

(1983) 03 KL CK 0021
In the High Court Of Kerala
Case No : O.P. No. 7290 of 1982-I

Annamma, C.V.

APPELLANT

Vs

The District Educational Officer and Others

RESPONDENT

Date of Decision : 03-03-1983

Acts Referred:

Kerala Education Rules, 1959 — Rule 6F, 6F(2), 6F(3)

Citation : (1983) 03 KL CK 0021

Hon'ble Judges : R.Bhaskaran, J

Bench : Single Bench

Advocate : T.L. Viswanatha Iyer and N. Subramoniam, for the Appellant;
Government Pleader, for the Respondent

Judgement

Bhaskaran, J.—The Petitioner, at the time of filing of this writ petition, was a lower grade (Hindi) Teacher in K.K.M. High School, Vandithavalam, Chittur Taluk, Palghat District. The Petitioner's first appointment to the post of lower grade Hindi Teacher in that School managed by the 3rd Respondent was on 30th July 1981 in a regular vacancy. Her appointment was approved by the first Respondent, the District Educational Officer, Palghat for the period from 15th September 1981 to the closing date in March 1982, i.e. 31st March 1982 as per Ext. P-1 order dated 30th July 1981. On 31st March 1982, for want of eight month's service she was relieved from service; she then was reappointed on 1st June 1982 in the very same regular vacancy by the third Respondent. Her appointment was approved by the first Respondent on 13th August 1982 for the period from 1st June 1982 without limiting the period of appointment by Ext. P-2 order dated 1st June 1982. The staff fixation order, dated 14th July 1982, a true copy of which is Ext. P-3, reduced the post in Hindi by abolishing the lower grade Hindi post, which post the Petitioner held, and directed the Petitioner to be relieved with effect from 14th July 1982. The third Respondent appealed to the second Respondent, the Deputy Director, Education, Palghat against Ext. P-3 order, but was not successful; and his appeal was dismissed by Ext. P-4 order dated 30th August 1982. The Petitioner who feels aggrieved by Ext. P-3 order,

confirmed in Ext. P-4 order, has filed this writ petition.

2. Sri T.L. Viswanatha Iyer, counsel for the Petitioner, submitted that in Ext. P-3 order, it was found that in the Upper Primary Section of the High School there were 42 periods and in the High School Section 57 periods. By virtue of the provisions contained in Rule 6F(i) of Chapter XXIII of the Kerala Education Rules, one full time post for every 25 periods of work per week taking High School Section and Upper Primary Section separately has to be sanctioned. In terms of Rule 6F(ii) after sanctioning full-time posts as specified in Sub-rule (i) the left over periods in both the Sections may be combined and posts may be sanctioned as indicated below:

(a) If on combination the number of left over periods in the High School Section and Upper Primary Sections together is 25 or above but below 29 in the case of Hindi, Arabic, Urdu and Sanskrit and below 30 in the case of other language except Regional Languages, one full-time post in the High School Section may be sanctioned, provided that the number of left over periods in the High School Section is 4 or above in the case of Hindi, Arabic, Urdu and Sanskrit and 5 or above in other cases. If on combination, the number of left over periods in the High School Section and Upper Primary Section together is 29 or above in the case of Hindi, Arabic, Urdu and Sanskrit and 30 or above in the case of other languages except Regional Languages but less than 49, one full-time post in the High School Section and one full-time post in the Upper Primary Section may be sanctioned.

In Clause (d) of Sub-rule (ii) of Rule 6F, it is provided as follows:

(d) If on combination, the number of left over periods in the High School Section and Upper Primary Section together is less than 25, a full-time post in the High School Section may be sanctioned if the number of left over periods in that Section is not less than 4 in the case of Hindi, Urdu, Arabic and Sanskrit and not less than 5 in other cases.

What would apply to the facts of the case, appears to be Clause (d) of Sub-rule (ii) of Rule 6F of Chapter XXIII quoted above. It is in exercise of that power that the first Respondent sanctioned three posts of High School Assistants Hindi in the High School Section while abolishing the post held by the Petitioner. This action would have been all right, but for the fact that in terms of further amendment to the proviso to Sub-rules (2) and (3) made by the Kerala Education (Amendment) Rules, 1982, published under Notification No. G.O. (P) 36/82/G. Edn., dated 30th March, 1982 as S.R.O. No. 438/82 in the Kerala Gazette Extraordinary No. 240, dated the 30th March 1982, further protection has been granted to persons like the Petitioner, who are likely to be affected by the reduction of posts as a result of Staff Fixation. That amendment reads as follows:

Amendment of Chapter XXIII.--In the Kerala Education Rules, 1959, in Chapter XXIII in Rule 6F, for the first proviso, the following proviso shall be substituted, namely:

Provided that if sanction of full time posts under Sub-rules (ii) and (iii) will adversely affect fully qualified teacher already working against sanctioned full time posts in the Upper Primary Section immediately before the date of commencement of the Kerala Education (Amendment) Rules, 1982, published under Notification No. G.O. (P) 36/82/G. Edn., dated 30th March 1982 as S.R.O. No. 438/82 in the Kerala Gazette Extraordinary No. 240, dated the 30th March 1982, all such posts may be allowed to continue for continuance of such teachers and a full time post may be sanctioned in the High School Section if the number of left over periods in the High School Section is not less than 4 in the case of Hindi, Urudu, Arabic and Sanskrit and not less than 5 in the case of other languages."

The Amendment shall come into force at once.

In this case during the material time the Petitioner admittedly was fully qualified. It is also not disputed that she was appointed in a regular vacancy; and her appointment was approved. Further, it is not disputed that on 30th March 1982 on which date further amendment to the proviso to Rule 6F of Chapter XXIII came into force, she was holding a post in the Upper Primary Section. That being the position, the provisions contained in Clause (d) of Sub-Rule (ii) of Rule 6F of Chapter XXIII and further proviso to Rule 6F of Chapter XXIII would make it clear that while it is open to the Educational Authorities to sanction a full time post in the High School Section, if the sanction of the full time post under Sub-rules (ii) and (iii) would adversely affect the fully qualified teacher already working against the full time sanctioned post in the Upper Primary Section immediately before the, date of commencement of the Kerala Education (Amendment) Rules, 1982, such posts are directed to be allowed to continue for continuance of such teachers. The position is therefore, that the Petitioner ought to have been allowed to continue in service retaining the post held by her in a regular vacancy, immediately prior to the coming into force of further amendment to proviso to Rule 6F of Chapter XXIII, (which came into force on 30th March 1982).

3. I, therefore, hold that the view expressed by the Respondents in Exts. P-3 and P-4 is untenable in law. Accordingly Exts. P-3 and P-4 are quashed; and Respondents one and two are directed to allow the Petitioner to continue in the post she was holding in a regular vacancy as on 30th March 1982, by virtue of the provisions continued in the further proviso to proviso to Rule 6F of Chapter XXIII of Kerala Education Rules. The Respondents 1 to 3 would also see to it that the Petitioner's salary and allowance for the period in dispute would be disbursed to her without delay, if not already disbursed to her. This writ petition is disposed of with the above directions quashing Exts. P-3 and P-4. There will be no orders as to costs.