
(2023) 06 KL CK 0378

In the High Court Of Kerala

Case No : Review Petition No.1039 Of 2022 In Writ Appeal No.639 Of 2021

M. Honey

APPELLANT

Vs

Manager Kopparethu Higher Secondary School P.O

RESPONDENT

Date of Decision : 27-06-2023

Acts Referred:

Citation : (2023) 06 KL CK 0378

Hon'ble Judges : P.B.Suresh Kumar, J;C.S.Sudha, J

Bench : Division Bench

Advocate : P.Sreekumar, Renoy Vincent, Helen P.A., Arun Roy, Shahir Showkath Ali, Aleesha Shereef, Stephanie Sharon, Athul Roy

Final Decision : Dismissed

Judgement

P.B.Suresh Kumar, J.

1. The review petitioner is the appellant in the appeal and the fifth respondent in the writ petition, from which the appeal arose. Parties are referred to in this order for convenience, as they appear in the writ petition.

2. The petitioner is the Manager of an aided Higher Secondary School. The Higher Secondary section of the school was sanctioned from the year 2014-2015. Since there were no qualified hands then in the school for appointment by transfer as Higher Secondary School Teacher [HSST], the petitioner took steps to appoint required number of teachers from open market. It is stated that there were three posts of HSST in the school. A selection was consequently conducted and appointments were made based on the selection. Among the appointees to the post of HSST, the fourth respondent was appointed on 05.01.2018 and respondents 5 and 6 were appointed on 06.01.2018. The said appointments were approved with effect from the respective dates of appointment, in terms of Ext.P2 order issued by the third respondent.

3. The fifth respondent preferred an appeal against Ext.P2 order before the second respondent seeking a direction to the Manager to submit a revised

proposal for approval of her appointment as HSST with effect from 05.01.2018. On the said appeal, the second respondent took the view that insofar as three vacancies were existing at the time of preparation of the select list, they should have been appointed on the same day itself and consequently directed the third respondent to approve the appointment of respondents 5 and 6 also as HSST with effect from 05.01.2018. Ext.P3 is the order issued by the second respondent in this regard. Although Ext.P3 order was challenged by the petitioner in revision before the Government, the same was affirmed by the Government as per Ext.P5 order. In the meanwhile, the fourth respondent being the earliest appointee to the post of HSST, the petitioner appointed her as Principal-in-Charge of the School. Exts.P3 and P5 orders were under challenge in the writ petition. The case set out by the petitioner in the writ petition was that, being the appointing authority, he has absolute discretion in the matter of making appointments and the appointees cannot claim that they should be appointed with effect from a particular date. It was also the case of the petitioner that the dates of appointment were fixed based on the merits of the candidates and the fourth respondent being a candidate who secured more marks in the selection, she was appointed earlier to others and there is nothing illegal in the same.

4. A counter affidavit was filed in the matter by the fifth respondent contending, inter alia, that insofar as the selection was conducted on the same day and since vacancies were available on the date of selection, the vacancies should have been filled up by appointing all the selected candidates on the same day itself. It was also contended by the fifth respondent that had the Manager adopted the said course, the fifth respondent being elder to the fourth respondent, she would have had a claim for appointment as Principal in preference to the fourth respondent and it was with a view to appoint the fourth respondent as Principal that the appointments were made by the petitioner in the manner aforesaid.

5. The learned Single Judge took the view that in the absence of any specific provision in the Kerala Education Act (the Act) and the Kerala Education Rules (the Rules) interdicting the Manager from making appointments in the manner in which appointments have been made by him, there is no illegality in the decision taken by the Manager to appoint the fourth respondent earlier to the appointment of respondents 5 and 6. The learned Single Judge also found that the decision of the Manager to appoint the fourth respondent earlier to the appointment of respondents 5 and 6 cannot be said to be unfair as she was found to be more meritorious than respondents 5 and 6 in the selection. The writ petition, in the circumstances, was allowed and Exts.P3 and P5 orders were quashed. It is aggrieved by the said decision of the learned Single Judge that the fifth respondent has come up in the appeal.

6. This Court found that the question arising for consideration is whether the petitioner was obliged under law to appoint the fifth respondent on 05.01.2018 itself and answered the question in the negative. The view taken by this Court is that in the absence of any specific provision in the Act and the Rules interdicting

the Manager from making appointments in a particular manner, there is no illegality in the decision taken by the Manager to appoint the fourth respondent earlier to the appointment of respondents 5 and 6, even if it was intended to enable the fourth respondent to claim seniority over the fifth respondent so as to appoint her as Principal of the school at a later point of time. It was also held by this Court that the statutory duty cast on the Manager to act fairly, reasonably and without arbitrariness, is only in the context of complying with the provisions of the Act and the Rules and it does not extend to matters not covered by the Statute. It was also held by this Court that in respect of matters not covered by the Act and the Rules, ideas of competence and the manner in which the Manager wants the school to be run, cannot be interfered with by the educational authorities who are created for the purpose of ensuring compliance of the provisions of the Act and the Rules. It was observed by this Court in the judgment that if the Manager chooses to appoint a more meritorious candidate on an earlier date, such a decision cannot be said to be unfair or unreasonable. It is that decision of this Court which is sought to be reviewed in this proceedings.

7. Heard the learned counsel for the fifth respondent/the review petitioner.

8. It was pointed out by the learned counsel for the fifth respondent that the posts of HSST in the school existed in different subjects and the selection was conducted on the same day. It was also pointed out by the learned counsel that rank list was prepared by the Selection Committee for each subject and the appointees are first rank holders in each subject. It was submitted by the learned counsel that the said fact could not be brought to the notice of this Court and it is on account of the said reason that the judgment in the appeal was rendered in the manner indicated above on the assumption that the fourth respondent is more meritorious than respondents 5 and 6. It was also argued by the learned counsel that it is thus clear that the decision of the Manager to appoint the fourth respondent in preference to respondents 5 and 6 was solely for the purpose of enabling the fourth respondent to claim seniority over respondents 5 and 6 which is per se unfair, and should have been interfered by this Court.

9. We have examined the argument advanced by the learned counsel for the fifth respondent, the review petitioner.

10. True, the fact that respondents 4 to 6 were appointed as HSSTs in different subjects based on separate selections conducted on the same day was not brought to the notice of the learned Single Judge or before this Court by the petitioner. Therefore, the argument advanced by the petitioner that the fourth respondent was more meritorious than respondents 5 and 6 may not be of any merit merely for the reason that the fourth respondent has secured more marks than respondents 5 and 6 in selection process. Let us assume that the fourth respondent cannot be considered as more meritorious than respondents 5 and 6. Is the judgment liable to be reviewed on that sole ground? The answer to this question, according to us, would decide the fate of this review petition.

11. Even though this Court was proceeding on the premise that the fourth respondent is a person who secured more marks than respondents 5 and 6 in the selection process, the judgment sought to be reviewed is not one rendered on that sole basis. On the other hand, the pointed question considered by this Court was whether, in the absence of a specific provision in the Act and Rules, the selected candidates could claim appointment on the same day, and this Court answered the said question holding that the restrictions that could be enforced against the Managers, are only restrictions provided for in the Act and Rules and in respect of all other matters relating to administration, the Manager shall have absolute right to take any decision. It was also held by us that in the absence of any specific provision in the statute interdicting the Manager from making appointments in a particular manner, there is no illegality in the decision taken by the Manager to appoint the fourth respondent earlier to the appointment of respondents 5 and 6, even if it was intended to enable the fourth respondent to claim seniority over respondents 5 and 6, so as to appoint the fourth respondent as Principal of the school at a later point of time. As noted, it was also held by us that the statutory duty cast on the Manager to act fairly, reasonably and without arbitrariness, is only in the context of complying with the provisions of the Act and the Rules and it does not extend to matters not covered by the Act and Rules, and in respect of matters not covered by the Act and the Rules, it was held that the choice, ideas of competence and the manner in which the Manager wants the school to be run, cannot be interfered with by the educational authorities who are created for the purpose of ensuring compliance of the provisions of the Act and the Rules. Of course, we have observed in our judgment that the fourth respondent is a candidate who secured more marks than the fifth respondent in the selection process. Even if it is held that the said observation is incorrect, we are of the view that the judgment is not liable to be reviewed on that ground, for the judgment is not one rendered solely based on the case set out by the petitioner that the fourth respondent was more meritorious than respondents 5 and 6.

The review petition, in the circumstances, is without merits and the same is accordingly, dismissed.