

(2015) 02 KL CK 0175

In the High Court Of Kerala

Case No : Writ Petition (C) No. 16073 of 2013

Bhaskaran Pillai K.K.

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 24-02-2015

Acts Referred:

Citation : (2015) 3 KHC 242

Hon'ble Judges : Babu Mathew P. Joseph, J

Bench : Single Bench

Advocate : K.N. Chandrababu, for the Appellant; E.M. Abdul Kadir, Senior Government Pleader, Advocates for the Respondent

Final Decision : Allowed

Judgement

Babu Mathew P. Joseph, J.—The petitioner, who is the Manager of E.C.E.K. Union High School, Kuthiathode, appointed Smt. Babitha B. as High School Assistant (Malayalam) to a permanent vacancy on 25/01/2011 by Ext. P1 appointment order dated 25/01/2011. The said permanent vacancy arose when a regular hand who was occupying that post resigned. The appointment of Smt. Babitha was approved by the second respondent, the District Educational Officer, with effect from 25/01/2011 to 31/03/2011 (excluding SSLC Examination days) on daily wages basis. Aggrieved by the order so passed by the second respondent in respect of the period of appointment of Smt. Babitha from 25/01/2011 to 31/03/2011, the petitioner preferred Ext. P3 appeal before the third respondent, the Deputy Director of Education. That appeal was rejected by Ext. P4 order dated 23/01/2012 of the third respondent. The petitioner preferred a further appeal before the fourth respondent, the Director of Public Instructions. That also came to be rejected as per Ext. P5 order dated 13/09/2012. Therefore, the petitioner preferred Ext. P6 revision petition before the first respondent Government. The revision petition also came to be rejected by the Government as per Ext. P7 order dated 11/03/2013. In these circumstances, the petitioner has preferred this writ petition praying for quashing Exts. P4, P5 and P7 orders

and for a direction to approve the appointment of Smt. Babitha from 25/01/2011 to 31/03/2011 as a regular one. Heard the learned counsel appearing for the petitioner and the learned Senior Government Pleader appearing for the respondents 1 to 4.

2. Learned counsel for the petitioner submits that a regular vacancy of High School Assistant (Malayalam) arose in the School of the petitioner on 25/01/2011 when a regular hand who was occupying that post resigned from service. In the light of the specific provisions made in Ext. P2 order dated 26/02/2011 issued by the Government, the appointment of Smt. Babitha should have been approved as a regular one by the second respondent and the higher authorities also should have recognised that right of the appointee, contends the learned counsel. Ext. P2 order has been issued by the Government clarifying the orders dated 15/06/2014 and 10/06/2008 in respect of granting approval of appointment of teachers. It is specifically ordered in Ext. P2 that in regular vacancies arising by way of retirement, resignation, death, long leave and increase in divisions and continuing such vacancies beyond 31st March, the appointments made to such vacancies can be approved subject to Rule 49 of Chapter XIV-A of KER. Rule 49 deals with teachers who are appointed to vacancies which are not permanent. In the case on hand, this rule can have no application as the appointment made by the petitioner is to a regular vacancy. Therefore, going by the provisions contained in Ext. P2 Government Order, there is no impediment in granting approval of appointment as a regular one for the period from 25/01/2011 to 31/03/2011.

3. The second respondent has filed a counter-affidavit in this case. The objection raised is that Ext. P2 order is dated 26/02/2011 and the appointment in this case was made on 25/01/2011. No retrospective operation can be given to Ext. P2. In such a circumstance, the case of the petitioner can be dealt with only in accordance with the Government Orders dated 15/06/2004 and 10/06/2008. In the light of the provisions in the Government Order dated 10/06/2008, Smt. Babitha is not entitled to approval of her appointment as a regular one for the period from 25/01/2011 to 31/03/2011, it is contended.

4. The contention so raised by the second respondent cannot be accepted for valid and genuine reasons. Ext. P2 order has been issued by the Government for rectifying the problems being created by the orders dated 15/06/2004 and 10/06/2008. Ext. P2 specifically says about granting approval of appointments made to regular vacancies. This order does not restrict such approval only to those appointments made after issuing this order. This order, in effect, clarifies, after removing the difficulties, the power of the educational authorities to grant approval of appointments made to regular vacancies. Moreover, this order does not say it will have only prospective application. The nature of the order itself shows that it will have retrospective application in the pending cases of approval. If the argument of the respondents is accepted, an anomalous situation may arise. If the appointment was made by the petitioner on 26/02/2011 or on a date

thereafter, Ext. P2 will have application and the appointment will be approved as a regular one from that date. Only for the reason that the appointment was made on 25/01/2011, the entire period between 25/01/2011 to 31/03/2011 is treated as a period entitling the appointee only to daily wages. This cannot be the intention of Ext. P2 Government Order. Therefore, the argument advanced, resisting the claim of the petitioner, that Ext. P2 has only prospective operation is not legally sustainable and hence it is rejected. The view that the appointment given to Smt. Babitha has to be approved as a regular one is fortified by the decision rendered by the Honourable Supreme Court in *State of Kerala and Others Vs. Sneha Cheriyan and Another*, (2013) 4 AD 1 : AIR 2013 SC 1753 : (2013) 3 JT 265 : (2013) LabIC 2670 : (2013) 2 SCALE 759 : (2013) 5 SCC 160 : (2013) 2 SCC(L&S) 381 : (2013) 2 SCT 677 : (2013) 2 SLJ 284 : (2013) AIRSCW 2211 . For the foregoing reasons, the approval of appointment of Smt. Babitha from 25/01/2011 to 31/03/2011 only on daily wages is liable to be quashed and the petitioner is entitled to a direction to the second respondent to approve her appointment from 25/01/2011 to 31/03/2011 as a regular one. Consequently, Exts. P4, P5 and P7 are also liable to be quashed.

In the result:

- (1) The order dated 16/03/2011 passed by the second respondent approving the appointment of Smt. Babitha B. only on daily wage basis from 25/01/2011 to 31/03/2011 is quashed.
- (2) Exts. P4, P5 and P7 orders are also quashed.
- (3) It is declared that Smt. Babitha B. is entitled to approval of her appointment as High School Assistant (Malayalam) from 25/01/2011 to 31/03/2011 as a regular one.
- (4) The second respondent is directed to issue fresh orders approving the appointment of Smt. Babitha B. as High School Assistant (Malayalam) from 25/01/2011 to 31/03/2011 as a regular one. This shall be done by him within a period of two months from the date of receipt of a copy of this judgment. The service benefits of Smt. Babitha B. shall be calculated and disbursed to her on that basis.

This writ petition is allowed as above.