
(2021) 01 KL CK 0420

In the High Court Of Kerala

Case No : Writ Petition (C) No. 24117, 24520, 28966, 35144 Of 2019

Nirmal M And Ors

APPELLANT

Vs

State Of Kerala And Ors

RESPONDENT

Date of Decision : 19-01-2021

Acts Referred:

Citation : (2021) 01 KL CK 0420

Hon'ble Judges : Devan Ramachandran, J

Bench : Single Bench

Advocate : R.K. Muraleedharan, T.G. Rajendran, P.M. Manoj, R.Sudhish, M.Manju, T.G.Rajendran, S.P.Aravindakshan Pillay, N.Santha, K.A.Balan, V.Varghese, Peter Jose Christo, S.A.Anand, K.N.Remya, L.Annapoorana, Vishnu V.K, Abhirami K. Uday, Elvin Peter P.J, K.R.Ganesh, N.R.Reesha, T.S.Likhitha, George Abraham

Final Decision : Allowed

Judgement

1. I am considering these writ petitions together because the factual averments made therein are interlayered and the reliefs to be granted one will

depend upon the reliefs to be granted in the others; thus making it necessary that they be disposed of together.

2. The issues in these cases revolve around the appointments made by the Manager to the post of Higher Secondary School Teacher (HSST) and

Higher Secondary School Teacher (Jr) [HSST (Jr.)] in the Pantheerankavu Higher Secondary School.

3. The undisputed facts available from the pleadings on record are that 7 posts of HSST and 5 posts of HSST (Jr.) were sanctioned to the School in

question by the Government. As per Rule 4 of Chapter XXXII of the Kerala Education Rules ('KER' for short), as far as appointments to the

vacancies of HSST are concerned, it has to be made in the ratio of 1:3 between by-transfer appointees and direct recruitees; while in the case of

HSST (Jr.), 25% of the posts are to be filled by transfer of qualified High School Teachers.

4. It appears that the Manager of the School appointed Sri.Nirmal M. ? petitioner in W.P(C)No.24117 of 2019, into the first vacancy of HSST, along

with a person by name Sujith who is placed as Rank No.29 in the seniority list of teachers to the second vacancy and then appointed Smt.Leeshma

N.T. who is the petitioner in W.P.(C) No.28966/19, through direct recruitment to one among the four other vacancies.

5. This led to Smt.Jyothilakshmi N., who was working as a High School Teacher in Malayalam, to stake claim for being appointed by transfer to one

of the vacancies in HSST and HSST (Jr). Her contention was that since she is ranked No.20 in the combined seniority list of teachers, the

aforementioned Sri.Sujith ought not to have been appointed in the second vacancy of HSST; and that in the alternative, she ought to have been

appointed in the second vacancy available to the post of HSST (Jr).

6. Smt.Jyothilakshmi maintains that since she is senior to Sujith, she ought to have been appointed as HSST in preference to him; and in the alternative

that since there are five posts sanctioned in the category of HSST (Jr), two among them ought to have been filled up through by-transfer appointments

and thus that she was eligible to be appointed to the second such vacancy. She consequently contends that the appointment of Smt.Leeshma as HSST

(Jr) by the Manager was illegal and therefore, prays that it should be set aside.

7. It transpires that when Sri.Nirmal, Sri.Sujith, and Smt.Leeshma applied to the Educational Authorities for approval of their respective appointments,

they were denied the same on account of the afore claims made by Smt.Jyothilakshmi; and in the case of Nirmal, a further objection was raised that

he could not have been appointed as HSST since, at the time when the vacancy arose in the school, he had been deployed to a Government School.

Sri.Nirmal, of course, says that this objection against him is without basis because, even before the Selection Committee had interviewed him, he had

been redeployed to the School on 28.12.2017 and that, going by Rule 2 of Chapter XXIII of the KER, he was certainly eligible to be considered for a

by-transfer appointment since he continued to be on the Rolls of the same

Educational agency.

8. As far as Smt.Jyothilakshmi is concerned, the records reveal that she had been agitating her claim through the hierarchy of Educational Authorities

and that the Regional Deputy Director, Directorate of Higher Secondary Education (â??RDDâ? for short) issued an order dated 24.11.2018, a copy

of which is on record as Ext.P5 along with W.P.(C) No.35144/2019, wherein he held that 25% of the vacancies in HSST (Jr) had not been filled up by

the Manager, since only one among the said vacancies had been occupied by Sri.Sunilkumar and resultantly, ordered her appointment in the second

post, further directing the educational officer concerned to grant approval to it.

9. However, this order was challenged by the Manager by filing an appeal before the Deputy Director of General Education (Higher Secondary

Department) (for short 'Deputy Director'), who finally issued an order, bearing No.ACDB.1/141677/H.S.E./19 dated 03.12.2019, holding that

Smt.Jyothilakshmi is not entitled to be appointed as an HSST since, she being an H.S.A.(Malayalam), can be accommodated only against the vacancy

of HSST (Malayalam), which has not been sanctioned to the school yet. In addition, her claim for being appointed to the post of HSST (Jr) was also

rejected holding that since there are only five posts sanctioned to the School, 25% of it would be 1.25 and therefore, that it cannot be rounded to 2,

because in such event, the ratio would be enhanced to 40%, which is statutorily impermissible.

10. That said, it is uncontested that even before the afore order of the Deputy Director had been issued, the approval of Sri.Sujith had been ordered by

the RDD through his order dated 30.08.2019, which is produced as Ext.P14 in W.P.(C) 24520/2019.

11. Smt.Jyothilakshmi challenges the afore order of the Deputy Director dated 03.12.2019, in W.P.(C) 35144/2019; while Smt.Leeshma challenges the

earlier mentioned order of the RDD dated 24.11.2018, in W.P.(C) No.28966/2019 - but the said order or its challenge is no longer relevant at this

stage because this has now been superseded by the order of the Deputy Director. In addition, Sri.Nirmal has filed W.P.(C) 24117/2019 challenging

Ext.P9, whereby his approval has been rejected for the reasons already recorded above.

12. I will first deal with the contentions of Smt.Jyothilakshmi, since on it revolves

the respective entitlement of the other teachers.

13. Dr.George Abraham, learned counsel appearing for Smt.Jyothilakshmi in W.P. (C) No.35144/2019, argues that since his client was concededly

rank No.20 in the seniority list of teachers, Sri.Sujith ought not to have been preferred for being appointed as HSST. He then argues that since Rule 4

of Chapter XXXII of the KER provides that 25% of the posts in HSST (Jr) should be filled up by transfer, two such ought to have been earmarked for

the said purpose and that his client should have been appointed to the second of it.

14. In response, Sri.Elvin Peter P.J., learned counsel appearing for Smt.Leeshma; Sri.Peter Christy Jose for Sri.Sujith and Sri.T.G.Rajendran, learned

counsel appearing for the Manager of the school, argued in favour of the order of the Deputy Director impugned by Smt.Jyothilakshmi saying that she

cannot make any claim to the post of HSST since a vacancy in her subject, namely Malayalam has never been sanctioned, nor available. They added

that as far as the post of HSST (Jr) is concerned, there is only one vacancy that can be earmarked for a by-transfer appointment, since the KER

prescribes only 25% of the available posts to be so filled up under Rule 4 of Chapter XXXII thereof.

15. In fact, Sri.T.G.Rajendran further submitted that when the RDD had issued orders dated 24.11.2018, his client had taken up the matter in appeal

before the Deputy Director because the observations in the said order "that there was a second vacancy to accommodate a teacher through by-

transfer was without basis, since this will constitute a violation of the statutory provisions on account of the percentage being enhanced to 40%.

16. The learned counsel for the party respondents, therefore, prayed that W.P.(C) No.35144/2019 and W.P.(C) No.24520/2019 be dismissed and that

W.P.(C) No.28966/2019 filed by Smt.Leeshma be allowed, arguing that she has been rightly accommodated to one of the available vacancies of

HSST (Jr), earmarked for direct recruitment.

17. When I assess the afore rival positions, I am afraid that I cannot accede to either of the contentions of Dr.George Abraham because it is admitted

unequivocally, even by Smt.Jyothilakshmi, that she is working as an HSA (Malayalam) and that she could have been appointed only an an HSST in the

said subject. In other words, since she is working as an HSA (Malayalam), she is

eligible to be appointed only as an HSST in that subject, but it is admitted that none among the seven posts sanctioned to the school was an HSST (Malayalam). Obviously, therefore, when Smt.Jyothilakshmi can aspire to be appointed only to the post of an HSST (Malayalam) and when Sri.Sujith had been appointed as HSST (English) which post was available, she cannot stake a competing claim, she being ineligible to do so.

18. Coming to the appointments made in the category of HSST (Jr), Smt.Jyothilakshmi's contention is that there are two vacancies available for being filled up through by-transfer. However, she admits that the number of posts allotted to the school is only five and that 25% of it can only be 1.25. The Deputy Director has, in the order impugned by her, found that 1.25 cannot be construed to be 2 because then the ratio becomes 40%, which is more than the statutorily permissible limit. He has, therefore, found that 1.25 can be construed only as one and therefore, that the earlier appointment of Sri.Sunil Kumar, which is not disputed by the petitioner, would satisfy the rigor of the aforementioned Rule.

19. I am in complete affirmation of the findings of the Deputy Director because, as rightly said by him, 25% of 5 is 1.25, which can only be construed as being one and not two as contended by Smt.Jyothilakshmi. Perspicuously, therefore, the assertions impelled by Smt.Jyothilakshmi, through her learned counsel Dr.George Abraham, cannot find imprimatur in law and I, therefore, repel them as being without merit.

20. That finally brings me to the contentions of Sri.Nirmal which are urged in W.P. (C) No.24117/2019.

21. Sri.R.K.Muralidharan, the learned counsel appearing for Sri.Nirmal, submitted that Ext.P9 order in the said writ petition is egregiously in error because, even though the petitioner was deployed on working arrangement from 14.07.2017, he was on the rolls of the school, being paid salary by the Educational Agency and was, in fact, repatriated on 28.12.2017, before the Selection Committee was convened on 29.12.2017. He relies on Rule 2 of Chapter XXXII of the KER to contend that a teacher who is under the same management is eligible to be considered for by-transfer appointment and asserts that since his client was continuing in the rolls of the same Educational Agency, the Authorities could not have found that he is not eligible for being appointed.

22. I have gone through the pleadings available in this case and I see that none of the assertions of Sri.Nirmal have been controverted by any of the

respondents. Ineluctably, therefore, the petitioner's contention, that he was repatriated on 28.12.2017 and that he continued on the rolls of the school

until then, will have to be treated to be credible; and this assumes great importance because the Selection Committee was convened only on

29.12.2017. I, therefore, cannot find favour with Ext.P9 in W.P.(C) No.24117/2019 and am of the firm view that it must be reconsidered by the

Regional Deputy Director of Higher Secondary Education, Kozhikode, adverting to the petitioner's contentions and after affording him an opportunity

of being heard.

Resultantly and for the reasons above, I dispose of these writ petitions in the following manner:

(a) W.P.(C) No.35144/2019 and W.P.(C) No.24520/2019 are dismissed.

(b) W.P.(C) No.28966/2019 is allowed, though without formally setting aside Ext.P15 in the said writ petition, since it has already been superseded by

the subsequent order of the Deputy Director of General Education (Higher Secondary Department); and consequently with a direction to the third

respondent to approve the appointment of the petitioner therein â?" Smt.Leeshma, subject to all other requirements and qualifications being met. This

process shall be completed as expeditiously as is possible, but not later than two months from the date of receipt of a copy of this judgment.

(c) W.P.(C) No.24117/2019 is allowed and Ext.P9 is set aside; with a consequential direction to the second respondent Regional Deputy Director of

Higher Secondary Education, Kozhikode to reconsider the proposal for approval of the petitioner â?" Sri.Nirmal, in terms of my observations above,

which shall be done, after affording an opportunity of being heard to him â?" either physically or through video conferencing â?" thus leading to an

appropriate order thereon, as expeditiously as is possible, but not later than two months from the date of receipt of a copy of this judgment.

After I dictated this part of the judgment, Dr.George Abraham submitted that since a fraction of 0.25% remains in excess of the statutory requirement

under Rule 4 of Chapter XXXII of the KER, the Manager may be directed to consider his client for the next arising vacancy in the post of HSST (Jr)

through a by-transfer appointment. Sri.T.G.Rajendran, learned counsel appearing

for the Manager responded to this request by saying that as and when the new vacancy arises in the category of HSST (Jr), Smt.Jyothilakshmi will also be considered, subject to her credentials and in terms of the statutory prescriptions. This is recorded.