

(2016) 09 KL CK 0010

In the High Court Of Kerala

Case No : Writ Appeal No. 2545 of 2015 In WP(C). 3122 of 2010.(Against the judgment in WP(C) 3122 of 2010 of High Court of Kerala Dated 09.10.2014).

District Educational Officer, Kannur - Applicants/appellants/respondents 2 to 4 In W.P.(C) @HASH A.V. Sathyabhama, Hsa, Moothedath High School, Thaliparamba, Kannur District-670 141 /Petitioners and 1st Respondent In W.P.(C)

Date of Decision : 07-09-2016

Acts Referred:

Kerala Education Rules, 1959 — Rule 43

Citation : (2016) 4 KLT 146

Hon'ble Judges : Antony Dominic and Dama Seshadri Naidu, JJ.

Bench : Division Bench

Advocate : Sri. P.N. Santhosh, Government Pleader, for the Appellant; Sri. P. Ravindran, Senior Advocate, for the Respondent No. 1, 3 and 5; Sri. P. Deepak, Advocate, for the Respondent No. 1, 3 and 5; Smt. Aparna Rajan, Advocate, for the Respondent No. 1, 3 and 5;

Final Decision : Dismissed

Judgement

Antony Dominic, J. - Respondents in W.P.(C)No. 3122/10 are the appellants. Respondents 1 to 6 filed the writ petition seeking to quash Exts.P1, P7 and P11 and to require the appellants not to revert respondents 1 to 3 from the cadre of HSA and also not to retrench respondents 4 to 6 from the post of UPSAs to accommodate respondents 1 to 3. By the judgment under appeal, the learned Single Judge quashed Ext.P11 to the extent it held that respondents 1 to 3 were not entitled to the benefit of protection as provided in Exts.P2 and P3 Government Orders and also issued consequential directions as sought for. It is aggrieved by this judgment, the official respondents have come up in appeal.

2. We heard the Government Pleader appearing for the appellants and the learned Senior Counsel appearing for respondents 1 to 6 and the learned counsel appearing for the 7th respondent.

3. It is now brought to our notice that during the pendency of the litigation,

respondents 4 and 6 have left service on getting other employment.

4. The issue that was raised in the writ petition was that having regard to Exts.P2 and P3 Government Orders and the proviso to Rule 43 of Chapter XIV A KER, respondents 1 to 3 were entitled to be retained as HSA on protection and that therefore respondents 4, 5 and 6 were not liable to be retrenched from the post of UPSA, in the school of which the 7th respondent herein is the Manager. The background in which the claim was raised was that the respondents 1 to 3 entered service as UPSA on 17.2.1997, 1.7.97 and 2.7.97 respectively. They were promoted as HSAs on 9.1.98, 1.6.99 and 1.6.99 respectively. Insofar as respondents 4 to 6 are concerned, they were appointed as UPSAs on 16.6.99, 16.6.99 and 5.6.2000.

5. In Ext.P1, the staff fixation order for the academic year 2006-2007 there was reduction of six posts of HSAs. As a result, giving them the benefit of the protection as provided in Ext.P2 Government Order, respondents 1 and 2 were retained as HSAs and respondent No.3 was reverted as UPSA. Consequently, respondent No.6 being the junior most was retrenched from the post of UPSA. In the academic year 2007-2008, there was reduction of five more posts of HSAs. This resulted in the reversion of respondents 1 and 2 as UPSA and retrenchment of respondents 4 and 5, being the junior most then in service. The staff fixation, reversions and retrenchment were the subject matter of the appeal filed by the Manager, which was rejected by Ext.P7 order of the Director of Public Instruction. This order was confirmed by the Government in Ext.P11, whereby the revisions filed were also rejected. It was in these circumstances, the writ petition came to be filed challenging Exts.P1, P7 and P11.

6. Before the learned Single Judge, the contention raised was that respondents 1 to 3 were entitled to the benefit of protection as provided in Exts.P2 and P3 Government Orders and the proviso to Rule 43 of Chapter XIV A KER and that therefore they were entitled to be retained as HSAs. It was their further contention that if respondents 1 to 3 were retained as HSAs, there would not have been any occasion for the retrenchment of respondents 4 to 6. On the other hand, this contention was resisted by the Government, again by relying on Exts.P2, P3 and the proviso to Rule 43 Chapter XIV A KER and contending that the protection that is provided by the Government Orders and the Rule is against the post which was held by the incumbent prior to 14.7.97. It was this contention which was rejected by the learned Single Judge in the judgment under appeal.

7. The aforesaid contentions were reiterated before us by the learned Government Pleader appearing for the appellants and was resisted by the respondents.

8. The controversy that is raised before us is whether the protection as provided in the Government Orders mentioned above and the proviso to Rule 43 is against the post held by an incumbent on his appointment or promotion prior to 14.7.97,

the cut off date prescribed in Ext.P3 Government Order. This controversy can be resolved by referring to the relevant provisions of the Government Orders and the proviso to Rule 43 of Chapter XIV A.

9. Ext.P2, G.O.(P)No.175/99/G.Edn. dated 26-7-99, insofar as it is relevant reads thus:

"2. Government have further examined the matter in detail and are pleased to order that all aided school teachers who were in service as on 14.7.96 will be given protection by retaining them in the respective schools subject to the following conditions:

(i) The teachers to whom this benefit of protection is granted will be absorbed in the future vacancies arising under the respective management.

(ii) No substitute will be posted in the case of retirement, resignation, death, leave or voluntary relinquishment, etc. of the incumbent, if retained by way of protection.

(iii) Protection will not be granted to teachers appointed during 1997-98 and thereafter."

10. This order was clarified by Ext. P3, G.O.(P) No. 240/99/G. Edn. dated, 29.9.99 and insofar as it is relevant, this Government Order reads thus:

"(i) All aided school teachers who were in service as on 14.7.96 and those who are appointed as aided school teachers against regular vacancies during 1996-97 upto 14-7-97 will be eligible for protection. However teachers appointed from 15-7-97 onwards will not be eligible for protection."

11. Subsequently, by G.O.(P)No.187/05 G.Edn. dated 17.6.2005, the second proviso to Rule 43 was inserted and the said proviso reads thus:

"Provided further that where a Headmaster or a teacher who has been promoted under this rule faces retrenchment for want of vacancy, he shall be reverted to the category of post from which he has been promoted provided he is not eligible for protection in the retrenched post as per the orders issued by the Government from time to time."

12. Reading of the G.O.(P)175/99/G.Edn. shows that Government ordered that all aided school teachers who were in service as on 14.7.96 will be given protection by retaining them in respective schools subject to the three conditions specified therein.

13. This Government Order was subsequently clarified by G.O.(P)240/99 whereby the Government ordered that all aided school teachers who were in service as on 14.7.96 and those who were appointed as aided school teachers against regular vacancies during 1996-97 upto 14.7.97 will be eligible for protection. It was further clarified that teachers appointed from 15.7.97 onwards will not be eligible for protection.

14. It was while the position stood thus that G.O.(P)187/05 was issued inserting the second proviso to Rule 43 in Chapter XIV A KER, which insofar it is relevant, further provided that where a teacher who had been promoted under Rule 43 faces retrenchment for want of vacancy, he shall be reverted to the category of post from which he has been promoted, provided he is not eligible for protection in the retrenched post as per the orders issued by the Government from time to time.

15. A combined reading of Government Orders and the proviso would, therefore, show that the protection provided by Exts.P2 and P3 is available to all aided school teachers who were in service as on 14.7.96 and also to those who were appointed against regular vacancies during 1996-1997 upto 14.7.99. As per these Government Orders insofar as teachers like respondents 1 to 3, who were appointed in the academic year 1996-1997, the only condition for protection is that they should have been appointed against regular vacancies and that their appointments should be on or before 14.7.97. The Government Orders do not prescribe that those who are appointed on or before 14.7.97, but promoted thereafter, will be retained in service on protection only in the post in which they were initially appointed.

16. When reference is made to the proviso to Rule 43 of Chapter XIV A KER, it can further be seen that it contemplates the case of the teacher who has been promoted under that Rule, as in the case of respondents 1 to 3 herein and facing retrenchment for want of vacancy, shall be reverted to the category of post from which he has been promoted, provided he is not eligible for protection in the retrenched post as per the orders issued by the Government from time to time. In other words, reversion as contemplated in the proviso can take place in the case of teacher who is promoted under Rule 43 only if he is ineligible for protection in terms of the Government Order.

17. Insofar as the case of the respondents 1 to 3 are concerned, admittedly they were appointed in service as UPSA prior to 14.7.97. Government Orders do not say that if they are to be retained in service on protection, such retention will be on the post which they occupied prior to 14.7.97. This, therefore, means that respondents 1 to 3 were entitled to be retained on protection in the category of HSA. Consequently, there was no reason for the retrenchment of respondents 4 to 6 from the category of UPSA which was ordered in order to accommodate respondents 1 to 3.

18. The upshot of the above discussions is that the conclusion of the learned Single Judge, that the view taken in Ext.P11 is erroneous, does not suffer from any illegality for interference. We do not find any merit in this appeal.

Appeal, therefore, fails and it is accordingly dismissed.