
(1991) 07 KL CK 0015
In the High Court Of Kerala
Case No : O.P. 9911/90

K. Bhargavi

APPELLANT

Vs

The State of Kerala and Others

RESPONDENT

Date of Decision : 25-07-1991

Acts Referred:

Kerala Education Rules, 1959 — Rule 1(2), 44A, 44A(3), 45, 45B(1)

Citation : (1991) 07 KL CK 0015

Hon'ble Judges : P.K. Shamsuddin, J

Bench : Single Bench

Advocate : T.K.M. Unnithan, for the Appellant; Tharian Joseph, Government Pleader for Respondents 1 and 2 and V.K. Ravindran, for 2nd Respondent, for the Respondent

Final Decision : Dismissed

Judgement

P.K. Shamsuddin, J.—The Petitioner is a teacher-in-charge of Vatayam North Lower Primary School. One O. Raghavan who was the Headmaster of the School expired on 17th November 1989. The Petitioner who was senibrmost teacher was appointed by the Manager as Headmistress by Ext. P-1 order dated 18th November 1989. The Petitioner had not acquired the account test qualification which is a requisite qualification for appointment as Headmistress but the Petitioner attained the age of 50 years on 28th October 1990. In the circumstances, the Assistant Educational Officer, the 2nd Respondent herein approved the appointment of the Petitioner as teacher-in-charge from 18th November 1989 to 27th October 1990 and as Headmistress from 28th October 1990. Ext. P-1 is the endorsement. Chapter XIV-A Rule 45-B Sub-rule 4 lays down that teachers who attain the age of 50 years stand exempted permanently from acquiring the qualifications specified in Sub-rule 1 of Rule 45-B Chapter XIV-A. It is the Petitioner's case that by virtue of this provision the Petitioner was exempted permanently from test qualification on attaining the age of 50 years and therefore she could continue as Headmistress.

2. The 4th Respondent is a teacher in the same school. He joined service as teacher on 5th June 1985. He appears to have submitted a representation before the 2nd Respondent claiming that he is entitled to be appointed as Headmaster of the school. He acquired test qualification on 6th October 1990. Ext. R-4 (a) is the certificate. The 2nd Respondent disposed of the representation made by the 4th Respondent by proceedings Ext. P-2. It is stated therein that the claim of the 4th Respondent was verified with test qualification certificate and other relevant records and the 2nd Respondent was satisfied that the approval of appointment granted to the Petitioner should be revised. The Manager was directed to appoint the 4th Respondent as Headmaster and submit appointment order for approval.

3. In this Original Petition, the Petitioner challenges the order Ext. P-2. Learned Counsel for the Petitioner submitted that the Ext. P-1 would show that the approval granted to the Petitioner is to hold the post of teacher-in-charge from 18th November 1989 to 27th October 1990 and thereafter from 28th October 1990 as Headmistress, that was perfectly valid and that the order Ext. P-2 passed by the 2nd Respondent revising the said order and directing to appoint the 4th Respondent without giving an opportunity to the Petitioner is illegal and opposed to all principles of natural justice.

4. It is difficult to accept the contention raised by the learned Counsel for the Petitioner. Under the Kerala Education Rules to appoint as Headmaster the teacher should possess the required qualification prescribed under the rules. It is not disputed that at the time when the Petitioner was appointed as Headmistress she did not have the required qualification. She did not also acquire eligibility for exemption from test qualification. That is the reason why Assistant Educational Officer approved her appointment only as a teacher-in-charge for the period from 18th November 1989 to 27th October 1990. The question to be considered is under such situation, the 2nd Respondent was justified in passing Ext. P-1 order.

5. G.O. (Ms) No. 181/87/G.Edn., dated 1st September 1987 marked in the counter affidavit filed by the 4th Respondent as Ext. R-4(b) highlights the circumstances under which a teacher-in-charge can be appointed. It is stated therein that in Aided Lower Primary and Upper Primary Schools, in the absence of a fully qualified person for appointment as Headmaster on the staff of the school or in the unit, a person without test qualification will be appointed as teacher-in-charge with the approval of the concerned Assistant Educational Officer for a period of one year following Sub-rule (3) of Rule 44A in Chapter XIV-A of K.E.R. at a time provided such in-charge teacher is the seniormost person. It is based on the principle contained in this Government Order that the Petitioner was appointed as a teacher-in-charge. This Government Order does not permit a teacher-in-charge to be appointed as Headmaster if there is a fully qualified teacher or a teacher acquired eligibility for permanent exemption on the ground of attainment of age of 50 years on the staff. A Full Bench of this Court had occasion to consider the question of appointment of teacher-in-charge in *P. Padmanabhan Nair and Another Vs. The Deputy Director of Education*,

Malappuram and Others, . The Full Bench made the following observations:

The mandate of Rule 44A is that only qualified hands should be appointed as Headmistress. It is only in exceptional cases when such hands are not available in the school, or otherwise even after advertisement that the seniormost graduate teacher is permitted to be made teacher-in-charge, and that too for a period not exceeding one year at a time, The intent is obvious that only qualified hands should, as far as possible, occupy the post of Headmaster. It is also in the best interests of the school that the temporary teacher-in-charge is replaced as soon as possible by a qualified hand. Therefore, as soon as a qualified hand becomes available in the school, he should be appointed to the post, replacing the teacher-in-charge. The view that we have taken that vacancy continues to exist despite the school being in charge of a teacher accords with this requirement of the rules.

6. There was no qualified teacher to be appointed as Headmaster for the period from 18th November 1989 upto 5th October 1990. The vacancy arose on 18th November 1989. On 6th October 1990 the 4th Respondent acquired qualification and therefore he became eligible and fully qualified to be appointed as Headmaster replacing the Petitioner who was in charge. The Full Bench in the decision referred to above also has taken the view that as soon as fully qualified teacher is available the teacher-in-charge, who is not qualified has to be replaced by such a teacher. Therefore the 2nd Respondent was correct in directing the Manager to appoint the 4th Respondent. It cannot be said that Ext. P-2 is in any way illegal.

7. Learned Counsel for the Petitioner further submitted that the Petitioner was appointed on 5th June 1974 whereas the 4th Respondent joined service only on 5th June 1985. He also pointed out that under Chapter XXVI, Rule 1, Sub-rule (2) there shall be two scales of pay to teachers of Aided Primary Schools. All the categories of. Primary " Teachers who completed 50 years of continuous service shall become eligible for higher scale of pay and Ors. shall be eligible for lower scale of pay. He submitted that if it is held that because of the required qualification by the 4th Respondent he is entitled to be appointed as Headmaster, it would lead to an anomalous position. That a teacher who is not entitled to higher scale of pay by reason of not having continuous service of 50 years will be entitled to hold the post of Headmaster, while those who are entitled to higher scale of pay will have to continue as P.D. Teacher. He also invited my attention to the following portion of Ext. R-4(b):

Wherever no qualified person is available for appointment as Headmaster a teacher is put in-charge of the school with the approval of the competent authority. The teacher-in-charge will be counted against the post of the Headmaster and the consequential vacancy will be filled up.

The argument of the learned Counsel is that by virtue of the direction contained above, a teacher-in-charge has to be counted against the post of Headmaster

and that would mean that he would be deemed to be as Headmaster. I am unable to accept the contention of learned Counsel for Petitioner. Government Order quoted above, will not have effect of converting the teacher-in-charge as a full fledged Headmaster. No doubt such teacher can exercise powers of Headmaster. The teacher-in-charge is not entitled to the salary of the Headmaster. He would be entitled to only an allowance. If the intention is to treat a teacher-in-charge as Headmaster for all purpose, the wording would not be couched in the manner as is done in Ext. R-4(b). It could have been stated that in the event of absence of qualified teachers the seniormost teacher will be appointed as Headmaster.

8. Learned Counsel also submitted that Chapter XIV-A Rule 44A prescribes the qualification of service of more than 12 years for appointment as Headmaster and under Rule 45, the graduate teacher having at least five years service alone can be appointed. No such requirement has been incorporated with regard to the post of Headmaster of Lower Primary School. It applies only to appointment of Headmaster in the Aided complete High Schools/Training Schools as is clear from the terms of Rule 44A of Chapter XIV-A K.E.R. The Petitioner has not raised any such ground in the Original Petition.

9. The principle laid down by the Full Bench in the above ruling has been incorporated in the later amendment introduced to K.E.R. as per G.O. (P) No. 226/89/ G.Edn., dated 28th November 1989 which is incorporated as Rule 45 of Chapter XIV-A. Sub-rule (2) of Rule 45C specifically says that a teacher temporarily promoted under Sub-rule (1) shall be replaced as soon as possible by the member of the service who becomes entitled to the promotion under the rules.

The foregoing discussion would show that there is no merit in the Original Petition and it is accordingly dismissed.