
(2009) 03 KL CK 0086
In the High Court Of Kerala
Case No : W.A. No. 1932 of 2006

Bindu, K.C.

APPELLANT

Vs

Juby Thomas and Others

RESPONDENT

Date of Decision : 16-03-2009

Acts Referred:

Kerala Education Rules, 1959 — Rule 51A, 7A, 7A(3)

Citation : (2009) 03 KL CK 0086

Hon'ble Judges : M.L. Joseph Francis, J;K. Balakrishnan Nair, J

Bench : Division Bench

Advocate : Bechu Kurian Thomas, for the Appellant; V.P. Seemandini S. Karthika, T.R. Rajesh and M.R. Anison for Respondent Nos. 1 and Noble Mathew, Sr. Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

K. Balakrishnan Nair, J.—The first Respondent in the Writ Petition is the Appellant. The Respondents herein are respectively the Petitioner and Respondents 2 and 3.

2. The brief facts of the case are the following. St. Mary Magdalene's Girls High School is an Aided School, managed by a Trust, formed by Knanite Christians, for the benefit of the female members of that community. There were some disputes in the Trust and a Scheme Suit is pending before the Sub Court, Kottayam as O.S. No. 119 of 1998. The Receiver, appointed by the Sub Court, is functioning as the Manager of the said School.

3. A leave vacancy of High School Assistant (H.S.A.) Malayalam, arose in the School from 21-11-2005 to 29-3-2006, as a result of availing of leave by Smt. Chachiamma, H.S.A. Malayalam. The Appellant was appointed in that vacancy on 21-11-2005 and she continued in service upto 29-3-2006. Smt. Chachiamma reported for duty after the leave and retired from service on 31-3-2006. As a result, a regular vacancy of H.S.A. Malayalam arose in the School with effect

from the next academic year. The Receiver invited applications for appointment to the said post. The Appellant and three others applied. The Receiver held an interview and submitted Annexure A-1 report before the Sub Court. The Sub Court directed the Receiver to appoint Smt. Juby Thomas, the first Respondent herein, who was shown as Sl. No. 1 in Annexure A-1, to the above vacancy of H.S.A. Malayalam.

4. The Appellant challenged the said decision before this Court. This Court set aside the order and remanded the matter to the Sub Court for fresh decision. Again, the first Respondent was appointed and the Appellant has to approach this Court. The decision was again set aside by this Court and remitted the matter for fresh decision in accordance with law. This time, the Sub Court granted permission to the Receiver to appoint the Appellant in the aforementioned vacancy, as per Ext. P-5 order. Challenging Ext. P-5, the first Respondent herein filed the Writ Petition. The Sub Court upheld the claim of the Appellant, on the ground that she is a claimant under Rule 51A of Chapter XIV A of the Kerala Education Rules (K.E.R.). The learned Single Judge, who heard the Writ Petition, found that the Appellant was not eligible for the benefit of Rule 51A and therefore set aside Ext. P-5. It was found that the procedure followed by the Receiver, in appointing the writ Petitioner/first Respondent, was in order. There was also a direction to the Receiver and the District Educational Officer to allow the writ Petitioner to continue in the post of H.S.A., Malayalam.

5. The Appellant, raising various contentions, attacks the findings of the learned Single Judge. The main point canvassed before us is that even teachers on daily wages are eligible for protection under Rule 51A. There is nothing in the K.E.R. or the Act or the Rules, which stand in the way of raising such a claim. Rule 51A expressly states that teachers thrown out, on termination of vacancies, are eligible for re-appointment. The said beneficial provision will cover the Appellant also, though she has worked on daily wage basis only.

6. The Respondents, including the official Respondents, on the other hand, pointed out that in view of the amendment to Rule 7A of Chapter XIV A of the K.E.R., introduced simultaneously with the amendment to Rule 51A, no appointment can be made to a vacancy, which does not have the duration of at least one academic year. In this case, the Appellant was appointed to a vacancy of shorter duration. Therefore, the said appointment could not have been approved in the light of the relevant provisions of the Rules. So, the Appellant did not have any claim for re-appointment. Therefore, the learned Single Judge rightly interfered with Ext. P-5, it is submitted.

7. Recently, we had occasion to consider the effect of amendments to Rule 51A and Rule 7A of Chapter XIV A of the K.E.R. in *Abdurahiman v. Government of Kerala* 2009 (1) K.H.C. 950 (D.B.). In the said decision, it has been held taking note of Rule 7A, after the recent amendment, that a valid appointment can be made only if the duration of the vacancy is one academic year. Sub-rule (3) of Rule 7A specifically states that a vacancy, duration of which is less than one

academic year, shall not be filled up. So, the appointment of the Appellant is not an appointment in terms of the K.E.R. But, the executive directions issued by the Director of Public Instruction permit appointment in short term vacancies in the interest of students, on daily wages basis and its approval for the limited purpose of payment of salary to the incumbent concerned. But, such appointments do not have any statutory backing. Ext. P-9 is a Circular issued by the Director of Public Instruction, concerning appointment of teachers on daily wage basis to short term vacancies. If the benefit of Rule 51A is to be claimed, the appointment should be one in accordance with the provisions in the K.E.R. In this case, the appointment being to a short term vacancy, which does not have the duration of one academic year, the Appellant cannot claim any benefit under the K.E.R. for re-appointment. Though Rule 51A does not mention about any duration of the previous appointment, what should be the minimum duration for claiming the benefit of Rule 51A is evident from Rule 7A. Therefore, the contention of the Appellant that daily wage teachers are entitled to get preference in the matter of appointment cannot be accepted. We agree with the conclusions of the learned Single Judge that the Appellant is not entitled to get the benefit of Rule 51A of Chapter XIV A of the K.E.R. If that be so, we find that the learned Single Judge has rightly interfered with Ext. P-5.

In the result, the appeal fails and it is dismissed.