
(2016) 07 KL CK 0058

In the High Court Of Kerala

Case No : Writ Appeal Nos. 160 and 218 of 2016

E.P. Sajithkumar Lower Primary School Assistant	APPELLANT
Vs	
The Assistant Educational Officer	RESPONDENT

Date of Decision : 25-07-2016

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 11

Citation : (2016) 3 KerLJ 770 : (2016) 3 KLT 95

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

Bench : Division Bench

Advocate : Smt. Aysha Rahman, Advocate, for the Appellant; Smt. Sunitha Vinod, Government Pleader and Sri. M. Sasindran, Advocate, for the Respondent

Final Decision : Disposed Off

Judgement

Dama Seshadri Naidu, J.—Introduction:

Initially, four writ petitions have been filed: one by the Manager (along with a teacher) of the School and the rest by three teachers. The issue is who, among those teachers, is a Lower Primary School Assistant (?LPSA?) and who is an Upper Primary School Teacher (?UPSA?). With the threat of a UPSA getting retrenched looming large, the clamour to establish that each is an LPSA was intense.

2. A learned Single Judge rendered a common judgment in all the four writ petitions: The claim of the two teachers to be the LPSAs was upheld. The aggrieved two filed writ appeals. They have, however, chosen to file appeals in their own writ petitions, but not in those filed by the other teachers. It was despite the fact that they were parties to the other writ petitions and the findings in them were to their prejudice. Apart from the merits, a preliminary question, now, begs for an answer—Are these two writ appeals barred by the principles of res judicata?

3. As we resolve to determine the preliminary issue first and to consider the

merits of the matter-if the lis could survive the preliminary objection-thereafter, we touch upon the factual controversy only to the extent necessary.

4. There are four protagonists to this litigation, one of them joined by the Manager of the School: (1) E. P.Sajithkumar, (2) Nisha M.Nair (both having a common cause); (3) K. Rajitha, and (4) E.V.Latha. We will take the pleadings of E.P.Sajithkumar in W.P. (C) No. 8287 of 2012 as the basis for our discussion.

Facts in Brief as Pleaded by E.P. Sajithkumar:

5. In Ackiparamba UP School, during the academic year 2002-03, the sanctioned posts were 14-9 UPSAs (Headmaster included) and 5 LPSAs. In 2002 one LPSA post and one UPSA post fell vacant owing to the retirement of two teachers. On 05.06.2002 E.P. Sajithkumar, a rule 51A claimant because of his earlier stint, was appointed as an 'Assistant Teacher' in one of the retirement vacancies; Smt. Nisha M.Nair was appointed on 21.06.2002 in the other post. Sajithkumar claims to have been appointed as an LPSA. In 2005 a UPSA retired from the service and E.V.Latha was appointed on 01.06.2005 in that vacancy. Later, because of one retirement and one promotion, Smt.K. Rejitha was appointed a UPSA on 01.06.2007.

6. During the academic year 2008-2009, because of the diminished student strength, one LPSA post and two UPSA posts were reduced. Nevertheless, when the protection under 1:40 teacher-student ratio was extended, one LPSA post and one UPSA posts were retained. Still, the junior most UPSA was directed to be retrenched from the service for only one of the two UPSA posts could be retained.

7. The Assistant Education Officer (AEO) wrongly treated Sajithkumar's post as UPSA and those of Latha and Rejith as LPSA. Aggrieved, Sajithkumar filed a complaint before the authorities; consequently, the Deputy Director of Education (?DDE?), Kannur, conducted an enquiry and submitted the Exhibit P3 report in Sajithkumar's favour. DDE has suspected tampering of the records to Sajithkumar's prejudice: he was shown as a UPSA instead of an LPSA. The government, in turn, affirmed the DDE's report and issued Exhibit P4 order. It also directed the AEO to approve Sajithkumar's appointment as an LPSA. AEO, in fact, restored Sajithkumar's position as an LPSA through exhibit P2 order.

8. Before the Director of Public Instruction (?DPI?) Latha, the rival contender, filed a petition challenging Exhibit P4 Government Order. That apart, she has also filed W.P.C.No.27736/2010. While the writ petition was pending, she further filed Exhibit P7 complaint before the Hon'ble Chief Minister of Kerala, who forwarded it to the DPI. Acting on Exhibit P7 complaint, DPI passed Exhibit P8 order: The direction was to change Sajithkumar's category to UPSA. Aggrieved, Sajithkumar filed W.P.(C).No. 8287/2012 assailing Exhibit P8.

Government's Assertion:

9. General Education Department filed a counter affidavit-it is detailed and revealing. According to the Government, Sajithkumar was appointed in a regular

vacancy against the retirement vacancy of an Assistant Teacher, who was holding the charge of UP Section (Std. VIC) as UPSA at the time of her retirement. Latha's appointment was approved as an LPSA with effect from 01.06.2005 and Nisha, a B.Ed., holder, was appointed in the school as a UPSA with effect from 21.06.2002 regularly. Given the subsequent division fall, Nisha was retrenched from service with effect from 15.07.2008.

10. During 2009-10, one post of UPSA and one post of LPSA were reduced for insufficient student strength. As Sajithkumar was a UPSA, the benefit of revised students-teacher ratio was extended to him, and Rajitha, an LPSA, was retrenched. Later, in the academic year 2010-11, one UPSA and two LPSA posts were reduced owing to the shortage of student strength. Sajithkumar could get the benefit of 1:40 ratio for that year, too, as a UPSA.

11. There was no vacancy in LP section when Sajithmumar was appointed in 2002; so his appointment was as a UPSA. He has a degree with B.Ed., and is qualified to be appointed only as a UPSA. Since there was a chance of reduction of the UPSA post, Sajithkumar pleaded before the DDE and DPI to reckon him as an LPSA so he can avoid any retrenchment in future.

12. In the course of time, Sajithkumar filed WP (C) No. 33958/09 and invited a judgment, though which this Court required the Government to consider the matter. The Government, accordingly, issued Exhibit P4, reckoning the petitioner as LPSA w.e.f 05.06.02. The Government's Order was based on the reports of DDE and AEO and the statements of Sajithmumar and the Manager. What has not been disclosed by any of them is that Smt. Savithri, in whose retirement vacancy Sajithkumar was appointed, was in charge of class VI.

13. Though the Government set out the details of other judicial proceedings taken recourse to by other teachers and the fall out on that count, it may not be germane for us to dwell on them. It, however, pays to examine the reliefs sought in each of those writ petitions.

Litigious Course of the Case: The Particulars of the Writ Petitions & the Reliefs Sought:

(1) W.P.(C) No.35253 of 2010: Rajitha. K is the petitioner; Sajithkumar and Nisha M.Nair are the 7th and 8th respondents respectively. Among the reliefs Rajitha has sought are the following:

to declare that she is entitled to be treated as an LPSA and Sajithkumar as a UPSA;

to declare that she is entitled to be posted as an LPSA against the existing vacancy of LPSA and that Sajithkumar will have no claim to the post of LPSA;

to issue a writ of mandamus directing the respondents to post her as an LPSA in Akkiparamba U.P. School by retrenching Sajithkumar;

to declare that Nisha M.Nair is not entitled to be treated as an LPSA; and

to issue a writ of mandamus directing the respondents to refrain from posting Sajithkumar as an LPSA without/before posting her as an LPSA.

(2) W.P. (C) No.27736 of 2010: Latha E.V., is the petitioner; Sajithkumar is the 6th respondent. Apart from questioning her retrenchment order, Latha has further, among other things, sought these reliefs:

to declare that the Manager has no jurisdiction to make an alteration in the appointment order of a teacher after its approval by the Educational Officer;

to issue a writ of mandamus or any other direction to the respondents 1 to 3 to pay salary to Latha by retaining her as LPSA.

(3) W.P. (C) No. 35873 of 2010: The Manager of the School and Nisha M. Nair are the petitioners; K. Rajitha and E.V.Latha are the 5th and 6th respondents respectively. The twin reliefs they sought were as follows:

Issue a writ of mandamus commanding the 1st to 4th and 7th respondents to implement Exhibits P4 to P7 orders;

to command the 4th and 7th respondents to disburse the salary due to Nisha M. Nair.

(4) W.P. (C) No.8287 of 2012: E. P.Sajithkumar is the petitioner; E.V.Latha and Nisha M.Nair are the 5th and 6th respondents respectively. Among other things, Sajithkumar has sought these reliefs:

to declare that he was appointed as an LPSA with effect from 05-06-2002 and permit him to continue as an LPSA;

to issue a writ of mandamus directing the respondents 1 to 3 to implement Exhibit P9 Government Order.

The Findings in the Impugned Common Judgment:

14. After an elaborate consideration, the learned Single Judge, after examining the summoned original records, acknowledges that there had been interpolations in Sajithkumar's service record-but the interpolation was said to be to his advantage. The observation (in para 14) is to the effect that Sajithkumar's claim, as noticed, is based on the DDE's enquiry report. Admittedly, Sajithkumar holds a B.Ed., while Latha holds a TTC. Though earlier both TTC and B.Ed. holders could be appointed as LPSAs or UPSAs, the situation stood altered in 2000. By G.O.(P) No.188/2000/G.Edn. dated 8.6.2000, Rule 4(1) of Chapter XXXI of KER was amended; as a result, the B.Ed. holders were not to be appointed as LPSAs, thenceforth.

15. The contention that a Rule 51A claimant is entitled to be appointed as an LPSA de hors the qualification in TTC is specious. The reliance in Ext.P8 report on the two Government letters, according to the learned Single Judge, is unsound and fallacious. Essentially the Government Order of 8.6.2000 brought in the amendments to the KER and altered the qualifications prescribed for UPSA and

LPSA in Rule 3(1) and Rule 4(1) respectively. In the context of such amendment, the prescription becomes statutory, and there can be no watering down of the same by clarifications issued by the Government. Moreover, the clarification does not lend credence to the strained interpretation attempted in Ext.P8.

16. In the end, the finding is that Sajithkumar's appointment, as disclosed from the files available with the educational authorities, is definitely to the post of UPSA and not to the post of LPSA. It could also not be otherwise since Sajith Kumar was not qualified to be an LPSA. His temporary appointment as an LPSA, and the consequent claim under Rule 51A, cannot entitle him to be appointed as an LPSA.

17. The finding concerning Latha is that she was appointed as an LPSA and she cannot be converted to UPSA. W.P.(C) No.27736/10, therefore, was allowed with a direction to the educational authorities to treat Latha as an LPSA. W.P.(C) No.8287/12 was dismissed. W.P.(C)No.35873/10 filed by the Manager and Nisha was also dismissed: Nisha could be placed only as a junior to Sajithkumar in the cadre of UPSA and necessarily has to be retrenched.

18. As far as W.P.(C)No.35253/10 is concerned, it is held that on Latha getting confirmed as an LPSA, Rajitha would be junior to her. W.P.(C)No.35253/10, too, was allowed.

19. To sum up, W.P.(C)Nos.27736 and 35253 of 2010 were allowed and W.P.(C)Nos.35873 of 2010 and 8287 of 2012 were dismissed.

Appeals:

1) W.A. No.160 of 2016: It arises out of W.P.(C) No.8287 of 2012 filed by E.P.Sajith Kumar, who is also the appellant.

2) W.A. No.218 of 2016: It arises out of W.P. (C) No.35873 of 2010 filed by the Manager of the School and Nisha M.Nair, who alone is the appellant.

Res judicata:

20. Res judicata is a common law principle of preclusion, devised to deter endless cycles of litigation; it is animated by a public policy against repetitious recourse to judicial remedies. Also of not less importance is the economy of judicial time, which can be spent on worthier causes. Three maxims can be cited as forming the foundation for this rule aimed at efficiency and finality: (a) *Nemo debet lis vexari pro eadem causa* (no man should be vexed twice for the same cause); (b) *Interest reipublicae ut sit finis litium* (it is in the interest of the state that there should be an end to a litigation); and (c) *Res judicata pro veritate occipitur* (a judicial decision must be accepted as correct).

21. The four elements of res judicata-a black letter law- are as follows: (a) the parties are identical or in privity; (b) the judgment in the prior action was rendered by a court of competent jurisdiction; (c) the prior action was concluded by a final judgment on the merits; and (4) the same claim or cause of action was

involved in both actions.

22. Though Section 11 of the Code of Civil Procedure consecrates this common law principle as a statutory mandate, it incontrovertibly applies to public law remedies, too, apart from civil disputes. The Courts have held that even the public interest litigation falls within its mischief and its enforcement demands vigil.

23. In *Sheoparsan Singh v. Ramnandan Prasad Singh*, (1916) 3 LW 544 the Privy Council has observed that *res judicata* is an ancient doctrine of universal application and permeates every civilised system of jurisprudence. This doctrine encapsulates the basic principle in all judicial systems which provide that an earlier adjudication is conclusive on the same subject-matter between the same parties. Recently, quoting *Sheoparsan Singh* with approval, the Supreme Court in *Sri Gangai Vinayagar Temple v. Meenakshi Ammal*, (2015) 3 SCC 624, at page 648 has observed that the *raison d'être* and public policy on which *res judicata* is predicated is that the party who has raised any aspect in a litigation and has had an issue cast thereon, has lead evidence in that regard, and has argued on the point, remains bound by the curial conclusions once they attain finality. No party must be vexed twice for the same cause; it is in the interest of the State that there should be an end to litigation; a judicial decision must be accepted as correct absent a challenge.

24. Illustratively stated, on a common issue two rival contenders, let us assume, take out independent legal proceedings before a court of law. The court, we further assume, allows one and dismisses the other. The aggrieved party files one appeal. Though the initial adjudication was through one single judgment, it actually amounts to two decisions, notionally. As no appeal is filed against the other decision, the finding notionally attributable to it attains finality. In such an event, the single appeal arising out of a case dismissed or allowed, as the case may be, is hit by the principle of *res judicata*. This is precisely the situation obtained in *Badri Narayan Singh v. Kamdeo Prasad Singh*, AIR 1962 SC 338 a decision rendered by a Constitution Bench of the Supreme Court. The same proposition of law stands affirmed in *Lonankutty v. Thomman*, (1976) 3 SCC 528 too.

Application of the Proposition:

25. There are no appeals against W.P. (C) No.35253 of 2010 filed by Rajitha K and W.P. (C) No.27736 of 2010 filed by Latha E.V. Thus, the findings in these two writ petitions have become final. The findings, as sought in W.P. (C) No.35253 of 2010, include that (a) Sajithkumar is a UPSC; (b) Sajithkumar will have no claim to the post of LPSA; (c) Sajithkumar be retrenched in view of his conflicting claim; Nisha M.Nair is not entitled to be treated as an LPSA; and authorities should not post Sajithkumar as an LPSA without/before posting Rajitha.

26. The irresistible, inescapable conclusion, to our mind, is that the above two appeals are barred by the principles of *res judicata*. Thus, any further discussion

on the merits, we conclude, is obviated.

27. In the facts and circumstances, we dismiss the appeals as barred by res judicata. No order on costs.