
(2011) 10 KL CK 0003
In the High Court Of Kerala
Case No : Writ Petition (C) No. 34604 of 2008

Ciji P. Jose

APPELLANT

Vs

State of Kerala and others

RESPONDENT

Date of Decision : 18-10-2011

Acts Referred:

Kerala Education Rules, 1959 — Rule 43, 51A, 51B, 9A

Citation : (2012) 1 ILR (Ker) 759 : (2012) 1 KLJ 721

Hon'ble Judges : T.R. Ramachandran Nair, J

Bench : Single Bench

Advocate : S.P. Aravindakshan Pillai and Smt. N. Santha, for the Appellant; M.T. Sheeba (Government Pleader), for the Respondent

Final Decision : Allowed

Judgement

Mr. Justice T.R. Ramachandran Nair

1. The petitioner is a claimant under Rule 51A of Chapter XIV A, K.E.R. Her initial appointment was for the period from 20-10-2003 to 2-3-2004 which was approved by Ext. P-1 order. In a later vacancy which arose from 3-3-2004 to 30-3-2004 also, the petitioner was continued and the same has also been approved as per Ext. P-2. One Smt. V.V. Sukumari, L.P.S.A. retired from service on 31-3-2007 and the Manager appointed the petitioner against that vacancy with effect from 1-6-2007 recognising her claim under Rule 51A, as per Ext. P-4 order. The petitioner is accordingly continuing in service. The approval of the same was declined by Ext. P-5 order on the reason that the vacancy in an uneconomic school should be filled up only by a protected teacher. The appeal submitted by the Manager was rejected by the District Educational Officer as per Ext. P-7 order. Again, in the next year also, the petitioner's proposal for approval was rejected by the Assistant Educational Officer as per Ext. P-8 order. The main reason for the rejection of the proposal is that the vacancy in an uneconomic school can be filled up only by protected teachers. Ext. P-10 is the Circular issued by the Government wherein, in para 4 it is stated that the claimants under Rules

43, 51A and 51B of Chapter XIV A and Rule 9A of Chapter XXIV, K.E.R. need not be considered for appointment in uneconomic schools in vacancies which are arising after 12-10-2006.

2. In the counter-affidavit filed by the second respondent, the above stand is reiterated. Reliance is placed on Ext. P-5 circular. Therefore, the only question is whether the claim of the petitioner under Rule 51A of Chapter XIV A, K.E.R. could be subject to the provisions of the circular. Obviously, the same cannot be, as the rules will override the provisions of a circular in case of conflict

3. It is well-settled that the benefit granted to a teacher under Rule 51A has to be extended by the Manager. Herein, the question is whether a protected hand who is available and who is liable to be deployed under various executive orders, should be absorbed as against a claimant under Rule 51A. Obviously, the statutory rules will prevail over executive orders. Rule 51A or any other provisions have not been amended for incorporating the provisions of the circular. Therefore, para 4 of Ext. P-10 cannot operate against the provisions of Rule 51A of Chapter XIV A, K.E.R.

4. Learned Government Pleader pointed out that the school is an uneconomic one and therefore the provisions of Ext. P-5 will have to be considered.

5. All these matters cannot be given a preference by a Circular issued by the Government, in the light of the specific provisions of Chapter XIV A, K.E.R. especially Rule 51A. The amendment made to Rule 51A by including the second proviso and the explanation therein protects only the right of a protected teacher under the same educational agency. Herein, there is no plea that a protected hand is available under the same educational agency. Therefore, the said amendment cannot also defeat the right of the petitioner and the rejection of approval of appointment of the petitioner cannot thus be supported. Therefore, the writ petition is allowed and the impugned orders, Exts. P-5, P-7 and P-8 are quashed. There will be a direction to the third respondent to approve the appointment of the petitioner pursuant to the appointment orders, Exts. P-2 and P-4 in the respective years. Appropriate orders will be passed within a period of two months from the date of receipt of a copy of this judgment. Consequential benefits will be granted. No costs.