

(1993) 11 KL CK 0039
In the High Court Of Kerala
Case No : W.A. No. 1477 of 1933-A

Manager, M.M. High School

APPELLANT

Vs

Deputy Director of Education and Others

RESPONDENT

Date of Decision : 26-11-1993

Acts Referred:

Kerala Education Act, 1958 — Section 3, 7(2), 9(1)
Kerala Education Rules, 1959 — Rule 51A, 7, 9

Citation : (1993) 2 KLJ 1103

Hon'ble Judges : M. Jagannadha Rao, C.J;K. Sreedharan, J

Bench : Division Bench

Advocate : V.P. Mohan Kumar, for the Appellant; K.S. Madhusoodanan, for 6th Respondent, for the Respondent

Final Decision : Dismissed

Judgement

K. Sreedharan, J.—Fifth Respondent in the Original Petition, who is the Manager of M.M. High School and U.P. School, New Mahe, is the Appellant. Learned Single Judge directed the Deputy Director of Education to compute the monetary loss sustained by the writ Petitioner on account of the failure of the Manager in not giving her appointment and to realise it from the Manager under the provisions of the Revenu Recovery Act for payment to the writ Petitioner. Appellant questions the correctness of the said direction.

2. Short facts necessary for the disposal of this appeal are as follows: Writ Petitioner had approved service in the school under the management of the Appellant as a Lower Grade Hindi Teacher in the U.P. section of the school from 1st February 1973 to 23rd April 1973 and from 29th January 1985 to 9th March 1985. She had also Anr. term as H.S.A. (Hindi) between 17th February 1983 and 19th April 1983. On the retirement of a Lower Grade Hindi Teacher in the U.P. section on 31st March 1990, a vacancy arose in the U.P. section with effect from 1st June 1990 in the cadre of Lower Grade Hindi Teacher. Writ Petitioner made representations to the Manager for getting appointment against the said vacancy.

She also approached the educational authorities by filing many representations. Assistant Educational Officer, by letter dated 4th February 1991, informed her that necessary action was being taken in regard to her request for appointment in the vacancy which arose from 1st June 1990. In spite of the various representations and the above mentioned reply from the Assistant Educational Officer, no action was taken by the Manager or the authorities to give the writ Petitioner order of appointment. Therefore she moved this Court by filing O.P. 2480/1991 on 6th March 1991.

3. When the Original Petition came up for hearing on 5th July 1991, learned Counsel representing the Manager-fifth Respondent stated before Court that writ Petitioner will be appointed in the vacancy that arose on 1st June 1990 within three weeks from that date. A learned Single Judge recorded that statement made by counsel and disposed of the Original Petition. Later, Manager moved a petition for review of the judgment. That petition was allowed, the judgment set aside and the Original Petition was posted for further hearing. Thereafter by order dated 1st August 1991, this Court directed the Manager to appoint the writ Petitioner in the vacancy which arose on account of the retirement of the teacher on 31st March 1990 as Lower Grade Hindi Teacher within a period of ten days. Instead of complying with that order, Manager filed a counter affidavit stating that he does not propose to make any appointment against the said vacancy. By order dated 30th August 1991, this Court gave one more opportunity to the Manager to implement the order within one week. This Court directed him to report compliance of the direction on 9th September 1991. It was also directed that if no such order was passed by the Manager, he was to be present personally in Court and show cause why proceedings in contempt should not be taken against him.

4. On 9th September 1991, counsel representing the Manager submitted that a letter has been issued to the Petitioner on 4th September 1991 directing her to join the post of Hindi Teacher in the U.P. section within seven days from the date of receipt of the letter. Writ Petitioner received that letter on 5th September 1991. Thereupon she appeared before the Headmaster of the school to join duty. But, she was informed by the Headmaster that no instruction had been given by the Manager to admit her to duty. Further, the communication sent by the Manager was not an order of appointment in the form prescribed by the Kerala Education Rules. Ultimately, Petitioner was admitted to duty on 12th September 1991 and a proper order of appointment in the prescribed form was also issued.

5. Under the circumstances detailed above, the learned Single Judge found that the Manager should compensate the loss sustained by the writ Petitioner on account of the delayed appointment. Learned Counsel representing the Manager-Appellant raised two contentions before us. They are (a) Manager is not bound to appoint a teacher in the school even if a vacancy exists; and (b) a person having right to get employment under Rule 51A of Chapter XIV-A of Kerala Education Rules is not entitled to claim any damages on account of the delay caused in

giving appointment. We shall proceed to deal with these aspects in detail.

6. Section 3 of the Kerala Education Act, hereinafter referred to as "the Act", deals with establishment and recognition of schools. Clause (1) of that section states that the Government may regulate the primary and other stages of education and courses of instructions in Government and private schools. Clause (2) enjoins the Government to take steps as they may consider necessary or expedient for the purpose of providing facilities for general education, special education and for the training of teachers. For providing such facilities, as per Clause (3) of that section, the Government may establish and maintain schools; or permit any person or body of persons to establish and maintain aided schools; or recognise any school established and maintained by any person or body of persons. Clause (4) of Section 3 proceeds to state that all existing schools shall be deemed to have been established in accordance with the provisions of the Act. As per Section 7(2) of the Act, the Manager shall be responsible for the conduct of the school in accordance with the provisions of the Act and the Rules framed thereunder. Section 9(1) of the Act provides that the Government shall pay the salary of all teachers in aided schools direct or through the Headmaster of the school. The Government may pay to the Manager a maintenance grant at such rates as may be prescribed by the rules. Chapter III of the Kerala Education Rules, hereinafter referred to as "the Rules", deals with management of private schools. Rule 9 in that Chapter relates to duties and powers of the Managers of aided schools. Clause (1) of Rule 9 provides that the Manager shall be responsible for the conduct of the school strictly in accordance with the provisions of the Act and the Rules issued thereunder. He shall also abide by the orders that may be issued from time to time by the Government and the Department in conformity with the provisions of the Act and the Rules; Clause (2) of Rule 9 states that the Manager shall sign all the bills relating to the maintenance and other grants specifically granted to the management. All other bills relating to the school shall be signed by the Headmaster. According to Clause (3) of that Rule, the Manager should provide site, building, staff, equipment, furniture, etc., as per Rules issued under the Act and the Orders that may be issued from time to time by the Government and the Department in conformity with the provisions of the Act and Rules. So, a legal duty is cast upon the Manager to provide the staff for the school as per the Rules and the orders that may be issued by departmental authorities. Manager is not to interfere with the academic work of the schools which should be attended to by the Headmaster. If the Manager is not providing the staff, it will certainly go to affect the academic work of the schools: The Manager is not to interfere with the academic work of the school. Clause (5) of Rule 9 further enjoins the Manager to verify the staff position of the school in conformity with the number of class divisions sanctioned by the Department. Depending on the number of staff fixed by the departmental officers, the Manager has to provide the staff. Chapter XXIII of the Rules provides for fixation of strength of teachers in departmental and aided schools. As per the provisions contained in this Chapter and the Rules,

each school should have the staff fixed by the educational authorities. The staff so fixed by the educational authorities is required for the academic work in the school. If the staff so fixed by the educational authorities are not provided by the Manager, it will adversely affect the working of the school. The persons adversely affected thereby are the students of the school. Manager cannot be allowed to contend that he has got the authority to make the appointment of teachers and that according to him no appointment is to be made for there are sufficient number of teachers in the staff. The provisions of the Act and Rules referred to above show that permission is granted to the Manager to establish and maintain the schools in furtherance of the duty of the State to provide facilities for education. When the educational authorities have come to the conclusion that a particular number of teachers are required to impart proper education to the pupils, the Manager cannot be allowed to take a stand that appointment is his prerogative and that he cannot be compelled to make appointment. If such a right is given to the Manager, it will certainly affect the students and the academic work of the school. When the Manager is duty bound to provide the staff required for the school and the Government had taken upon itself the liability to pay the salary of all the teachers in aided schools, according to us, it is the duty of the Manager to fill up all the posts in accordance with the orders of the educational authorities fixing the staff strength. Consequently, we hold that Ground-(a) urged by the learned Counsel representing the Appellant has no legal basis. We overrule the said contention.

7. Clause(4) of Rule 7 of Chapter III of the Rules reads:

In the case of a Manager who commits serious irregularities causing monetary loss to teachers/Government, the loss sustained by teachers/Government shall be recoverable from the Manager under the provisions of the Revenue Recovery Act for the time being in force as if it is an arrear of public revenue due on land, in the following cases, namely:

(a) Denial of appointment to a qualified thrown out teacher who has a rightful claim for re-appointment by virtue of his/her holding the post earlier, under Rule 51A Chapter XIVA.

(b)

In the instant case, writ Petitioner was having a rightful claim for re-appointment under Rule 51A of Chapter XIV A of the Rules. This fact is not in dispute. The vacancy to which she was to be appointed arose with effect from 1st June 1990. As per the orders of the educational authorities fixing the staff strength, that vacancy ought to have been filled up by the Manager with effect from 1st June 1990 itself. Only because of the recalcitrant attitude of the Manager, the writ Petitioner was not appointed with effect from 1st June 1990. On account of the interference of this Court, Manager was compelled to appoint her in the said vacancy with effect from 12th September 1991. The Manager thus kept her away from the school for the period from 1st June 1990 to 12th September 1991. The

failure of the Manager in not appointing the writ Petitioner against the vacancy which arose with effect from 1st June 1990 caused monetary loss to the writ Petitioner. Such a loss caused to the teacher is to be recovered from the Manager as provided by the Rule quoted above, Learned Single Judge was right in giving direction to the educational authorities to compute the loss caused to the writ Petitioner on account of the delayed appointment and to realise the same under the provisions of the Revenue Recovery Act. We are in full agreement with the reasonings adopted by the learned Judge.

In view of what has been stated above, we find no merit in this writ Appeal. It is accordingly dismissed.