

**(2009) 07 KL CK 0099**

**In the High Court Of Kerala**

**Case No : Writ Petition (C) No. 34780 of 2007**

D.V.M.N.N.M. Higher Secondary School

APPELLANT

Vs

Secretary to Government

RESPONDENT

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**Date of Decision : 03-07-2009**

**Acts Referred:**

Kerala Education Rules, 1959 — Rule 2, 2(2), 43

**Citation : (2009) 3 KLT 488**

**Hon'ble Judges : S. Siri Jagan, J**

**Bench : Single Bench**

**Advocate :** V.A. Muhammed, K.E. Hamsa, M.R. Nandakumar, P. Sreekumar, K.S. Manu Punukkonnoor and P.S. Sidhan, for the Appellant; Smitha Sukumar, Government Pleader, S. Jayakrishnan and V. Purushothama Panicker, for the Respondent

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## **Judgement**

S. Siri Jagan, J.—These three Writ Petitions relate to the same subject matter and therefore are being heard together and disposed of by this common judgment. Exhibits referred to in this judgment are as obtaining in W.P.(C) No. 7851/2007.

2. Three persons are vying with each other for appointment to two posts of H.S.A.'s in the DVMNNM Higher Secondary School, Maranalloor. They are 1) T.R. Hemalatha (Petitioner in W.P(C) No. 7851/2007) 2) A. Ani (6th respondent in W.P. (C)No. 7851/2007) and 3) S.K. Salini (Petitioner in W.P(C) No. 36664 of 2007.) Hemalatha and Ani aspire for direct recruitment as H.S.A. (English). Salini is a UPSA in the same school and she aspires for promotion as H.S.A. (Social Studies) under Rule 43 of Chap. XIVA of the Kerala Education Rules. The Manager appointed Hemalatha and Ani to the two vacancies available on the ground that both vacancies are those of H.S.A.(English), without considering the claim of Salini for promotion. The appointments of Hemalatha and Ani made by the Manager were refused to be approved by the educational authorities on the ground that there was only one vacancy of H.S.A. (English) and the other

vacancy is that of H.S.A. (Social Studies). The educational authorities held that Salini has a right to be promoted as H.S.A. (Social Studies) in the other vacancy, under Rule 43 of Chap. XIVA of the Kerala Education Rules. The matter was taken in appeal, revision etc by the Manager and Hemalatha and ultimately, the matter was finally decided by the Government by Ext.P11 order. In the same, the Government held that to the vacancy of HSA (English) available, Sri. Ani is the rightful claimant, since he has the qualifications prescribed for the post, whereas Hemalatha does not possess one of the prescribed qualifications. The Government also directed that to the vacancy of H.S.A. (Social Studies), Salini is entitled to be promoted under Rule 43 of Chap. XIVA of K.E.R. Hemalatha has filed W.P.(C) No. 7851 of 2007 challenging that order. The manager has filed W.P(C) No. 34780 of 2007 challenging the very same order. Salini has filed W.P(C) No. 36664 of 2007 seeking the implementation of the direction in that order to promote Salini to the post of H.S.A. (Social Studies).

3. The contention of Hemalatha and the Manager is that although as per the subject requirements, the ratio between Physical Science, Natural Science, Mathematics, Social Studies and English is 6:4:8:7:7, for teaching 150 periods of Social Studies only 6 H.S.A.'s are necessary, whereas for teaching 160 periods of English one more H.S.A.(English) is necessary. Therefore both the posts available should be allotted to English in which event both Ani and Hemalatha are entitled to be appointed to the said two posts. Another contention raised is that, by virtue of Ext.P2 order of the Government, promotions under Rule 43 have been temporarily banned until the subject requirement of H.S.A. (English) is stabilised. Therefore, Salini could not have been promoted to the post of H.S.A. (Social Studies) in view of the said ban in Ext.P2. Hemalatha raises a 3rd contention to the effect that even assuming that there is only one post of H.S.A. (English), she should be preferred to that post instead of Ani, in so far as Hemalatha has M. A. in English with B.Ed., which is accepted as alternate qualification by G O.(P) No. 83/2003/G.Edn. dated 3.4.2003 produced as part of Ext.P2 in W.P.(C) No. 7851 of 2007. The learned Government Pleader and Counsel for Ani and Salini opposes the contentions of Hemalatha and the Manager. Salini would contend that when as per staff fixation order, the ratio has been settled as 6:4:8:7:7 among Physical Science, Natural Science, Mathematics, Social Studies and English, nobody can say that although the sanctioned posts are in that ratio, for teaching 150 periods of Social Studies six teachers are sufficient. When staff strength is fixed, appointment of teachers can only be in accordance with the sanctioned staff strength. Going by the staff fixation order, there is one vacancy of H.S.A. (Social Studies) and since Salini is the rightful claimant for promotion under Rule 43, the Government rightly directed promotion of Salini to that post. Ani would contend that the qualifications prescribed for the post of H.S.A. (English) are a degree in English and B.Ed./B.T./L.T. with English as optional subject conferred or recognised by the Universities in Kerala and only in the absence of persons with those qualifications candidates with Degree in English and B.Ed./B.T./L.T. in any other subject conferred or recognised by the Universities in Kerala can be

considered, even though as per proviso to the rule applicable postgraduate degree in the subject would be considered as an alternative qualification of degree. According to Ani, he possesses the qualifications of B.A. in English Literature and B.Ed. with English as an optional subject, whereas Hemalatha possesses only M.A. in English and B.Ed. in Natural Science. When a candidate with the prescribed qualifications is available, Hemalatha with the alternate qualification cannot be considered is the contention raised by Ani. The learned Government Pleader would support Ext.P11 order on the same grounds.

4. I have considered the rival contentions in detail.

5. As is revealed from Ext.P11, the distribution of posts as per the staff fixation order in the core subjects and the number of teachers working in the school are as follows:

| -----      |       |       |    |          | Subject            |
|------------|-------|-------|----|----------|--------------------|
| Sanctioned | posts | No.   | of | teachers | working            |
| -----      |       |       |    |          | Physical Science 6 |
| 6          | ----- |       |    |          | Natural Science    |
| 4          | 4     | ----- |    |          | Mathematics 8      |
| 10         | ----- |       |    |          | Social Studies     |
| 7          | 6     | ----- |    |          | English 7 4        |
| -----      |       |       |    |          |                    |

6. Staff fixation order is not under challenge before me. Therefore, appointments to the vacant posts have to be strictly in accordance with the said distribution. The counsel for the Manager points out that in Ext.P8 order of the Director of Public Instruction, it is stated that the District Educational Officer, Neyyattinkara reported that the existing 6 posts of H.S.A. (S.S.) are enough for handling 32 divisions in High School Section. Therefore according to the counsel for the Manager as well as the counsel for Hemalatha the extra post in H.S.A. (S.S.) has to be allotted to H.S.A.(English). I am unable to subscribe to the same. A D.E.O. cannot report against the provisions of the K.E.R. Staff fixation can be done only in accordance with the K.E.R. Staff fixation has already been made, as per which the ratio is 6:4:8:7:7 among Physical Science, Natural Science, Mathematics, Social Studies and English. Nobody can interfere with that ratio especially when the staff fixation order is not under challenge before me. The two excess teachers in mathematics has been adjusted against the two vacant posts of H.S.A. (English) as per the Rules governing sanctioning of cadre of English teachers, the legality of which is not disputed before me by any of the parties. Therefore in English, there is only one vacancy and the other vacancy is in Social Studies. Neither Hemalatha nor Ani has any claim for appointment as H.S.A. (S.S.). So the only one left in the fray for the post of H.S.A.(SS) is Salini. Hence, there is no infirmity in Ext.P11 order directing promotion of Salini as H.S.A. (S.S.) under Rule 43 of Chap.XIVA of K.E.R.

7. The next question is as to as between Hemalatha and Ani, who is to be

preferred for the post of H.S.A. (English), available for filling up by direct recruitment. Admittedly, Hemalatha possesses only the qualifications of M.A. degree in English Literature with B.Ed. in Natural Science. The contention of the counsel for the Manager is that in view of the decision of the Division Bench in Sandhya T.N. Vs. Jalaja Kumari and Others, , holding that person possessing degree in Chemistry and postgraduate degree in Malayalam with B.Ed. degree in Physical Science is eligible for appointment as H.S.A. (Malayalam), a candidate with M.A. in English and B.Ed. in Natural Science can also be appointed as H.S.A. (English). It is also pointed out that in the decision of this Court in Bose William v. State of Kerala 2002 (2) KLT 34, it has been held that the word "degree" obtaining in Rule 2(2)(a) of Chap; XXXI K.E.R. would include post graduate degree also. Therefore, according to the Manager and Hemalatha, Hemalatha is fully qualified for appointment as H.S.A. (English).

8. As far as the reliance on Bose William's case is concerned, it is not necessary to consider the same, since in the rules themselves appropriate provision has been made to the effect that postgraduate degree in the subject or language concerned shall be considered as an alternative qualification for degree in such subject or language concerned for appointment as High School Assistant (Subject) or High School Assistant (Languages) as the case may be. The issue is whether a person with the prescribed qualifications are available, viz. Degree in English and B.Ed. degree with English as an optional subject can a person with the alternate qualifications namely M.A. Degree in English and B.Ed.. in Natural Science can be appointed. The rule in respect of same is contained in Rule 2(b) (X) of Rule 2 of Chap. XXXI of K.E.R, which reads thus:

(x) High School Assistant (English):- (i) A degree in English language and literature; and

(ii) B.Ed./B.T./L.T. with English as optional subject; conferred or recognised by the Universities in Kerala;

(iii) In the absence of those with qualification in item (ii) above, candidates with B.Ed./B.T./L.T. in any other subject, conferred or recognised by the Universities , in Kerala will be considered.

(Provided that a post graduate degree in the subject or language concerned shall be considered as an alternative qualification of degree in such subject or language concerned for appointments as High School Assistant (Subject) or High School Assistant (Languages) as case may be.)

From a reading of the rule there cannot be any doubt regarding the fact that only in the absence of a B.Ed. degree holder with English as an optional subject, a B.Ed. degree holder in any other subject can be considered for appointment. The reliance on the decision in Sandhya T.N. Vs. Jalaja Kumari and Others, is misplaced in so far as that decision relates to appointment to the post of H.S.A. (Malayalam), rules relating to which do not contain a corresponding provision. The rules relating to High School Assistant (Malayalam) is contained in Rule 2(b)

(i) of Sub-rule 2 of Chap. XXXI of K.E.R, which reads thus:

2(a) xxx xxx xxx

(b) High School Assistant (Languages)

(i) High School Assistant (Malayalam):- A Degree in Malayalam (or Malayalam as one of the two optional subjects under Pattern II of Part III) and B.Ed./B.T./L.T. conferred or recognised by the Universities in Kerala: or

A tittle of Oriental learning in Malayalam awarded by the Universities in Kerala and certificate in Language Teachers Training issued by the Commissioner for Government Examinations, Kerala.

In that rule for the purpose of appointment as H.S.A. (Malayalam) it is not mandatory that the B.Ed. degree should be with Malayalam as an optional subject, but B.Ed. degree in any other subject would do. In view of the specific qualifications prescribed for High School Assistant (English) as above only in the absence of persons with B.Ed. degree with English as optional subject, B.Ed. degree holders in other subjects can be considered. Here a person with B.Ed. degree with English as optional subject is available, namely Ani. So long as Ani with that qualification is available for appointment, Hemalatha with B.Ed. in Natural Science cannot be considered for appointment. Therefore, on both counts, the contention of the Manager and Hemalatha cannot be accepted. That being so, I do not find any infirmity in Ext.P 11 order and accordingly the W.P (C) Nos. 7851 of 2007 and 34780 of 2007 are dismissed.

9. Now that I have upheld the right of Salini to be promoted, she is entitled to succeeded in her Writ Petition. Accordingly, I direct the Manager to forward an order promoting Salini as H.S.A. (S.S.) as directed in Ext.P11 order of the Government, to the D.E.O. within two weeks from the date of receipt of a copy of this judgment. On receipt of the same, the D.E.O. shall take appropriate steps to approve such promotion, if otherwise she is entitled to such promotion. The D.E.O. shall also approve the appointment of Sri. Ani as H.S.A. (English) within one month from the date of receipt of a copy of this judgment.

10. The learned Counsel for Hemalatha makes a fervent plea that the Manager may be directed to accommodate Smt. Hemalatha in the vacancy left by Salini on her promotion as H.S.A. I am sure that the Manager having put Smt. Hemalatha in this unenviable position, would do the needful for saving her from the predicament insofar as she is already beyond the upper age limit prescribed for appointment as H.S.A. This shall be done, as expeditiously as possible, at any rate, within one month from the date of promotion of Salini.

Therefore, W.P.(C) No. 36664 of 2007 is disposed of as above.