
(2015) 03 KL CK 0224

In the High Court Of Kerala

Case No : Writ Petition (C) No. 30707 of 2014 (K)

Girija V.K.

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 27-03-2015

Acts Referred:

Citation : (2015) 03 KL CK 0224

Hon'ble Judges : A. Muhamed Mustaque, J

Bench : Single Bench

Advocate : M. Sasindran and V. Venugopal, for the Appellant; Lowsy A., Govt. Pleader, Advocates for the Respondent

Final Decision : Disposed off

Judgement

A. Muhamed Mustaque, J.

1. The short question in this writ petition arises in the context of appointment of Higher Secondary School teacher in terms of Rule 4 of Chapter XXXII of the Kerala Education Rules (KER).

2. The petitioner was appointed by the Manager of an aided Higher Secondary School in the post of H.S.S.T. (Economics). The appointment of the petitioner was from open market. The claim of the 5th respondent is for appointment to the above post is in by transfer quota of the High School Assistant. The claim of the 5th respondent was upheld by the Government as per Ext. P6. It is challenging the above order, the petitioner has approached this Court.

3. There is no dispute with regard to the qualification of the petitioner or 5th respondent for appointment as H.S.S.T. in Economics. The Regional Deputy Director, Kannur and the Director of Higher Secondary Education approved the appointment of the petitioner. There is no dispute regarding sanctioning of two H.S.S.T. posts. Consequent upon sanctioning of additional batch in H.S.S.T., two additional posts are sanctioned one is in Commerce and the other one is in Economics.

4. The case of the petitioner is that the cadre strength of H.S.S.T. has to be reckoned for filling up the vacancies. On the other hand, the case of the 5th respondent is that in the absence of qualified hands for appointment from Junior Lecturer in the subject, the first vacancy has to go to the High School Assistant.

5. In order to understand the issue, it is relevant to refer to relevant Clause in Rule 4 of Chapter XXXII of the KER, which reads as follows:

"(1) By transfer from Junior Lecturer in the subject under the management/ Higher Secondary School Teacher (Junior).

(2) In the absence of qualified hands under clause (1) above, the vacancies shall be apportioned in the ratio 1:3 between appointment by transfer and direct appointment as detailed below:

(i) (a) By transfer from High School Assistants, who possess the requisite qualifications, under the Educational Agency.

(b) In the absence of qualified persons under (a) above, by transfer from qualified Upper Primary School Assistants/Lower Primary School Assistants who possess the requisite qualification in the subject concerned, under the Educational Agency.

(ii) By direct appointment.

Note:- (1) When qualified persons are not available to fill up the vacancies set apart for appointment by transfer under item 2(i) above such vacancies shall also be allotted for direct appointment.

(ii) Appointments under item (1) above shall be made from select lists of qualified persons prepared on the basis of seniority and merit."

6. The learned counsel for the petitioner Sri. M. Sasindran would submit that the filling up of the vacancy should be based on the cadre strength and not on the basis of the existing vacancies. He relied on the various judgments of this Court in *Prakash v. Kurien* [1999 KHC 408], *Prasad Kurien and others v. K.J. Augustine and others* [2008 (2) ILR 240] and *Babu v. Deputy Director of Education* [2004 KHC 285].

7. The learned counsel for the 5th respondent would urge that the above Rule is very clear with regard to the method of appointment and therefore, cadre strength is not a criteria for filling up the posts in existing vacancies.

8. The very premises on which the impugned order is passed on the ground that the first vacancy of H.S.S.T. is to be filled up through by transfer appointment from the qualified H.S.A. This Court is of the view that the Government erred in interpreting relevant Clause in Rule 4 as the method of appointment is very clear from above Rule itself. The appointment of H.S.S.T. has to be from H.S.S.T. Junior. In the absence of H.S.S.T. Junior, the vacancy shall be apportioned in the ratio of 1:3 between by transfer and direct recruitment. While fixing the different

ratio of by transfer and direct appointment, the intention of the Rule making authority is to delineate cadre strength of by transfer appointees and direct appointees. The relevant Rule for appointing H.S.S.T. Junior would fortify the object of prescribing different ratio between the appointment by transfer and direct appointment. In the Rule relating to HSST Junior, the ratio of the cadre strength has been specifically laid down between 25:75 by transfer and direct recruitment into the total post. Merely because in category 2 under Rule 4, it is mentioned that the vacancy shall be filled in the ratio of 1:3, will not prioritize claim of "by transfer" appointment for all the vacancies for the post of H.S.S.T. The vacancy has to be filled in relation to the cadre strength.

9. The first vacancy in the post of H.S.S.T., not necessarily go to appointment by transfer. When different method and different percentage are prescribed under Special Rules, the recruitment has to be based on cadre strength and not based on the existing vacancy. If the cadre strength is not taken into account, it will render different percentage prescribed in the Rule as nugatory and unworkable.

10. It is relevant to refer to the Rule 5(3) of the Kerala State and Subordinate Services Rules, 1958, which reads as follows:

"Whenever a ratio or percentage is fixed for different methods of recruitment/appointment to a post the number of vacancies to be filled up by candidates from each method shall be decided by applying the fixed ratio or percentage to the cadre strength of the post to which the recruitment/transfer is made and not to the vacancies existing at that time."

Therefore, in the light of the above Rule, I am of the view, the vacancy has to be filled based on the cadre strength and not based on the first vacancy should be filled with by transfer appointment. The ratio can only be worked out if the cadre strength is maintained. It is already found by the Regional Deputy Director and the Director that appointment of the petitioner is in conformity with the cadre strength. In that view of the matter, I am of the view, the writ petition is liable to be allowed. The impugned order is set aside. There shall be a direction to competent among respondents to approve the appointment of the petitioner and to release the arrears of salary within three months.

The writ petition is disposed of as above. No costs.