT.P18(r) COPY OF THE APPOINTMENT ORDER DATED 20.5.1997

EXT.P19 COPY OF THE ORDER PASSED BY THE SECOND RESPONDENT
DATED 2.7.1998.

EXT.P20 COPY OF THE PETITION FILED BY THE PETITIONER BEFORE
THE SECOND RESPONDENT DATED 5.2.2000.

EXT.P21 COPY OF THE ORDER PASSED BY THE SECOND RESPONDENT
DATED 24.11.1998.

EXT.P22 COPY OF THE PETITION FILED BY THE PETITIONER DT.5.2.2000

EXT.P23	COPY OF THE LETTER ADDRESSED TO THE SECOND RESPONDENT DATED 5.2.2000.
EXT.P24	COPY OF THE LETTER ADDRESSED TO THE SECOND RESPONDENT DATED 5.2.2000.
EXT.P25	COPY OF THE LETTER ADDRESSED TO THE SECOND RESPONDENT DATED 5.2.2000.
EXT.P26	COPY OF THE LETTER ADDRESSED TO THE SECOND RESPONDENT DATED 1.2.2000.
EXT.P27	COPY OF THE LETTER ADDRESSED TO THE SECOND RESPONDENT DATED 5.2.2000.
EXT.P28	COPY OF THE LETTER ADDRESSED TO THE SECOND RESPONDENT DATED 5.2.2000.
EXT.P29	COPY OF THE LETTER ADDRESSED TO THE SECOND RESPONDENT DATED 5.2.2000.
EXT.P30	COPY OF THE LETTER ADDRESSED TO THE SECOND RESPONDENT DATED 5.2.2000.
EXT.P31	COPY OF THE LETTER ADDRESSED TO THE SECOND RESPONDENT DATED 5.2.2000.
EXT.P32	COPY OF THE LETTER ADDRESSED TO THE SECOND RESPONDENT DATED 5.2.2000.
EXT.P33	COPY OF THE LETTER ADDRESSED TO THE SECOND RESPONDENT DATED 5.2.2000.
EXT.P34	COPY OF THE LETTER ADDRESSED TO THE SECOND RESPONDENT DATED 7.2.2000.
EXT.P35	COPY OF THE LETTER ADDRESSED TO THE SECOND RESPONDENT DATED 7.2.2000.
EXT.P36	COPY OF THE LETTER ADDRESSED TO THE SECOND RESPONDENT DATED 7.2.2000.
EXT.P37	COPY OF THE LETTER ADDRESSED TO THE SECOND RESPONDENT DATED 7.2.2000.

- EXT.P38 COPY OF THE LETTER ADDRESSED TO THE SECOND
RESPONDENT DATED 7.2.2000.
- EXT.P39 COPY OF THE LETTER ADDRESSED TO THE SECOND
RESPONDENT DATED 7.2.2000.
- EXT.P40 COPY OF THE LETTER ADDRESSED TO THE SECOND
RESPONDENT DATED 7.2.2000.
- EXT.P41 COPY OF THE JUDGMENT IN O.P.NO.8251/1999
- EXT.P42 COPY OF THE ORDER OF THE THIRD RESPONDENT.

RESPONDENTS' EXHIBITS:

- EXT.R2(a) TRUE COPY OF THE PURCHASE DEED DT.25.3.1994.
- EXT.R2(b) TRUE COPY OF THE LETTER DATED 20.9.1996.
- EXT.R2(c) TRUE COPY OF THE ATTESTED SALARY BILL FOR 6.94.

//true copy//

ahz/

K.T. SANKARAN, J.

O.P.NO. 36431 OF 2000 K

Dated this the 29th day of September, 2006

JUDGMENT

The petitioner, who is the Manager of M/s.Raghavananda Central School, Chirakkara, Kollam, challenges Ext.P42 order passed by the Regional Provident Fund Commissioner (E&R), Kerala, whereby the contention raised by the petitioner that the School is not covered by the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as 'the Act') on the ground that it was established as a new school after it ceased to function, was rejected.

2. The School in question is a recognised school. It was established in 1985 by Anugraha Mission Trust. It would appear that later one Raghavan Pillai became the owner of the property

:: 2 ::

and Manager of the School. Raghavan Pillai assigned the property consisting of the School as per registered assignment deeds dated 25.3.1994 and 23.3.1994, in favour of Rajendran Pillai and the petitioner (Ext.R2(a)). The name of the School was changed as Raghavananda Central School. The School was brought under the purview of the Act and the schemes framed thereunder with effect from 1.6.1994 provisionally. The proposal for coverage was submitted by C.A.Mathews on behalf of the Anugraha Mission Trust. When the ownership and name of the School and management of the School were changed and the title came to vest in Raghavan Pillai, the coverage under the Act continued. Later, when Raghavan Pillai transferred the property to Rajendran Pillai and the petitioner, the coverage under the Act continued in the name of Rajendran Pillai.

3. The case of the petitioner, as evidenced by

Ext.P20 representation dated 5.2.2000, is that the School started functioning from 1994 and Rajendran Pillai was the Manager. The management of the School was not a successful venture and he could not continue to run the School. On 6.5.1997, the petitioner purchased the School and started functioning of the School as a new establishment. His further case is that he became the Manager of the School not as a "going concern". The petitioner contended that all the employees and teachers are new entrants. He stated that there are only 18 employees and, therefore, the School is not covered under the Act. He also disclaimed any liability to pay contribution as provided under the Act.

4. Since the contribution payable by the Manager under the Act was not paid by the petitioner, proceedings were initiated by the Assistant Provident Fund Commissioner and an

enquiry under Section 7A of the Act was held. Ext.P19 order dated 2.7.1998 was passed holding that a sum of Rs.2,34,521.25 is liable to be recovered as contribution. Rajendran Pillai and the petitioner were directed to remit the amount. The arrears of contribution were for the period from June 1994 to December 1997. The petitioner raised objections against the demand and the Assistant Provident Fund Commissioner passed Ext.P21 order dated 24.11.1998, holding that the objections raised by the petitioner are devoid of merits and the petitioner is liable to pay contribution. After Ext.P19 order was passed, the petitioner had filed a petition before the second respondent, Assistant Provident Fund Commissioner, to reconsider the matter and drop the proceedings. That request was considered under Ext.P21 order. Ext.P22 representation dated 5.2.2000 was submitted by the petitioner to the second respondent and requested to post the case and to consider the same

afresh in the light of the documents produced by him. The petitioner produced Exts.P1 to P18 series and P23 to P40 to show that the teachers were appointed afresh by him and to show that the teachers relinquished their rights under the Act. Steps were initiated by the second respondent for realisation of the amount. At that juncture, petitioner filed O.P.No.8251 of 1999 to quash Exts.P19 and P21 orders and also for a direction to the second respondent to consider and pass orders on Ext.P22 representation in the light of Exts.P1 to P18(h) and P23 to P41. O.P.No.8251 of 1999 was disposed of by Ext.P41 judgment dated 26.3.1999, on the date on which it came up for admission, directing the second respondent to consider and pass orders on Ext.P22 representation after considering the documents produced along with the representation. Thereafter, Ext.P42 order dated 10.8.1999 was passed holding that the petitioner's establishment is an educational institution coming

:: 6 ::

under the coverage of the Act. The petitioner was also directed as per Ext.P42 order to comply with the provisions of the Act and the schemes with effect from 1.6.1994 without delay. Ext.P42 order is under challenge in this writ petition.

5. Sri.R.Krishna Raj, the learned counsel for the petitioner, contended that the School was closed down while Rajendran Pillai was the Manager and the petitioner commenced to run the School as a new establishment. The petitioner appointed teachers afresh and there are only 18 persons employed by him. Since twenty or more persons are not employed by the petitioner, it is contended that the establishment is not covered by the Act. The counsel for the petitioner contended that the crucial question to be decided is whether there was cessation of functioning of the School and the third respondent (Regional Provident Fund Commissioner) has not considered the crucial

question with reference to the documents produced by the petitioner. He also submitted that the teachers having relinquished their rights under the Act, the petitioner cannot be compelled to pay the contribution.

6. Sri.N.N.Sugunapalan, the learned counsel appearing for the second respondent submitted that once the establishment is covered under the Act, there cannot be any cessation of coverage in view of Section 1(5) of the Act. It was also submitted that the Act being a social security legislation, there cannot be any relinquishment of right by beneficiary and any such relinquishment would be void as being opposed to public policy. He also submitted that all the documents were considered by the third respondent and, therefore, Ext.P42 order does not call for any interference invoking jurisdiction under Article 226 of the Constitution of India.

7. The property including the building in which the School was established was purchased by Rajendran Pillai and the petitioner as per two documents marked as Ext.R2(a). Therefore, the petitioner is a co-owner of the property. The petitioner claims that Rajendran Pillai transferred his rights to the petitioner in 1997. There is no registered document executed by Rajendran Pillai transferring his rights to the petitioner. The petitioner has not produced in this Original Petition any document evidencing such transfer though an unregistered document was produced before the third respondent showing such transfer. The third respondent held that the document is invalid as it is not a registered one. It is admitted that the petitioner is the Manager of the School. He could become the Manager of the School either by transfer of management or by change of management involving change of ownership. If it was change of

management, under Rule 5 of Chapter III of the Kerala Education Rules, the approval of the Educational Officer was to be obtained. If it was change of management involving change of ownership, the Director had to grant previous permission for the same under Rule 5A of Chapter III of the Kerala Education Rules. The petitioner has not produced any document evidencing approval by the Educational Officer under Rule 5 or permission by the Director under Rule 5A of Chapter III of the Kerala Education Rules. If it is to be treated that the petitioner established a new recognised school, he should be able to produce documents to prove that he made an application for the opening of a new school under Chapter V of the Kerala Education Rules and that necessary permission was obtained by him. Chapter V of the Kerala Education Rules provides for the procedure to be followed while granting permission to open a new school. A recognised school could not be opened and run

without there being any documents. The petitioner has not produced any document to prove that there was a change of management or that a new school was established after getting permission from the Educational Authorities concerned. Therefore, the third respondent was fully justified in holding that the coverage under the Act continued to apply and that the petitioner is also liable for payment of contribution.

8. The contention raised by the petitioner that since the employees have relinquished their rights under the Act, the petitioner cannot be compelled to pay the contribution under the Act is without substance. The Employees' Provident Funds and Miscellaneous Provisions Act, 1952 is a social welfare legislation. A person, either the employer or employee, cannot contract out of the provisions of the Act. Even the beneficiary cannot relinquish his rights as provided under the Act. Any such

:: 11 ::

relinquishment would be against public policy and therefore void.

9. It is not disputed that the School was brought under the purview of the Act on 1.6.1994 under Code No.KR/12935. Section 1(5) of the Act provides that an establishment to which the Act applies shall continue to be governed by the Act notwithstanding that the number of persons employed therein at any time falls below twenty. The contention of the petitioner that at present there are only eighteen employees and therefore, the Act would not apply cannot therefore be accepted. In **Ernakulam Radio Co. (Calicut) v. Regional Provident Fund Commissioner, Kerala** (1974 KLT 603), it was held that it is well settled that a change in ownership or location of an establishment does not affect the applicability of the Act to that establishment.

10. The contention raised by the petitioner that the third respondent did not consider the documents produced by the petitioner is also without substance. The documents produced by the petitioner were perused by the third respondent and it was held that the benefit under the Act cannot be relinquished by the beneficiaries.

11. The learned counsel for the petitioner submitted that the petitioner may be afforded an opportunity for adducing oral evidence before the third respondent in order to establish that the teachers were newly appointed by him and that they were not in continuous service. Sufficient opportunity was granted to the petitioner before passing Ext.P19 order and also Ext.P42 order by the third respondent. Before passing Ext.P19 order, the case was adjourned on several occasions. After passing Ext.P41 judgment, again the matter was considered by the third respondent and the case

:: 13 ::

was posted on 31.5.1999, 18.6.1999, 2.7.1999, 21.7.1999 and 23.7.1999. The petitioner was represented by his counsel before the third respondent and the argument of the counsel were heard. At the request of the counsel for the petitioner, the third respondent adjourned the case to 2.7.1999 for submitting the argument notes. On 2.7.1999, there was no appearance and the case was adjourned to 21.7.1999, on which date also there was no appearance. The case was again adjourned to 23.7.1999, on which date the argument notes were submitted. The contention of the learned counsel for the petitioner that no effective and meaningful opportunity was afforded to the petitioner does not appear to be correct in view of the various dates of postings and what is recorded in Ext.P42 order.

12. For the foregoing reasons, I am of the view that Ext.P42 order was passed by the third respondent after considering all the relevant facts

and circumstances of the case and Ext.P41 judgment was duly complied with by the third respondent. No grounds are made out for invoking the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India.

The Original Petition fails and it is accordingly dismissed.

(K. T. SANKARAN)
Judge

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K.T.SANKARAN, J.

O.P.NO. 36431 OF 2000 K

JUDGMENT

29th September, 2006
