
(2000) 10 KL CK 0057

In the High Court Of Kerala

Case No : W.A. No's. 1934, 2025 and 2026 of 2000

Balakrishna Pillai

APPELLANT

Vs

The State of Kerala and Others

RESPONDENT

Date of Decision : 19-10-2000

Acts Referred:

Kerala Education Rules, 1959 — Rule 2, 2(1), 3, 34, 44

Citation : (2000) 2 KLJ 789

Hon'ble Judges : S. Sankarasubban, J;A. Lekshmikutty, J

Bench : Division Bench

Advocate : Govind K. Bharathan and C.P. Kunhikannan, in W.A. 1934 of 2000, for the Appellant; Gopinathan Nair, Govt. Pleader and V.P. Seemanthini, for Respondents 1 to 4 and P. Ali, for Respondent 6, for the Respondent

Final Decision : Dismissed

Judgement

S. Sankarasubban, J.—W.A. No. 1934/2000 is filed against the judgment in O.P. No. 8163/94, while W.A. Nos. 2025/2000 and 2026/2000 are filed against the judgment in O.P. Nos. 7197/94 and 4436/94 respectively. The main case is W.A. No. 1934/2000 and the other two writ appeals can be disposed of in the light of the judgment in W.A. No. 1934/2000.

2. As already stated, W.A. No. 1934/2000 is filed against the judgment in O.P. 8163/1994 The Petitioner is the Appellant. He is the manager of S.V.M. Model High School, Vendar, Kottarakkara. The question for consideration in this case is, as to which of the persons from Respondents 5 and 6 is entitled to be the Headmaster of the school. 5th Respondent, A.R. Meenakshi Amma is the wife of the Manager. 6th Respondent, N. Radhakrishnan Nair is a claimant to that post. The previous Headmaster retired on 31st March 1993 on superannuation. So the vacancy arose on 1st April 1993. But, it seems that the Manager represented to the Government to allow the Headmaster (in this case the same person) to continue for one more year. But that representation was dismissed by the Government on 12th April 1994.

3. According to the Appellant, 5th Respondent is fully qualified to be appointed as Headmistress of the school and the 6th Respondent has no prescribed qualification. The Appellant by Ext. P-1 dated 25th April 1994 sought for the approval of 5th Respondent. The District Educational Officer passed Ext. P-3 order by which he refused to approve the 5th Respondent as teacher in charge and also refused to consider the petition of the 6th Respondent. The Manager by Ext. P-4 filed an appeal before the Deputy Director of Education. The Deputy Director found that 6th Respondent was the qualified person and he should be appointed as Headmaster. The appeal was disposed of in the above manner. But, it seems that, subsequently by Ext. P-7 order dated 3rd May 1994, the Government by special order directed the District Educational Officer to approve the appointment of the 5th Respondent and this was done by Ext. P-8 order. In the meanwhile, two Original Petitions were filed before this Court by the 6th Respondent. They are O.P. Nos. 4436 and 7197 of 1994. In O.P. No. 4436/94, the prayer was for a direction to promote the Petitioner as Headmaster, while in the other O.P., O.P. No. 7197/1994 the prayer was to quash the approval granted to the appointment of A.R. Meenakshi Amma, by the Government. In O.P. No. 8163/94 filed by the Manager, the prayer was for quashing G.O. (Ms.) 2/81 and for a writ of mandamus directing the Respondents to refrain from interfering in any manner with the continuing of 5th Respondent as Headmistress. As already stated, O.P. No. 8163/94 was heard first and the other two Original Petitions were disposed of in the light of the judgment in O.P. No. 8163/94.

4. Sri Govind K. Bbarathan appeared for the Appellant, Smt. Seemanthini for the 5th Respondent and Sri Ali for the 6th Respondent. The main contention raised by Sri Govind K. Bharathan on behalf of the Appellant is that, 6th Respondent is not qualified to hold the post of Headmaster. The 6th Respondent's qualification is Bachelor of Arts (Hindi), Master of Arts (Hindi Literature), and B.Ed. He has also passed Account Test and the test in K.E.R. The qualification prescribed for Headmaster is found in Chapter XXXI, Rule 2 of Kerala Education Rules (for short, "K.E.R."). The qualification prescribed there under is a degree in Arts or Science and B.Ed./B.T./L.T. conferred or recognised by the Universities in Kerala. According to the Appellant, 6th Respondent is not having a Degree in Arts. For this purpose, he relies on Exts. P-2 A and P-2 B. Ext. P-2 A is a letter from the Registrar, University of Kerala to the Manager, viz. the Appellant, in which it is stated that subject Hindi does not come under the Faculty of Arts but under the Faculty of Oriental Studies. Ext. P-2 B is a letter addressed to T. Nanoo Master from the Registrar in which it is informed that B.A. degree in Hindi language and literature of the University of Kerala is a Bachelor's Degree under the Faculty of Oriental Studies. Hence, it is contended that it is not a degree in arts. Learned Counsel for the 6th Respondent invited our attention to Chapter XIV of the Kerala University First Statutes. Clause 1 deals with degrees in the Faculty of Oriental Studies. The first degree is Bachelor of Arts and the second is Bachelor of Arts (Honours). Clause 2 states that candidates for the Degree of Bachelor of Arts shall be required to have passed the Pre-Degree Examination of the University or

such other equivalent examination accepted by the University. Clause 3 states that candidates for the Degree of Bachelor of Arts (Honours) shall be required to have passed Intermediate Examination of this University or equivalent examination accepted by the University.

5. The argument of the counsel for the Appellant is that, so far as B.A. (Hindi) comes under Faculty of Oriental Studies and does not come under the Faculty of Arts or Faculty of Science, a degree holder in Hindi cannot be said to possess a degree in Arts or Science. According to us, this fine distinction sought to be made by the counsel for the Appellant cannot be accepted. What the rule says that is a degree in arts or science. Even though language Hindi comes under the Faculty of Oriental Studies, what is awarded is a Degree in Arts. Chapter XIV clearly says candidates for Degree of Bachelor of Arts. Thus, we do not accept the plea of the Appellant that 6th Respondent is not holding a degree in arts.

6. Another contention raised by the counsel for the Appellant is that there are certain other diplomas and titles recognised as equivalent to Bachelor of Arts (Hindi) and such equivalence cannot be treated as Degree in Arts. So far as the present case is concerned, we are not concerned with the same. Hence, we are of the view that 6th Respondent is qualified as per Rule 2(1) of Chapter XXXI of K.E.R.

7. The next argument submitted by the counsel for the Appellant is that distinction is made in Chapter XXXI with regard to H.S.A. (Subject) and H.S.A. (Language). Then the learned Counsel submits that distinction is also seen in Rule 3 of Chapter XXIII of K.E.R. Learned Counsel then took us to Chapter XIV-A of K.E.R. Rule 44(1) of Chapter XIV-A states that appointment of Headmaster shall ordinarily be according to seniority from the seniority list prepared and maintained under Clauses (a) and (b) as the case may be of Rule 34. Now we shall refer to Rule 34 of Chapter XIV-A. Rule 34 says that every management shall prepare and maintain in Form 11A a staff list otherwise called the seniority list of teachers as specified in Clauses (a) and (b). In this case we are concerned with High Schools. Hence Clause (a) is relevant. Clause (a) of Rule 34 states that, in the case of High School, a combined seniority list of teachers specified in Clauses (ii) and (ii A) of Rule 3, "Chapter XXIII shall be prepared. Clause (ii) of Rule 3 is High School . Assistant. Clause (ii A) of Rule 3 is High School Assistant (Language). Thus under Clause (a) of Rule 34 of Chapter XIV-A, seniority list is the combined seniority list of High School Assistant and High School Assistant (Language). Thus, going by the rules, for appointment of the Headmaster under Rule 44 of Chapter XIV-A, the combined seniority list of teachers should be looked into.

8. Learned Counsel for the Appellant brought to our notice that in the Original Petition, he has challenged G.O. (Ms.) 2/81 which is produced as Ext. P-6. As per Ext. P-6, originally the seniority of High School Assistant and High School Assistant (Language) were combined together. He challenged this as arbitrary. But, according to us, we cannot consider this contention, because the

Government Order does not now remain as G.O. Now this has form part of the Rules 34(a) and 34(b). In fact, when a similar contention was taken in W.A. Nos. 629 of 1982 and connected cases, by judgment dated 7th March, 1985, a Division Bench consisting of Bhaskaran, C.J. and Padmanabhan, J. held that, since the order is no longer, in force having been superseded by the rules framed by the Government, and as the validity of the Rule is not challenged, the validity of the Government Order cannot be gone into.

9. Further, according to us, there is no arbitrariness in the rule. Even though High School Assistant and High School Assistant (Language) find separate place in Chapter XXIII of K.E.R., according to us, they forma single group for the purpose of promotion to the post of Headmaster. Hence, we cannot accept the argument of the Appellant. The Learned Single Judge has also considered the validity of Ext. P-6.

10. In the above view of the matter, we do not find any substance in Writ Appeal No. 1934/2000. Hence, the same is dismissed. In the light of the judgment in W.A. No. 1934/2000, Writ Appeal Nos. 2025 and 2026 of 2000 filed by the 5th Respondent in W.A. No. 1934/2000 are dismissed.

11. Learned Counsel for the Appellant in Writ Appeal Nos. 202 and 2026 of 2000 submitted that she has been continuing as Headmistress from 15th April 1994. It is further stated that school has now been upgraded as Higher Secondary School and she is appointed as the Principal of the School. So far as the appointment of the Principal of a Higher Secondary School is concerned, it is submitted that K.E.R. does not apply. We are of the view that, 6th Respondent-N. Radhakrishnan Nair, ought to have been appointed as Headmaster. The approval of the appointment of the Appellant as Headmistress is not correct, and 6th Respondent is eligible to be appointed as Headmaster. The appeals are dismissed. The direction to pay cost is vacated.