

(1998) 01 KL CK 0003

In the High Court Of Kerala

Case No : O.P. No"s. 13086, 13104 of 1996 and 860, 1878 of 1997

Girija Kumar and Another

APPELLANT

Vs

The State of Kerala and Others

RESPONDENT

Date of Decision : 07-01-1998

Acts Referred:

Kerala Education Act, 1958 — Section 13
Kerala Education Rules, 1959 — Rule 51A

Citation : (1998) 01 KL CK 0003

Hon'ble Judges : C.S. Rajan, J

Bench : Single Bench

Advocate : A.N. Rajan Babu, N. Sugathan, S. Santhosh Kumar, A.V.R. Panicker and K.G. Anil Babu, for the Appellant; P.V. Asha, Government Pleader for Respondents 1 and 2 and O.V. Radhakrishnan, for Respondents 3 and 4, for the Respondent

Judgement

C.S. Rajan, J.—Petitioners in all these Original Petitions were included in the ranked list for appointment to the post of H.S.A. (Mathematics) in Kollam district prepared by the P.S.C. The above list was brought into force with effect from 25th August 1993. These Original Petitions were filed at a time when the educational authorities were not reporting the existing vacancies to the P.S.C. According to the Petitioner, the educational authorities were either deploying the protected hands from the aided schools or appointing provisional hands from the Employment Exchange. In order to safeguard the interest of the Petitioners this Court by order dated 22nd February 1996 in C.M.P. 23086/1996 in O.P. No. 13086/1996 and C.M.P. No. 23104/1996 in O.P. No. 13104/96 directed the Deputy Director (Education) to report 19 vacancies to the P.S.C. But actually 24 vacancies were reported.

2. Counter-affidavits have been filed by the second Respondent in O.P. Nos. 1304 of 1996 and 860 of 1997. The stand of the second Respondent is that protected hands are working in these posts and therefore actually there are no vacancies for accommodating the P.S.C. hands. Therefore, it was argued that though 24

vacancies were reported to the P.S.C. in obedience to the interim order passed by this Court, these vacancies are not to be filled up by appointing the candidates from the ranked list prepared by the P.S.C. Therefore, the short question to be decided in these cases is whether deployment of protected hands from the aided school to the Government schools can be resorted to in order to deny the rights of candidates included in the ranked list prepared by the P.S.C. for the purpose of appointing High School Assistants in the Government schools.

3. The learned Government Pleader invited my attention to Section 13 of the Kerala Education Act which reads as follows:

13. Absorption of teachers on retrenchment.- When any retrenchment of teachers in any aided school is rendered necessary consequent on orders of the Government relating to the course of studies or scheme of teaching or of such other matters, it shall be competent for the Government or the Manager of an aided school to appoint such teachers in any Government school or aided school, as the case may be.

Note. Section 13 does not permit deputation of an aided school teacher to a Government school. Kunhi Krishna Menon v. State 1969 K.L.J. 817.

The Government can appoint a supernumerary teacher in a Government school. W.A. No. 132 of 1997 decided on 2nd January 1978.

Therefore it was argued that the Government is competent to appoint teachers working in the aided schools in any of the Government schools. A close reading of Section 13 as quoted above will go to show that the retrenchment of the aided school teachers must be consequent on the orders of the Government relating to the course of studies or scheme of teaching or of such other matters. In these cases there is no case for the Government that the deployment of these protected hands is consequential orders passed by the Government relating to the course of studies or scheme of teaching or any other orders as referred to in Section 13. The teachers who became surplus in aided schools on account of the fixation of staff in every year are deployed to Government schools when there are vacancies. These teachers are called protected teachers. The teachers become surplus because of fall in division due to the non-availability of sufficient students in the school. Therefore, their deployment is not due to any orders of the Government relating to the course of studies or scheme of teaching. In such situations I do not think that Section 13 of the Kerala Education Act will come in aid of the educational authorities.

4. Deployment of retrenched aided school teachers by giving protection is by virtue of G.O. (Ms.) 104/69/Edn. (J), dated 6th March 1969 as amended from time to time. The above order provides that lien of protected teachers should be retained under the Manager of the management schools at the time of retrenchment. It also a provided that the period during which the protected teachers who are out of service would be treated as eligible leave or on leave on loss of pay. A useful discussion is available with regard to the status of these

protected teachers in the ruling reported in *Manager, Mar Sleeba U.P.S. v. State of Kerala* 1990 (1) KLT 626. According to the above judgment, a teacher who is found to be an excess hand on fixation of the staff strength will be retrenched by throwing him out and such thrown out teacher has got a preferential claim to be appointed in future vacancy in the parent school. Such teachers are entitled to a preferential claim for appointment to the future vacancy in the school under Rule 51A of Chapter XIV A K.E.R. Thus, it can be seen that the deployment of the thrown out teachers as protected hands in Government schools can never be termed as appointment. A vacancy in Government school can be filled up by appointing a regular hand or by promotion from the lower post in accordance with the rules. As held by this Court a thrown out teacher who is working as a protected hand in Government school is entitled to get preference for appointment in his parent school if a vacancy arises under Rule 51A of Chapter XIV A K.E.R. Such a teacher can never be considered as a regular member of the staff of the Government school. Their continuance in the Government school is subject to the availability of a vacancy in the parent school from which the teacher was retrenched. The moment a vacancy arises in the parent school the teacher is entitled to claim preference for appointment in the new vacancy. Thus, such appointment can never be considered as equivalent to filling up of a regular vacancy which arose in the Government school.

5. The method of appointment for filling up of High School Assistants in Government school is by direct recruitment or by promotion. A ratio has also been fixed for direct recruitment and promotion. Deployment of protected teachers is not a method prescribed for filling up of vacant posts in Government schools. Therefore the educational authorities cannot put forward the plea of continuance of protected hand by virtue of the Government Orders as a shield to deny appointments to candidates who were regularly selected by the P.S.C.

6. It may be argued that persons like the Petitioners were only included in the ranked list of candidates prepared for appointment and have no legal right to demand that they must be appointed. But it must be remembered that the authorities are also not empowered to fill up these posts to which the Petitioners were selected by any other method which is unknown to law. If such a method is adopted by the Government, it really becomes illegal, arbitrary and discriminatory.

7. Now 24 vacancies have been reported by the Deputy Director (Education) to the P.S.C. on the basis that there are 24 protected hands working in Kollam district as H.S.A. (Mathematics). Therefore, it is only just and proper to direct the District Office of the P.S.C., Kollam to advise 24 candidates to the posts of H.S.A. (Mathematics) from the ranked list of candidates prepared and brought into force with effect from 25th August 1993. The P.S.C. is directed to advise the candidates in accordance with law within one month from the date of receipt of a copy of this judgment. The Deputy Director (Education), Kollam is also directed to issue appointment orders pursuant to the advice within one month thereafter.

Original Petition is disposed of as above.