
(2013) 03 KL CK 0060

In the High Court Of Kerala

Case No : Writ Petition (C) No. 33684 of 2006

Hafsath, K.K.

APPELLANT

Vs

District Educational Officer and Others

RESPONDENT

Date of Decision : 14-03-2013

Acts Referred:

Citation : (2013) 2 ILR (Ker) 478 : (2013) 2 KHC 458 : (2013) 2 KLJ 691 : (2013) 2 KLT 522

Hon'ble Judges : P.N. Ravindran, J

Bench : Single Bench

Advocate : M. Vijayakumar, for the Appellant; M.A. Fayaz, Government Pleader for Respondents 1 to 3, for the Respondent

Final Decision : Allowed

Judgement

P.N. Ravindran, J.—The petitioner was appointed as H.S.A. (Arabic) by the fourth respondent Manager with effect from 2-6-2004 as per Ext. P-1 order dated 2-6-2004 in the vacancy which arose consequent on the appointment of Smt. K. Nafeesa, H.S.A. (Arabic) as Head Master of the school with effect from 1-4-2004. Smt. K. Nafeesa, H.S.A. (Arabic) was working against a part-time post of H.S.A. (Arabic), but with full time benefits. When the staff fixation order for the academic year 2004-2005 was issued, though the District Educational Officer, Aluva found the school eligible for a full-time post of H.S.A. (Arabic), based on the effective student strength and the number of periods of work per week, a full time post was not sanctioned on the ground that higher level verification was not conducted by the Deputy Director of Education as required under Rule 12 of Chapter XXIII of the Kerala Education Rules. Consequently, the petitioner's appointment as H.S.A. (Arabic) was approved only on part-time basis as per order dated 13-12-2004 issued by the District Educational Officer, Aluva, with effect from 2-6-2004. Aggrieved by the staff fixation order to the extent it declined the full-time post of H.S.A. (Arabic), the Manager filed an appeal before the Director of Public Instruction under Rule 12B of Chapter XXIII of the Kerala

Education Rules. By Ext. P-2 order passed on 2-6-2005, the Joint Director of Public Instruction rejected the appeal on the ground that higher level verification was not conducted. Aggrieved by the order approving her appointment only as part time teacher, the petitioner filed a representation dated 28-1-2005 before the Government. The Government considered the said representation and rejected it on the ground that to sanction an additional division, higher level verification was mandatory as per Rule 12 of Chapter XXIII of the Kerala Education Rules and therefore, the petitioner's request for a full-time post cannot be granted. The petitioner thereafter filed Ext. P-4 representation dated 27-11-2005 seeking a review of Ext. P-3 order. She contended that if higher level verification was required it should have been conducted by the Deputy Director of Education and for the failure of the Deputy Director of Education to conduct the higher level verification, the post of full time teacher cannot be declined. She contended that the failure of the Deputy Director of Education to discharge his statutory functions cannot be held out against her. The instant writ petition was thereafter filed on 18-2-2006, challenging Exts. P-2 and P-3 and seeking a writ in the nature of mandamus commanding the respondents to sanction a full-time post of H.S.A. (Arabic) in the school. The principal contention raised in the writ petition is that the failure of the competent statutory authorities to conduct the higher level verification cannot be held out against the petitioner and operate to her detriment.

2. In the meanwhile, an additional post of H.S.A. (Arabic) arose in the school during the academic year 2006-07. The Manager appointed the petitioner as H.S.A. (Arabic) against the said vacancy with effect from 15-7-2006. He did not however submit a proposal to approve the said appointment to the District Educational Officer, Aluva within the time-limit stipulated in Rule 8 of Chapter XIV A of the Kerala Education Rules. The proposal to approve the petitioner's appointment as H.S.A. (Arabic) with effect from 15-7-2006 was submitted only on 30-10-2006. For that reason and also for the reason that the Government had by G.O. (P) No. 169/04/G.Edn. dated 15-6-2004 and G.O. (P) No. 317/05/G.Edn. dated 17-8-2005 imposed a ban on appointments against additional posts and the change of management has not been approved, the District Educational Officer, Aluva declined to approve the said appointment. Aggrieved thereby, the Manager filed an appeal before Deputy Director of Education, Ernakulam who by order passed on 19-5-2007 rejected it. The Manager thereupon filed a revision petition dated 3-7-2007 before the Director of Public Instruction. By order passed on 12-12-2007, the Director of Public Instruction rejected the revision petition. Aggrieved thereby, the Manager filed a revision petition before the State Government. While the said revision petition was pending before the Government, the petitioner filed W.P.(C) No. 7936 of 2010 in this Court challenging the orders passed by the District Educational Officer, Aluva, the Deputy Director of Education, Ernakulam and the Director of Public Instruction declining to approve her appointment with effect from 15-7-2006. The said writ petition was disposed of by judgment delivered on 11-3-2010 with a direction to

the Government to consider the revision petition filed by the Manager and pass orders thereon within three months from the date of receipt of a copy of the judgment, after affording the parties an opportunity of being heard. It is not in dispute that pursuant to the said direction, the Government issued Ext. P-5 Order dated 24-1-2011 produced along with I.A. No. 3364 of 2013, whereby, the Government directed the Director of Public Instruction and the Deputy Director of Education, Ernakulam to approve the petitioner's appointment as H.S.A. (Arabic) on full-time basis with effect from 15-7-2006, if she is otherwise eligible.

3. When this writ petition came up for hearing today, Sri M. Vijayakumar, learned counsel appearing for the petitioner, brought to my notice a copy of order No. B2-1275/11/DD is dated 8-3-2011 whereby, in implementation of the direction issued by the Government in Ext. P-5, the District Educational Officer, Aluva accorded sanction for one post of H.S.A. (Arabic-Full-time) instead of the part-time post, with effect from 15-7-2006 in the fourth respondent's school and directed that the staff fixation orders for the period from 2006-07 to 2010-11 shall stand revised accordingly. A copy of the said order is incorporated in the records.

4. A counter-affidavit dated 19-7-2007 has been filed on behalf of the State of Kerala. In paragraph 3 it is stated that, only a part-time post of H.S.A. (Arabic) was in existence in the school, but the incumbent was enjoying full-time benefits as envisaged in G.O.(Ms.) No. 62/73/S.Edn. dated 2-5-1973 and that for sanctioning a full-time post during the year 2004-05, a higher level verification was required, that it was not conducted and therefore, only a part-time post as in the previous years was allowed in the school during the year 2004-05. It is stated that though the Manager had filed an appeal from the staff fixation order, it was rejected by Ext. P-2 order on the ground that the statutory requirement of higher level verification was not conducted. It is also stated that the Manager had not made a request to convert the part-time post into a full-time post. The counter-affidavit proceeds to state that the Government rejected the revision petition filed by the petitioner to sanction an additional division on the ground that higher level verification as per Rule 12 of Chapter XXIII of the Kerala Education Rules was mandatory to sanction an additional division or for up-gradation of the post.

5. I heard Sri M. Vijayakumar, learned counsel appearing for the petitioner and Sri M.A. Fayaz, learned Government Pleader appearing for respondents 1 to 3. Though the fourth respondent Manager has been served, he has not entered appearance. The pleadings and the materials on record disclose that the petitioner's appointment as H.S.A. (Arabic) in the fourth respondent's school with effect from 2-6-2004 as per Ext. P-1 order of even date in the vacancy of Smt. K. Nafeesa, H.S.A. (Arabic), who was promoted as Headmaster with effect from 1-4-2004, was approved only on part-time basis. The stand taken by the official respondents is that though Smt. K. Nafeesa was holding only a part-time post, she was getting full-time benefits in view of the stipulations contained in

G.O.(Ms.) No. 62/73/S.Edn. dated 2-5-1973 and though having regard to the student strength and the number of periods of work for Arabic, a full-time post could have been sanctioned for the academic year 2004-05, it was not sanctioned for the reason that a higher level verification as required under Rule 12 of Chapter XXIII of the Kerala Education Rules was not conducted. The respondents have also blamed the Manager for not taking steps in that regard. It is evident from Ext. P-5 Government Order dated 24-1-2011 and the proceedings dated 8-3-2011 issued by the District Educational Officer, Aluva that a full-time post has been sanctioned in the fourth respondent's school from the academic year 2006-2007 onwards. In this writ petition this Court is concerned only with the approval of the petitioner's appointment as per the appointment order dated 2-6-2004, which appointment as stated earlier was approved only on part-time basis. It is not in dispute that the teacher in whose vacancy the petitioner was appointed as H.S.A. (Arabic) was holding only a part-time post but with full-time benefits. She was enjoying full-time benefits in view of the stipulations in G.O. (Ms.) No. 62/73/S.Edn. dated 2-5-1973, wherein it was stipulated that part-time language teachers who have put in more than five years service and have 8 periods of work shall henceforth be made full-time. Rule 6-D of Chapter XXIII of the Kerala Education Rules prescribes the conditions subject to which a full-time post of H.S.A. in languages can be sanctioned. It is stipulated therein that if the number of periods of work per week is above 15 but below 29, one full-time post of H.S.A. (Arabic) can be sanctioned. The same principle applies to the post of H.S.A. (Hindi), H.S.A. (Urdu) and H.S.A. (Sanskrit). The petitioner has in paragraph 5 of the writ petition averred that the strength of students studying Arabic during the academic year 2004-2005 was 91, that the number of periods of work for Arabic language per week was 24 and therefore, going by Rule 6 D, the school was entitled to a full-time post of H.S.A. (Arabic), but it was declined on the short ground that a higher level verification was not conducted. In my opinion, on the terms of Rule 12 of Chapter XXIII of the Kerala Education Rules, the stand taken by the official respondents in Exts. P-2 and P-3 which are impugned in the instant writ petition cannot be sustained. In Rule 12 of Chapter XXIII of the Kerala Education Rules, it is stipulated that the pupil strength of all schools, both Government and aided, shall be verified by the Educational Officers or Officers authorized by the Director in this regard by visiting the schools in the State on a single day fixed by the Director or Staff Fixation Officers. It is also stipulated that a further verification of student strength at the higher level by the District Educational Officer in the case of fixation of strength in the Lower Primary and Upper Primary Schools and by the Deputy Director of Education in the case of High Schools shall be done wherever additional divisions or additional staff are found necessary after the one day verification conducted by the Educational Officers or Officers authorized by the Director in this regard. On the terms of Rule 12, a higher level verification is required only in cases where, after the initial verification by the Educational Officer or Deputy Director of Education, as the case may be, sanctioning of additional divisions or additional staff are found necessary. In the instant case, it is not in dispute that such a contingency

had not arisen. The Joint Director of Public Instruction has no case in Ext. P-2 and the Government have no case in Ext. P-5 that on verification of the student strength for the academic year 2004-2005 sanctioning of additional divisions or additional staff was found necessary. All that is stated is that, as per the staff fixation order for the year 2004-2005, the school was eligible for a regular full-time post instead of the part-time post which had been sanctioned in the earlier years. It is relevant in this context to note that the incumbent who was holding the post was enjoying full-time benefits in view of G.O.(Ms.) No. 62/73/S.Edn. dated 2-5-1973. As the authorities have no case in the impugned orders that an additional division was sanctioned by the staff fixation order or that additional staff was required to be appointed, it cannot be said that on the terms of Rule 12, a higher level verification was required. The authorities misdirected themselves, when without paying attention to the wordings of Rule 12, they proceeded on the basis that a higher level verification is required even in cases where the student strength and number of periods of work per week, warrants conversion of the part-time post, which was held by Smt. K. Nafeesa with full-time benefits because of the Government Order dated 2-5-1973, into a full-time post. Such being the situation, I am of the opinion that, the petitioner is entitled to have her appointment made as per Ext. P-1 Order dated 2-6-2004 approved on full-time basis with effect from 2-6-2004 instead of on part-time basis as was done by the District Educational Officer, Alappuzha by his order dated 13-12-2004.

I accordingly allow the writ petition, set aside Ext. P-2 order passed by the Director of Public Instruction and Ext. P-3 Government Order dated 9-11-2005 and direct the respondents to sanction a full-time post of H.S.A. (Arabic) in S.P.W. High School, Alappuzha for the academic year 2004-05 and also for the academic year 2005-06 in view of the fact that the number of periods of work for Arabic has not come down from 24 and also for the reason that a full-time post of H.S.A. (Arabic) has been sanctioned in the school for the academic year 2006-2007. Revised staff fixation orders in that regard shall be issued expeditiously and in any event within one month from the date on which the petitioner produces a certified copy of this judgment before the District Educational Officer, Aluva. The District Educational Officer, Aluva shall simultaneously issue revised orders approving the petitioner's appointment as H.S.A. (Arabic) on full-time basis with effect from 2-6-2004. The monetary benefits shall be drawn and disbursed to the petitioner within two months thereafter.