
(2009) 09 KL CK 0092

In the High Court Of Kerala

Case No : WP (C) . No. 185 of 2009 (V)

Jancy Mathew, Hsst. Jr. Chemistry

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 25-09-2009

Acts Referred:

Kerala Higher Secondary Education State Service Rules, 2001 — Rule 3

Citation : (2009) 09 KL CK 0092

Hon'ble Judges : T.R. Ramachandran Nair, J

Bench : Single Bench

Advocate : Benoy Thomas, for the Appellant; Government Pleader, for the Respondent

Judgement

T.R. Ramachandran Nair, J.—All the petitioners are presently working as H.S.S.T (Junior) in different subjects. Names of the schools wherein they are working are also mentioned in the cause title of the writ petition. Petitioners joined duty as H.S.S.T (Junior) with effect from various dates shown in paragraph (1) of the writ petition. They have successfully completed their period of probation of two years commencing from their dates of joining and thus all of them have completed probation in 2007 except the fourth petitioner who has completed the same in 2008.

2. Their claim is for appointment as H.S.S.T (Senior). Some of the writ petitioners have approached this Court earlier by filing W.P.(C). No. 29582/2007 and connected cases which were disposed of by Ext.P2 judgment. The main relief prayed for in those writ petitions was to appoint the petitioners as H.S.S.T (Senior) as well as to treat the petitioners as H.S.S.T (Junior) who have completed the period of probation with effect from 04/09/2007 and, this Court by Ext.P2 judgment issued various directions to the respondents to fill up the vacancies. In paragraph (8), the following directions were issued:

i. The post of H.S.S.T shall be filled up strictly in accordance with Rule 3 of the Special Rules for the Kerala Higher Secondary Education State Service.

ii. When any H.S.S.T (Junior) who is qualified and who has satisfactorily completed the period of probation is available, no candidate other than H.S.S.T (Junior) shall be appointed against a vacancy which arose subsequent to the date of successful completion of the period of probation of H.S.S.T (Junior).

iii. The process for declaring successful completion of probation of the petitioners shall be expeditiously carried out and the probation of the petitioners concerned shall be declared without delay.

iv. It is necessary to ensure that eligible candidates in the category of H.S.S.T (Junior) shall not be denied appointment as H.S.S.T only because of the delay in getting their probation declared.

3. Later the Government by Ext.P3 dated 15/09/2008 ordered that 655 posts of H.S.S.T (Junior) will be upgraded as H.S.S.T in the scale of pay of Rs. 12250-19800. The Government also ordered creation of 868 posts of H.S.S.T (Senior) in Government Higher Secondary Schools along with 1093 posts as H.S.S.T (Junior). These posts were sanctioned in various subjects.

4. Now, the petitioners have approached this Court by filing this writ petition aggrieved by Clause (4) of Ext.P3 wherein the Government has specified that the said order shall deem to have come into force with effect from the Academic year 2007-08. The same causes prejudice to the claim of appointment of the petitioners, since actually it provides retrospectivity to Ext.P3 Government Order. The said clause is attacked on various grounds raised in the writ petition.

5. The respondents have filed a counter affidavit and the petitioners have filed a reply affidavit and an additional reply affidavit also. Averments have been made in paragraph (6) of the counter affidavit filed by the second respondent that as per G.O.(Rt) No. 1011/09/Gl.Edn., dated 07/03/2009, the Government has permitted to take the date of occurrence of vacancies as 15/09/2008 (i.e. the date of Ext.P3 Government Order). It is therefore, pointed out that the apprehension of the petitioners is not correct. Along with the additional reply affidavit the petitioner has produced the copy of the said Government Order G.O. (Rt) No. 1011/09/Gl.Edn. dated 07/03/2009) as Ext.P8. A reading of Ext.P8 shows that the Government ratified the action of the Director, Higher Secondary Education in having taken 15/09/2008 as the date of occurrence of vacancy to fill up the vacancies on regular basis.

6. Therefore, the issuance of Ext.P8 goes a long way in redressing the grievances raised by the petitioner. What remains is the efforts to be taken by the respondents to implement Exts.P3 and P8 in terms of the specifications made in Ext.P8.

7. This Court had passed two interim orders dated 21/01/2009 and 01/07/2009. In the interim order dated 21/01/2009 it was made clear that any appointment by transfer as per Exts.P3 and P4 will be subject to the result of the writ petition and it shall be so made clear in the orders of appointment. In the interim order

dated 01/07/2009 in I.A. No. 7509/2009 it was directed that the appointments if any made by direct recruitment also will be subject to the result of the writ petition and the same shall also be made clear in the order of appointments.

8. The learned Counsel for the petitioners therefore, further prayed that a direction may be issued to the respondents to effect appointments of petitioners in the existing vacancies in terms of the Rules in question and as specified in Ext.P8. The learned Government Pleader submitted that appropriate action will be taken in the matter in accordance with the rules and subject to the claim of seniority etc.

9. Therefore, there will be a direction to respondents to complete the process of appointments as H.S.S.T (Senior) in terms of various orders and in accordance with the Rules within a period of three months from the date of receipt of a copy of the judgment. The claims of petitioners will therefore, be considered, in accordance with qualifications and eligibility and orders will be passed accordingly granting appointments.

10. The learned Counsel for the petitioners further submitted that since the petitioners ought to have been appointed earlier, they should be assigned seniority also on that basis. This is a matter which the petitioners will have to address the second respondent after they are appointed as H.S.S.T (Senior) and the second respondent will thereafter take a decision in accordance with law and after hearing petitioners and other necessary affected parties. The writ petition is accordingly disposed of. No costs.