
(1991) 06 KL CK 0016
In the High Court Of Kerala
Case No : W.A. No. 56 of 1991

Mary Thomas

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 26-06-1991

Acts Referred:

Kerala Education Rules, 1959 — Rule 1, 2, 2(2), 2(3), 6B

Citation : (1991) 06 KL CK 0016

Hon'ble Judges : U.L. Bhat, Acting C.J.; P. Krishnamoorthy, J

Bench : Division Bench

Advocate : Anil Sivaraman, for the Appellant; V. Ramachanran, Government Pleader, for the Respondent

Judgement

U.L. Bhat, A.C.J.

1. M.J. Aleykutty was working as Sewing Teacher (Specialist Teacher) in the O.M.L.P. School, Upputhara. In another school under the same management, namely, St. Ephrem's L.P. School, Cheerakadavu a Sewing Teacher retired. M.J. Aleykutty was transferred to that school in the retirement vacancy and in the vacancy caused by the transfer the manager appointed the Appellant as Sewing Teacher on 20th June 1984. The statutory authority, namely, the third Respondent declined to approve the appointment. Ultimately the Appellant came to this Court in O.P. 6977/88. The court disposed of the petition enabling her to file a revision before the Government. She filed a revision before the Government and that has been dismissed under Ext. P-6. Challenging this order she filed O.P. 5192/91 and that has been dismissed by a learned Single Judge. Hence this appeal.

2. We have heard learned Government Pleader also.

3. The only ground on which approval for the appointment of the Appellant in the transferred vacancy has been denied is based on Rule 2(3) of Chapter XXIII of the Kerala Education Rules. According to learned Counsel for the Appellant, the

learned Single Judge did not correctly appreciate the purport of the Rule.

4. Chapter XXIII deals with fixation of strength of teachers in departmental and aided schools. Rule 1 deals with the strength of teaching staff of Lower Primary schools and lays down the principle on which strength is to be fixed. Rule 1(c) contemplates sanction of posts of Specialist Teachers. The basis on which the number of Specialist Teachers is to be fixed is laid down in Rule 2 which states that subject to availability of funds, the number of Specialist Teachers that may be appointed in Lower Primary Schools shall be as follows:

(i) a Music Teacher or a Sewing Mistress will be allowed to a Lower Primary School having a total strength of 200 or more girl pupils,

(ii) a Music Teacher and a Sewing Teacher will be allowed to a Lower Primary School where the strength of the girl pupils is 400 or above,

* * *

(v) as far as possible combined posts of music and sewing teachers will be created.

Sub-rule (2) states that "the number of Specialist Teachers who may be appointed in a district shall be fixed by the Director and intimated to the District Educational Officer every year". It is Sub-rule (3) which is relevant for our purpose. It reads thus:

Notwithstanding anything contained in the above rules, no post of Specialist Teacher shall be created in any Lower Primary School or Lower Primary Section of Upper Primary or High Schools;

Provided that posts already Sanctioned against which Specialist Teachers are appointed and approved may continue as such.

While according to the Appellant the post shall continue notwithstanding the change of incumbency, according to learned Government Pleader, the post shall continue as long as the incumbent teacher appointed and approved on the day when the Rule came into force continues to occupy the post and when the teacher ceases to occupy the post on account of retirement, transfer or the like, the post ceases to exist and cannot survive.

5. Learned Counsel for the Appellant invited our attention to parallel provision regarding Upper Primary Schools contained in Rule 6B(1) and the proviso thereto. This Rule contains a ban on creation of posts of Specialist Teachers in Upper Primary Schools for a period of six years from the school year 1969-70. There is a proviso which states that "posts sanctioned before 1969-70 against which Specialist Teachers and Craft Teachers are appointed and approved and such teachers who are qualified according to the rules then in force may however continue as such". While one side argued that the language of the proviso would indicate that the proviso protects only the incumbents the other side would contend that it is a redundancy.

6. There can be no controversy regarding the meaning of the proviso in Rule 6B(1). That has been considered in two decisions, namely, *Saroja v. A.E.O., Pattambi* ILR 1987 Ker 10 and *Krishnankutty v. Commissioner and Secretary to Government* 1988 (1) KLT 913. There can be no doubt that by virtue of the proviso to Rule 6B(1) the post continues only as long as the then existing incumbent occupies the post and once the incumbent ceases to so occupy the post it shall not continue.

7. *Krishnankutty's* case 1988 (1) KLT 913 is decided by a Division Bench of this Court. The case related to the appointment of a Specialist Teacher in an Upper Primary School governed by Rule 6B(1). The attention of their Lordships of the Division Bench was invited to the parallel provisions in Rule 2(3) and an attempt was made to draw a distinction between the two Rules. The Division Bench repelled the contention that there is any real dissimilarity between the two Rules and in the course of discussion observed:

The protection under Rule 2(3) is only to continue a sanctioned post when there is a teacher appointed and approved for the post. The post does not continue when the teacher leaves the post. Similarly under the proviso to Rule 6B, the protection is to the teachers who were holding the posts of specialist teachers sanctioned before 1969-70 and not to the posts which they were occupying.

On a consideration of the Rule 2(3) and the proviso thereto we are inclined to agree with the above view which certainly is a possible view. If that be so, the learned Single Judge was right in holding that the post to which the Appellant had been appointed having become vacant on the transfer of the incumbent to a post in another school under the same management, the post to which the Appellant had been appointed must be treated as having ceased to exist and the Appellant could not have been lawfully appointed in the post.

We, therefore, decline to interfere and accordingly dismiss the appeal.