
(2014) 10 KL CK 0149
In the High Court Of Kerala
Case No : WP(C). No. 3122 of 2010 (M)

A.V. Sathyabhama

APPELLANT

Vs

The Manager, Moothedath High School

RESPONDENT

Date of Decision : 09-10-2014

Acts Referred:

Citation : (2014) 10 KL CK 0149

Hon'ble Judges : A.K. Jayasankaran Nambiar, J

Bench : Single Bench

Advocate : P. Ravindran, Sr. Adv., P. Deepak and Aparna Rajan, Advocate for the Appellant; S. Sheeja Kumary (Ayoor), Government Pleader and Noushad Thottathil, Government Pleader, Advocate for the Respondent

Judgement

A.K. Jayasankaran Nambiar, J.—The petitioners are six in number and were all appointed as UPSA's in the 1st respondent School. Petitioners 1 to 3 subsequently got promoted as High School HSA's in the same School. The petitioners 1 to 3 entered service as UPSA on 17.02.1997, 01.07.1997 and 02.07.1997 respectively and their promotions as HSA's were on 09.01.1998, 01.06.99, and 01.06.1999 respectively. The issue in this case stems from an order of staff fixation in the said School for the academic year 2006-2007. In Ext. P1 staff fixation order dated 05.12.2006, it was found that, on account of reduction in students strength, six divisions in the High School section become redundant and there was a consequential division fall recorded in the staff fixation order. As a direct consequence of the division fall, petitioners 1 to 3 faced reversion to the post of UPSA and petitioners 4 to 6 faced retrenchment from the post of UPSA. Aggrieved by Ext. P1 staff fixation order, to the extent it affected the petitioners, the 1st respondent Manager filed an appeal before the 3rd respondent, but the same was rejected by Ext. P7 order. Challenging Ext. P7 order, petitioners 1 to 3 and 4 to 6, filed separate revision petitions before the 4th respondent. Ext. P11 is the common order passed by the 4th respondent in all the revision petitions. In Ext. P11, the 4th respondent essentially rejects the contention of the petitioners in the writ petition, with regard to the claim for the

benefit of protection conferred on them by Exts. P2 to P5 Government orders. In Ext. P11, two other HSA's namely Smt. S.M. Santha and Smt. N. Suma, were held eligible for the protection in the cadre of HSA since their appointment as HSA was before the cut-off date of 14.07.1997 that is prescribed in Ext. P3 Government order dated 29.09.1999. Ext. P11 is impugned by the petitioners, inter alia, on the ground that the 4th respondent while passing the said order, erred in treating the case of the petitioners as different from that of Smt. S.M. Santha and Smt. N. Suma by holding that the benefit of protection conferred by Ext. P3 Government order would enure only to those HSA's who were appointed as HSA prior to 14.07.1997 and not to persons who, although appointed as UPSA's prior to 14.07.1997, were promoted as HSA only thereafter. It is this interpretation of Ext. P3 Government order, and the consequential benefit that it confers, that has worked to the disadvantage of petitioners 1 to 3 in Ext. P11 order. Further, it is as a consequence of the reversion faced by petitioners 1 to 3 that petitioners 4 to 6 are also aggrieved because, Ext. P11 virtually holds that they are liable to be retrenched from the post of UPSA.

2. A counter affidavit has been filed on behalf of the 2nd respondent wherein the stand taken by the 4th respondent in Ext. P11 order is sought to be justified by placing reliance on Ext. P3 Government order and pointing out that the said Government order envisages a protection for all aided School teachers who were in service as on 14.07.1996 and those who were appointed as aided School teachers against regular vacancy during 1996-97 up to 14.07.1997. It is pointed out that the terms of the said Government order would clearly indicate that the protection would enure to the teacher in question only in respect of the post that he or she was holding prior to 14.07.1997. In other words, it is contended that if a person was holding the post of UPSA prior to 14.07.1997, then that teacher would get the benefit of protection after 14.07.1997, only in the event that he or she faced a reversion or retrenchment from that post and not if the reversion or retrenchment was faced in a promoted post such as HSA. It is also pointed out that during the pendency of the writ petition, the 4th and 6th petitioners have left the service of the 1st respondent School, having obtained employment elsewhere.

3. I have heard learned Senior counsel Sri. P. Ravindran, appearing on behalf of the petitioners and the learned Government Pleader appearing on behalf of respondents 2 to 4.

4. On a consideration of the facts and circumstances of the case as also the submissions made across the Bar, I find that the protection granted in Ext. P3 Government order is basically a continuation of the protection that was granted to teachers in Ext. P2 Government order dated 26.07.1999. In both the Government Orders, namely Exts. P2 and P3, the protection is granted to teachers who were in service as on the prescribed cutoff date and the manner of protection envisaged is to retain them in the respective Schools, subject to compliance with the conditions that are enumerated in the Government order.

There is no indication in the Government orders that the benefit of protection conferred by the said Government Orders is limited only to the period for which the teacher continues in the post, which she was holding at the time of getting the benefit of protection under the said Government orders. In other words, there is nothing in the Government orders that would suggest that a teacher, who was entitled to the benefit of the protection conferred by the said Government orders, would stand to lose the said benefit on securing a promotion to a higher post, which is also a teacher's post for the purposes of the Kerala Education Act and Rules. If that be the case, and the benefit of protection conferred by Exts. P2 and P3 Government orders enures to a teacher (and not to any particular category thereof), who has been appointed prior to the cut-off date, then I see no justification in the stand, taken by the 4th respondent in Ext. P11 order, that the benefit of the protection would be available only to those HSA's who were appointed as HSA's prior to the cut-off date mentioned in the Government orders referred to above, and not to HSA's who had been appointed as UPSA's prior to the said cut-off date. As already noted, this is the sole reason that weighed with the 4th respondent in Ext. P11 order while granting the benefit of protection to only two HSA's namely Smt. S.M. Santha and Smt. N. Suma, and to the exclusion of petitioners 1 to 3, who were similarly situated in that they were appointed as UPSA's prior to the cut-off date of 14.07.1997. The findings of the 4th respondent in Ext. P11 are not supported by the express provisions of the Government orders relied upon and are hence liable to be set aside. Resultantly, I quash Ext. P11 to the extent it holds that petitioners 1 to 3 are not entitled to the benefit of Exts. P2 and P3 Government orders extending protection to teachers appointed during the academic year 1997-1998 up to 14.07.1997. As a consequence, the reversion of petitioners 1 to 3 to the post of UPSA are set aside. The retrenchment of petitioners 4 to 6 from the post of UPSA are also set aside since the protection given to petitioners 1 to 3 would now render the retrenchment of petitioners 4 to 6 unnecessary. The 2nd respondent is directed to pass consequential orders determining the staff fixation for the academic year 2006-2007 based on the findings in this judgment. To enable him to do so I also quash Ext. P1 order of the 2nd respondent, to the extent it has merged in Ext. P11 order that already stands quashed by this judgment. The 2nd respondent shall pass a consequential order within a period of one month from the date of receipt of a copy of the judgment. While passing the consequential order, the 2nd respondent shall also take note of the fact that the 4th and 6th petitioners have since left the services of the 1st respondent School. The 2nd respondent will also have to modify the staff fixation orders of the subsequent years based on the revised staff fixation order for the year 2006-2007 passed pursuant to this judgment.

The writ petition is allowed as above.