
(2015) 11 KL CK 0088
In the High Court Of Kerala
Case No : W.P.(C) No. 31553 of 2009 (L)

D.R. Shiny

APPELLANT

Vs

The State of Kerala and Others

RESPONDENT

Date of Decision : 06-11-2015

Acts Referred:

Citation : (2015) 11 KL CK 0088

Hon'ble Judges : K. Vinod Chandran, J.

Bench : Single Bench

Advocate : K. Mohanakannan and A.R. Pravitha, Advocates, for the Appellant;
T.R. Rajesh, Government Pleader and V.A. Muhammed, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

K. Vinod Chandran, J.—The petitioner is aggrieved with the fact that the petitioner had been retrenched in the year 2007-08, while she had a claim to be continued on the basis of her seniority and subject categorisation as against the 5th respondent, and also entitled to be continued on protection on the 1:40 ratio.

2. The petitioner admittedly was appointed as H.S.A (Maths) in a long leave vacancy from 05.06.2000 to 15.01.2006 and then from 16.01.2006 to 15.01.2011, both of which were approved by the educational authorities. In the year 2007-08, there was a fall in division and the sanctioned post of 15 H.S. As of the previous year was reduced to 11. The petitioner seeks continuation over and above the 5th respondent. The 5th respondent admittedly is an U.P.S.A., who was promoted as H.S.A in 2002 and hence the said H.S.A had to be first reverted and the petitioner continued, is the contention. The petitioner relies on Ext. P3 to contend that 1:40 ratio is applicable to leave substitutes also. The specific contention taken is on the basis of Ext. P4 staff fixation order. The petitioner impugns Ext. P5 order passed by the Government.

3. A reading of Ext. P5 order, indicates that there were a total number of 6

teachers in excess in the year 2007-08. Two senior most teachers were adjusted in the vacancy of H.S.A English and only three divisions could be sanctioned in the 1:40 ratio and the next senior most regular teachers were said to have been accommodated in the said ratio. The first contention of the petitioner is that on there being no H.S.A (English) specifically appointed, the ratio to be maintained is 1:1:1. In introducing English as a core subject, in the year 2002, the Government was careful insofar as permitting continuance of H.S. As in other core subjects; as H.S.A (English). This was to ensure that the senior H.S. As appointed, approved and continued are not retrenched and fresh hands appointed in the post of H.S.A (English). Hence the Government intended only a phased implementation, by which the H.S. As in other core subjects, who were teaching English till then, were permitted to be accommodated to avoid retrenchment. Hence on there being threat of retrenchment definitely the earlier ratio has to be adopted.

4. To understand the sanctioned staff strength, Ext. P4 has to be looked into. In Ext. P4, it is stated that three persons one A.R. Ramanathan, H.S.A (Maths), Smt. M.C. Latha, H.S.A(SS), and C.V. Krishnadas, H.S.A(Maths) were given protection by reckoning the divisions on the basis of 1:40 ratio. The 5th respondent is said to have been adjusted against the vacancy of Smt. CS. Omana, H.S.A(Maths), in which vacancy, the petitioner was continued. If that was the case, definitely, the petitioner was entitled to be continued, since the petitioner was an H.S.A (Maths) and the subject requirement warrants that; even if a senior is retrenched, the junior, who is qualified to teach the particular subject, in the vacancy arising has to be retained; considering the need of the students.

5. However, the Government has come out with an erratum at Ext. R1(a) wherein, Smt. M.C Latha, H.S.A (SS), Sri. C.V. Krishnadas, H.S.A (Maths), K.B. Keralakumari H.S.A (SS) were allowed to be continued by granting the benefit of 1:40 ratio and Sri. A.R. Ramanathan, H.S.A (Maths) was accommodated in the third regular post of H.S.A(Maths), (vacancy of Omana C.S) as he was the next senior most among the H.S.A (Maths). Hence the petitioner cannot have any claim to the said post since the post of H.S.A(Maths) is filled up by the H.S.A in the same subject. The petitioner also cannot claim the vacancies conceded to the senior teachers accommodating them in H.S.A (English), to protect them from retrenchment.

6. What remains to be considered is the claim with respect to 1:1:1 ratio being applied for protection granted on 1:40 ratio. Admittedly there were three vacancies arising in the school, when 1:40 ratio is applied. The petitioner by virtue of Ext. P3 would be entitled to protection on 1:40 ratio though she is a leave substitute. But by application of 1:40 ratio, one regular H.S.A(Maths) was accommodated in one of the vacancies and two H.S.A (SS) were accommodated. Hence, when 1:1:1 ratio is applied to the three vacancies, the H.S.A (Maths) vacancy was conceded to an admitted senior of the petitioner of the same

subject. As H.S.A (SS), one M.C. Latha, also senior to the petitioner, was accommodated. Then the question is whether the 5th respondent could have been accommodated, who is also an H.S.A (SS).

7. Herein it is to be noticed that if the petitioner had been a Science teacher, probably on application of 1:1:1 ratio, the petitioner would have to be conceded the next vacancy, looking at the subject requirement. The petitioner cannot claim the Maths vacancy on 1:1:1 ratio since another senior H.S.A (Maths) (C.V. Krishnadas) was protected, on application of 1:40 ratio. The vacancy of C.S. Omana was also filled up with another senior H.S.A (Maths). The question then, boils down to the seniority of the rival claimants, the petitioner and the 5th respondent. Admittedly the petitioner was appointed as an H.S.A (Maths) on 05.06.2000 but in a leave vacancy. The 5th respondent was appointed as a U.P.S.A and then promoted as an H.S.A, both after the petitioner's appointment. However there could be no question of seniority between the petitioner and the 5th respondent since the 5th respondent is a regular appointee and the petitioner has only claim to a leave vacancy.

8. If C.S. Omana H.S.A (Maths), in whose leave vacancy the petitioner was accommodated, had been holding the post, she would have been retrenched, if she had been the junior most. If she was senior to any others then the junior most would have been retrenched. But an appointee in a leave vacancy cannot claim preference over a regular hand; for the reason that the original incumbent, the teacher on leave is senior to other regular hands. In such circumstance, the petitioner's retrenchment has to be upheld. Definitely the 51A claim of the petitioner would survive.

The writ petition is found to be devoid of merit and the same would stand dismissed.