

(1998) 12 KL CK 0033

In the High Court Of Kerala

Case No : O.P. No's. 15040 and 16707 of 1998

Manager, Mahatma High School

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 15-12-1998

Acts Referred:

Kerala Education Rules, 1959 — Rule 43, 44(1), 92
Kerala State and Subordinate Services Rules, 1958 — Rule 38

Citation : (1999) 1 KLJ 640

Hon'ble Judges : K.S. Radhakrishnan, J

Bench : Single Bench

Advocate : N. Sugathan, for the Appellant; V.K. Mohanan, Government Pleader for Respondents 1 and 2 and M.R. Rajendran Nair and M.R. Sudheendran for Respondent 3, for the Respondent

Final Decision : Dismissed

Judgement

K.S. Radhakrishnan, J.—Question that has come up for consideration in these cases is whether management of a school could deny future promotion to a teacher under Rule 43 of Chapter XIV A of the Kerala Education Rules, relying on a relinquishment letter given by the teacher at the time of his/her appointment.

2. Third Respondent in O.P. No. 15040 of 1998 was appointed as U.P.S.A. on 25th January 1995. She worked upto 31st March 1995. Her appointment was also approved by the second Respondent. When third Respondent was appointed, manager obtained a statement of relinquishment signed by the third Respondent witnessed by two teachers and attested by the Manager. Relinquishment letter was countersigned by the second Respondent, District Educational Officer. A true extract of the relinquishment letter is as follows:

In exercise of the right conferred under Rule 38 of the Kerala State and Subordinate Services Rules, 1958, I.S. Gangakumari, U.P.S.A., Mahatma H.S. for Boys, Ghennithala, (H.E. name and designation) hereby relinquish permanently my right for promotion as H.S.A. (under Rule 43 Chapter XIV A of K.E.R.) which

may arise in Mahatma High School in Ghennithala.

I do also hereby declare that nothing contained in the Kerala Educational Act and Rules or in the Special Rules applicable to me Shall be deemed to require the recognition of my right or privilege.

Signed on the 25th day of January, 1995.

On re-opening of the school, third Respondent was again reappointed on 5th June 1995. Appointment was also approved by the second Respondent with effect from 5th June 1995.

3. A vacancy of H.S.A. (Natural Science) arose in the Mahatma High School on 20th June 1995. Third Respondent submitted a representation before the Manager for promotion to that post, since there was no other claimant. Third Respondent was fully qualified. Manager however, rejected her request vide his letter dated 20th July 1995 stating that since third Respondent had Relinquished her claim for promotion, she cannot be promoted in that vacancy. Third Respondent then preferred a complaint before the District Educational Officer, who vide Ms order, dated 3rd October 1997 rejected the request of the third Respondent. District Educational Officer also relied on a Circular No. ET3-87201/96, dated 6th January 1997. Aggrieved by the same, third Respondent filed O.P. No. 646 of 1998 before this Court. This Court disposed of the Writ Petition permitting the third Respondent to file a revision before the Government. Government have now considered the revision and passed Ext. P-11 order, dated 23rd July 1998 reversing the order of the District Educational Officer. According to Government Rule 43 of Chapter XIV A protects the interests of teachers and that the action of the management in having obtained the relinquishment letter is ultra vires the provisions of the Kerala Education Rules. Aggrieved by the said order Manager has filed O.P. No. 15040 of 1993.

4. After the third Respondent submitted an application dated 20th June 1995 claiming promotion to the post of H.S.A. (Natural Science), Manager appointed the Petitioner in O.P. No. 16707 of 1998 as H.S.A. (Natural Science) from 21st June 1995 to 24th August 1995. Appointment was approved. She was again appointed from 5th June 1997 to 8th August 1997, which was also approved. Manager reappointed her from 1st June 1998 onwards. Petitioner also challenges Government Order, dated 23rd July 1998 and seeks a declaration that her appointment is legal and consequently wants a direction to the department to approve her appointment as H.S.A. (Natural Science).

5. Counsel for the Petitioners in both the Writ Petitions contended that third Respondent had relinquished her promotion, consequently she waived her right and therefore she cannot claim promotion to the post of H.S.A. forever. Further, it was contended that circular, Ext. P-12, dated 6th January 1997, permits teachers to relinquish their promotion and consequently management is justified in accepting the relinquishment letter and denying promotion to the third Respondent. Counsel for the Petitioners also contended that in any view of the

matter, High School section and U.P. section are under different managements and as far as the promotion in the U.P. section is concerned, Counsel submitted, permission of the N.S.S. management is essential. Reference was also made to Ext. P-1 bye-laws of Mahatma High School. Counsel for the management contended that Government was not justified in proceeding with the revision petition under Rule 92 of Chapter XIV A of the K.E.R. since no copy of the revision petition was made available. This contention was however given up by Counsel agreeing that the matter itself can be heard on merits by this Court without remitting the matter to the Government.

6. Counsel for the contesting Respondent contended that all along appointments and promotions were effected in both the (J.P. and High School Sections by the Petitioner in O.P. No. 15040 of 1998, who is the Manager of Mahatma High School. Several such instances were pointed out by the contesting Respondent. Counsel further submitted that the same was never urged as a ground at any time in denying promotion.

7. Petitioners could not point out any statutory provision under the Kerala Education Act or Rules permitting a teacher to relinquish promotion to any poster enabling the Manager to accept such a letter of relinquishment. Rule 38 of the K.S. and S.S.R. under which the so-called relinquishment letter was given is not applicable to the aided school teachers. The only provision in the Kerala Education Rules is Note to Rule 44(1) of Chapter XIV A of the K.E.R., which says, whenever the Manager intends to appoint a person as Headmaster other than the senior claimant, the Manager shall obtain a written consent from such senior claimant, renouncing his claim permanently. Such consent shall have the approval of the Educational Officer concerned. Scope of Rule 44(1) was considered by this Court in *George v. State of Kerala* (1998) 2 KLT 637 and this Court held that there cannot be any permanent relinquishment to the post of Headmaster.

8. A person can relinquish his right for promotion, only when the right accrues. Relinquishment letter was accepted by the management even before her appointment was approved as U.P.S.A. I am of the view to get a relinquishment letter along with appointment order renouncing his/her claim for promotion for all the years to come, that is till a teacher retires from service, is unjust, illegal and arbitrary. It will demoralise a teacher. No teacher will at her/his own volition renounce her/his claim for promotion at the time of entry in service, unless the teacher is compelled to do so due to extraneous reasons. A teacher may relinquish her/his claim for promotion when right to promotion actually accrues. A teacher may relinquish her/his claim for promotion due to various reasons such as to avoid taking up of higher responsibility, or to avoid transfer due to other reasons, etc. But there is no question of relinquishment of promotion at the time of entry in service, when the right to promotion is yet to accure. Evidently, such relinquishment letters are obtained by the management due to extraneous reasons. Ext. P-12 circular dated 6th January 1997 issued by the-department,

gives certain guidelines, which are extracted below:

1. Whenever the Manager intends to appoint or promote a person other than the senior claimant, the Manager shall obtain a written consent in advance from such senior claimant renouncing his/her claim either permanently or temporarily.
2. In the case of temporary relinquishment the period of relinquishment should necessarily be furnished in the relinquishment letter.
3. Such relinquishment letters accepted by the appointing authority shall have the approval of Educational Officer concerned (A.E.O. in the case of Primary and D.E.O. in the case of Secondary).
4. Employees shall not be allowed to withdraw the relinquishment of their claim once accepted and approved by the Controlling Officer.
5. While making appointment/promotions of juniors on the strength of relinquishment letters of rightful claimants, the letters renouncing the claim duly accepted by the appointing authority and approved by the controlling officers should invariably be sent along with the proposals for approval of appointments.

The above-mentioned circular states that the question of relinquishment arises only whenever the Manager intends to appoint or promote a person other than the senior claimant. This shows that the question of relinquishment arises only when the right accrues. Note to Rule 44(1) says that whenever the Manager intends to appoint a person as Headmaster other than the senior claimant, the Manager shall obtain a written consent from such senior claimant, renouncing his claim permanently. This Court in *George v. State of Kerala* (1998) 2 KLT 637, took the view that the expression "whenever the Manager intends to appoint" would show that whenever Manager overlooks the claim of a senior teacher to be appointed as Headmaster, Manager has to get a written consent from such; senior claimant renouncing his claim permanently. This Court also held that there cannot be any permanent relinquishment to the post of Headmaster. In other words, renouncing of a right should be voluntary, but not under coercion or under influence.

9. Any condition attached by the management for appointment or promotion against the wish and will of a teacher will be against public policy. It will demoralise a teacher and also students community. Experience gathered by a teacher in a post should be advantageous to the students as a whole and also the educational institution. Experience of teachers, are better utilised for the benefit of students. If promotion is denied to those teachers by obtaining relinquishment letters, that will affect the standard of education and interests of the students as well. The quality of education depends upon the ability and knowledge of the Teachers. If meritorious teachers are overlooked, ignoring their service, that will affect standard of education. I am of the view such actions of the management should be deprecated. Seldom teachers relinquish promotion by their own volition. Even if a teacher relinquishes promotion the management can

refuse to accept the same in the best interests of the students. Interest and welfare of the students is the primary consideration than the interest of the teachers or the management.

10. Under the above circumstances, Ext. P-4 relinquishment letter has no statutory basis, and the same has to be ignored. I am of the view that if third Respondent is otherwise qualified and eligible, she should be promoted to the post of H.S.A (Natural Science). I therefore uphold the order of the Government, and direct the management to give effect to the said order. Since I have found that third Respondent in O.P. No. 15040 of 1998 is the legitimate person to get promotion to the post of H.S.A. (Natural Science), Petitioner in O.P. No. 16707 of 1998 can claim only the subsequent vacancy after giving promotion to the third Respondent. It is so declared.

Original Petitions are accordingly dismissed.