

(2015) 10 KL CK 0037

In the High Court Of Kerala

Case No : W.A. No. 1386 of 2009 in W.P. (C) 2457/2004 and W.A. No. 1498 of 2009

L.J. Girija

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 20-10-2015

Acts Referred:

Constitution of India, 1950 — Article 30(1)
Kerala Education Act, 1958 — Section 12

Citation : (2015) 10 KL CK 0037

Hon'ble Judges : Antony Dominic and P.V. Asha, JJ.

Bench : Division Bench

Advocate : Pirappancode V. Sreedharan Nair, Pirappancode V.S. Sudhir, Saju John and V. Varghese, Advocates, for the Appellant; P. Fazil Advocate Government Pleader and A.N. Rajan Babu, for the Respondent

Final Decision : Dismissed

Judgement

P.V. Asha, J.—These two appeals are filed against a common judgment in Writ Petition No. 2457 of 2004 - filed by the appellant herein, and in Writ Petition No. 16553 of 2006, filed by the management, by which the learned Single Judge held that Ext. R5(b) is the order which governs the appointment of Headmasters in the Schools for physically handicapped and directed that the 5th respondent School shall be treated as a minority educational institution, till high level committee to be constituted by the Government finally decides the matter.

2. The C.S.I. Vocational High School and Higher Secondary School for Deaf, Valakom, in Kottarakkara, is an aided school under the 5th respondent Corporate Education Agency. A vacancy of Headmistress cum Principal arose in the school, consequent to the retirement of the then incumbent w.e.f. 01.06.2002. The appellant herein has been working in the School as H.S.A. (Social Science) since 01.06.1998. She commenced her service in the School as Assistant Teacher w.e.f. 04.07.1988. She was a graduate with B.Ed at the time of her initial

appointment. She had passed M.A. Degree in History with second class. She acquired training qualification for hearing impaired - D.Ed also. She had also passed the test in Kerala Education Act and Kerala Education Rules and Account Test (Lower), as on 01.06.2002. Therefore she claimed promotion as Headmistress cum Principal saying that she is the only qualified hand for the same.

3. But, the 5th respondent management issued orders giving full additional charge of the Headmistress cum Principal to the 6th respondent - Smt. Sophy Gabriel. As no action was taken on the appellant's request for promotion, she approached this Court by filing O.P. No. 15607 of 2002 and this Court by Ext. P2 judgment, directed the District Educational Officer to consider her claim. Pursuant to this, the D.E.O. heard all the parties. Management defended their action invoking minority status. The D.E.O. found that there were 4 claimants for the post and the appellant was the only teacher with test qualification and Masters Degree with second class which is the qualification required for the post of Principals in the Higher Secondary Schools and Headmasters in the High School. Hence, the appellant was found to be better qualified for promotion. As the Manager did not take any action in terms of the D.E.O.'s order, the appellant again approached this Court in W.P.(c) No. 28160 of 2002. By Ext. P5 judgment, this Court directed the Manager to consider the claim of the appellant and other eligible candidates for promotion to the post of Principal, in the light of the judgment in W.A. No. 204 of 2003 and connected cases, relating to the filling up of the post of Principals in Higher Secondary Schools. Thereafter, the 5th respondent constituted a selection committee and considered the claims of all the candidates for promotion to the post of Principal after conducting an interview. On the basis of the decision taken therein, the Manager issued Ext. P6 proceedings dated 17.07.2003 again granting full additional charge of Headmaster to Smt. Sophy Gabriel-the 6th respondent herein. Aggrieved by this the appellant approached the Government in Ext. P7 representation and thereafter approached this Court in W.P.(c) No. 2457 of 2004 challenging the denial of promotion and the appointment of the 6th respondent. She further sought directions to the respondents to promote her as Higher Secondary School Teacher (Junior); thereafter as Higher Secondary School Teacher and thereafter as Principal of the school.

4. In the meanwhile, the Management had filed an appeal against the order passed by the D.E.O. on 29.08.2002, before the Deputy Director of Education. Apart from the appellant, there were other 3 claimants also before the Deputy Director of Education. One Smt. K. Santhamma, who has been working as High School Assistant from 15.07.1995 onwards claimed that she, being the senior most H.S.A., was liable to be promoted w.e.f. 1.06.2002. Smt. Sophy Gabriel, the 6th respondent, in the first Writ Appeal claimed that she was entitled to be appointed in the light of the appointment already granted to her invoking the minority right of the management. One Sri Ananda Mohan, who had been working under the management from 8.6.1988 onwards, also claimed promotion

as against the vacancy which arose on 1.6.2002. The Deputy Director of Education, after hearing all the parties, found that none of the contestants had the requisite 12 years of graduate service as explained in Rule 44A of Chapter XIVA KER. It was further found that the rules, which govern the qualification and method of appointment to the post of teaching staff including that of Headmasters for the schools of handicapped, are governed by G.O(Ms) No. 198/79 dated 22.11.1979 [Ext. R5(b) order]. As per those orders, 50% of the post of Headmasters are reserved for the qualified teachers in service with 10 years service in teaching the blind/deaf. By order dated 25.3.2003 (Ext. P9 in the Writ Petition filed by the Manager), the Deputy Director of Education set aside the order passed by the D.E.O. saying that the D.E.O., while passing the order dated 28.9.2002, had not examined the applicability of G.O(Ms) No. 198/79/G.Edn. dated 22.11.1979, which deals with the appointment of Headmasters in the schools for handicapped; and directed the D.E.O. to pass fresh orders.

5. As against the order of the Deputy Director of Education, the affected teachers approached the Director of Public Instructions and the D.P.I., after hearing all the parties, passed Ext. P10 order (in W.P.(C) 16553/2006). The D.P.I. found that the school does not have minority status. The CSI(LMS) schools were under the ownership of church of South India Trust Association and that the schools were not established by them and the C.S.I. management is not protected by Article 30(1) of the Constitution of India. It was further found that there was no approved seniority list of the staff of C.S.I. and none of the teachers were found to have 12 years graduate service. The D.P.I. found that it was Smt. K. Santhamma, who was the better claimant to be promoted as Headmistress, as there is no special rule for the method of appointment for qualification for aided special higher secondary schools. The matter was again taken up before the Government, and the Government, by Ext. P11 order in W.P.(c) No. 16553 of 2006, upheld the order passed by the D.P.I. Regarding the minority status of the school, it was found that the Government had earlier, as per G.O.(Rt.) No. 912/2001/G.Edn. dated 08.03.2001, accepted the minority right of C.S.I. management. The D.P.I. had subsequently found that all the orders in respect of the minority status of LMS School were issued based on an incorrect report of the A.E.O. and therefore the LMS Educational institutions administered by CSI management did not have any minority status or right, under Article 30(1) of the Constitution of India.

6. W.P.(c) No. 16553 of 2006 was filed by the management, aggrieved by the orders Exts. P10 and P11, i.e. the orders passed by the D.P.I. as well as the Government declaring that the management does not have the minority status and directing appointment of Smt. K. Santhamma as Headmistress.

7. Counter affidavits were filed in both the cases. According to the Government, the promotion as Headmistress is to be made in accordance with Rule 44A of Chapter XIVA KER and 12 years of graduate service with test qualifications is necessary for promotion as Headmaster. But none of the teachers were found to

be qualified for promotion. It was also stated that the rules governing the qualification and method of appointment of teachers in schools for handicapped were governed by the order Ext. R5(b) issued by the Government on 22.11.1979 (Ext. P5 in W.P.(c) No. 16553/2006). In the counter affidavit it was stated that the appointment of Smt. Sophia Gabriel, an unqualified hand, was improper and illegal. Regarding the minority right of the management it was stated that, C.S.I. schools for deaf come under the ownership of church of South India Trust Association by a deed registered on 18.07.1969. But the school was not established by them, so as to have the minority right under Article 30(1) of the Constitution of India. It was further stated that the Government, though accepted the minority right of C.S.I. management as per its order dated 08.03.2004, found that the said status was conferred on the basis of the incorrect information. It was further stated that as per G.O.(Rt) 2114/06/G.Edn. dated 24.5.06, the Government de-recognised the minority right of the management. At the same time, it was stated that a high level committee was constituted by the Government as per G.O.(Rt) No. 3754/06/G.Edn. dated 23.08.2006, to frame the guidelines to be followed for granting minority status to the institutions like that of the respondents and that the petitioner management would have liberty to move the committee for redressal of its grievances.

8. Both the Writ Petitions were heard together. The learned Single Judge found that the denial of minority status to the C.S.I. Management was improper. In view of the fact that the minority status was already granted to it in the year 2001 and a high level committee has been constituted in 2006, it was directed that the management shall be treated to have the minority status until a final decision is taken in the matter about the status of the management.

9. At the same time, it was found that the appointment made by the management invoking its minority right in favour of Smt. Sophy Gabriel was liable to be upheld. It was found that the rules applicable for appointment of Headmasters in special schools is the order Ext. P5 - G.O. dated 22.11.1979 and not those in KER. The learned Single Judge found that the question whether the institution has got minority status or not is a matter to be examined by the Government in the light of the guidelines to be framed by the high level committee and so long as that question is not finally decided, the status conferred on the institution by the Government Circular shall continue. On the basis of these findings, the writ petition filed by the appellant was dismissed and the orders-Exts. P10 and P11, passed by the D.P.I. and challenged by the management, were quashed.

10. These Writ Appeals are filed as against the above judgment.

11. The appellant's case is that promotion to the post of Headmaster is governed by Rules 44 and 44A of Chapter XIVA of KER and the executive order cannot override the same. Hence she claims that she is the only person eligible for appointment as Headmistress, as she is having more than 12 years graduate service as prescribed in Rule 44 of Chapter XIVA KER. She also claims

appointment as Principal on the ground that she is the only Post graduate with second class, which is the requisite qualification for the same. In this context it is relevant to note that the qualifications possessed by the rival claimants for the post in the school as on 1.6.2002 i.e. when the vacancy arose, are as follows:

From the above, it can be seen that the appellant is having service in the school from 4.7.1988 onwards and her service from 1.6.1998 onwards is as H.S.A. The appellant claims that she has got 12 years" graduate service, as she has acquired B.Ed Degree as early as in 1985, though her service as H.S.A. commenced only from 1.6.1998 onwards. The claim of the appellant is on the basis of Rule 44A of Chapter XIVA K.E.R. Relevant portion of Rule 44A K.E.R. is as follows:

"44A. (1) Subject to the provisions contained in sub-rule (1) of rule 44, the minimum service qualification for appointment as Headmaster in Aided Complete High Schools/Training schools shall be twelve years of continuous graduate service with a pass in the test in Kerala Education Act and the Kerala Education Rules and a pass in account Test (Lower) conducted by Kerala Public Service Commission.

Provided that Headmasters of High and Training Schools, who were actually holding the said post on the eleventh day of June, 1974 shall stand exempted from passing the Account Test (Lower)

"[Provided further that Teachers who have attained the age of 50 years shall stand exempted permanently from acquiring the test qualification specified in Sub rule (1)

Explanation. I: - For the purpose of this rule, "Graduate Service" means all service of a teacher as High School Assistant, Training School Assistant, Headmaster of an incomplete High School, Headmaster of a complete Upper Primary School/Middle school or Headmaster of a Training School after acquisition of Collegiate training such as B.T., L.T. or B.Ed. But in the case of such teachers appointed prior to 15-10-1957 their untrained service after graduation shall also be reckoned as "Graduate Service", provided that their appointments were not in accordance with the Madras Educational Rules."

As per the above Rule, the requisite qualification for appointment as Headmaster in the High School is 12 years graduate service with B.Ed. and pass in the test in Kerala Education Act and Rules and Account Test (lower). Explanation to Rule 44A provides that graduate service means the service as High School Assistant after acquiring B.Ed. Degree. When the appellant had got appointment as H.S.A. only on 1.6.1998, she cannot have any claim for promotion in tune with Rule 44A of Chapter XIV A KER as she had only 4 years graduate service as on 1.6.2002. Similarly in the case of Mrs. Sophia Gabriel - the 6th respondent, Smt. K. Santhamma as well as Ananda Mohan also, who were the rival claimants for the post, it is seen that none of them were having 12 years of graduate service.

12. But the learned Single Judge found that all these claimants are qualified, going by the executive order issued by the Government in 1979 (Ext. P5 in the connected Writ Petition 16553/2006). Finding of the learned Single Judge that Ext. P5 is the order which governs the appointment of Headmasters cannot be correct, in view of the fact that the school is governed by the Kerala Education Rules, 1958. The schools for deaf, dumb, blind and the mentally challenged come under the class of Schools for Education of particular categories of students coming under the purview of KER, in the light of Rule 1(3) and Rule 4 of Chapter II of KER. Section 12 of the Kerala Education Act provides that conditions of service of teaching staff in the Schools shall be such as may be prescribed by the Government. Chapter XIVA of KER governs the conditions of service of aided school teachers. Therefore promotion to the post of Headmaster in the 5th respondent School, which is an aided School governed by the provisions in the K.E.R., should be in accordance with the provisions contained in Chapter XIVA. Rule 44 of Chapter XIVA KER provides that appointment of Headmaster shall ordinarily be according to the seniority of qualified teachers. As per Rule 44A, the minimum service qualification for appointment as Headmaster in an aided complete high school shall be 12 years of continuous graduate service with a pass in test in Kerala Education Act and Kerala Education Rules and a pass in the Account Test (lower) conducted by the Public Service Commission. According to Explanation 1 to Rule 44A, graduate service means, service as a H.S.A. after acquiring B.Ed. Degree. Ext. R5(b)/Ext. P5 is only an executive order which cannot override the statutory provisions contained in the K.E.R. Therefore, we are unable to agree with the conclusion of the learned Single Judge that, it is Ext. R5(b)/Ext. P5 G.O., which governs the promotion of headmasters in the schools for physically handicapped. At the same time, we find that the appellant does not have the requisite number of years of graduate service as provided in the Explanation to Rule 44A and hence she is also not entitled to promotion as against the vacancy which arose on 01.06.2002, despite the test qualification acquired by her before 1.6.2002.

In view of the fact that the appellant is not qualified for promotion as Headmistress as on 01.06.2002, we do not find it necessary to go into the other questions, as to the findings of the learned Single Judge regarding the minority status or the eligibility of other teachers for promotion to the post. Therefore, we leave these questions open and dismiss these Writ Appeals, with the above observations.