
(2021) 01 KL CK 0461
In the High Court Of Kerala
Case No : Writ Appeal No. 11 Of 2021

K.P. Remadevi And Ors

APPELLANT

Vs

Veena U. Nair And Ors

RESPONDENT

Date of Decision : 20-01-2021

Acts Referred:

Citation : (2021) 01 KL CK 0461

Hon'ble Judges : A. Muhamed Mustaque, J;Gopinath P, J

Bench : Division Bench

Advocate : V.A. Muhammed, V. Rajasekharan Nair, George Abraham, K.P. Dandapani, A.J. Varghese

Final Decision : Allowed

Judgement

A.M. Shaffique, J

1. This appeal is filed by respondents 6 and 7 in WP(C) No. 36877/2017 challenging interim order dated 15/12/2020 by which the learned Single Judge had issued the following directions;

â??There will, accordingly, be an interim direction to the Manager to appoint the petitioner in this writ petition as HM with prospective effect. The

appointment shall be made and send up for approval by the Manager within a period of three weeks from the date of receipt of a copy of this order.

The Educational Authority shall approve the said appointment as made by the Manager as directed above within a period of two weeks thereafter and

the petitioner shall be eligible for all the benefits of the appointment with prospective effect, including the monetary benefits thereof. On the retirement

of the petitioner from service, the 7th respondent who is admittedly qualified will be eligible for appointment as HM.â??

2. The short facts of the case would disclose that the first appellant Smt.K.P.Remadevi was appointed as Headmistress in a vacancy that occurred in the school on 1/6/2015. She was appointed based on an exemption clause provided under the second proviso to Rule 44A(1) of Chapter XIVA KER

to those teachers who had attained the age of 50 years.

3. On 10/6/2015, the Government issued GO(Ms) No.157/2015/G.Edn providing preference to test qualified junior teachers for promotion to the post

of Headmaster than the senior who claimed test exemption. The first appellant retired due to superannuation on 31/3/2018 and a vacancy arose on

01/4/2018. The 2nd appellant Smt.P.M.Beena was appointed as Headmistress in the said vacancy.

4. The writ petition was filed by Smt.Veena U.Nair on 15/11/2017 challenging Ext.P14, an order dated 6/11/2017 passed by the Government rejecting

her claim to be appointed as Headmistress in the vacancy that had arisen on 1/6/2015. The said order came to be passed when a claim was made by

Smt.Veena U.Nair staking a claim to the post of Headmistress in the vacancy that had arisen on 1/6/2015. The Government in the impugned order

held that since Smt.Remadevi was appointed in the vacancy that had arisen on 1/6/2015, the Government Order dated 10/6/2015 will not apply and

therefore the Government sustained the appointment of Smt.Remadevi. While so, Smt.P.M.Beena was impleaded as additional 7th respondent in the

writ petition as per order dated 5/4/2018. On retirement of Smt.Remadevi on 31/3/2018, petitioner sought for a direction to appoint her to the said post.

She contended that she was the only qualified person. In the meantime, new proviso was added to Rule 44A(1) of Chapter XIVA KER as per gazette

notification dated 13/12/2017 with retrospective effect from 1/6/2015 stating that preference shall be given to test qualified teachers for the post of

Headmaster than a teacher claiming exemption. It is based on the aforesaid amendment that the writ petitioner contended that she was eligible to be

appointed to the post of Headmistress on 1/6/2015 and since Smt.Remadevi retired on 31/3/2018, she should be permitted to occupy the said post. In

fact, in *Manager, Pavandoor Higher Secondary School v. Sadanandan* [2016 (5) KHC 78], a Division Bench of this Court had held that test qualified

persons cannot have any preference for appointment as against those persons who are senior most HSA and above 50 years who are entitled for

exemption as provided under the 2nd proviso to Rule 44A. Needles to be stated, as on the date of appointment of Smt.Remadevi, the Government

Order dated 10/6/2015 was not in force and even otherwise, in the light of the judgment in Pavandoor Higher Secondary School's case (supra), she

was entitled to continue. What would be the effect of the 3rd proviso to Rule 44A was considered by another Division Bench of this Court in Haneefa

Beevi Kallan v. Manager, P.P.M. Higher Secondary School and Others (decided on 28/3/2019 in WA No. 925/2019), wherein it was held that when

the Headmaster is appointed on 1/04/2017 on the strength of permanent exemption which he had by virtue of 2nd proviso to Rule 44A(1) and since the

benefit had already inured to him, it cannot be taken away by retrospective effect of the 3rd proviso. It was held that the 3rd proviso only had

prospective operation. While considering a reference order dated 29/5/2019, in WP(C) No. 17344/2017 and connected cases, in which myself

(Shaffique, J) was a party, after taking note of the controversy relating to retrospective operation of the amendment, this court had formed an opinion

that it may not take away any vested right and to that extent we do not agree with the view expressed in Pavandoor Higher Secondary School's case

(supra) and Haneefa Beevi Kallan's case (supra). However, in view of the conflict of view expressed by this court with reference to the earlier cases,

the matter has been referred for consideration by a Larger Bench. Though we have expressed a different view from what has been held in

Pavandoor Higher Secondary School's case (supra) and Haneefa Beevi Kallan's case (supra), the said decision now holds the field until a different

view is expressed by a Larger Bench. Therefore, the reference order by itself does not have any precedential value. Learned Single Judge was

therefore not justified in placing much reliance on the reference order.

5. Now coming to the factual aspects involved in the case, Smt.Remadevi was appointed as a teacher based on an exemption in terms of the 2nd

proviso to Rule 44A(1). She has retired from service during the pendency of the writ petition. Presently Smt.Veena U.Nair, the writ petitioner, seeks

for being appointed in the vacancy that had arisen on the retirement of Smt.Remadevi on 31/3/2018 and the learned Single Judge had also directed her

to be appointed in the said vacancy. But the fact remains that there are two claimants to the said vacancy which has arisen on 1/04/2018,

Smt.P.M.Beena and Smt.Veena U.Nair. Both are test qualified. It is argued by the learned senior counsel for the writ petitioner that she is due to

retire on 31/5/2021 and thereafter Smt.P.M.Beena could be accommodated in the post of Headmistress. But what is now directed to be complied with

by the learned Single Judge is regarding the vacancy that had arisen on 01/04/2018. Admittedly Smt.P.M.Beena is senior to Smt.Veena U.Nair and,

therefore, as on the date when the vacancy had arisen, Smt.P.M.Beena alone can be accommodated, and she, being the senior most test qualified

teacher, can be appointed as Headmistress. The right of the petitioner to be absorbed as Headmistress w.e.f. 1/6/2015 can arise only in the event of a

final adjudication in WP(C) No. 36877/2017, which of course depends upon the validity of the amendment and its retrospectivity.

6. As matters stand now, the law laid down in Pavandoor Higher Secondary School's case (supra) and Haneefa Beevi Kallan's case (supra) shall hold

the field until a different view is taken by the Larger Bench in the pending matters.

In the light of the aforesaid discussion, we are of the view that the learned Single Judge was not justified in directing Smt.Veena U.Nair to be

appointed in the vacancy that had arisen w.e.f. 1/04/2018.

In the result, we set aside the interim order dated 15/12/2020 and the appeal stands allowed.