

(2024) 04 KL CK 0216

In the High Court Of Kerala

Case No : Writ Petition (C) Nos.1859, 2499 Of 2018

Muhammed Basheer K

APPELLANT

Vs

Manager IKT Higher Secondary School

RESPONDENT

Date of Decision : 12-04-2024

Acts Referred:

Citation : (2024) 04 KL CK 0216

Hon'ble Judges : Easwaran S, J

Bench : Single Bench

Advocate : Dr.George Abraham, C.Leena, Joby D Joseph, Bimal.K.Nath

Final Decision : Dismissed

Judgement

Easwaran S, J

1. The facts of these two writ petitions are interconnected and intertwined. In WP(C) No.1859/2018, an unsuccessful teacher, whose appointment as Higher Secondary School Teacher ("HSST", for short) has been declined by the Educational Authorities and confirmed by the Government, is before this Court. The reasons perhaps may be little strange. On the other hand, WP(C) No.2499/2018 has been filed by the rival claimant, who claims that she being the senior most teacher, is entitled to be appointed as HSST by transfer in the place of Sri.Mohammed Basheer, the petitioner in WP(C) No.1859/2018. For the sake of brevity, the facts in WP(C) No.1859/2018 will be stated.

2. Sri.Mohammed Basheer K. and Smt.Jisha John are both working as high school teachers in IKT Higher Secondary School, Cherukulmba, Vattaloor, Malappuram District. On 20.6.2015, the Manager, who is the 1st respondent, invited applications for filling up of the post of HSST, consequent to the retirement of Smt.Alice Joseph. The said notice was exhibited in the notice board. Later, Sri.Mohammed Basheer claims that the notice dated 1.7.2015 proposing to conduct an interview on 5.7.2015 was issued to him as well as Smt.Jisha John as per Ext.P3. On 5.7.2015 at 10.00 a.m., a selection committee

interviewed and minutes was recorded regarding the selection process. Smt.Jisha John did not participate in the selection process. However, later Smt.Jisha John seems to have filed a complaint on 6.1.2016 to the Educational Authorities, which started the long drawn litigation between the parties. Based on the claim raised by Smt.Jisha John, the Educational Authorities declined to grant approval to the petitioner. This was by Ext.P9 order dated 25.5.2017. Aggrieved by the same, a revision was filed before the 3rd respondent, which was rejected by Ext.P13 order dated 5.1.2018, which is impugned in the writ petition.

3. Before entering into the discussion relating to the sustainability of the orders impugned, this Court will refer to the bare necessary facts in WP(C) No.2499/2018 also.

4. In the writ petition filed by Smt.Jisha John, the relief sought is for a direction to respondents 3 and 4, who are the District Educational Officer and the Manager, to appoint the petitioner to the post of HSST with effect from 31.5.2015. An additional relief in the form of a writ of mandamus to direct respondents 2 to 5 to consider and pass orders on Exts.P5 to P8 representations, respectively, is also sought for.

5. When the above writ petition came up for consideration before another Bench of this Court on 23.2.2023, there was a direction to the learned Government Pleader to produce the entire files relating to the appointment of Sri.Muhammed Basheer, which has been placed before this Court for perusal.

6. Before going to the rival contentions, it is suffice to note that the order declining approval of appointment of Sri.Muhammed Basheer is basically confined to three points.

1. The Manager did not notify the vacancy of HSST to all eligible candidates;

2. The relinquishment stated to have been obtained by the Manager from Smt.Jisha John is vitiated, since the same has been obtained on a blank paper; and

3. Sri.Mohamed Basheer is junior to Smt.Jisha John and therefore not entitled to be appointed as HSST.

7. It is also noted in Ext.P13 order produced in WP(C) No.1859/2018 that as per circular No.ET3/87201/96 dated 6.1.1997 of the Director of Public Instructions, certain procedures have been prescribed for obtaining relinquishment and, therefore, the Manager has not followed the said procedure and hence, the appointment cannot be approved. The 3rd respondent also found that the Manager has neither intimated the vacancy nor called upon qualified hands for appointment to the post of HSST (English) in the School. The 3rd respondent proceeded to hold that any documents produced to prove that intimation has been given to rightful claimants has been created for the limited purpose of defeating the claims of qualified teachers.

8. I have heard Dr.George Abraham, learned counsel for the petitioner in WP(C) No.1859/2018; Sri.Bimal K.Nath, learned Senior Government Pleader; Adv.Pramod J.Dev, learned counsel appearing for Smt.Jisha John, the petitioner in WP(C) No.2499/2018 & the 4th respondent in WP(C) No.1859/2018 and Smt.Leena C., learned counsel for the 1st respondent-Manager.

9. This Court has perused the files and the findings of this Court based on the recordings in the files will be rendered in the later part of the judgment.

10. The short point for consideration before this Court is as to whether other eligible teachers have been put on notice about the proposal to conduct interview on 5.7.2015 by the Manager. It is an admitted fact that the Government nominee was nominated for being a member of the selection committee, which was scheduled to conduct the interview. The post of HSST is a promotion post and appointment is by selection from the eligible candidates. Therefore, admittedly, selection process must take place before the appointment. In the present case, the parties are not at dispute regarding such process being undertaken. But the parties are at variance about the act of the Manager in properly notifying the selection process.

11. Therefore, before considering the sustainability of the orders impugned, this Court will have to necessarily see as to whether the notification regarding the selection process was proper or not.

12. Admittedly, there is no procedure/ guidelines fixed by the Educational Authorities, nor under the Educational Rules for the purpose of undertaking such selection process. When this query was posed before the parties, the learned counsel appearing for Sri.Mohammed Basheer, Dr.George Abraham, brought to the notice of this Court an unreported judgment of a Single Bench of this Court in WP(C) No.16786/2004 [K.R.Jeeji v. State of Kerala]. The learned counsel further refers to paragraph No.10 of the said judgment in which it is categorically held that the Principal and the Manager had a duty to duly notify such vacancy for information of the teachers, which could be done by publishing a notice regarding the occurrence of the vacancy and inviting application, appropriately or by circulating such a notice among the teachers and obtaining acknowledgment of having circulated such a notice. This court is in respectful agreement with the procedure laid down in K.R.Jeeji(supra) except to add that it would be incumbent on the Managers to issue such notice by registered post notifying the vacancies for selection.

13. Applying the above principles, this Court has to examine whether there was proper circulation of notice. The original files produced before this court shows a letter dated 1.7.2015 signed by the parties on 2.7.2015 putting them on notice regarding the interview scheduled to be held on 5.7.2015. The said letter is produced as Ext.P3 in WP(C) No.1859 of 2018. It is to be noted that both parties have acknowledged the said letter on 2.7.2015. The aforesaid document led credence to the case of the petitioner and the Manager that despite having put

on notice Smt.Jisha John choose consciously not to appear before the selection committee and subjected herself to the selection process.

14. When confronted with this letter of acceptance of the notice regarding the date of interview for the selection process, the learned counsel Sri.Pramod J.Dev pointed out that the said letter was never signed by Smt.Jisha John. He reiterates that the relinquishment letter was not in proper form as rightly found by the Educational Authorities. Therefore, the learned counsel further contends based on the circular issued by the Director of Public Instructions as referred to in Ext.P13, that unless and until a relinquishment was obtained from a senior high school teacher, there is no sanctity to the selection process.

15. When rival contentions raised by the parties are assessed by this Court, it becomes clear that the findings has to be rendered on two issues:

(a) whether there is a proper circulation of notice regarding selection process?

(b) Whether the relinquishment letter is properly executed by Smt.Jisha John? If not, then on that sole ground whether the approval of Sri. Mohammed Basheer is liable to be rejected?

16. Smt. Jisha John raised her claim on 6.1.2016. A copy of the said claim is placed on record as Ext.P8. The original of Ext.P8 is also available in the file. When one peruses the entire letter given on 6.1.2016, it becomes explicitly clear that Smt.Jisha John had no quarrel about the notice of selection being circulated on her. Had Smt.Jisha John had any dispute on that she would have definitely raised a complaint at the first available instance. Further, it is to be noted that the complaint is after six months from the date of selection.

17. It may be noticed here that under Exhibit P9 and Exhibit P13 orders, the 2nd and 3rd respondents had come to the conclusion that since the relinquishment letter of Smt.Jisha John is not approved by the concerned District Education officer the appointment of Sri.Mohammed Basheer cannot be approved. On the other hand, it is the specific case of Smt.Jisha John that the relinquishment letter is not properly obtained. It is to be noted that Smt.Jisha John has not filed any criminal complaint against the Manager for having obtained the alleged relinquishment letter. Hence, admittedly parties are at variance in the way the relinquishment letter is obtained. Therefore, even if this Court is to find that the relinquishment letter of Smt.Jisha John is not properly obtained for want of approval of DEO, the question is whether the same by itself will invalidate the appointment of Sri.Mohammed Basheer. The answer should be in negative against Smt.Jisha John for the reasons discussed below.

18. In Geevarghese Vs State of Kerala [2000(3) KLT SN 31 C.No 37] this Court had an occasion to consider whether the approval of the junior teacher as Headmaster could be declined on the ground that there is variation in the relinquishment letter. It was thus held that if the senior had a complaint with regard to the appointment of junior incumbent as Headmaster, necessarily such

senior in service would be aware of it and would agitate against it by filing appeals as provided under Rule 44(2) and (3) XIV-A KER. Though the above decision was rendered in the context of Rule 44 of Chapter XIV-A KER, the principles governing the same equally applies to this case and it can be concluded safely that Smt.Jisha John had not filed any appeal against the appointment of Sri.Mohammed Basheer. Therefore, this Court is not prepared to accept the argument of Smt.Jisha John that merely because there is variance in the letter of relinquishment the appointment of Sri.Mohammed Basheer had to be declined.

19. It is pertinent to note that there is no explanation forthcoming from the side of the petitioner with regard to the reason as to why this Court should disown her signature in Ext.P3 letter. Both the petitioner, Sri.Mohammed Basheer, and the 4th respondent, Smt.Jisha John, were served with the notice on 2.7.2015. Admittedly, the petitioner, Sri.Mohammed Basheer, alone participated in the selection process.

20. When the complaint of Smt.Jisha John, the 4th respondent in WP(C) No 1859 of 2018 is carefully scrutinized, it does not reveal any allegation insofar as to the receipt of Ext.P3 letter of acknowledgment. It would also not be possible for this Court to conclude that the signature of Smt.Jisha John was utilized for the purpose of creating an acknowledgment because the files reveal that the letter dated 1.7.2015 is executed in the letterhead of IKT Higher Secondary School.

21. There is yet another reason for this Court to find against the sustainability of Exts.P9 and P13 orders. When Ext.P9 order is scanned carefully, one could see that the Deputy Director of Higher Secondary Education, after verification of the files found that there is no notice circulated to the eligible teachers about the selection process. Hence, he declined to approve the appointment of Sri. Mohammed Basheer. However, it is pertinent to note that there was no direction to appoint Smt.Jisha John. It is also profitable to note that the said order was not challenged by Smt.Jisha John, petitioner in WP(C) No.2499 of 2018 in revision. On a revision filed by the petitioner, Sri.Mohammed Basheer, the 3rd respondent rendered Ext.P13 order in which it is specifically found that "any documents produced to prove that intimation has been given to rightful claimants has been created for the limited purpose of defeating the claims of qualified teachers". It is no one's case that the said document was created. Much less, Smt.Jisha John also does not have such a case in Ext.P8. Had the position been otherwise, the first point of objection that would have been raised by the incumbent would have been the non-receipt of such notice regarding the date of convening of the selection process. Therefore, it is evidently clear that 3rd respondent mis directed itself in considering the entire issue at large. In fact, while exercising the revisional powers, the 3rd respondent could not have arrived at a conclusion on its own.

22. No doubt, the promotion to the post of HSST is by selection. There is no rule which prohibits the Manager from appointing an eligible person after the due

selection process. At the same time, no enabling provision has been brought to the notice of this Court, which mandates that unless a relinquishment letter is obtained from the senior incumbent, the Manager cannot appoint another eligible teacher, who has come out successful in the selection process. To accept otherwise, would necessarily put premium to a claim of an incumbent, who did not participate in the selection process. Such a principle is not envisaged in a case, where the promotion is based on a selection process. It is precisely the reason why this Court has concluded that even if the relinquishment letter is not approved by the Education officer, the same by itself will not be sufficient to sustain the claim of Smt.Jisha John. This is more so when, Smt.Jisha John had not staked her claim for promotion by participating in the interview. The finding on the creation of any document evidencing the service of notice regarding the selection process was rendered only when Ext.P13 order was passed.

23. There is yet another reason for this Court to hold against Ext.P13 order. The files produced before the Court specifically show that the Manager at the first point of time has raised an objection before the Regional Deputy Director of Higher Secondary Education, that both teachers have accepted and countersigned the notice on 2.7.2015. Unfortunately, no specific finding in this regard is rendered in Ext.P9 order. On a contrary, going against the facts, the Deputy Director of Higher Secondary Education has found that there is no evidence to show that the notice of interview was circulated. When this order is pitted against the order of the 3rd respondent, the consideration on the issue completely changed. The 3rd respondent on his own found, that the letter dated 1.7.2015 has been created for the purpose of defeating the claim of Smt.Jisha John, which this Court is not inclined to accept.

24. Accordingly, Exts.P9 and P13 orders in WP(C) No.1859/2018 are quashed and WP(C) No.1859/2018 is allowed. The 2nd respondent is directed to approve the appointment of Sri.Mohammed Basheer as HSST (English) and pass consequential orders within a period of one month from the date of receipt of a copy of this judgment and release consequential benefits within a further period of three months thereafter.

WP(C) No.2499/2018 is dismissed, in the light of the findings rendered by this Court in WP(C) No.1859/2018. No orders as to costs.