
(2000) 03 KL CK 0004
In the High Court Of Kerala
Case No : W.A. No. 1589/93

Bhaskaran, K.

APPELLANT

Vs

C.P. Viswanathan and Others

RESPONDENT

Date of Decision : 06-03-2000

Acts Referred:

Kerala Education Rules, 1959 — Rule 56, 60, 62, 63, 72(2)

Citation : (2000) 03 KL CK 0004

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

Bench : Division Bench

Advocate : V.K. Ravindran, for the Appellant; M. Vijayakumar, for Respondents 1 and 2, for the Respondent

Final Decision : Dismissed

Judgement

Arijit Pasayat, C.J.—The short but interesting question which arises in this writ appeal is whether on the Headmaster of an institution being granted special leave in terms of Rule 63 of Chapter XIV A of Kerala Education Rules, 1959 (in short the "K.E.R.") a vacancy arises.

2. Factual position briefly stated is as follows: One Sri Narayanan Nair, Headmaster of the institution in question retired from service on 1st July 1992 on superannuation. He was granted special leave on full pay from 1st June 1992 in terms of the provisions contained in Rule 63 of Chapter XIV A of the Rules. Both C.K. Raghavan Nair, the second Respondent and K. Bhaskaran, the present Appellant staked claim to be appointed. Bhaskaran acquired the eligibility for exemption on 14th April 1990 on completion of 15 years of age whereas Raghavan got the exemption only on 1st July 1992. If the vacancy in the post of Headmaster is taken to have occurred on 1st June 1992, Raghavan cannot be entitled to claim the same as he was not qualified with the help of an exemption on that day even though he is senior to Bhaskaran. In that event only Bhaskaran could claim promotion as he had already acquired exemption from test qualification by 1st June 1992. C.P. Viswanathan, Respondent No. 1, the Manager

took the view that vacancy had arisen only on 1st July 1992 and on that basis Raghavan was promoted. The said view was not accepted by the authorities and the appointment of Raghavan was not approved. The orders passed by the District Educational Officer, in short the D.E.O. the Dy. Director of Education (in short Dy. D.E.) and the Director of Public Instruction (in short D.P.I.) were challenged in the Original Petition. It is to be noted that the D.E.O. based his conclusion on a circular dated 1st July 1979 issued by the Director of Public Instruction. He took the view that since the Headmaster ceased to be on active duty with effect from 1st June 1992 as per the provisions of Rule 63 of Chapter XIV A of K.E.R. It is to be taken that the vacancy had arisen on 1st June 1992. Same reason was followed by the Dy. D.E. and the D.P.I. Before the learned Single Judge the circular was pressed into service by the present Appellant and the State. Reliance was also placed on a decision of this Court in Ponnammamma v. Government of Kerala 1991 (2) KLT 344 in support of the stand that the vacancy had arisen on 1st June 1992.

3. Learned Single Judge observed that the circular had no application to the facts of the case. It was also observed that the doubt which was answered in the circular related to question whether the additional leave vacancy under Rule 60(c) Part I, of Kerala Service Rules 1959 (in short K.S.R) from 1st June to 30th June followed by a regular vacancy due to the retirement from 1st July can be taken as leave vacancy. It was observed, by learned Single Judge that it did not deal with the question whether a regular vacancy would arise on 1st of June. The decision in Ponnammamma's case 1991 (2) KLT 344 also was distinguished on the ground that the same had no applicability to a case where the question was whether regular vacancy would arise on the date on which the teacher proceeds on leave prior to his retirement. Ultimately it was concluded that in the light of Rule 63 the vacancy can be said to have arisen only on 1st July 1992 and not on 1st June 1992.

4. It is submitted by learned Counsel for Appellant that the ratio in Ponnammamma's case 1991 (2) KLT 344 has clear application to the facts of the case. Learned Counsel appearing for the Respondents Raghavan and Viswanathan contend that the view taken by the learned Single Judge in the impugned judgment is correct.

5. In view of the rival submissions it is necessary to take note of the relevant provision. Rule 63 of Chapter XIV A of K.E.R. which is the pivotal provision, reads as follows:

63. If the date of superannuation falls within one month from the date of reopening of the institution, he will cease to be on active duty on the date of reopening. In such cases, he will be allowed special leave on full pay from the reopening date till he gets superannuated.

6. It is to be noted that the institution in question is an aided institution. Rule 56 of Chapter XIV A of the K.E.R. provides that in the matter of casual leave and all other kinds of leave, the teachers of aided schools shall be governed by the rules

for teachers of Government Schools in the Service Regulations for the time being in force. Rule 72(2) Part I K.S.R. inter alia provides that notwithstanding anything contained in Sub-rule (1) an officer on leave preparatory to retirement shall be precluded from withdrawing his request for permission to retire and from returning to duty, save with the consent of the authority empowered to appoint him. The provision which is of considerable importance reads as follows:

72(2) Notwithstanding anything contained in Sub-rule (1) an officer on leave preparatory to retirement shall be precluded from withdrawing his request for permission to retire and from returning to duty, save with the consent of the authority empowered to appoint him.

Note 1.- No formal cancellation of the unexpired portion of leave is necessary when an officer returns to duty before the expiry of his leave. The cancellation will be effected by the Audit Officer in the case of Gazetted Officers and by the Head of Office in the case of non-gazetted officers.

Learned Single Judge in Ponnammamma's case 1991 (2) KLT 344 observed that there is remote possibility of a person withdrawing the request for leave preparatory to retirement and rejoining duty with consent of authority competent to appoint, and same cannot be considered as a circumstance to hold that Rule 7A(3) of Chapter XIV A is attracted in such cases. We are unable to subscribe to the view. There is no legal bar for such a request being made and when the provision provides that same can be done with the consent of the authority empowered to appoint the person, merely because there is possibility of such a person not seeking withdrawal, that cannot take away the effect of the provision enabling the withdrawal. In the circumstance, therefore Rule 7A(3) of Chapter XIV A which reads as follows clearly applies.

7A(3) Vacancies, the duration of which is two months or less shall not be filled up by any appointment.

It stipulates that vacancies, the duration of which is two months or less, shall not be filled up by any appointment. In the case at hand the duration is certainly less than two months, in view of the provisions contained in Rule 63. Apart from that, the decision in question related to a case under Rule 62 of Chapter XIV A of K.E.R. The decision in that background cannot be treated as an authority to support the stand that a regular vacancy arises on the date on which the person proceeds on leave prior to his retirement, particularly when there is no legal bar on his rejoining duty with consent of concerned authority. That being the position we find nothing illegal in the conclusions arrived at by the learned Single Judge to warrant interference.

Writ Appeal is dismissed,

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