
(2003) 06 KL CK 0076
In the High Court Of Kerala
Case No : O.P. No. 36534 of 2002 (Y)

P.L. Lilly

APPELLANT

Vs

Secretary to Govt., Genl. Edn. Dept. and Others

RESPONDENT

Date of Decision : 04-06-2003

Acts Referred:

Kerala Education Rules, 1959 — Rule 51A

Citation : (2003) 2 KLJ 748

Hon'ble Judges : K. Balakrishnan Nair, J

Bench : Single Bench

Advocate : V.A. Muhammed and K.E. Hamza, for the Appellant; Augustine Joseph, T.V. George and C.V. Shaju and Julie Victor, for the Respondent

Final Decision : Allowed

Judgement

K. Balakrishnan Nair

1. The point to be decided in this O.P. is whether the right under Rule 51A will be lost to the petitioner if she fails to object in time to a list of 51A claimants published by the Manager in which her seniority is wrongly shown. The brief facts of the case are the following :- The petitioner and the 6th respondent were Rule 51A claimants for appointment to the post of Needle Work Teacher in the Schools managed by the 5th respondent. The petitioner's first spell of approved service was from 09-09-1980 to 05-12-1980 as evident from Ext. P1. The 6th respondent's first approved spell of service was from 09-08-] 982 to 30-10-1982. Thereafter, the petitioner, the 6th respondent and another teacher were appointed on 19-01 -1989 as Sewing Teachers in different schools. Those appointments were not approved for want of sanctioned posts. It appears, as a result of the efforts made by the 6th respondent and the Manager, one post of Sewing Teacher was sanctioned. The 6th respondent was accommodated in it instead of the petitioner who is the senior claimant. Thereafter, when a regular vacancy arose, the 6th respondent was appointed in the said vacancy on 04-06-1990 and she is continuing in it even today, it is submitted.

2. Earlier, the Manager had published Ext. P6 list of 51A claimants, in which the petitioner was shown as junior to the 6th respondent. Again, another list Ext. P9 was published in which the petitioner's name was not included at all. On coming to know of Ext. P9, the petitioner moved the District Educational Officer. The said officer, by Ext. P10, directed the petitioner to move the higher authorities as the Management involved was a Corporate Educational Agency having a number of schools which were located outside his jurisdiction. So, the petitioner moved the Director of Public Instructions by filing a representation highlighting her grievances. The said representation was allowed by the Director by Ext. P11 dated 13-12-2001 upholding the superior claim of the petitioner. The manager and the 6th respondent moved the Government in revision and the Government allowed the revision by Ext. P12 order dated 24-10-2002. The reason for rejecting the claim of the petitioner was the delay from her part to move for establishing her right. The petitioner challenges Ext. P12 on several grounds. The main ground of attack is that it has been issued in violation of the mandatory provisions of Rule 51 A. The finding of the Government that the petitioner has abandoned the job when her appointment was not approved by the Educational Officer is denied by her. In fact, she was relieved by the Manager when her appointment was not approved, it is submitted relying on the original of that relieving order which was handed over to the Court at the time of hearing.

3. The 6th respondent has filed a detailed counter affidavit. According to the 6th respondent, the petitioner did not object in time to Exts. P6 and P9 lists and therefore, it should be treated that she has forfeited her rights, if any, under Rule 51 A. It is also submitted that when the appointment of the petitioner was not approved in 1989, she did not pursue the matter. Only the 6th respondent pursued it and got one post sanctioned. Therefore, the Manager rightly accommodated the 6th respondent in that vacancy, it is submitted. The learned Counsel for the 5th respondent also supported the contentions of the 6th respondent. The learned Counsel for the 5th respondent would further add that when the three appointments made by the Manager in 1989 were not approved by the Controlling Officer, the Manager filed an appeal before the appellate authority and one post was sanctioned. At the relevant time, the 6th respondent was senior in the seniority list of 51A claimants and she was accommodated in the post so sanctioned. I heard both sides. It is settled law that the right under Rule 51A will not be lost even on furnishing a relinquishment letter by the teacher. The only method by which it can be forfeited is by following the procedure prescribed therein, i.e., the Manager has to issue an appointment order by registered post with acknowledgment due to the 51A claimant calling upon him to join duty within two weeks. If he does not join duty, the Manager has to issue another registered letter giving him time to join duty for seven days from the date of receipt of the letter. Even thereafter, if the incumbent does not join duty, then, it may be treated that his right is forfeited and the Manager can appoint some other claimant, if there is one, or a fresh hand. The manager does not have a case that in the case of the petitioner he followed the above

procedure prescribed under Rule 51 A. As per Note -I of Rule 51 A, if there is more than one claimant under the Rule, the order of preference shall be according to the date of first appointment. The date of first appointment mentioned in the Note has been interpreted to mean the date of first approved appointment. Therefore, when a vacancy was sanctioned in 1989, the petitioner should have been accommodated in it. Under the K.E.R., there is no provision for publishing the seniority list of 51A claimants and rejecting the rights of a 51A claimant for the reason that he or she did not object to any mistake in the said list. Therefore, the reason that the petitioner did not object to Ext. P6 or Ext. P9 in time cannot be pressed into service as a ground to deny the rights of the petitioner under Rule 51 A. The stand taken by the Government that there is delay from the part of the petitioner to assert her rights is plainly untenable and contrary to the mandate of Rule 51A as interpreted by this Court in "Lakshmikutty Amma v. Vijayalakshmikutty" (1992(2) KLT 341). The relevant portion of the said judgment reads as follows :-

Yet another reason which could be attracted to the situation is the following. As stated by the learned Single Judge, there is no provision in the Rules which specifically permits relinquishment of a right accrued under R. 51A to a teacher. On the other hand, Note 2 to Rule 51A refers to the procedure to be followed by the Manager which could result in forfeiture of an existing or accrued right under R. 51A to a teacher. The Note contemplates that initially the Manager should issue an order of appointment to the teacher concerned by Registered Post acknowledgment due and give 14 clear days to the teacher to join duty. If the teacher did not join duty in time, the Manager is bound to give a further notice to the teacher stating that another person would be appointed instead and that the preferential right under R. 51A would be forfeited if not exercised within seven clear days. If nothing is heard during that time also, the preferential right under the Rule will be regarded as forfeited. In other words, Note 2 requires two registered notices to be issued as stated above and under the second notice, the Manager has to give the option to the teacher to exercise the preferential right within seven clear days. It is only when such an option is not exercised by the teacher, her or his preferential right would be forfeited. It is now well settled that if a statute prescribes that an act has to be done in a particular manner, that act can be done only in that manner and in no other manner. If a statute gives a power to do certain thing in a certain way, the thing must be done in that way or not at all and other methods of performance are necessarily forbidden. *Taylor v. Taylor*, (1875) 1 Ch.D. 426 quoted in *State of Gujarat Vs. Shantilal Mangaldas and Others*, and *University of Kashmir and Others Vs. Dr. Mohd. Yasin and Others*,

In that context, the Supreme Court referred to *Taylor v. Taylor*, referred above and other cases as follows :

A century ago, in *Taylor v. Taylor*, (1875) 1 Ch. D 426 Jessel M.R. adopted the certain thing in a certain way, the thing must be done in that way or not at all

and that other methods of performance are necessarily forbidden. This rule has stood the test of time. It was applied by the Privy Council in AIR 1936 253 (Privy Council) and later by this Court in Rao Shiv Bahadur Singh and Another Vs. The State of Vindhya Pradesh, , Deep Chand Vs. The State of Rajasthan, ..

We accordingly hold that the procedure contained in Note 2 to Rule 51A is mandatory and that there cannot be forfeiture of a right accrued under R. 51A in any manner otherwise than by the procedure provided by Note 2 and that consequently the relinquishment letters even if executed voluntarily by the teacher relinquishing his or her right under R. 51A cannot result in the forfeiture of the preferential right to appointment. R. 51A and Note 2 thereunder are based upon public policy and they are intended to prevent malpractices.

A claimant under Rule 51A need not go to the School every now and then to find out whether there is a vacancy or anyone else has been appointed in the vacancy ignoring his claim. His rights will not be lost for not asserting them as claimed by the Manager and the rival claimant. His rights will be lost only if he fails to act even after receiving the appointment order and notice from the Manager. A 51A claimant under a corporate educational agency which is running several schools will never be able to keep track of the occurrence of vacancies and appointments made in them. He is not expected to do that also under the Rules. In view of this position, the stand taken by the Government in Ext. P12 is unsupportable in law. Accordingly, I quash Ext. P12. It is declared that the petitioner is the senior 51A claimant when compared to the 6th respondent. Therefore, she shall be notionally accommodated in the vacancy that was sanctioned in 1989 and her appointment shall be adjusted against the vacancy or vacancies that arose subsequently. If there is now an open vacancy, the petitioner shall be accommodated in that vacancy. Otherwise, the juniormost among the Needle Work teachers under the Management shall be reverted and the petitioner shall be accommodated forthwith. She will be entitled to seniority and also notional fixation of pay from 1989 onwards without arrears of salary. Necessary orders in this regard shall be passed by the Manager within one month from the date of receipt of a copy of this Judgment. The concerned

Controlling Officer shall pass consequential orders within one month thereafter. If any incumbent has been wrongly appointed in the post of Needle Work teacher and the said appointment has been approved, the salary paid to him or her shall not be recovered.

The Original Petition is allowed as above.