
(2014) 10 KL CK 0225

In the High Court Of Kerala

Case No : W.P. (C). Nos. 33556 of 2007 (T) and 14868 of 2009-C

M.N. Sheena

APPELLANT

Vs

The State of Kerala

RESPONDENT

Date of Decision : 10-10-2014

Acts Referred:

Kerala Education Act, 1958 — Section 7, 7(2)

Citation : (2014) 10 KL CK 0225

Hon'ble Judges : P.V. Asha, J

Bench : Single Bench

Advocate : V.A. Muhammed and K.E. Hamza, Advocate for the Appellant; Gikku Jacob, Government Pleader, Advocate for the Respondent

Judgement

P.V. Asha, J.—Petitioners were appointed as Upper Primary School Assistants (hereinafter referred to as UPSAs) in an aided school managed by the sixth respondent. Both of them are graduates with B.Ed, appointed as UPSAs after reverting the incumbent UPSAs as Lower Primary School Assistants (hereinafter referred to as LPS A), against open vacancies in LP School, which arose on retirement. As common questions arise in these cases, I am disposing of the same together.

2. The case of the petitioner in W.P(c) No. 14868/2009 is as follows: A vacancy of LPSA arose in the school managed by the sixth respondent with effect from 1.6.2005, consequent to a retirement. The manager of the school reverted Smt. Geetha, who was working as UPSA and posted her as LPSA against the retirement vacancy. In the resultant vacancy he appointed the petitioner as UPSA with effect from 27.6.2005, as per Exhibit P1. The Assistant Educational Officer, Kodungalloor approved her appointment as per endorsement dated 6.6.2006 in Exhibit-P1, with effect from the date of appointment. The audit team under the Deputy Director of Education, Thrissur, when conducted audit for the period from 1.04.2006 to 31.5.2007, raised objections against the appointment of petitioner. As per Exhibit P2 letter dated 4.3.2008, the Assistant Educational Officer

forwarded the relevant extract of the audit objection (produced as Exhibit P3) and directed the Headmaster of the school to rectify the defects and to recover excess amount drawn. The objection raised in the audit was that when the vacancy arose in LP School, the action of the manager in appointing a teacher in the UP section after creating a vacancy of UPSA by reverting the incumbent therein as LPSA, was not permissible; the vacancy in LP School should have been filled up by a person with the qualification of TTC; but the manager filled up the vacancy by reverting Smt. Geetha, who is a graduate with B.Ed. and moreover the duties attached to the posts of UPSAs and LPSAs are different.

3. On coming to know about the objection raised in the audit, the petitioner approached the Deputy Director of Education, Thrissur, submitting Exhibit P4 representation, requesting to withdraw the objections and to regularise her appointment. While so the Assistant Educational Officer Kodungalloor, issued Exhibit P5 letter dated 28.11.2008 directing the Headmaster to withhold the salary and other monetary benefits of the petitioner. At that stage, after submitting Exhibit P6 representation to the Deputy Director, petitioner approached this Court filing WPC No. 36294/2008, which was disposed of by Exhibit P7 judgment directing the Deputy Director-third respondent herein, to consider and pass orders on the representation with notice to her and the manager. The third respondent, thereupon issued Exhibit P9 order on 24.1.2009 rejecting the request of the petitioner, saying that petitioner was appointed after shifting Smt. Geetha to the post of LPSA against the retirement vacancy of Smt. Vanaja, LPSA and as per circular No. 35528/J5/04/91 dated 11.10.2002 shifting of a UPSA even if appointed prior to 8.6.2000, as LPSA could not be allowed. The contention raised by the petitioner as well as manager that shifting of Smt. Geetha from the post of UPSA to that of LPSA was permissible since her initial appointment as UPSA was on 1.6.1992 i.e. prior to 8.6.2000, was rejected in the light of the circular dated 11.10.02 and saying that the duties attached to these posts are different in nature and both the posts are in different categories. Petitioner thereupon approached the Director of Public Instructions, by submitting Exhibit P10 representation, pointing out that several such transfers/shifting were made in several other schools and those appointments were approved. She also pointed out that TTC was insisted for appointment as LPSA only in the case of appointments after 8.6.2000 and amendment in KER insisting TTC for transfer of UPSAs as LPSAs was introduced only from 26.6.2007 and therefore her appointment was liable to be regularised. The second respondent, rejected the representation by issuing Exhibit P13 order on 30.4.2009, rejecting the contentions raised by the teacher and approving the stand of the educational officers. The second respondent further granted permission to the AEO to cancel the approval and appointment of the petitioner with effect from 27.6.2005.

4. Petitioner thereupon has approached this Court challenging the orders Exts. P3, P5, P9 and P13, praying for a declaration that her appointment is valid and for consequential directions to grant her salary and all other benefit.

5. In WPC 33556/2007, the petitioner was appointed in the same school as UPSA with effect from 8.9.2004 in the vacancy of Smt. O.R. Isha, UPSA reverted as LPSA, when a vacancy arose in the LP School on 1.6.2004, on retirement of an LPSA. In this case, the Assistant Educational Officer did not approve her appointment. Manager filed appeal before the District Educational Officer and the same was dismissed as per Exhibit P2 order dated 3.4.2006 on the ground that vacancy arose in the post of LPSA against which appointments are to be made by TTC holders and that the reversion effected by the manager in the middle of the academic year was not in order. The Manager took up the matter before the Director of Public Instructions, who rejected the same as per Exhibit P3 order dated 8.11.2006. The manager thereupon approached the Government and Government rejected the revision petition as per Exhibit P7 order, upholding the decisions of the subordinate authorities. The petitioner has thereupon approached this Court challenging the orders Exhibit P1, P2, P3 and P4 and praying for a direction to the fourth respondent to approve her appointment as UPSA with effect from 8.9.2004 and seeking consequential benefits.

6. The respondents have filed counter affidavits in both the cases refuting the contentions raised by the petitioners and stating that the appointment made by the manager by creating a vacancy in U.P. School, after reverting the incumbent UPSA to the post of LPSA, when the vacancy actually arose in LP section, was illegal. According to them the order issued in 2007 did not approve the illegal appointments made earlier; on the other hand it only clarifies the position which existed already.

7. I heard the learned counsel for the petitioners and the learned Government Pleader appearing for the official respondents.

8. Relying on the orders Exts. P9, P11 and P12, P14 and the judgments Exts. P15 and P16, Sri Varghese, the learned Counsel for the petitioner in W.P.(C) 14868/2009 argued that appointment of the petitioner was not liable to be interfered with by the educational authorities, in so far as the teachers who were shifted to the post of LPSAs were holding the post of UPSAs prior to 8-6-2000 and there was no prohibition for their shifting/reversion to the post of LPSA even if they do not have T.T.C. The Learned Counsel for the petitioner in W.P.(C) No. 33556/2009, relied on the orders Exts. P5, P6, P7 and P8 in support of his contention that the appointment of petitioner therein was liable to be approved. He has got a further case of discrimination saying that the appointment of another teacher in the same school (petitioner in W.P.(C) 14868/2009) was approved in similar circumstances.

9. According to the petitioners there is nothing illegal in shifting a UPSA to the post of LPSA, especially when the initial appointment of the UPSA was prior to 8.6.2000, when B.Ed. holders could be appointed as LPSAs. According to them the order insisting TTC as a condition precedent for transfer, was not relevant in the matter.

10. In this context it is necessary to have a look at the orders relied on by the petitioners in both the cases. Ext. P11 - Order No. F2/88461/07/DPI/K. Dis. dated 7.6.08 is an order issued by the Additional Director of Public Instructions in respect of appointment of one Smt. Lissa as U.P.S.A. against the vacancy of Smt. Swapna Sathyan, U.P.S.A. shifted to the post of L.P.S.A., against her retirement vacancy. In that case it was found that Smt. Swapna Sathyan, though was working as U.P.S.A., was having T.T.C. as well as B.Ed. In those circumstances, the D.P.I. found that shifting a U.P.S.A. with T.T.C. cannot be said to be contrary to Rules. Ext. P12 is the letter issued by the Government letter No. 17607/J3/07/G.Edn. dated 26.06.07, in which Government addressed the Director of Public Instructions requesting to forward proposals to incorporate provisions in K.E.R. to the effect that T.T.C. was mandatory for shifting of teachers from the post of U.P.S.A. to the post of L.P.S.A., irrespective of the fact that appointment took place before or after 08.06.2000. It is seen that the letter has been issued on the basis of a proposal placed by the Director of Public Instructions, in view of the fact that the Managers have been shifting B.Ed. Holders working as U.P.S.As. prior to 08.06.2000 to the L.P. Sections, in order to accommodate other B.Ed. Holders in U.P. Sections and that such shifting are against the spirit of the Government decision in the matter. Ext. P12 Government Order cannot be interpreted to mean that shifting of U.P.S.As. with B.Ed. Qualification was permissible till Government issued the letter Ext. P12 on 26.06.2007.

11. On a perusal of the orders Exts. P5 to P9 in W.P(c) No. 33556 of 2007, it is seen that none of these orders permit shifting of U.P.S.As. as L.P.S.As. In Ext. P5 - letter No. 26327/J3/2000/G.Edn. dt. 26.6.2000, the Government informed the D.P.I. that Rules 3(1) and 4(1) of Chapter XXXI K.E.R. in such a way that only T.T.C. holders are eligible to get appointment as L.P.S.As. and B.Ed. holders can be considered for appointment to the post of U.P.S.As. along with T.T.C. holders. It was further made clear that B.Ed. holders are not eligible to be appointed as L.P. School Assistants. However, it was clarified that the amendment will not affect the claims under Rule 51A of Chapter XIV A KER secured before 8.6.2000, the date of amendment. In Ext. P6 - Circular No. 41247/J3/2000/G.Edn. Dated 20.09.2000, the Government clarified that the amendments effected in respect of the qualification to the post of L.P.S.As./U.P.S.As. will not be applicable to the appointments under Rule 51B of Chapter XIVA KER, in the case of those who have acquired their claims prior to 08.06.2000. In Ext. P7 Government letter No. 37431/J3/2000/G.Edn. dated 09.10.2000, the Government informed that the clarification issued in Ext. P6 letter will not stand against the statutory claims under Rule 51A of Chapter XIV A KER. In Ext. P8 Circular (No. H3/67408/99/DPI dt. 15.11.2000), the D.P.I. clarified that the amendments effected to Rules 3 and 4 in Chapter XXXI KER will not affect the claimants under Rule 51A or 51B of Chapter XIV A who acquired the claim before 08.06.2000. Neither the petitioners nor the teachers shifted to L.P. Section are claimants under 51A or 51B.

12. None of these orders provide for making appointments of U.P. School Assistants, when vacancies arise in L.P. Sections. The vacancies under the 6th

respondent school arose in the post of L.P. School Assistants, much after 08.06.2000. Those vacancies were to be filled up by qualified hands with T.T.C., in the absence of any claimant under Rule 51A or 51B. But the Manager shifted the U.P. School Assistants who did not have even T.T.C., to the post of L.P. School Assistants and filled up the resultant vacancies of U.P.S.As. by appointing the petitioners. In both the cases, the case of the Manager appears to be that the U.P.S.As. who were shifted as L.P.S.As. were initially appointed to the post of U.P.S.As. prior to 08.06.2000 and hence their transfer/shifting/reversion is permissible.

13. The petitioners have relied on Exts. P15 and P16 judgment of this Court. But I find that the teacher who was shifted therein was initially working as L.P.S.A. and the circumstances which arose in that case were entirely different.

14. I find that the issue regarding the shifting of U.P. School Assistants to L.P. School Assistants is covered by a judgment of this Court in W.P(c) No. 25667 of 2010, wherein this Court after an elaborate consideration of various provisions in K.E.R. as well as the Government Orders including those relied on by the petitioners herein, held that shifting of U.P.S.As. as L.P.S.As. is not permissible. The relevant portion of the judgment is as follows:

"15. The posts of UPSA and LPSA are different in category and the nature of duties are different. This question was examined in Mary George's case (1999 (3) KLT 912). The issue was examined while considering the right of a UPSA for appointment as LPSA under Rule 51A of Chapter XIV-A K.E.R. This Court held that both these categories of teachers are not one and the same. They are different in nature and duties. xxxx xxxx xxxx xxxx xxxx xxxx xxx xxxx xxxx xxxx xxxx xxxxxxxx

18. The next question is whether in the absence of a prohibition in the rule the Manager can shift a teacher working as UPSA to the L.P. Section. Herein, evidently the vacancy arose in the cadre of LPSA on 1.6.2009. Section 7 of the Act and Rule 9 of Chapter III are relevant in this context. Section 7(2) provides that the Manager shall be responsible for the conduct of the school in accordance with the provisions of the Act and the Rules thereunder. The position is evident from Rule 9 of Chapter III of the Rules which deals with the duties and powers of the Managers of Aided schools. Sub-rule (1) provides as follows:

"The Manager shall be responsible for the conduct of the school strictly in accordance with the provisions of the Kerala Education 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 issued thereunder."

Therefore, the Manager will have to conduct the school strictly in accordance with the provisions of the Act and orders issued from time to time by the Government and the department. He cannot assume certain powers by himself other than that is conferred by the Act and Rules as Manager of the school. Recognition of

such a wide power dehors the express power conferred on the Manager will go clearly against the provisions of the Act, Rules and the object underlining the provisions of the Act and Rules. Such unbridled power if recognized, the Manager can play havoc in the management of the school. Therefore, the contention raised by the counsel for the petitioner Manager that in the absence of a prohibition, the Manager can order shifting of a UPSA as LPSA, cannot be accepted."

15. It is seen that the Writ Appeal Nos. 25 of 2011 and 26 of 2011 filed against W.P(c) Nos. 25667 of 2010 and 27985/2010 (supra) are dismissed by judgment dated 13.01.2011.

16. In the above circumstances, I find that the impugned orders issued by the educational authorities are not liable to be interfered with.

17. In the event of any subsequent developments occurred in the school, it is up to the petitioners to approach the Government for appropriate relief.

18. It is seen that the petitioner in W.P(c) No. 14868 of 2009 was being paid salary initially on the basis of the approval granted by the educational authorities and thereafter on the basis of the orders of this Court. Therefore, the respondent shall not take any steps to recover the same from the petitioner.

These Writ Petitions are accordingly dismissed.