

(2015) 11 KL CK 0091

In the High Court Of Kerala

Case No : W.P. (C) Nos. 31758 of 2015 (T) and 32216 of 2015

Aswathy P.R.

APPELLANT

Vs

Principal Secretary General Education Department and Others

RESPONDENT

Date of Decision : 17-11-2015

Acts Referred:

Citation : (2015) 11 KL CK 0091

Hon'ble Judges : K. Vinod Chandran, J.

Bench : Single Bench

Advocate : R.T. Pradeep and M. Bindudas, Advocates, for the Appellant; K. Jaju Babu, Senior Advocate, M.U. Vijayalakshmi, Brijesh Mohan, K.P. Justine, Advocates and M.J. Rajasree, Government Pleader, for the Respondent

Final Decision : Disposed Off

Judgement

K. Vinod Chandran, J.—The petitioners in both the writ petitions are concerned with their appointment as HSA (Physical Science) in two different academic years. The parties are referred to by their names.

2. Vijayalakshmi T.P. claims to have been appointed as an UPSA on 01.06.2011 and later promoted as an HSA (Physical Science) on 04.06.2012. Both the said actions, of the Management, was rejected approval by the District Educational Officer. The appointment of Vijayalakshmi as UPSA was rejected by Ext. P1 [WP(c) No. 32216 of 2015] for reason of the promotion of UPSA, which resulted in the vacancy, having not been approved. A reading of Ext. P1 would indicate that one M.S. Raneesh, who was working as UPSA, was promoted as HSA.

3. Subsequently, on 04.06.2012, it is alleged that Vijayalakshmi was promoted as HSA (Physical Science). The approval of the same was also rejected by the District Educational Officer by Ext. P2, in the very same writ petition, for reasons stated therein. Aswathy P.R., however claims that there was no promotion made on 04.06.2012 and it was a fresh appointment of Vijayalakshmi as HSA (Physical Science). The contention is raised since admittedly there was a ban in existence

which would interdict the Manager from making a fresh appointment.

4. Subsequently, when another vacancy arose on 01.04.2014 of HSA (Physical Science), Aswathy staked a claim to the said vacancy under Rule 43. Vijayalakshmi was outside the rolls of the School, since her appointment as UPSA and her promotion as HSA (Physical Science) were not granted approval. The claim of Aswathy was allowed by the District Educational Officer by Ext. P4 in WP(C) No. 32216 of 2015. A revision was filed from the above order also by Vijayalakshmi. Vijayalakshmi thus filed a revision from the rejection of her appointment as UPSA and the rejection of her appointment as HSA, by Ext. P3 produced in her writ petition. Against Ext. P4 order of the DEO, upholding the claim of Aswathy, Vijayalakshmi also filed Ext. P5 revision. By Ext. P6 judgment, both the revisions were directed to be considered by the Government. The Government, by Ext. P9, rejected the claim of Vijayalakshmi. Hence Aswathy filed WP(c) No. 31758 of 2015, seeking implementation of that order produced as Ext. P13 in her writ petition. Vijayalakshmi challenged the order as Ext. P9 in WP(c) No. 32216 of 2015.

5. The rival claimants have different contentions with respect to Vijayalakshmi's appointment. The Government has proceeded as if Vijayalakshmi was appointed as an UPSA on 01.06.2011, and then promoted as HSA (Physical Science) on 04.06.2012. Definitely, if appointment made on 04.06.2012 was a promotion, then necessarily the question of approval for 01.06.2011 as an UPSA, also has to be considered by the Government. Ext. P3 indicates that Vijayalakshmi had a contention with respect to her rejection of approval as an UPSA on 01.06.2011 and her promotion as HSA (Physical Science) on 04.06.2012. The Government having not considered the question of approval of Vijayalakshmi as UPSA on 01.06.2011, Ext. P4 cannot be sustained.

6. Pausing here for a moment, one has to look at the contention of Aswathy also, which is that Vijayalakshmi's appointment as HSA (Physical Science) on 04.06.2012 was not a promotion, but a fresh appointment. If that was a fresh appointment, then the question has to be looked at the perspective of, whether there is any established vacancy on 04.06.2012 and whether there was in existence a ban for such appointment. If Vijayalakshmi claims fresh appointment on 04.06.2012 and there is a ban in existence, there could be no fresh appointment. Hence, it has to be held that if Vijayalakshmi's appointment as UPSA on 01.06.2011 is not approved, then definitely there could be no promotion on 04.06.2012.

7. But these are matters which are to be examined by the Government, after looking into the files of the Educational Authority and looking at the nature of the respective appointments. If Vijayalakshmi has no claim to be appointed as UPSA or HSA (Physical Science), then definitely on the vacancy of HSA (Physical Science) arising on 01.04.2014, Aswathy, who is a qualified UPSA, has a better claim for promotion, under Rule 43. It is in that context that Ext. P8 order in WP(C) No. 31758 of 2015 has been passed.

8. However, that would depend upon the result of Exts. P3 & P5 revisions filed by Vijayalakshmi. If Vijayalakshmi's Ext. P3 revision is rejected, then necessarily Ext. P5 also will have to be rejected. However, if the approval is granted to Vijayalakshmi as an UPSCA on 01.06.2011, then her claim for promotion on 04.06.2012 would have to be considered and on such a contingency, the occurrence of vacancy on 01.04.2014 would have to be reviewed by the DEO and if there is a vacancy, necessarily Aswathy would have a claim over it.

9. Hence, unequivocally holding Aswathy's claim to a vacancy arising on 01.04.2014, if such vacancy arises, the revisions at Exts. P3 and P5 would have to be considered again. As was noticed, Ext. P9 order of the Government did not at all deal with the initial appointment of Vijayalakshmi as an UPSCA on 01.06.2011.

10. Ext. P9 is set aside and the parties are directed to appear before the Government on 25.11.2015. On which date, the Government shall give a date of hearing within a period of ten days from that date and a decision shall be taken within one month therefrom. Both Vijayalakshmi and Aswathy shall be continued, however subject to the result of the revision petition. All contentions of either parties are left open.

The writ petition would stand disposed of. No costs.