
(2001) 06 KL CK 0031
In the High Court Of Kerala
Case No : O.P.No. 6241 of 2001

Mary	Vs	APPELLANT
A.E.O.		RESPONDENT

Date of Decision : 13-06-2001

Acts Referred:

Kerala Education Rules, 1959 — Rule 2, 51A, 92

Citation : (2001) 3 ILR (Ker) 428

Hon'ble Judges : K.A. Abdul Gafoor, J

Bench : Single Bench

Advocate : K. Balakrishnan, I. Sheeladevi, N. Sudhadevi, Reji Ramachandran and R. Renjith, for the Appellant; T.P. Sajan, Government Pleader and V.A. Mohammed, for the Respondent

Final Decision : Allowed

Judgement

K.A. Abdul Gafoor, J.—There is no dispute that the petitioner has approved service as a teacher in V.S.U.P. School, Vellarakkad. That was during the period from 27.1.1984 to 5.4.1984 as revealed by Ext. P1. The school was transferred to the present Manager, the second respondent. There arose a short term vacancy in the very same category on 17.2.2000. That is also not disputed. Another teacher was appointed against that vacancy, which terminated on 30.3.2000. A permanent vacancy again arose in the very same school which is now under the management of the second respondent, on 5.6.2000. Third respondent is preferred to that post by the second respondent, Manager. The petitioner resisted that appointment raising her claim under R. 51A Chapter XIV A of KER. Her claim was upheld in Ext. P5 by the District Education Officer. The Manager filed an appeal before the District Education Officer. Ext. P5 is reversed by Ext. P8 holding that the petitioner cannot have any claim under R. 51A to be honoured by the second respondent. Therefore Ext. P8 is under challenge at the instance of the petitioner.

2. It is contended by the petitioner that Rule 51A was amended on 22.6.1998

with retrospective effect from 1.1.1985, to the effect that R. 51A claim would subsist even if the school has been transferred from one Manager to another. Therefore, Ext. P8 is bad, he submits. It is submitted by the respondents that the petitioner had such approved service before such amendment in the school which was transferred to the second respondent. In such circumstances, the petitioner cannot have a claim for appointment against any future vacancy under R. 51A. It was further contended by them that when short term vacancy arose on 19.1.2000 the petitioner, who is living in the neighbourhood of the school, had not put forth her claim for appointment. That vacancy was therefore, utilised to give appointment to the third respondent. Therefore, the petitioner's claim has been forfeited. It is further contended that the petitioner had made a relinquishment letter duly witnessed by two members of the staff of the school and the then Assistant Educational Officer, Kunnankulam. Therefore the claim if any, which had already been relinquished, cannot be raised further. Therefore, Ext. P8 is perfectly in order.

3. The amendment brought to R. 51A Chapter XIV A KER on 22.6.1998 with effect from 1.1.1985 as mentioned above is to widen the scope of R. 51A and to include the claims of teachers who had been working in the schools which were later transferred from one management to another. The claim under R. 51A is for appointment to future vacancies. Admittedly a short term vacancy arose on 19.1.2000 and the permanent vacancy arose on 5.6.2000, both subsequent to the amendment dated 22.6.1998. At that time, as per the rules in existence, the petitioner did have a claim for appointment notwithstanding the transfer of management. Therefore against such a future vacancy, the petitioner will have a claim on the basis of the amendment, based on her appointment as approved, as per Ext. P1 during 1984. The contention raised by the department and the Manager is not therefore in consonance with the purport of the amendment to Rs. 51A. Moreover, the vacancy had arisen after such amendment. Therefore that shall be deemed as the future vacancies subsequent to the amendment. There is no reason to exclude the petitioner from raising a claim against such future vacancies.

4. There is also no merits in the contention by the respondents that the petitioner had relinquished her claim. Relinquishment of a claim arises when she will have to be considered for future appointment. Before the occurrence of a future vacancy, a retrenched teacher cannot have a claim to be honoured. There is no question of any advance relinquishment of a right that may or may not occur, as contended by the respondents. Any letter executed by the petitioner and counter signed by the Educational Officer at a time when there was no certainty or even a remote possibility of occurrence of a future vacancy, cannot have any validity. It is the bounden duty of the Manager, under Note 2 to R. 51A, to issue appointment order to the claimant directing him/her to join duty. If the teacher does not join duty the manager has to give a notice. In case the teacher does not report for duty in spite of that notice, then alone the Manager can appoint any person other than the claimant. Only if the teacher fails to report for

duty after issuance of such notice that his/her claim shall stand forfeited. That is the statutory procedure laid down under Note 2 to the said Rule. Unless the Manager did follow such procedure, none can contend that the petitioner had forfeited her claim. Therefore, there is no basis for the contention based on the alleged relinquishment letter.

5. The Manager also does not have a case before me that the petitioner had been issued with appointment order or the notice as contemplated under Note 2, when a short term vacancy arose on 19.1.2000, to which the third respondent was preferred by the Manager. Any appointment made by the Manager without following the procedure made mention of under R. 2 of R. 51A, will not result in a forfeiture of the claim of the petitioner. The petition is not bound to enquire every day, coming to the door step of the Manager, as to whether any vacancy had arisen in any of the schools under him. It is to avoid such situation that Note 2 had been introduced, making the Manager liable to issue appointment order to the claimant and a notice thereafter to the teacher to ensure that claim under R. 51A is honoured. Therefore the contention that the petitioner did not raise any claim in respect of temporary vacancy that had arisen on 19.1.2000 also not have any merit.

6. Thus, all the three grounds on which Ext. P8 is based are unsustainable.

7. It is submitted by the counsel for the third respondent that the petitioner did not file a revision against Ext. P8. The petitioner ought to have availed of a statutory remedy as available under R. 92 of the Chapter XIV A KER. That does not disable this Court in considering the legality or otherwise, when all the parties are now before this Court. Moreover consideration of Ext. P8 is not based on the law as already discussed above. In such circumstances, there is no reason for regrating the parties to the statuary authority to waste the precious time of the statutory authority and of the parties once again.

Ext. P8 is accordingly quashed and Original Petition allowed. Consequences follow. No costs.