
(2015) 06 KL CK 0052
In the High Court Of Kerala
Case No : Writ Petition (C) No. 1853 of 2015

P.B. Dhanya

APPELLANT

Vs

The State of Kerala and Others

RESPONDENT

Date of Decision : 16-06-2015

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2015) 06 KL CK 0052

Hon'ble Judges : A.K. Jayasankaran Nambiar, J

Bench : Single Bench

Advocate : V.A. Muhammed and P.A. Jenzia, for the Appellant

Final Decision : Dismissed

Judgement

A.K. Jayasankaran Nambiar, J.

1. The petitioner was appointed as UPSA in the Sree Narayana Kadaksham Upper Primary School, P. Vemballur with effect from 26.10.2004. The said appointment of the petitioner was duly approved by the educational authority. In the academic year 2008-2009, consequent to the staff fixation order, a post of LPSA stood reduced in the School. While the Junior most LPSA ought to have been retrenched consequent to the reduction in the posts, the Assistant Educational Officer, taking note of the seniority of the junior most LPSA, permitted him to be retained, and a UPSA who was Junior to the said LPSA in the common seniority list was retrenched. The facts in the writ petition would disclose that there was no challenge against the said decision of the Assistant Educational Officer. Thereafter, with effect from 31.03.2011, a vacancy arose to the post of Headmistress in the School consequent to the retirement of Smt. Subhashini, who was borne in the cadre of UPSA but had been appointed as Headmistress based on her seniority. It is the case of the petitioner that, consequent to the retirement of Smt. Subhashini, there also arose a vacancy in the post of UPSA to which the petitioner could have been accommodated, considering her previous approved appointment in the School. This, however, was not done. The 4th

respondent Manager promoted Smt. Sanila as Headmistress, to the vacancy that arose consequent to the retirement of Smt. Subhashini as Headmistress, insofar as Smt. Sanila was the senior most teacher in the School and due for promotion as Headmistress. No doubt, the consequent vacancy that arose, on the promotion of Smt. Sanila as Headmistress, could only have been a vacancy that arose in the post of UPSEA since Smt. Sanila was effectively replacing Smt. Subhashini who was borne in the cadre of UPSEA. The 4th respondent Manager as well as the education authority, however, treated the resultant vacancy, consequent to the promotion of Smt. Sanila as Headmistress, as a vacancy in the cadre of LPSEA, to which cadre Smt. Sanila belonged, prior to her promotion as Headmistress. The 4th respondent Manager, therefore, appointed the 7th respondent as the LPSEA in the School in the vacancy that resulted pursuant to the promotion of Smt. Sanila as Headmistress.

2. The petitioner, who had worked as a UPSEA in the School, and was a Rule 51 A claimant to a future vacancy that arose in the School to the post of UPSEA, preferred an appeal to the Deputy Director, against Ext. R7 (b) order dated 04.06.2012 of the District Educational Officer, which in turn rejected the appeal preferred by the petitioner against the dismissal of his claim for appointment as UPSEA under Rule 51 A of Chapter XIV A KER. By Ext. R7(c) order dated 29.12.2012, the Deputy Director of Education found that the resultant vacancy, that arose consequent to the promotion of Smt. Sanila as Headmistress of the School, was one that arose in the cadre of LPSEA and not UPSEA. He therefore rejected the appeal preferred by the petitioner. Aggrieved by Ext. R7(c) order of the Deputy Director of Education, the petitioner preferred a representation dated 29.01.2013 before the Government. The Government, by Ext. P6 order dated 25.07.2013, rejected the claim of the petitioner, for appointment as UPSEA on the strength of her claim under Rule 51 A, by holding that the petitioner was overqualified for the post of LPSEA, in which post the vacancy had arisen in the School, and further, that her claim under Rule 51 A could not be of any assistance in a situation where she was not qualified for the post in question. It would appear that Ext. P6 order of the Government was challenged by the petitioner in W.P. (C). No. 708 of 2014 before this Court. In the said writ petition, the petitioner also challenged Ext. P4 order dated 31.10.2013, which had by then been passed by the District Educational Officer, approving the appointment of the 7th respondent by taking note of Ext. P6 order of the Government. At the time of filing the writ petition, the petitioner had also taken steps to prefer Ext. P5 revision before the Government, against Ext. P4 order of the District Educational Officer. While, by Ext. P8 order, there was a stay initially granted against the operation and implementation of Ext. P4 order dated 31.10.2013, the writ petition itself was subsequently disposed by Ext. R7(d) judgment whereby this Court directed the State Government to pass final orders on Ext. P5 representation, preferred by the petitioner, within three weeks from the date of receipt of a copy of the judgment. It was also made clear that, the payment of salary to the 7th respondent would be subject to the order to be passed by the

State Government. What is relevant to note at this stage, however, is that in Ext. R7(d) judgment, this Court did not specifically grant the relief sought for in the writ petition against Ext. P6 order; nor was there any consideration of the merits of Ext. P6 order in the said judgment. In the absence of any further proceedings against Ext. R7 (d) judgment, therefore, Ext. P6 order attained finality.

3. Subsequent to Ext. R7(d) judgment, the Government passed Ext. P9 order, in Ext. P5 revision which was preferred by the petitioner. In Ext. P9 order, the Government considered the case of the petitioner and held against her on the ground that she did not have the necessary qualification for appointment to the post of LPSA, and further, that her claim under Rule 51 A would not be of any assistance to her under the said circumstances. There was also a direction in Ext. P9 that the petitioner could be included in the list of retrenched teachers for consideration for future appointments in the School in question. It is Ext. P9 order of the Government that is impugned in the present writ petition, wherein the petitioner contends that, inasmuch as the vacancy that resulted consequent to the promotion of Smt. Sanila as Headmistress, was a vacancy that arose in the cadre of UPSA, the 4th respondent Manager should have appointed the petitioner, and not the 7th respondent, to the said vacancy.

4. A counter affidavit has been filed by the 7th respondent wherein the sequence of events leading to the passing of the various orders namely, Exts. R7(b), R7(c), P6, P4 and P9 have been narrated in detail. The contention raised by the 7th respondent is essentially that, inasmuch as Ext. P6 order, that found against the petitioner with regard to her claim for appointment to the vacancy that arose in the school consequent to the promotion of Smt. Sanila as Headmistress, had not been set aside in any proceedings, the same had become final and would operate to defeat the petitioner's attempt to agitate the same issue in these proceedings under Article 226 of the Constitution of India. It is pointed out that, Ext. P9 order was passed by the Government in Ext. P5 revision, that was preferred by the petitioner against Ext. P4 order of the District Educational Officer, which in turn approved the appointment of the 7th respondent as UPSA in the school. Learned Senior counsel would emphasise that Ext. P4 order was passed by the District Educational Officer, after taking note of Ext. P6 order that was passed by the State Government, and inasmuch as there was no challenge to Ext. P6 order, the petitioner could not now mount a collateral challenge to Ext. P6 in a writ petition filed challenging Ext. P9 order.

5. I have heard the learned counsel for the petitioner, the learned Senior counsel appearing for the 7th respondent and also the learned Government Pleader for the official respondents.

On a consideration of the facts and circumstances of the case and submissions made across the bar, I am of the view that, the challenge in the writ petition against Ext. P9 order of the Government must necessarily fail. The petitioner, who was appointed as UPSA in the School under the management of the 4th respondent with effect from 26.10.2004, no doubt, had a claim under Rule 51 A

for being considered to a subsequent vacancy that arose in the school in the post of UPSA. Although, it is the case of the petitioner that the resultant vacancy that arose in the School, consequent to the promotion of Smt. Sanila as Headmistress, was one that arose in the cadre of UPSA (since the earlier incumbent to the post of Headmistress, who had retired, was borne in the cadre of UPSA), the said claim of the petitioner stood rejected by Ext. R7 (b) order of the District Educational Officer. The further proceedings that were pursued by the petitioner against the said order culminated in Ext. P6 order of the Government which found against the petitioner with regard to her claim for the post in question. Although, the petitioner challenged Ext. P6 order in W.P (C).N0.708 of 2014, in Ext. R7(d) judgment of this Court in the said writ petition, the specific reliefs that were sought by the petitioner against Ext. P6 order were not granted by this Court. Instead, this Court relegated the petitioner to the revisionary remedy against Ext. P4 order of the District Educational Officer, before the Government. There is no direction in Ext. R7(d) judgment, to the Government, to go into the issue that was already decided by Ext. P6 order. In fact, since Ext. P6 order was itself an order passed by the Government, on a representation filed by the petitioner, this Court could not have directed the Government to consider any representation against Ext. P6 order, for to do so would have amounted to clothing the Government with a power to review its own orders - a power which it did not otherwise have. Inasmuch as Ext. P6 order attained finality consequent to Ext. R7 (d) judgment, I am constrained to hold that the claim of the petitioner for appointment, to the vacancy in the post of LPSA, by treating it as a vacancy in the post of UPSA, cannot be entertained at this distance of time. Resultantly, the challenge against Ext. P9 order of the Government must also fail, inasmuch as it is an order passed consequent to the findings of the Government in Ext. P6 order. Thus, the writ petition fails and is accordingly dismissed.