

(1978) 01 KL CK 0011

In the High Court Of Kerala

Case No : W.A. No's. 75 and 85 of 1975

Kunhiraman Nambiyar

APPELLANT

Vs

Gopalan Nair and Others

RESPONDENT

Date of Decision : 24-01-1978

Acts Referred:

Kerala Education Act, 1958 — Section 10, 2(6)
Kerala Education Rules, 1959 — Rule 45

Citation : (1978) 01 KL CK 0011

Hon'ble Judges : Gopalan Nambiyar, C.J.; Balagangadharan Nair, J

Bench : Division Bench

Advocate : Chandra Sekharan and Chandrasekhara Menon, in W.A. 75/75 and B. Moosakutty, Government Pleader in W.A. 85/75, for the Appellant; Chandra Sekharan and Chandrasekhara Menon for 3rd Respondent in W.A. 85/75, Easwara Iyer and E. Subramoni for 1st Respondent and B. Moosakutty, Government Pleader for Respondents 2 to 4 in W.A. 75/75, for the Respondent

Final Decision : Dismissed

Judgement

Gopalan Nambiyar, C.J.—These two writ appeals are against the judgment of a learned Judge in O.P. No. 478 of 1973. W.A. No. 75 of 1975 is by the 5th Respondent in the writ petition and W.A. No. 85 of 1975 is by the State. The question agitated was whether the Petitioner or the 5th Respondent possessed the requisite qualifications for appointment as Headmaster in an Upper Primary Aided School. The controversy hinges around the question as to which of the two qualifications -- a pass in the S.S.L.C. with the Teachers' Training Certificate, or what we may call, a non-S.S.L.C. with a Higher Elementary Teachers' Training Certificate -- is the required qualification for appointment as Headmaster, and as to which of these is superior to the other. The Appellant who has passed the S.S.L.C. and has got the Teachers' Training Certificate, is junior to the 1st Respondent who is a non-S.S.L.C. with a Higher Elementary Teachers' Training Certificate. By an amendment effected to Chapter XIV(A) Rule 45 in 1971, it was provided that for the post of a Headmaster, if there is a graduate teacher with B.

Ed. or other equivalent qualification and who has got at least five years experience in teaching after graduation, he may be appointed as Headmaster provided he has got a service equal to half of the period of service of the seniormost undergraduate teacher. If graduate teachers with the aforesaid qualifications and service are not available in the School, the seniormost Primary School Teacher with S.S.L.C. or equivalent and T.T.G. qualification may be appointed. This statutory prescription of qualifications having been effected in 1971, and the vacancy with which we are concerned being prior to the same, it is admitted that the rule has no application. There was in force a prior executive instruction G.M. Ed. (B) 2-7340/57/E.H.D., dated 3rd May 1957 by the Government, a copy of which is filed as Ext. R-1. That was as follows:

Copy of G.M.Ed. (B) 2-7340/57/E.H.D., dated 3rd May 1957 from Government.

Sub: Appointment of secondary grade teachers as Headmasters of Elementary schools having four or more sections.

Ref: 1. Resolution dated 19th March 1957 from the Secretary, A.T. Union, Valancheri.

2. Letter No. M1-3813/57 from the Director of Public Instruction.

G.M. Ed. (B) 2-7340/57/E.H.D.

The teachers association of Malabar have represented that the orders of the Director of Public Instruction laying down that secondary trained teachers could be posted as Headmasters in Elementary Schools having four or more sections may be stayed.

The Director of Public Instruction has reported that the rules issued in 1939 by the Madras Government required that Headmasters should hold secondary grade T.T.C. This rule was not enforced till 31st May 1956, for want of qualified hands. When qualified persons became available the concession was not extended. The Director of Public Instruction has stated that there is no difficulty in finding qualified persons now and there is therefore no need to give any concession. The Director of Public Instruction has not issued any new orders in the matter but he had only enforced the orders of the Madras Government.

Government considered the question in all its details and order that the existing order need not be enforced on teachers who are already Headmasters of Elementary schools. Future appointments will be limited to secondary grade T.T.C.

The Director of Public Instruction is requested to issue immediately instructions in the matter to subordinate officers.

(By order of the Governor)

(Sd.)

M.K. Krishnan,

Assistant Secretary.

On a prior occasion when this controversy in regard to the qualifications for appointment as Headmaster came upto this Court, by Ext. P-4 judgment dated 18th March 1970, the Petitioner was directed to move the Government to consider and decide whether the Higher Elementary Teachers' Training Certificate is equivalent to Secondary T.T.C. In pursuance of this direction by the said judgment, the Petitioner's representation was forwarded to the Director of Public Instruction, who, by Ext. P-7 informed the Petitioner that his representation had been rejected by the Government and copy of the Government Order rejecting the representation was appended to Ext. P-7. The Petitioner's application for review was rejected by Ext. P-9 order by the Government. It was in these circumstances that the Petitioner moved the writ petition praying to quash Exts. P-7 and P-9 orders. The learned judge allowed the writ petition holding that, on the promulgation of the Kerala Education Act and the Rules, their provisions alone should govern the position. The learned judge extracted Rule 45 of the Rules as it stood prior to its amendment. This was as follows:

45. When the post of Headmaster of a complete Upper Primary School is vacant or when an incomplete Upper Primary School is raised to a complete Upper Primary School, those who are qualified to be graduate teachers, if any shall have preference over undergraduate teachers for appointment as Headmaster, notwithstanding their relative seniority provided that the Graduate Teacher has put in a service equal to three-fourths of the period of service of the seniormost teacher.

It was observed by the learned judge that the rule drew no distinction between H.E.T.T.C. holders and secondary T.T.C. holders in the matter of appointment as Headmaster of Upper Primary Schools, and that both were qualified for the appointment. The learned judge was further of the view that Ext. R-1 G.O. dated 3rd May 1957 can have no application after 1st June 1959 when the Kerala Education Act and the rules came into force.

2. We are unable to agree with the learned judge. Under the Kerala Education Act prescription of qualifications for appointment as Headmaster has to be done by the rules. See Section 10 read with Section 2(6) of the Act. This was done only by the amendment of Chapter XIV(A) Rule 45 in 1971. It was claimed that it was also done about the same time by Ext. R-3 G.O. Ms. 32/71/S/ Edn., dated 19th March 1971. Even assuming that Ext. R-3 is to be regarded as a statutory rule, it is plain on its terms, that it can have no application to the case. For one thing, it prescribes qualifications only for the post of Headmasters of Government Schools; for another, it makes clear that it applied only to future vacancies and vacancies which remained to be filled up on a regular basis. The vacancy with which we are concerned in this case arose on 14th October 1966. Ext. R-3 G.O. cannot therefore have any application.

3. It is plain that till a statutory rule has occupied the field, there is scope for executive instructions to take the place. This has been recognised by judicial decisions. It is enough to refer to B.N. Nagarajan and Others Vs. State of Mysore and Others, (para 5) and Lakshmi v. Assistant Educational Officer 1966 KLT 1042 to 1045. We may also refer to the decisions of this Court in Abdul Rahiman v. A.E.O., Balussery ILR 1976 Ker 458 (para 6) and to N.K. Krishnan v. The Manager, Pallipuram Union Basic and U.P. School ILR 1977 Ker 52. It is also worthwhile to note that Ext. R-1 has clearly recorded that it was merely enforcing the orders of the Madras Government in the matter of qualifications of teachers prescribed by the rules issued in 1939 by that Government. We have no doubt that in the circumstances, Ext. R-1 G.O. had operation till the statutory rules under the Kerala Education Rules occupied the place for prescribing qualifications in respect of the appointment of teachers. As Ext. R-1 had application at the relevant time in regard to the vacancy with which we are concerned in this case, it is clear that the Appellant is entitled to claim the appointment as Headmaster in preference to the 1st Respondent. We allow those appeals and set aside the judgment of the learned judge. The result would be that the writ petition O.P. No. 478 of 1973 would stand dismissed. There will be no order as to costs.