
(2014) 09 KL CK 0021
In the High Court Of Kerala
Case No : WP(C). No. 20849 of 2013 (E)

K.V. Sreejith

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 19-09-2014

Acts Referred:

Citation : (2014) 09 KL CK 0021

Hon'ble Judges : A.K. Jayasankaran Nambiar, J

Bench : Single Bench

Advocate : K.T. Shyamkumar, Advocate for the Appellant; Naushad Thottathil, Government Pleader, Advocate for the Respondent

Judgement

A.K. Jayasankaran Nambiar, J.—The petitioners are Higher Secondary School Teachers who were appointed pursuant to Exhibit P1 order issued by the Government sanctioning Higher Secondary Courses in August 2010. The respective schools in which the petitioners were appointed were all sanctioned the Higher Secondary Courses in August 2010.

2. In Exhibit P1 Government Order, there was a stipulation that in those Schools where the Higher Secondary Courses had been newly sanctioned, and the first year of the said courses had already commenced, the initial appointments had to be only of Guest Lecturers. Accordingly, the petitioners were also initially appointed as Guest Lecturers and their salaries fixed accordingly.

3. Thereafter, by Exhibit P2 Government Order dated 24.10.2011, the Government sanctioned posts of HSST (Junior) with retrospective effect from 06.08.2011. This was done by taking into account the fact that in those Schools where the Higher Secondary Courses were sanctioned in the year 2010, the first year of the course would have been completed by the academic year 2011-12 and therefore, the posts to be sanctioned in those Schools were only to be posts of HSST (Junior).

4. With the passage of time, the second year of the Higher Secondary Courses

also came to be conducted in the Schools in question. Representations were therefore preferred by the petitioners, among others, before the Director of Higher Secondary Education for the purposes of bringing to his notice the fact that they were now persons who qualified to be Higher Secondary School Teachers (HSSTs) and accordingly, there was a requirement for upgradation of the posts of HSST (Junior) to that of HSST in the said Schools. It would appear that the Director of Higher Secondary Education recommended the upgradation of posts in the various Schools where the Higher Secondary Courses had been sanctioned in the year 2010. By Exhibit P3 Government Order, the Government examined the matter and accorded sanction, inter alia for upgradation of 1,061 posts of Higher Secondary School Teacher (Junior) as Higher Secondary School Teachers in the various Schools. In Exhibit P3 Government Order, however, the Government indicated that the upgradation of posts would have only prospective effect from the date of the Government Order namely 23.02.2013. The petitioners are aggrieved by the said stipulation in Exhibit P3 Government Order which mandates that the upgradation of the posts as HSST would take effect only prospectively from 23.02.2013. It is their case that, on upgradation of the posts, the same should have been with retrospective effect coinciding with the date on which they had qualified to be appointed as HSST in terms of Rule 1 (d) of Chapter XXXII of the Kerala Education Rules (For short `KER"). The writ petition is thus preferred by the petitioners seeking a declaration to the effect that they are entitled to an upgradation, of the posts of HSST (Junior) to which they were appointed, as HSST with effect from the commencement of the academic year 2011-12. There is also a prayer for quashing Exhibit P3 order to the extent it provides that the sanction for upgradation of the posts of HSST (Junior) as HSSTs will be only prospective from the date of Exhibit P3 Government Order.

5. A counter affidavit has been filed on behalf of the 2nd respondent. Therein it is pointed out that while sanctioning Higher Secondary Courses in 2010, it was made clear in Exhibit P1 Government Order that, pending creation of posts of HSST, the Schools could resort only to the appointment of Guest Lecturers. In the instant case, it is pointed out that since the said stipulation in Exhibit P1 Government Order governed appointments made in the various Schools where Higher Secondary Courses were sanctioned in 2010, the petitioners could not insist on a retrospective operation of Exhibit P3 Government Order and claim upgradation from an earlier date other than the date of Exhibit P3 Government Order. It is also pointed out that ultimately the decision as to whether the posts should be upgraded or not, and if so, the date from which such upgradation should take effect, must rest with the Government which is obliged to shoulder the financial burdens associated with the upgradation. It is pointed out that in so far as this is a matter involving financial commitment on the part of the Government, the discretion with regard to the date from which the upgradation must take place must necessarily vest in the Government and that this Court should not interfere with the said decision taken by the Government.

6. I have heard Adv. Sri. K.T. Shyam Kumar, the learned counsel appearing on

behalf of the petitioners and Adv. Sri. Naushad Thottathil, the learned Government Pleader appearing on behalf of the respondents.

7. On a consideration of the facts and circumstances of the case and the submissions made across the Bar, I find that this is a case where, admittedly, the posts of HSST(Junior) were created vide Exhibit P2 Government Order dated 24.10.2011. At the time of creation of the said posts, in the Schools for which the Higher Secondary Courses were sanctioned vide Exhibit P1 Government Order dated 20.07.2010, the Government created the posts with retrospective effect from 06.08.2011. This was done after taking into account the fact that the first year of the Higher Secondary Courses sanctioned in the year 2010 would have been completed by 06.08.2011 and finding it necessary to accommodate the Lecturers who had by then completed one year, to the said posts created with effect from 06.08.2011. The case of upgradation of the posts of HSST (Junior) to that of HSSTs arose only when the Lecturers appointed to the posts of HSST (Junior) qualified to be posted as HSST's, within the meaning of that term under Rule 1 (d) of Chapter XXXII of the KER. As per the said provision, a 'Higher Secondary School Teacher' means a Higher Secondary School Teacher of an aided school whose workload is 15 or more periods per week per subject. This would necessarily arise in the Schools where the Higher Secondary Courses were sanctioned in the year 2010 only with the commencement of the academic year 2011-12. It was under these circumstances that the Director of Higher Secondary Education had recommended to the Government the necessity of upgrading 1,061 posts of HSST (Junior) as HSSTs in the various Schools where the courses were sanctioned in the year 2010. The recommendation of the Director of Higher Secondary Education did not fix any cut-off date for the purpose of upgradation. While sanctioning the upgradation of posts, however, the Government in Exhibit P3 Government Order dated 23.02.2013, chose to make the same applicable only with prospective effect. There is no reason forthcoming from the side of the Government as to why the Government chose to fix this artificial cut-off date while according sanction for upgradation of the posts of HSST (Junior) as HSSTs. The only reason stated in the counter affidavit is that the Government had taken such a decision keeping in mind the financial burden that it would have to incur pursuant to the upgradation. The learned Government Pleader would also draw my attention to a decision of the Honourable Supreme Court in Divisional Manager, Aravali Golf Club and Another Vs. Chander Hass and Another, for the proposition that Courts cannot direct the creation of any posts that would entail financial commitment for the employer and that the creation of posts is a policy matter within the discretion of the employer.

8. In the case at hand, and based on the facts already noticed, I feel that there is no legal or rational basis for the artificial cut-off date of 23.02.2013, the date of Exhibit P3 Government Order, fixed for the purposes of upgradation of posts that were already created under Exhibit P2 Government Order. The purpose of the upgradation was to recognize the services rendered by Lecturers who had been accommodated against the posts of HSST (Junior) that had been created

pursuant to Exhibit P2 Government Order. If, as a matter of fact, the Lecturers in question conformed to the criteria stipulated in Rule 1 (d) of Chapter XXXII of the KER at the commencement of the academic year 2011-12, then there was no justification for denying them the benefit of upgradation with effect from that date. In fact, it is for this reason that the Director of Higher Secondary Education had chosen not to fix any cut-off date for the operation of the upgradation of the posts. The prospective operation of the sanction for upgradation being based on no tangible or valid reasons forthcoming from the Government, the same has necessarily to be held as arbitrary and therefore legally unsustainable. Accordingly, Exhibit P3 Government Order, to the extent it accords sanction for the upgradation of 1,061 posts of HSST, prospectively with effect from the date of the said Government Order, is quashed. Exhibit P3 Government Order, in its application to the petitioners, shall have effect from the commencement of the academic year 2011-12 and subject to physical verification as to whether the petitioners qualify to hold the post of HSST in terms of Rule 1 (d) of Chapter XXXII of the KER.

The writ petition is allowed as above.