
(2009) 02 KL CK 0086
In the High Court Of Kerala
Case No : W.A. No. 240 of 2009

Manju Varghese

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 08-02-2009

Acts Referred:

Kerala State and Subordinate Services Rules, 1958 — Rule 2, 2(10), 2(3), 2(7), 2(9)

Citation : (2009) 02 KL CK 0086

Hon'ble Judges : M.L. Joseph Francis, J;K. Balakrishnan Nair, J

Bench : Division Bench

Advocate : Joice George, for the Appellant; Noble Mathew, Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

K. Balakrishnan Nair, J.—The writ Petitioners are the Appellants. They are High School Assistants working under the Respondents. All of them are probationers. They claim appointment by transfer to the post of HSST. Ext. P-16 is the notification issued by the 2nd Respondent, calling volunteers from High School Assistants for appointment to the post of HSST. The said notification stipulates that only approved probationers are eligible to apply for appointment by transfer. Aggrieved by the said condition, the writ petition was filed. The learned Single Judge dismissed the writ petition, relying on a reported decision of this Court in Shamna Vs. State of Kerala, . The said decision was affirmed by the Division Bench of this Court in W.A. No. 1000/2006.

2. The learned Counsel for the Appellants submitted that the said decision was concerning appointment by transfer from the post of HSST (Junior) to the post of HSST. In this case, the appointment is from the High School Assistants and therefore, the said decision can have no application, it is contended.

3. The definition of a member of a service is contained in Rule 2(9) of Part I of the Kerala State and Subordinate Services Rules, 1958, which reads as follows:

2(9): "Member of a Service" means a person who has been appointed to that service and who has not retired or resigned, been removed or dismissed, been substantively transferred or reduced to Anr. service, or been discharged otherwise than for want of a vacancy. He may be a probationer, an approved probationer or a full member of that service.

Probationer is defined in Rule 2(10), as follows:

2(10): "Probationer" in a service means a member of that service who has not completed his probation.

Approved probationer is defined in Rule 2(3), in the following manner:

2(3): "Approved probationer" in a service, class or category means a member of that service, class or category who has satisfactorily completed his probation and awaits appointment as a full member of such service, class or category.

Full member is defined in Rule 2(7), as follows:

2(7): "Full member" of a service means a member of that service who has been appointed substantively to a permanent post borne on the cadre thereof.

4. When an approved probationer is appointed to a substantive vacancy in a cadre post, he becomes a full member. The relevant rule is Rule 24 of K.S. and S.S.R. which reads as follows:

24. Appointment of full members.-(a) Subject to the provisions of Rule 8 an approved probationer shall be appointed to be a full member of the service in the class or category for which he was selected, at the earliest possible opportunity, in any substantive vacancy which may exist or arise in the permanent cadre of such class or category and if such vacancy existed from a date previous to the issue of the order of appointment, he may be so appointed with retrospective effect from the date or, as the case may be, from any subsequent date from which he was continuously on duty as a member of the service in such class or category or in a higher class or category:

Provided that where more than one approved probationer is available for such appointment as full member, the seniormost approved probationer on the date of vacancy shall be appointed:

Provided that notwithstanding anything contained in this sub-rule, a candidate who is recruited direct to a post in any service, class, category or grade reserved for members of Scheduled Caste and Scheduled Tribes shall, on satisfactory completion of probation, be appointed to any substantive vacancy which may exist in the permanent cadre of such service, class, category or grade, or if no such vacancy exists, to the first such vacancy which may arise after the satisfactory completion of probation.

(b) Where appointment to any service, class or category is according to rules normally both by direct recruitment and by transfer, vacancies against which

persons have been recruited direct shall be regarded as a distinct group, while all other vacancies shall be regarded as Anr. distinct group, and appointment of full members in accordance with Sub-rule (a) shall be made separately in each of these groups.

5. Rule 3(2) of the Special Rules for The Kerala Higher Secondary Education State Service prescribes the method of appointment to the post of HSST as follows:

3. Appointment-Appointment to the categories shall be made as follows.

(1) ...

(2) Higher Secondary School Teacher:

(i) By transfer from Higher Secondary School Teacher (Junior) in the subject concerned.

(ii) In the absence of qualified hands under Clause (1) above, the vacancies shall be apportioned in the ratio of 1:3 between appointment by transfer and direct recruitment as detailed below:

(1) (a) By transfer from High School Assistants included in the General Education Subordinate Service who possess the requisite qualification in the subject concerned.

(b) In the absence of qualified persons under item (a) above, by transfer from qualified Upper Primary School Assistants/Lower Primary School Assistants included in the General Education Subordinate Service who possess the requisite qualification in the subject concerned.

(2) By direct recruitment.

6. The above Rule would show that in the absence of qualified HSST (Junior) in the concerned subject, High School Assistants in the concerned subject are eligible for appointment by transfer in the ratio of 1:3 between appointment by transfer and direct recruitment. So, going by the definition of "recruitment by transfer" only a full member or an approved probationer is eligible to be considered for the same. The Appellants/Petitioners being admittedly probationers, they are ineligible to be considered for appointment, as per the Special Rules. The Special Rules Form Part III of K.S. and S.S.R. as evident from Rule 2 of Part II thereof, which reads as follows:

2. Relation to the Special Rules.-If any provision in the General Rules contained in the Part is repugnant to a provision in the Special Rules applicable to any particular service contained in Part III, the latter shall, in respect of that service, prevail over the provision in the General Rules in this Part.

So, the stipulations contained in the Special Rules have to be read in the light of the provisions in the General Rules. If there is no provision concerning a matter in the Special Rules, the provisions in the General Rules will apply. As per the

General Rules in Part II of the K.S. and S.S.R. only an approved probationer can be appointed by transfer. Therefore, we find nothing wrong with Ext. P-16. Accordingly, the appeal fails and it is dismissed.