

(2011) 03 KL CK 0075

In the High Court Of Kerala

Case No : Writ Petition (C) No. 13020 of 2010 (B)

Aleyamma Abraham and Selin P. Rini

APPELLANT

Vs

Secretary to Government, District Educational Officer and
Manager, Victory Vocational Higher

RESPONDENT

Date of Decision : 14-03-2011

Acts Referred:

Citation : (2011) 03 KL CK 0075

Hon'ble Judges : T.R. Ramachandran Nair, J

Bench : Single Bench

Advocate : R.T. Pradeep, for the Appellant; Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

T.R. Ramachandran Nair, J.—The Petitioners are aggrieved by the rejection of the proposal for approval for appointment/promotion. The first Petitioner was initially appointed as UPSA with effect from 28.7.1983. A short term leave vacancy for 65 days arose from 28.10.1997 to 31.12.1997 when one Smt. C.S. Swarnamma HAS (Social Studies) took leave. First Petitioner was promoted in the leave vacancy as a Rule 43 claimant and the second Petitioner was newly appointed in the resultant vacancy of UPSA from 28.10.1997. Exhibits P2 and P3 are the appointment orders. The 1st Petitioner was later promoted as HSA (Social Science) with effect from 6.6.2001 in a substantive vacancy which was duly approved also. The 2nd Petitioner is working as UPSA with effect from 1.6.2008. Their appointments have been duly approved as evident from Exhibits P6 and P7.

2. The respective claims of the Petitioners for approval of appointment/promotion in the leave vacancy was considered by the Government and the Government by Exhibit P8 order rejected it. The same is under attack in this Writ Petition.

3. The reason pointed out by the Government in Exhibit P8 is that the appointments of the Petitioners were irregular as teachers of the school were

deployed to Government schools on protection in the previous academic year 2001-02 and therefore instead of recalling those protected teachers the Manager resorted to make appointment/promotion and this is against the rules and orders in force.

4. It is pointed out by the the learned Counsel for the Petitioners that going by Exhibit P9 and P10 circulars, short term leave vacancies are not to be filled up by recalling protected teachers. The next contention is that the protected teachers were in HSA (Natural Science) and HSA (Mathematics) and therefore they were not available for reappointment.

5. Evidently, the first Petitioner was promoted when Smt. Swarnamma HSA (Social Science) took leave. It is revealed from paragraph No. 3 of the counter affidavit that the promotion of Smt. Swarnamma UPSA as HSA (Social Science) was approved only with effect from 1.6.1998. Therefore Smt. Swarnamma was continuing only as UPSA while availing leave for the period from 28.10.1997 to 31.12.1998. As such promotion of the 1st Petitioner against that vacancy was irregular and hence it cannot be approved. Therefore, a fresh temporary appointment of the second Petitioner as against the promotion vacancy of the first Petitioner also cannot be approved.

6. Evidently, the promotion of Smt. Swarnamma was approved only from 1.6.1998 as the recalling of deployed protected teachers was delayed by the Manager. It is stated in paragraph No. 3 of the counter affidavit that in 1991-92 one HSA (Natural Science) and one HSA (Mathematics) were deployed in Government schools on protection. In the next year, the reduced two divisions were regained. But the Manager made irregular promotion and irregular appointment without recalling the protected teachers. Only after recalling the protected teachers, promotions and appointments can be approved and that can be done only from June, 1998 onwards.

7. The argument raised by the learned Counsel for the Petitioners is that even if the approval of Smt. Swarnamma was only from 1.6.1998, there is established vacancy prior to the said date covering the leave period and therefore the Petitioners are entitled for approval. The learned Government Pleader submitted that unless and until Smt. Swarnamma's promotion as HSA(Social Science) is approved, the Petitioners cannot get any approval for that period.

8. The approval of appointment of Smt. Swarnamma as HSA(Social Science) being only from 1.6.1998, evidently, during the leave period, namely 28.10.1997 to 31.12.1998, she was continuing as UPSA. There is no dispute that the said state of affairs continued. Therefore, there was no established vacancy for promotion of the first Petitioner or to make a fresh appointment of the second Petitioner. Therefore, I need not go into the veracity of the contentions of the Petitioners that in short term vacancies, protected teachers need not be recalled as the Government Order is otherwise in order. The Government found in Exhibit P8 that the appointments were against the rules.

9. The learned Counsel for the Petitioners submitted that both Petitioners have worked in the promoted and the newly appointed post and therefore they are entitled for approval. I fail to understand how they are entitled for approval in the light of the fact that Smt. Swarnamma's promotion as HSA(Social Science) is approved only from 1.6.1998. Even though the learned Counsel for the Petitioners relies on Exhibit P16 and P17 orders in this context, the second Petitioner cannot get approval of her appointment unless and until the promotion of the first Petitioner is approved, as that alone will create a fresh vacancy for justifying the appointment of the second Petitioner.

In that view of the matter, the Writ Petition fails and the same is dismissed. No costs.