

(1994) 03 KL CK 0057

In the High Court Of Kerala

Case No : O.P. No. 8965 and 15421 of 1993

Manager, Amrita Sanskrit H.S. School

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 09-03-1994

Acts Referred:

Kerala Education Act, 1958 — Section 10, 11
Kerala Education Rules, 1959 — Rule 43, 51A

Citation : (1994) 03 KL CK 0057

Hon'ble Judges : K.K. Usha, J

Bench : Single Bench

Advocate : K.K. Dinesan, for the Appellant; Mary Benjamin, Government Pleader for Respondents 1 and 2 and K.P. Dandapani, for Respondent 3, for the Respondent

Judgement

K.K. Usha, J.—While O.P. No. 8965/93 is at the instance of the Manager, Amrita Sanskrit Higher Secondary School, O.P. No. 15421/93 is at the instance of 3 teachers who are working as U.P.S.A. in the above School. Challenge in these Original Petitions is against a Government Order dated 28th June 1993 produced as Ext. P-12 in O.P. No. 8965/93 and Ext. P-4 in O.P. No. 15421/93. Since the issues raised in these Original Petitions are the same, the petitions are being disposed of under a common judgment. Reference is made to the Exhibits as they are marked in O.P. No. 8965/93.

2. Amrita Sanskrit Higher Secondary School is an aided High School having a High School Section as well as a Upper Primary Section. The 3rd Respondent was initially appointed as High School Assistant (Sanskrit) from 15th January 1985 to 1st March 1985 in a leave vacancy. The above appointment was duly approved. Later he was regularly appointed as High School Assistant (Sanskrit) with effect from 15th July 1985. Even though the above appointment was also approved, he had to be retrenched during the academic year 1991-92 on reduction of certain posts in the School.

3. 1st Petitioner in O.P. No. 15423/91 was working as High School Assistant (Social Studies) in the same School from 1988 onwards till she was thrown out of service for want of vacancy on 14th July 1992. Even prior to that she had for a period of 3 years service as H.S.A. in a leave vacancy. The second Petitioner had continuous approved service as H.S.A. (Maths.) from 15th July 1986 till 14th July 1991. The 3rd Petitioner had worked in the School as H.S.A. (Science) with effect from 15th July 1985 to 14th July 1991. While the abovementioned three Petitioners and the 3rd Respondent were out of service due to reduction in posts in the High School section, vacancies arose in the School in the U.P. Section. The Petitioners 1 to 3 in O.P. No. 15421/93 were appointed as U.P. School Assistants by the Petitioner in O.P. No. 8965/93 namely, the Manager from 30th July 1992, 1st June 1992 and 1st June 1992 respectively. The 3rd Respondent in O.P. No. 8965/93 there upon raised a complaint that he having earlier approved service in the School as H.S.A. has a better claim under Rule 51A of Chapter XIV A of K.E.R. than the three Petitioners for appointment in future vacancies in the: School. The above claim was not admitted by the Manager contending that Petitioners in O.P. No. 15421/93 were not appointed as Rule 51A claimants, but as fresh appointees. Since teachers who were retrenched from the High School section, cannot put forward a claim under Rule 51A of Chapter XIV A of K.E.R. for appointment to the U.P. Section.

4. The appointment of the Petitioners in O.P. No. 15421/93 were not approved by the District Educational Officer on the ground that such appointments were made overlooking the preferential claim of the 6th Respondent in O.P. No. 15421/93 who is the 3rd Respondent in O.P. 8965/93. Aggrieved by the above order appeals were filed by the Manager before the Deputy Director, Kollam who allowed the appeals under Exts. P-2, P-2 (a) and P-2 (b) orders.

5. The matter was taken up in revision before the Government by the 6th Respondent in O.P. No. 15421/93. The Government after hearing all the parties passed Ext. P-4 order (in O.P. 15421/93) dated 28th June 1993 allowing the revision and directing the Manager to appoint the 6th Respondent in the existing vacancy, or the next arising vacancy in the post of L.P.S.A./U.P.S.A./Junior Language Teacher, H.S.A. (Sanskrit). Without prejudice to his claim for reappointment as H.S.A. (Sanskrit) as Rule 51A claimant when his turn comes up. It was also directed that fresh appointments in the category of teachers shall be made in the School only after appointing the 6th Respondent against any of the categories of teaching posts, for which he is fully qualified.

6. The above order dated 28th June 1993 is challenged by the Manager in O.P. No. 8965/93 contending that the Manager cannot be compelled to appoint a particular person as a teacher in the School by the department unless the teacher has got a preferential claim under any of the provisions of the Kerala Education Act or Rules. According to the Petitioners in O.P. 15421/93 their appointment is not being approved and they are not being paid salary in view of the fact that the Manager is not inclined to abide by the directions contained in

the order dated 28th June 1993. Therefore, they also, challenge the Government order.

7. Certain facts are admitted in these cases. Petitioners in O.P. No. 15421/93 and the 6th Respondent therein are having claim under Rule 51A of Chapter XIV-A of K.E.R. for appointment to future vacancies in the school of the Petitioner in O.P. No. 8965/93. Going by the Rules the 6th Respondent has preferential claim over the Petitioners in O.P. No. 15421/93 as Rule 51A claimant for appointment to a future vacancy in the post of U.S.A. Subsequent to their retrenchment from service, vacancies had arisen in the post of U.P.S.A. in the School, in which the Manager appointed Petitioners in O.P. No. 15421 of 1993. Respondents have no case that while making such appointment the Manager has violated any of the provisions of the Kerala Education Act or Rules. If that be so whether the department can compel the Manager to appoint the 6th Respondent as U.P.S.A. and take the stand that if such appointment is not made approval will not be granted to the appointment of Petitioners in O.P. No. 15421/93.

8. Section 11 of the Kerala Education Act provides that subject to the Rules and conditions laid down by the Government, teachers of aided schools shall be appointed by the Managers of such schools from among persons who possess the qualifications prescribed u/s 10. Respondents have no case that the Petitioners in O.P. No. 15421/93 are not qualified to hold the post of U.P.S.A. in the School. The only aspect that has to be examined is whether a preferential claim of the 6th Respondent over the Petitioners was denied by the Manager. Admittedly the past service of the 6th Respondent in the school is in the post of H.S.A. (Sanskrit). This Court has already held in *Gopalakrishndn Nair v. District Educational Officer* 1988 (1) KLT 644 *Sree Kumari Amma v. State of Kerala* 1988 (2) KLT 359 and *Saramma v. District Educational Officer* 1991 (2) KLT 883 that the claim that can be put forward by a teacher under Rule 51A of Chapter XIV-A is in the category of post in which the teacher had prior approved service entitling a claim under Rule 51A. Therefore, the 6th Respondent in O.P. No. 15421/93 has no preferential claim under Rule 51A for appointment to the post of U.P.S.A. in the same School. Such being the position there is no question of having a better claim than the Petitioners in O.P. No. 15421/93 for appointment to the post of U.P.S.A.

9. If the Government Order dated 28th June 1993 is examined it can be seen that Government also has not referred to any particular provision of the Rule or order which would give the 6th Respondent in O.P. 15421/93 a better claim than the Petitioners therein for appointment to the post of U.P.S.A., failure, to comply with which would justify the Government to give a direction as the one contained in the above Government Order. It is true that the Petitioners and the 6th Respondent are having Rule 51A claim for appointment to the post of H.S. As. in the school. But none of them have any claim for appointment to the post of U.P.S.A. According to the Manager, the Petitioners were appointed not as Rule 51A claimants but as fresh hands. So long as they are qualified to hold the post

of U.P.S.A. there is nothing which stands in the way of Manager appointing them as U.P.S.A. The power of the Manager to appoint teachers in the School is governed by the provisions contained u/s 11 of the Kerala Education Act. The only restriction in the exercise of the power is that the Manager can make appointments subject to the rules and conditions laid down by the Government. So long as the appointment of the Petitioners in O.P. No. 15421/93 is not violative of any of the Rules or conditions laid down by the Government, the Manager has to be taken as having acted within his power. I find no merit in the stand taken by the Government in the impugned order that the action of the Manager is in violation of equity, fair play and natural justice. Since the school is an aided school, restrictions are imposed under the rule and the orders regarding the appointment of teachers. But that does not mean that within the Rules the Manager has no right to choose the teachers who are to be appointed in his school. When the Manager makes such appointments there is no question of violation of equity or fair play or natural justice. The appointment of the Petitioners in O.P. No. 15421/93 is not as a Rule 51A claimants. Rule 51A claim is attached to a particular post. It is not that a teacher who had appointed in any of the post in the school will be treated as Rule 51A claim for appointment to other different posts. The claim under Rule 51A is not unconnected with the post in which appointment has to be made. Therefore, it cannot be contended for a moment that the 6th Respondent was denied equal treatment along with the Petitioners by the Manager.

10. The learned Government Pleader put forward a contention that if a future vacancy arises in High School Section the Petitioners in O.P. No. 15421/93 would be entitled to promotion under Rule 43 in preference to the 6th Respondent who is only a Rule 51A claimant. Such a position, according to the learned Government Pleader, is unfair as the 6th Respondent is a senior claimant under Rule 51A. I am afraid that such a contingency will not arise in the present case, since the vacancy to which Petitioners in O.P. No. 15421/93 might get promotion would be vacancies in which the 6th Respondent cannot put forward any claim as their subjects are entirely different. Even if such a contingency arises, I find in the absence of a Rule which would safeguard the interest of Rule 51A claimant "in the manner in which the Government wanted, under the impugned order, the Manager"s action cannot be held against the Rules and justifying denial of approval of appointment of the teachers appointed by him. There is some justification in the contention taken by the Manager that an H.S.A. in core subject would be more suitable to discharge the duties of U.P.S.A. than an H.S.A. (Sanskrit) since a U.P.S.A. has" to teach all subjects in the U.P. Section. In the result, I set aside Exts. P-12 in O.P. 8965/93 which is the same as Ext. P-4 in O.P. No. 15421/93. There will be a further direction to Respondent to approve the appointment of the Petitioners in O.P. No. 15421/93 forthwith and release their salary as expeditiously as possible at any rate within a period of one month.

The Original Petitions and allowed as above.