

(2011) 01 KL CK 0035
In the High Court Of Kerala
Case No : W.A. No. 1143 of 2010

Krishnakumar and Another

APPELLANT

Vs

P. Kunhiraman and Others

RESPONDENT

Date of Decision : 28-01-2011

Acts Referred:

Kerala Education Rules, 1959 — Rule 51A

Citation : (2011) 2 ILR (Ker) 85 : (2011) 2 KLJ 216

Hon'ble Judges : C.N. Ramachandran Nair, J;B.P. Ray, J

Bench : Division Bench

Advocate : S. Sujin and Nitans. N.S, for the Appellant; T.B. Raman (GP), for the Respondent

Final Decision : Allowed

Judgement

C.N. Ramachandran Nair, J.—The connected appeals are filed against the same judgment of the learned single Judge. We have heard counsel appearing for the appellant in both the cases and the counsel for the respondents. We proceed to decide the matter with reference to the parties and the documents referred to in Writ Appeal 1344/10 which is filed by the manager of the school. The appellant appointed the first respondent as a Hindi teacher in the high school run by the appellant on 20.6.1991. However, within two years, that is on 15.7.1993, the first respondent got retrenched on account of fall in division of the school. Since the first respondent worked in the school for two years, he was entitled for appointment in the next arising vacancy under Rule 51A of Chapter XIV-A of the Kerala Education Rules. The next regular vacancy arose in June, 1996 and at that time the first respondent filed a relinquishment letter to the appellant stating that in the vacancy arising to which he has claim under Rule 51A, his wife who is also qualified to be appointed as a Hindi teacher may be appointed. Based on the relinquishment letter by the first respondent and the application submitted by his wife, she was appointed to the post of Hindi teacher. Later a leave vacancy of Hindi teacher arose in the appellant's school on 2.7.1997 to which the appellant

appointed the third respondent who worked for two months. At that time, if the short duration appointment in a leave vacancy was approved by the Educational Authority, such appointee is also entitled to preference in employment under Rule 51A. Therefore, two months' service entitled the third respondent to claim the next arising vacancy in Hindi which happened on 14.6.2000. The appellant appointed the third respondent to the vacancy so arose on 14.6.2000. At this point of time, the first respondent staked a claim for appointment to the regular vacancy that arose to which the third respondent was appointed, by taking up the matter with the D.E.O. When the first respondent approached this Court, this Court directed the D.E.O. to consider whether there is relinquishment of the claim by the first respondent and to decide the matter after verifying the facts. The D.E.O., vide Ext.P6 dated 28.11.2000 produced in writ petition, clearly held that the first respondent relinquished his claim under Rule 51A and it is only on his request that wife was appointed to the post to which he could have claimed appointment by virtue of Rule 51A. The first respondent challenged this order before the Director of Public Instructions, who held that relinquishment is not permissible under the Kerala Education Rules and so much so there is no relinquishment in the eye of law which disentitles the first respondent for appointment. When the appellant challenged the order of the D.P.I, before the Government, Government reversed the said order and restored the order of the D.E.O. It is against this order of the Government, the first respondent filed the writ petition which was allowed by the learned Single Judge against which these writ appeals are filed.

2. The case of the appellant is that the first respondent has no right to claim the post given to the third respondent that arose on 14.6.2000 and the vacancy to which he had a claim under Rule 51A was filled up by the appellant by appointing the first respondent's wife. The case put forward by the first respondent is that even the subsequent post arising could be claimed by the first respondent. The learned single Judge has referred to several decisions of this Court wherein this Court has held that a teacher entitled to Rule 51A benefit cannot relinquish the claim. We are in complete agreement with this proposition because, the right acquired by the teacher is a personal right, which, if permitted to be relinquished, will be transferred or sold leading to very undesirable consequences. However, when a teacher who is entitled to claim appointment to a post arising subsequently by virtue of the provisions of Rule 51A does not choose to exercise the right or fails to accept the employment offered by the management, what happens is extinguishment of the right under Rule 51A leaving the manager freedom to appoint a teacher in accordance with the Rules. In this case, the letter of relinquishment given by the first respondent for appointing his wife in the vacancy that subsequently arose to which he could have claimed the appointment under Rule 51A amounts to abandonment of his right for appointment and so much so once he has given this letter to the management, his right was extinguished forever. Subsequently, his wife was rightly appointed by the management as she was found eligible. Once the first

respondent has forfeited his right of employment which was available to him under Rule 51A he has no right to claim employment to the vacancies subsequently arising. In fact, not only that, he did not claim the post that arose in 1996 which was filled up by his wife on his request and with his consent; he did not put forward a claim for appointment to the leave vacancy that arose on 2.7.1997 which was filled up with third respondent who by virtue of such posting in the leave vacancy acquired right under Rule 51A. We do not think the first respondent has any right to claim employment to the vacancy that arose on 14.6.2000 which was rightly filled up by the appellant with the third respondent. Since we have already found that the first respondent had forfeited his right for appointment when he gave the letter of relinquishment and requested to appoint his wife in the said post to which he could have claimed appointment, the first respondent is not entitled to the relief granted by the learned single Judge. Consequently, the writ appeals are allowed vacating the judgment of the learned single Judge and by restoring the orders of the Government and D.E.O.