

(1990) 03 KL CK 0003
In the High Court Of Kerala
Case No : O. P No. 1287 of 1990

Manager Mar Sheba U. P. School

APPELLANT

Vs

State of Kerala and . Others

RESPONDENT

Date of Decision : 02-03-1990

Acts Referred:

Citation : (1990) 1 KLJ 605

Hon'ble Judges : K. Sreedharan, J

Bench : Single Bench

Advocate : K. R. Kurup, for the Appellant; A. N. Rajan Babu and P. Ravindran, for the Respondent

Final Decision : Allowed

Judgement

K. Sreedharan, J.—Petitioner is the Manger of an aided Upper" Primary School. By Ext.P16 order dated 16-12-1989 4th respondent, the Deputy Director of Education, Kottayam, directed the petitioner to appoint 5th respondent as Headmaster of the school and to regularize his claim for promotion to that post in any vacancy that has arisen on or after 4-5-1987, by reverting others appointed as Headmaster. This order is under challenge. The short facts germane for disposal of this Original Petition are as follows: Fifth respondent was appointed as a teacher in the School during the academic year 1961-62. At that time he had not passed the Teachers Training Course. He was selected for the course in the departmental quota and completed the same in 1964. He passed the examination in 7-7-1980. There-after his qualified regular service in the school started on 6-7-1981. When the staff strength was fixed for the academic year 1983-84 as per Ext. PI order dated 25-7-1982 two teachers were thrown out of service. Those teachers were given protection as per G. O (MS) 104/82/G. Edn dated 23-7-1982. Of the two teachers so given protection 5th respondent was the Junior most. They were continued in the school belonging to the petitioner, as protected teachers. By Ext. P2 order dated 25-2-1985 those protected teachers were deputed to Government Schools. First teacher. Smt. M.

J. Elisamma was deputed to Konattuseri Lower Primary School. Fifth respondent was posted at Ariad Lower Primary School. Ext. P2 order by which the protected teachers were deployed to other schools inter alia provided:

The protected teachers may be relieved of their duties within 2 days on receipt of this order positively to join duty in the new station. The protection and posting given to teachers as per this order will cease unless they join duty forthwith.

5th respondent, it is conceded on all sides, did not join the school to which he was deployed eventhough he was relieved from the parent school on 28-2-1985. He challenged the order deploying him to the other school before this court in O. P. 1806/85. This court ordered to maintain the status quo and directed the Director of Public Instruction to pass fresh orders after considering his representation. The Director took a decision against 5th respondent and consequently he was ordered to be relieved from the school with effect from 29-7-1985. There-after he was not attending to any school. It appears that he had put in applications for leave. A vacancy of Headmaster arose in the school belonging to the petitioner with effect from 1-4-1985. The senior-most teacher was appointed in that post. Subsequently, disciplinary actions were initiated against the Headmistress. She was consequently reverted as Upper Primary School Assistant with effect from 4-5-1987. Once Shri K. C. Sebastian who was the senior most teacher in the school, was appointed teacher-in-charge with effect from 4-7-1987. The Educational Authorities approved that appointment. Shri Sebastian acquired the test qualifications on 28-11-1988. He was, there upon regularly appointed as Headmaster. That appointment has also been approved by the Educational Authorities.

2. The staff strength for the academic year, 1988-89, was fixed by Ext.P6 order dated 6-7-1988. During that year one vacancy of Upper Primary School Assistant arose. To that vacancy Smt. Elisamma, who was sent on protection to another school under Ext.P2, was directed to be accommodated 5th respondent was ordered to continue in the Government School on protection for 1988-89.

3. 5th respondent put forward a claim for getting the post of Headmaster which fell vacant in the school with effect from 4-5-1987. His claim was that he was the only qualified teacher in the staff of the school to hold the post of Headmaster and that he should be given the post eventhough he is on protection and deployed to the other school. This claim of 5th respondent has been accepted by the Deputy Director of Education in Ext. P16 order. The stand taken by the Dy. Director of Education is that protected teacher is having alien in the school and that there is no rule preventing the promotion of a protected teacher to the post of Headmaster if he is qualified for appointment to the post when a vacancy arises. The Deputy Director is of the view that protected teachers hold a lien in their parent school even-after their deployment to other schools. According to him, protected teachers are deployed on working arrangement alone and they continue in the staffs of the; parent school. This view of the Deputy Director of Education is under challenge.

4. Learned Counsel representing 5th respondent would urge that the protected teacher continues to be a member of the staff in the parent school and that his claim for the post of Headmaster should be considered as and when vacancies arise in the parent school along with other teachers in the staff. He has got a further case that 5th respondent is senior to Smt. Elisamma and that Ext.P6 order directing his detention in the Government School on protection is bad.

5. For a proper understanding of the position of a Headmaster vis a vis a teacher in a primary school or upper primary school reference has to be made to Rules 1 and 5 of Chapter XXIII, K. E. R. Rule I (b) of this chapter provides that in Lower Primary Schools which do not work on shift system there shall be one post of Headmaster and as many posts of Lower Primary School Assistants as the number of class divisions reduced by one. According to Rule 5 in every Upper Primary Schools there must be one post of Headmaster and as many posts of Upper Primary School Assistants as the number of class divisions reduced by one and as many posts of Lower Primary School Assistants as there are divisions in the Lower primary School Classes. These provisions make it clear that in the case of Lower Primary and Upper "Primary schools the total strength of teaching staff will be the same as the number of class divisions in the school. One among them is to hold the post of Headmaster. Depending on the strength of students excess hands will be retrenched by throwing out the junior most bands (Vide Rule 55, Chapter XIV-A, K.E R.). When the rule states that the excess hand will be retrenched by throwing out the junior, most hand, it means that the junior most is sent out of the school. Such a teacher who is thrown out cannot be treated as a member of the teaching staff of the parent school. By Ext. P1 staff fixation order for the academic year 1983-84 two teachers, viz Smt. Elisamma and 5th respondent were retrenched by throwing them out of the staff of the school. 5th respondent was treated junior to Smt. Elisamma. A teacher who is relieved on account of reduction in the number of posts under orders of the Department is entitled to a preferential claim to appointment in the school in future vacancies; This right of the teacher is recognised in Rule 5t-A of Chapter XIV-A, K.E.R. It states that a qualified teacher who is relieved on account, of the termination of vacancies shall have preference for appointment to future vacancies in the schools under the same educational agency. Rule 52 states that a teacher on reappoint men t in the same school will be entitled to same pay as he was getting at the time of relief. The cumulative effect of the above provisions appears to be that a teacher who is found to be an excess hand on fixation of the staff strength during an academic year will be retrenched by throwing him out. Such a thrown out teacher has got a preferential claim to b: appointed to" future vacancy in the parent school. When he is thrown out of service can he be considered as a member of the staff in the parent school? Rule 55, chapter XIV-A states that excess hand based on the strength of class will be retrenched by throwing out the junior most hand. The word "retrench" as per Chambers 20th Contrary Dictionary means "to cut off, or down". It means that excess hand, bases on the strength of class should be cut off from the staff of the school. If he

is so cut off from the staff of the school he cannot there-after be considered as a member of the staff of the school. " The teacher so thrown out there-after is entitled to a preferential claim for appointment to future vacancy in the school as provided under Rule 51A of Chapter XIV-A. He has no other right in the parent school.

6. Protection is given to qualified retrenched aided school teachers by G. O. (MS) No. 104/69/Edn dated 6-3-1969. That order inter alia provides that lien of protected teachers should be retained under the management of the aided schools in which they were working at the time of retrenchment. It also provided that the period during which the protected teachers out of service will be treated as on eligible leave or on leave on loss of pay, Since the Government have recognised the protected teachers" lien in the parent school, it is contended that the teacher should be treated as a member of the staff of the parent school. If so treated his claim for promotion to the post of Headmaster should also be considered along with the other members of the teaching staff in the school. I find it difficult to accept this argument. "Lien" made mention of in G. O. (MS) 104/69, Edn dated 6-3-1969 cannot be understood in the sense that word is defined in the Kerala Service Rules. A protected teacher cannot have a right to claim the post in the parent school. As and when a vacancy arises he can put forward a preferential claim under Rule 51A of Chapter XIV-A, K. E. R. If no such vacancy arises till the protected teacher attains the age of superannuation he will have to keep out. In his volition he cannot ask for a posting in the school. If such a right is recognised on admitting the protected teacher in the parent school another teacher will have to be sent out because the staff strength depends on the number of students. In these circumstances the word "lien used in G. O. (MS) 104/69/Edn dated 6-3-1969 cannot be understood as it is defined in the K. S. R. It can only be given the meaning of "a preferential claim for appointment to the future vacancies" as provided in Rule 51A, Chapter XIV-A. K E R.

7. Appointment of Headmasters in Upper Primary schools is governed by Rules 45 and 45A of Chapter XIV-A, K. E R It states that the post of Headmaster should be filled up from among qualified teachers on the staff of the school. A protected teacher, being not a member of the staff of the school, is not entitled to be considered for the post Being a protected teacher deployed to a Government school, 5th respondent cannot put forward any claim to the post of Headmaster in his parent school The contrary view taken by the Deputy Director of Education is against the statutory provisions contained in the Kerala Education Rules. So, the direction given to the Manager to appoint 5th respondent as Headmaster of the school cannot be sustained.

8. Fifth respondent has put forward a claim for seniority over Smt. Elisamma. He bases his claim on account of his earlier appointment in the school during the academic year 1961-62. Admittedly, at the time of that appointment he was not qualified to hold the post. He acquired the qualification only in 1980. As a qualified teacher he got appointment in the year 1981. Seniority in service can

be counted only from the date of continuous service as a qualified teacher. Smt. Elisamma started her qualified continuous service in the school run by the petitioner in 1980. So, 5th respondent cannot claim seniority over her. G. O.(MS) 155/88/G. Edn dated 11-10-1988 inter alia provided that protected teachers who are to retire from service on superannuation by 31st March, 1990 are to be retained in the parent school. On the basis of this Government Order, the Dy. Director of Education by Ext. P13 order dated 25-1-1989 ordered creation of a supernumerary post of U.P.S A in the school run by the petitioner and re-posted fifth respondent in that post A reading of G. O. (MS) 155/88/G.Edn dated 11-10-1988, a copy of which was made available to court, will show that the action taken by the" Dy. Director of Education is un-warranted. Government Order directed retention of protected teachers who are to retire on superannuation on 31-3-1990 in the parent schools, The word used in that Government Order is "retained". As per Black"s Law Dictionary the word "retain" is meaning ""to continue to hold, have, use, recognize etc". The meaning given in the Chambers 20th Century Dictionary is "to keep, to hold back, to continue to hold, to keep up, to employ or keep engaged. From these meaning it would appear that the Government by order dated 11-10-1988 wanted to allow teachers who are holding the post in this parent school on the date of the order to continue to hold the same eventhough they are treated as protected teachers. A protected teacher who was already retrenched or thrown out from the parent school cannot avail the benefit of the above Government Order and claim re-appointment in the parent school The above Government Order has no retrospective operation. By Ext. P2 order 5th respondent was thrown out of the parent school way back in 1985 He was in-fact sent out of the parent school with effect from 29-7-1985. Under the cover of the Government Order dated 11-10-1988, he cannot come back to the parent school. So, the Dy. Director of Education was clearly in error in ordering creation of a supernumerary post in the school belonging to the petitioner for accommodating 5th respondent Ext. P14 order issued by the District Educational Officer/consequent to Ext. P13 has no independent existence. Exts. P13 and P14 orders are quashed.

In view of what has been stated above, I allow this Original Petition and set aside Exts. P13, P14 and P16 orders. I direct the parties to suffer their respective costs.