
(1999) 03 KL CK 0005
In the High Court Of Kerala
Case No : W.A. No. 462/90

Govinda Pillai, K. and Another

APPELLANT

Vs

State of Kerala and Another

RESPONDENT

Date of Decision : 31-03-1999

Acts Referred:

Kerala Education Rules, 1959 — Rule 2(2), 2(3), 6B

Citation : (1999) 2 KLJ 41

Hon'ble Judges : P.K. Balasubramanyan, J;J.B. Koshy, J

Bench : Division Bench

Advocate : V.N. Achutha Kurup, for the Appellant; V.M. Kurian, Govt. Pleader, for the Respondent

Judgement

P.K. Balasubramanyan, J.—The Original Petition giving rise to this Writ Appeal was filed by the Manager of an aided school and a Sewing Mistress appointed in the Lower Primary School of which he was the Manager. In terms of Chapter XXIII of the Kerala Education Rules Sewing Mistress is a specialised teacher. Appointment of Petitioner No. 2 was on 1st June 1987. The post was earlier occupied by one K. Indiramma. Indiramma had continuous service in the school as a Sewing Mistress from 3rd June 1957 onwards. Indiramma retired on 31st March 1987. The educational authority refused to approve the appointment of Petitioner No. 2 on the ground that under Rule 2(3) of Chapter XXIII of the Kerala Education Rules, no post of specialised teacher could be created in any Lower Primary School and what was saved by the proviso to that Rule was only the person who was holding the post of a specialised teacher in a Lower Primary School before the commencement of the academic year 1969-70. According to the Petitioners, what was saved by the proviso to Rule 2(3) of Chapter XXIII of Kerala Education Rules was a post of specialised teacher that existed prior to the academic year 1969-70 and not merely the incumbent and the post continues to exist notwithstanding the retirement or death of the prior incumbent of the post. This contention raised on behalf of the Petitioners was not accepted by this Court originally and this Court following the decision in Krishnankutty v. Commissioner

and Secretary to Government 1988 (1) KLT 913 dismissed the Original Petition. The Writ Appeal filed by the Petitioners against the said judgment was dismissed by the Division Bench by holding that in the light of the decision in Krishnankutty (1) 1988 (1) KLT 913 which was binding on the Single Judge there was no scope for interference in appeal. The Petitioners challenged the decision of the Division Bench in Civil Appeal No. 10409 of 1995 before the Supreme Court. The Supreme Court allowed the appeal and accepted the contention of the Petitioners that what was saved by the proviso to Rule 2(3) of Chapter XXIII of the Kerala Education Rules was the post of specialised teacher that existed prior to the academic, year 1969-70 and not merely the incumbent occupying such a post. After disagreeing with the view taken by this Court earlier and holding that the post will continue to exist, the Supreme Court remanded the Writ Appeal to this Court for considering whether there were any other Government Orders abolishing such posts. The Supreme Court indicated the scope of enquiry by this Court as follows:

...It is, therefore, not possible without a probe into the matter to decide whether or not at the date of appointment of Appellant No. 2 the post was in fact abolished. That is a question of fact which the High Court will have to consider. We have merely explained the import of the relevant rules and the factual aspect will have to be considered in the light thereof by the High Court.

2. Though the Supreme Court gave the parties opportunities to file additional pleadings neither of the parties have filed any additional pleadings before us.

3. Learned Counsel for the Appellants, Manager and the Teacher submitted that there were no subsequent Government Orders which abolished such posts and on the interpretation placed on Rule 2(3) of Chapter XXIII of the Kerala Education Rules by the Supreme Court in the order of remand, post continues to subsist and so long as the conditions of Chapter XXIII Rule 2(2) are satisfied, the post can be filled by a competent teacher and in this case by Petitioner No. 2. Counsel therefore submitted that the authorities were bound to approve the appointment of Petitioner No. 2 for the concerned academic years. Learned Government Pleader submitted that Ext. P-12 order, dated 22nd August 1989 marked in the Original Petition was a subsequent order abolishing the post. The learned Government Pleader in particular referred to the operative portion of the order reading:

In view of the Government decision dated 27th January 1989, the position is that the posts of specialist teachers in L.P. and U.P. Schools which were being continued under the proviso to Rule 2(2) and 6B(i) of Chapter XXIII will terminate with the vacation 1 of the posts by the specialist teacher by retirement, resignation death and like reasons. No request for approval of fresh appointments against such post will be entertained or allowed by Government or by any educational authority. All the requests received or appeal or revision, etc. pending with the educational authorities should be dealt with and disposed of accordingly.

It is also submitted that even otherwise, the existence or otherwise of the post for a particular academic year will depend upon the staff fixation order in terms of the Kerala Education Rules and will also be subject to Rule 2(2) of Chapter XXIII of the Kerala Education Rules.

4. We must observe that even when the Supreme Court made the order of remand after setting aside the interpretation placed by this Court on proviso to Rule 2(3) of Chapter XXIII of Kerala Education Rules, the order Ext. P-12 was available before that Court. That Court did not take note of Ext. P-12 as an order deciding to do away with the posts themselves on the death or retirement of the incumbent at the commencement of the academic year 1969-70. It cannot therefore be said that Ext. P-12 order can now be relied upon to contend that the post no more survives. It is also clear that Ext. P-12 order was passed on the basis of the interpretation placed by this Court on the scope of the proviso to Rule 2(3) of Chapter XXIII of Kerala Education Rules which interpretation has not been accepted by the Supreme Court. We are of the view that since no subsequent order abolishing the posts that were saved by the proviso to Rule 2(3) of Chapter XXIII of Kerala Education Rules as interpreted by the Supreme Court is brought to our notice, it has necessarily to be held that the Petitioners-Appellants are entitled to relief in the Original Petition. But there is merit in the submission that the existence or otherwise of the post for a particular academic year will depend upon the staff fixation order in terms of the Kerala Education Rules and will also be subject to Rule 2(2) of Chapter XXIII of the Kerala Education Rules. Hence the only clarification needed is to make it clear that the continuation of the post occupied by Petitioner No. 2 Appellant No. 2 will be subject to the conditions laid down in Rule 2(2) of Chapter XXIII of the Kerala Education Rules and will depend upon the staff fixation orders for the respective academic years. We may also notice that in view of the clear pronouncement by the Supreme Court in Civil Appeal No. 10409 of 1995, the decision of the Division Bench in *Mary Thomas v. State of Kerala* 1991 (2) KLT 129 relied on by the learned Government Pleader cannot be considered any longer to be good law.

In the light of our conclusion as above, the orders Exts. P-2, P-3, P-5, P-7, P-12 and P-15 are quashed and the authorities are directed to approve the appointment of Petitioner No. 2 to the post of Sewing Mistress in the lower primary school subject to Rule 2(2) of Chapter XXIII of the Kerala Education Rules. The parties are directed to suffer their respective costs.