

(2015) 09 KL CK 0167

In the High Court Of Kerala

Case No : Writ Petition (C) Nos. 9002 of 2012-A and 11868 of 2012-G

Jisha P. Sugathan

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 29-09-2015

Acts Referred:

Citation : (2015) 09 KL CK 0167

Hon'ble Judges : K. Vinod Chandran, J

Bench : Single Bench

Advocate : M.V. Thambran, R. Reji, Thara Thambran and B. Bipin, for the Appellant; S. Jamal, Government Pleader, Advocates for the Respondent

Judgement

K. Vinod Chandran, J—The question of who has to be retrenched in the subject academic year on the basis of the staff fixation order, effecting a division fall, is raised in the above writ petitions. Since the writ petitions are filed by rival claimants, they are referred to by their names.

2. Jisha P. Sugathan, HSA [Mathematics] (petitioner in W.P.(C). No. 9002 of 2012) is aggrieved with her retrenchment effected in the academic year 2010-11. The background facts to be noticed are that, Jisha P. Sugathan was continuing as HSA [Mathematics] with approval of appointment effective from 04.09.2001 in the 5th respondent's school. In the academic year 2008-09, the staff fixation order sanctioned 7 posts of High School Assistants [HSAs]. Jisha P. Sugathan, being an excess HSA [Mathematics], was allowed to continue as the 7th HSA in the unfilled post of HSA [English]. Two HSAs, one in Natural Science and the other in Social Studies, retired from service on 31.03.2009. There was also a reduction of one post in the academic year 2009-10, as is evident from Exhibit P1. In the said academic year, there was sanctioned six posts of HSAs; one each in Physical Science, Natural Sciences, Social Studies and English and two in Mathematics. HSA [Natural Science] and HSA [Social Studies] had retired and two vacancies arose. Sabeena, the 6th respondent, was appointed as HSA [Natural Science] and Asha Chandran, the 7th respondent, was appointed as HSA

[Social Studies]; both with effect from 01.06.2009 [they are the petitioners in W.P.(C). No. 11868 of 2012]. In the said academic year also, Jisha P. Sugathan, HSA [Mathematics], was excess, since there were three HSAs [Mathematics] existing in the school as against two sanctioned posts. Hence, Jisha P. Sugathan was continued as HSA [English].

3. In the subject year, being 2010-11, there was a further reduction in Mathematics and the school had a total sanctioned posts of five, with one each in the core subjects, including English. Hence, Jisha P. Sugathan's senior in the post of HSA [Mathematics] was accommodated as HSA [English] and Jisha P. Sugathan was retrenched. Jisha P. Sugathan contends that, in the earlier academic year there were two appointments made, one HSA [Natural Science] and the other HSA [Social Studies], respondents 6 and 7, who, being junior to Jisha P. Sugathan; one of whom is to be retrenched. The said contention goes contrary to the declaration of this Court in *Rakhee v. State of Kerala* [2007 (1) KLT 766] and of the Hon'ble Supreme Court in *Deepa Augustine v. Geetha Alex* [2008 (2) KLT 771 (SC)].

4. In 2007 (1) KLT 766, the contention of the appellant, Rakhee, was also that, while identifying the excess hand, the minimum requirement for satisfying all the core subjects alone need be counted; and the teacher to be identified shall be the latest entrant in service irrespective of the subject. The said contention was specifically negatived and the appellant therein, a Physical Science teacher, was found to be junior-most in that category and liable to be retrenched, despite there being an HSA [English], who was appointed much later.

5. The Supreme Court judgment in *Deepa Austine* (supra) also emphasised the need for examination of the subject requirement when a vacancy arises and the need to appoint a person who has the minimum qualification for teaching that subject.

6. Jisha P. Sugathan relies on Exhibit P7 to contend that she ought to have been continued either in the vacancy of HSA [Natural Science] or HSA [Social Studies]. To understand the contention, it is to be noticed that by G.O.(MS). No. 11/2002/G.Edn. Dated 07.01.2002, English was made a core subject, which subject till then was taught by the teachers in the other core subjects. Posts were hence created for HSA [English]; but, however, with a rider that no fresh appointment should be made to the post of HSA [English] in an academic year when an approved teacher in the other core subjects is threatened with retrenchment. Hence, the introduction of HSA [English] and the creation of posts was to be implemented in a phased manner and a person in another core subject, threatened with retrenchment, was to be adjusted against an HSA [English], so as to protect him/her from retrenchment.

7. By Exhibit P7, the Government took note of the situation by which Rule 51A claims under the Kerala Education Rules in the other core subjects were kept away from service even when vacancies arose in schools in that particular core

subject. It was directed that the appointments made of such Rule 51A claimants could be regularised with reference to the subject ratio that existed prior to 07.01.2002. This Court is unable to find any relevance to the said proposition when applied to Jisha P. Sugathan's case.

8. The further reliance placed is on G.O.(MS) 37/94/G.Edn. dated 16.03.1994, with specific reference to paragraph 3(C), which is extracted hereunder:

"C. Future promotions/appointments of H.S. As (core subjects)

(i) Future promotions/appointments to the posts of has (Core subjects) shall be confined strictly in accordance with the subject ratio of 1:1:1 for each category of H.S. As (Core subjects, namely, Social Studies, Mathematics, Science with internal ratio of 3:2 between Physical Science and Natural Science), and that appointment shall be made with due regard to the qualifications prescribed for each post, i.e. the candidate should be duly qualified for that particular post, under Chapter XXXI of KER.

(ii) When retrenchment or reversion of teachers is necessary as a consequence of reduction of posts according to the annual fixation of staff retrenchment or reversion will be done on the principle: last to come, first to go, in each category of H.S. As (Core subjects). In other words, the subject ratio of 1:1:1 (between the core subjects with internal ratio of 3:2 between Physical Science and Natural Science) in the matter of retrenchment or reversion of teachers as a consequence of reduction of posts in annual fixation of staff will be followed".

The said Government Order also refers to retrenchment or reversion to be done on the principle "last come, first go", in each category of HSA or subjects.

9. Jisha P. Sugathan, HSA [Mathematics], hence, cannot be adjusted either in the vacancy of a Natural Science or Social Science, High School Assistant. When the said vacancies arose in the previous year by retirement of the incumbents, Sabeena and Asha Chandran respectively were appointed. Jisha P. Sugathan was adjusted as HSA [English]. However, in the subject academic year, being 2010-11, there was a further reduction of posts in Mathematics, which resulted in a situation of three approved teachers in HSA [Mathematics] continuing in the school. The senior-most had to be adjusted against the sanctioned post of HSA [Mathematics] and the 2nd senior-most accommodated in the post of HSA [English]. Jisha P. Sugathan, who was the last in seniority in the category of HSA [Mathematics], had to be retrenched. This Court does not find any reason to interfere with the impugned order in W.P.(C). No. 9002 of 2012 and the same stands dismissed. It is submitted that the petitioner had been continuing in the school by virtue of the interim order passed on admission of the writ petition. However, the petitioner is liable to be retrenched in the subject academic year 2010-2011. In this context it is to be noticed that in the subsequent academic year, i.e., 2011-2012, the Headmistress of the school retired and the senior-most HSA (Mathematics) was promoted as Headmaster. In such circumstances, the second senior-most should be appointed from the post of HSA [English] to the

post of HSA [Mathematics] and the petitioner could be accommodated in the post of HSA [English]. The official respondents would look into the same, if such a claim has been made and the dismissal of the writ petition is only with respect to the rejection of the claim of the petitioner to be retained in 2010-2011.

10. HSA [Natural Science] and HSA [Social Studies] have filed W.P.(C). No. 11868 of 2012, wherein their approval has been declined from the date of appointment, i.e., 01.06.2009 for reason of no protected teacher having been appointed in the management-school. The issue is covered by the decision of this Court in State of Kerala Vs. Nadeera, (2013) 2 KLT 88 , wherein it was clearly found that the Circulars of 2002 and 2006 mandated that list of protected teachers be forwarded by the AEO concerned to the DDE, which lists should be made available to the Managers and in such circumstance, the Managers would have no choice or option but to appoint such protected teachers. Even the schools which are presumed to be new establishments, who had executed such agreements, would not have any information as to the protected teachers; which information would be only available with the Educational Authorities under the KER. It was categorically held that, it was mandatory on the part of the Department to maintain such list and the management could be found fault with only if such lists were forwarded to such managements and there is an appointment made in violation of the stipulation in the Circulars.

11. In the present case, it is further stated that the Manager had set apart a post of HSA [Malayalam] from 01.04.2008 for accommodating a protected teacher and also issued appointment order to one Smt. K.B. Sheela of M.M. Higher Secondary School, Uppood, who was exempted by the Deputy Director of Education from deployment. Subsequently, one Smt. D. Anitha, protected teacher of AKVM Higher Secondary School, Thadicode was appointed, who did not turn up for duty and filed a writ petition. In such circumstances, going by the above precedent and the facts noticed above, the approval of the appointment of the petitioners, S. Sabeena and V. Asha Chandran, from 01.06.2009 on daily wage basis cannot be sustained. The impugned orders in W.P.(C). No. 11868 of 2012 shall stand set aside. The petitioners shall be approved from the date of their appointment from 01.06.2009, if their appointments are otherwise in order. The order shall be passed in accordance with law, within a period of three months from the date of receipt of a copy of this judgment.