
(2000) 04 KL CK 0019
In the High Court Of Kerala
Case No : W.A. No. 1302 and 1304 of 1999

Bhanumathy

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 06-04-2000

Acts Referred:

Kerala Education Rules, 1959 — Rule 43, 51A

Citation : (2000) 2 KLJ 197

Hon'ble Judges : K.S. Radhakrishnan, J;Arijit Pasayat, J

Bench : Division Bench

Advocate : N.N. Sugunapalan, for the Appellant; N.D. Premachandran, M.C. Gopi, Jaju Babu and C.T. Ravikumar (Govt.Pleader), for the Respondent

Final Decision : Dismissed

Judgement

Radhakrishnan, J.—Fifth respondent in O.P. No, 4778 of 3 993 along with the Manager of the Thekkummuri High School, Puthenchira, has preferred W.A.. No. 1304 of 1999 and the petitioners in O.P. No. 6894 of 1993 have preferred W. A No. 1302 of 1099. Question that has come up for consideration is as to who is the rightful claimant for the vacancy of HSA which arose in the Thekkummuri High School on 20-7-1988. Short facts which are necessary for the disposal of these appeals are as follows. Petitioner in O.P. No. 4778 of 1993, by name P.K. Lekha, was earlier appointed in the School as H.S.A. (Physical Science) for the period from 11-9.1984 to 8-12-1984 in a maternity leave vacancy, and that appointment was approved by the District Educational Officer vide order dated 18-4-1985. She was again appointed in another leave vacancy from 4.1.1985 to 5-3-1985. However, approval was not granted since the leave granted was only less than 30 days. Leave vacancies arose in the School for the period from 2.1.1986 to 31-8-1986 and from 1-1-1987 to 31-3-1987 in the Post of High School Assistant. Manager, however, appointed the second petitioner in O.P. No. 6894 of 1983, one Sunil Babu, a Social Studies Graduate teacher, in those vacancies. Appointment was approved by the District Educational Officer. Lekha

was unaware of the said appointments. During the academic year 1987-88, there arose a leave vacancy in the U.P. Section of the School from 1-6-1987 to 28-8-1987. In that vacancy also, the Manager appointed Sunil Babu.

2. In the academic year 1988-89 there arose a vacancy of HSA in the High School Section. On the guise that Sunil Babu was a Rule 43 claimant. Manager appointed him in that vacancy with effect from 20-7-1988. On coming to know of the irregular appointments effected by the Manager, especially in the vacancy which arose on 20-7-1988, Lekha filed a petition before the District Educational Officer dated 30-9-1988 which was however rejected by the District Educational Officer vide his order dated 28-3-1989. Aggrieved by the said order Lekha preferred appeal before the Director of Public Instruction. Director of Public Instruction issued notice to all the affected parties, including Sunil Babu. After elaborately considering the service details, minimum subject requirement, and also internal ratio, Director allowed the appeal finding that Lekha was the rightful claimant for the post to which Sunil Babu was appointed. According to the Director, Manager has failed to satisfy the minimum subject requirement, as provided in rule 43 of Chapter XIV-A of the K.E.R. by accommodating Sunil Babu. Further, a direction was given by the Director to take disciplinary action against the Manager for irregular appointments. Aggrieved by the Order of the Director, Manager preferred revision before the Government. On the basis of direction issued by this Court, Government disposed of the revision. Government upheld the earlier appointments of Sunil Babu. However, it was found that the promotion given to him as HSA in the vacancy which arose on 20-7-1988 was irregular. Government found that at the time of first appointment of Sunil Babu and subsequent appointments there was dearth of physical Science teacher. Claim of Lekha was rejected on the plea that the vacancy ought to have gone to a Mathematics hand. Aggrieved by the order of the Government, as we have already stated, Lekha filed O.P. No. 4778 of 1993 and Sunil Babu and the Manager filed O.P. No. 6894 of 1993. Learned single Judge after hearing the entire matter upheld the claim of Lekha and found that she was the rightful claimant for the vacancy of HSA which arose in the school on 20-7-1988. Writ Petition filed by Lekha was allowed and the orders passed by the D.E.O. and the Government were quashed. Writ Petition preferred by Sunil Babu and the Manager was dismissed.

3. Counsel for the appellants. Sri. N.N. Sugunapalan, submitted that Lekha was not qualified for appointment as HSA (Social Studies). She was only qualified for appointment as HSA (Physical Science). According to him, five teachers are qualified to teach both physical Science and Natural Science and they were teaching both the subjects. None of the teachers could be retrenched for maintaining the ratio 1:1:1 and the internal ratio of 3:2 between physical science and Natural Science, so as to give appointment to Lekha. According to him, if Lekha was to be appointed as HSA (Physical Science) during the academic year 1988-89, the number of science teachers would have become six. Consequently to maintain 1:1:1 ratio only five Science Teachers were necessary and they were

already working in the School. Further counsel submitted Lekha had never worked as UPSA and therefore she could not raise any claim under Rule 51A for the post of UPSA. Counsel further submitted that since the appointment of Sunil Babu was approved as UPSA, he is a Rule 43 claimant as well.

4. Counsel appearing for Lekha, Sri. N. D. Premachandran, submitted that Manager committed a grave irregularity in not appointing Lekha in the vacancies of HSA which arose from 2-1-1986 to 31-3-1986 and from 1-1-1987 to 31-3-1987. According to him, Manager failed to comply with the provisions of Rule 51A of Chapter XIV-A of the K.E.R. by issuing necessary statutory notice to Lekha. Therefore the appointments given to Sunil Babu in those vacancies are irregular. Counsel further submitted even for the vacancy which arose on 20-7-1988 Lekha was the rightful claimant, if the minimum subject requirement and internal ratio are to be maintained. Counsel submitted that this is a statutory requirement as provided in the proviso to rule 43 of Chapter XIV-A of the K.E.R. We notice from the facts available in this case, that Lekha was originally appointed as HSA (Physical Science) in a leave vacancy from 11-9-1984 to 8-12-1984 and that appointment was approved. Consequently, she became a Rule 51A claimant for the post of HSA (Physical Science). Sunil Babu, who is a Social Studies hand was appointed in the vacancies which arose for the period from 2-1-1986 to 31-3-1986 and from 1-1-1987 to 31-3-1987. If we look at the staff fixation of the School as on 2-1-1986 and 1-1-1987 it would show that the minimum subject requirement in Physical Science was not satisfied, when a fresh appointment was made in the leave vacancy by Social Studies hand. As per the proviso to Rule 43 of Chapter XIV-A of the K.E.R. minimum subject requirement has to be satisfied. Further if we notice the staff position as on 20-7-1988 there was dearth of one Physical Science teacher. Therefore in order to satisfy minimum subject requirement, a Physical Science teacher has to be appointed. Since Lekha was a Rule 51A claimant for the post of HSA and minimum subject requirement would be satisfied only if a Physical Science teacher was appointed, we are of the view that Lekha was the rightful claimant for the vacancy which arose on 20-7-1988.

In the said circumstances we do not find any infirmity in the judgment of learned single Judge and the same is confirmed. Writ Appeals therefore lack merits and the same are dismissed.