
(2010) 10 KL CK 0042

In the High Court Of Kerala

Case No : Writ Petition (C) No. 27453 of 2010 (F)

Nisha M.T.

APPELLANT

Vs

The State of Kerala and Others

RESPONDENT

Date of Decision : 28-10-2010

Acts Referred:

Citation : (2010) 10 KL CK 0042

Hon'ble Judges : K.T. Sankaran, J

Bench : Single Bench

Advocate : V.A. Muhammed, for the Appellant; Government Pleader, for the Respondent

Judgement

K.T. Sankaran, J.—The case of the petitioner is the following:

The petitioner was appointed as Urdu teacher in Kolacherry A.U.P. School with effect from 1.6.2010 against a retirement vacancy of a Full Time Urdu Teacher. As per Ext.P2 order dated 20.7.2010, the Assistant Educational Officer rejected a proposal for approval of appointment of the petitioner on the ground that no protected teacher was appointed in the school as per the Government Orders in force. It was also pointed out in Ext.P2 that no protected teacher is working in the school concerned. Challenging Ext.P2 order, the petitioner filed Ext.P9 revision dated 24.8.2010 before the Government. Ext.P9 revision is pending disposal.

2. The contention of the petitioner that C. Sreedharan, in whose retirement vacancy the petitioner was appointed, was working as a Full Time Urdu teacher, on creation of the post by Group "C" diversion and therefore, Ext.P3 Government Order (G.O.(P) No. 178/2002/G. Edn. dated 28.6.2002) will apply. Ext.P3 Government Order provides that language teachers working in Full Time Posts by virtue of Group "C" diversion need not be treated as protected. The petitioner also relies on Ext.P4 undertaking dated 9.7.2010 submitted by the Manager. In Ext.P4, it is stated that the A.U.P.School was upgraded as UP school in 1979 and

a protected teacher was appointed in the school. That teacher was accommodated in the parent school later. The appointment of teachers made in the school thereafter were duly approved. It is also stated in Ext.P4 that the Manager is prepared to appoint a protected teacher in a regular vacancy.

3. The petitioner relies on Ext.P5 Government Order dated 25.1.2007, as per which, in a similar case an undertaking given by the Manager was relied on and the appointment of the teacher was approved.

4. It is submitted that the present Manager has issued Ext.P7 letter dated 9.8.2010 to the Headmaster not to allow the petitioner to work after 10.8.2010.

5. A counter affidavit is filed by the third respondent (Assistant Educational Officer) in which it is stated that as per GO(P) No. 178/02 dated 28.6.2002 and GO(P) No. 46/06 dated 1.2.2006, the Manager was bound to appoint at least one protected teacher. The petitioner was appointed by the Manager without fulfilling the condition and in violation of the Government Orders. It is also stated that the post was not created by Group "C" diversion. Relying on GO(MS) No. 62/73/Gen. Edn.(S) dated 2.7.1973, it is contended that the benefit of Full Time Post was restricted only to the existing teacher and not to the post. The contention raised by the petitioner that no list of protected teachers was available in the office of the Deputy Director of Education was denied. There was a change of Managership with effect from 13.7.2010 and the new Manager is not liable to fulfill the obligations as per the existing Government Orders.

6. At the time of admission, an interim order was granted staying the operation and implementation of Exts.P2 and P7 orders and that interim order was extended. The interim order is in force even today.

7. Since Ext.P9 revision is pending before the Government, it is not necessary to consider the rival contentions raised by the parties on the merits, while disposing of the Writ Petition. It would be sufficient, without expressing any opinion on the merits of the case, to direct the Government to dispose of Ext.P9 revision expeditiously, after retaining the interim order granted by this Court.

In the facts and circumstance of the case, the Writ Petition is disposed of as follows:

a) The first respondent shall consider and dispose of Ext.P9 revision dated 24.8.2010 filed by the petitioner as expeditiously as possible, and at any rate within a period of three months from the date of receipt of a copy of the judgment, after affording an opportunity of being heard to the petitioner and respondents 4 to 6.

b) The petitioner shall produce a copy of the Writ Petition, a copy of the counter affidavit and certified copy of the judgment before the first respondent.

c) Till the disposal of Ext.P9 revision, the interim order granted in this Writ Petition on 3.9.2010 and which was extended by the order dated 29.9.2010 will

continue to be in operation.