

(2014) 07 KL CK 0250
In the High Court Of Kerala
Case No : WP (C). No. 9268 of 2014 (G)

Jincy Joseph

APPELLANT

Vs

The State of Kerala

RESPONDENT

Date of Decision : 15-07-2014

Acts Referred:

Citation : (2014) 07 KL CK 0250

Hon'ble Judges : A.K. Jayasankaran Nambiar, J

Bench : Single Bench

Advocate : V.A. Muhammed and V. Rajasekharan Nair, Advocate for the Appellant; M.J. Rajasree, Government Pleader and K.A. Manzoor Ali, Advocate for the Respondent

Judgement

A.K. Jayasankaran Nambiar, J.—Petitioner had initially joined as Upper Primary School Assistant (UPSA) in the 5th respondent School during the period from 1.6.2009 to 1.4.2010 against a leave vacancy that arose in the said School. The said appointment as UPSA against the leave vacancy was approved by the authorities under the Kerala Education Rules, hereinafter referred to as "KER". She continued in that vacancy till 1.4.2010, on which date, she was relieved since the regular appointee had rejoined the service. Thereafter, pursuant to a vacancy that arose on staff fixation in the School during the academic year 2010-11, the petitioner was again appointed as an UPSA from 1.6.2010 onwards considering her claim under Rule 51-A of the KER. When the said appointment was sent up for approval, the approval was not granted on the ground that as per the Circulars and orders of the Government prevailing as on the date, the vacancy ought to have been filled by appointment of a protected teacher. Aggrieved by the refusal to grant approval, the petitioner preferred a revision petition before the Government seeking approval of the appointment of the petitioner as UPSA from 1.6.2010 onwards and for a further direction to disburse the salary that was due to her for the period she worked. By Ext.P6 order, the Government rejected the revision petition. In Ext.P6, the Government relies on G.O.(P) 10/10/G.Edn. dated 12.1.2010 to point out that it was by virtue of the

said Government Order that the Manager of the School obtained the necessary permission to make appointment to the vacancies that arose in the School with effect from 1.6.2010 for the academic year 2010-11 since prior to that there was a ban imposed by the Government on all appointments as UPSAs in the various aided schools in the State. It is pointed out that on availing the benefit of the said Government order, the Manager of the School was obliged to make appointments from among persons who were included in the list of protected teachers as that was a condition imposed by the Government while lifting the ban on appointments. It is this decision of the Government in Ext.P6 order that is impugned in the writ petition.

2. A counter affidavit has been filed on behalf of the 4th respondent wherein, Ext.P6 order passed by the Government is sought to be justified on the basis of the Government Order dated 12.01.2010 which was relied upon by the Government while passing Ext.P6.

3. I heard the learned counsel on behalf of the petitioner as also the learned Government Pleader for the respondents.

4. On a consideration of the facts and circumstances of the case, I feel that the writ petition has to be allowed by following the decisions of this Court, reported in Thomas N.C. Vs. Director of Public Instructions and Others, as also P.K. High School Vs. State of Kerala, . This Court has already taken the view that when it comes to an inter se claim between protected teachers claiming a right of appointment by virtue of Government orders issued by the State Government, and teachers who claim appointment pursuant to rights accrued to them under Rule 51A of the Kerala Education Rules, then the rights of the latter have to prevail over those of the former in the matter of appointments to vacancies that arise in the School. In the instant case, insofar as Ext.P6 order passed by the Government refuses the approval to the appointment of the petitioner solely on the ground of the Government order dated 12.1.2010, I feel that the said order cannot be legally sustained in view of the judgments of this Court which I have already referred to. Accordingly, Ext.P6 order of the Government is set aside and the 4th respondent is directed to approve the appointment of the petitioner as UPSEA from 1.6.2010 onwards and disburse the salary and allowances to the petitioner forthwith in accordance with the Rules and the Government orders on the subject.

Writ petition is allowed.