
(2012) 08 KL CK 0058

In the High Court Of Kerala

Case No : WP (C) . No. 34342 of 2008 (L)

Habusath Beevi and Sajeetha

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 13-08-2012

Acts Referred:

Citation : (2012) 08 KL CK 0058

Hon'ble Judges : A.M. Shaffique, J

Bench : Single Bench

Advocate : B. Harish Kumar, for the Appellant; Lisha M.G ., Government Pleader R1 to R4, Sri. K.R.B. Kaimal (SR.), R5 and R6 and Sri. B. Unnikrishna Kaimal, for the Respondent

Final Decision : Dismissed

Judgement

Justice A.M. Shaffique

1. The Petitioners in W.P.(C) 32342/2008 challenges Exhibits P4, P5, P6 and P9 and also seeks a direction to the respondents to retain the petitioners as UPSA in the 5th respondent school and for declaration that the petitioners are entitled for salary with effect from 15.07.2006. They also seek a direction to the respondents to sanction two posts of UPSA in the said school for the academic year 2006-07 and for consequential reliefs. The petitioners are the Upper Primary School Assistants in the 5th respondent school. The 4th respondent by an order dated 13.07.2006 directed staff fixation of the 5th respondent school for the academic year 2006-07 and sanctioned eleven posts of UPSA and two post of Language Teacher (LG) Hindi. From the said post two post of UPSA and one post of LG (Hindi) was abolished due to reduction of division.

2. Though the petitioners filed appeal and revision against the said staff fixation before the second and first respondent no deviation was made by the said respondents and hence the writ petition is filed. It is contended that a Super Check Cell visited 5th respondent school on 18.10.2006 and it was found that

there has been undue shortage in the attendance of pupils on the date of inspection. The Super Check Cell conducted a second visit on 06.02.2007. Then also it was found that the number of students were much below the actual strength. A re- visit was conducted by Super Check Cell on 22.02.2007 but in the meantime the 2nd respondent intimated the abolishing of four posts of UPSA. The Super Check Cell further conducted a visit on 11.07.2007 and again it was found that there was no sufficient number of pupils in the school. Hence the 2nd respondent ordered re-fixation of staff strength for the year 2006-07 reducing one division of standard V and VI and two divisions in standard VII and abolished four posts of UPSA and one post of Hindi Teacher. Ext. P4 is the said order. Pursuant to Ext. P4, petitioners and one language teacher was found not be eligible for protection or the benefit of 1:40 ratio and therefore the salary paid to these teachers from 15.07.2006 was directed to be fixed as liability of the 6th respondent. Ext. P5 is the said order.

3. By Ext. P6 proceedings, the 4th respondent fixed the liability of Rs. 2,06,283/- on the 6th respondent being the amount paid to the petitioners and the Hindi teacher as salary for the period from 15.07.2006.

4. Being aggrieved by Exts. P4, P5 and P6, the 5th respondent filed a revision before the 1st respondent. Ext. P7 is the revision petition. When it was not considered, they filed W.P. (C). No. 5597/2008 which was disposed of by the judgment dated 18.02.2008 directing the first respondent to take a decision on the revision, in accordance with law. The revision was dismissed approving the decision of the 2nd respondent and Ext. P9 is the said order. According to the petitioners, Ext. P9 order is illegal as it violates Rule 15 of Chapter XXIII of KER. According to them, there was sufficient reasons for the absence of the students during the visit by the Super Check Cell which was duly explained to the department. Still further, it is contended that as per Rule 12 Chapter XXIII of the KER the staff strength sanctioned by AEO will exist till 14.07.2007 and the petitioners were working against the sanctioned post. The direction to recover the salary paid to the petitioners commencing from 15.07.2006 therefore cannot be made.

5. Writ petition W.P.(C) No. 3808/2008 is filed by Hindi Teacher of the same school taking identical contentions.

6. Counter affidavit has been filed by the 4th respondent. According to them, when the Super Check Cell visited the school it was found that there were no sufficient students and therefore orders were passed to abolish three posts of UPSA's and one post of Hindi Teacher with effect from 15.07.2006. Since there was direction in the said order to consider the retention in allowing the benefit of 1:40 ratio to the aggrieved teachers, senior most retrenched UPSA was accommodated in the school as per order dated 19.09.2007. The remaining two UPSA's and Hindi teacher were retrenched with effect from 15.07.2006. In that premise, it is contended that there is no illegality in the orders passed by the appropriate authority. The question that arises for consideration is whether the

orders impugned is in any manner illegal or arbitrary. On a perusal of the facts involved in the matter it could be seen that the authorities have properly considered the matter and it is after hearing the parties concerned, the impugned orders were passed. It is contended that going by Rule 15 of Chapter XXIII of KER it shall be competent for the educational officers to re-fix the staff strength only during the course of year. But, it is relevant to note that Rule 16 of Chapter XXIII of KER is a special provision which enables the government to check the staff fixation proceedings and to find if any irregularity is committed in staff fixation and it is based on such report by the authorised officer that the Director of Public Instruction issues appropriate actions. As far as the proceedings under Rule 16 are concerned, there is no prohibition of fixing the staff strength as available in Rule 15. It is open for the authorities to pass any order to see that there is no manipulation by the school authorities and in that view of matter I do not think that any legal grounds exist for interfering with the impugned orders. The petitioner in W.P.(C) No. 3808/2008 also stands in same footing and has no other contentions. As such I do not find any merit in these writ petitions and the same are dismissed.