

(2010) 09 KL CK 0172

In the High Court Of Kerala

Case No : Writ Petition (C) No. 28338 of 2010 (N)

Bindu K.

APPELLANT

Vs

The State of Kerala and Others

RESPONDENT

Date of Decision : 29-09-2010

Acts Referred:

Citation : (2010) 09 KL CK 0172

Hon'ble Judges : K.T. Sankaran, J

Bench : Single Bench

Advocate : V.A. Muhammed, for the Appellant; No Appearance, for the Respondent

Judgement

K.T. Sankaran, J.—The petitioner was appointed as full time Sanskrit Teacher on 1.6.2007 in Edacherry North U.P. School, Post Edacherry North, Kozhikode District, in the retirement vacancy of one K. Kumaran who retired on 31.3.2007. The appointment of the petitioner was approved only as part time Sanskrit Teacher as per Ext.P1 order passed by the Assistant Educational Officer. Aggrieved by that order, the Manager filed appeal to the Deputy Director of Education, who confirmed the order passed by the Assistant Educational Officer, as per the order dated 21.12.2007. The Manager filed Ext.P2 revision before the Director of Public Instruction. But, the revision was dismissed by the Director of Public Instruction. The Manager filed Ext.P3 revision dated 27.12.2007 before the Government. According to the petitioner, Ext.P3 revision is pending disposal. The contention of the Manager as well as the petitioner is that once a post is created by way of group "C" diversion, such a post cannot be converted as part time. The petitioner relies on Ext.P6 Government Order, G.O.(MS) No. 371/2000/G.Edn. dated 13.11.2000, in support of that contention. Ext.P5 staff fixation order is also produced to support the contention that the post was created by group "C" diversion.

2. The reliefs prayed for by the petitioner are the following:

(i) declare that the Petitioner is entitled to get her appointment vide Exhibit P-1 approved as full- time;

(ii) issue a writ of mandamus or other appropriate writ order or direction commanding the Respondents to grant full-time service benefits to the Petitioner since Exhibit P-1;

(iii) issue a writ of mandamus or other appropriate writ order or direction commanding the 1st Respondent to effectively consider and pass appropriate orders upon Exhibit P-3 after affording an opportunity of being heard to the Petitioner within a time limit;

(iv) pass such other order or direction which this Hon"ble Court may deem fit and proper o grant in the circumstances of the case.

3. The learned counsel for the petitioner submitted that it would be sufficient, for the time being, if relief (iii) is granted.

4. The learned Government Pleader, on instructions, submitted that Ext.P3 was not traced out in the Department concerned. Learned counsel for the petitioner submitted that, if so, the petitioner may be permitted to file a revision before the first respondent challenging Exts.P1 and the order passed by the Director of Public Instruction. The counsel submits that the petitioner will file the Revision within one month from today. The counsel also submitted that the second page of Ext.P3 would disclose that the revision was sent by post on 27.12.2007.

In the facts and circumstances of the case, the Writ Petition is disposed of as follows:

(a) The first respondent shall consider and dispose of Ext.P3 revision dated 27.12.2007 filed by the Manager challenging the order passed by the Director of Public Instruction. If by some chance, Ext.P3 is not traced out, the first respondent shall dispose of the revision that may be filed within a period of one month from today by the petitioner.

(b) The first respondent shall dispose of Ext.P3 revision and/or the Revision that may be filed by the petitioner as expeditiously as possible and, at any rate, within a period of three months from the date of receipt of the revision petition that may be filed by the petitioner, after affording an opportunity of being heard to the petitioner and the Manager.

(c) The petitioner shall send a copy of this judgment and a copy of the Writ Petition to the Manager by registered post and shall produce proof of the same before the first respondent. Petitioner shall also produce a copy of the Writ Petition and certified copy of the judgment before the first respondent.