
(2011) 06 KL CK 0193

In the High Court Of Kerala

Case No : Writ Petition (C) No. 19179 of 2009 (N)

P.P. Jayasree, Hindi Teacher

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 28-06-2011

Acts Referred:

Citation : (2011) 06 KL CK 0193

Hon'ble Judges : T.R. Ramachandran Nair, J

Bench : Single Bench

Advocate : K. Jaju Babu, for the Appellant; Government Pleader, for the Respondent

Judgement

T.R. Ramachandran Nair, J.—The Petitioner who was appointed as a Hindi Teacher in the school managed by the 5th Respondent is aggrieved by the rejection of approval of her appointment on the reason that a protected hand ought to have been appointed. Apart from that, the Petitioner also claims appointment on regular basis for two spells which preceded her regular appointment. It is contended that no protected hand was available in the revenue district as evident from the statement filed by the Respondents itself.

2. The Petitioner was appointed as a leave substitute Hindi teacher between 04.02.2003 to 07.04.2003, 15.06.2004 to 14.08.2004 and 01.12.2005 to 11.02.2006. Exts.P1 to P3 are the orders rejecting approval of appointment.

3. When a retirement vacancy arose on 05.06.2006, the Petitioner was appointed. The approval is granted from 19.12.2007 as evident from Ext.P4. The 2nd Respondent also confirmed the said approval as per Ext.P5. The Petitioner later approached the Government and the Government also rejected the claim as evident from Ext.P9.

4. Learned Counsel for the Petitioner submitted that no protected Hindi teacher was available for appointment and therefore, in the light of the decision of this Court in Moosakutty Vs. D.E.O., and other decisions of this Court, the Petitioner

is entitled to succeed in the writ petition.

5. The 1st Respondent has filed a counter affidavit and the 3rd Respondent has filed a statement. In the statement filed by the 3rd Respondent, in paragraph 3, it is averred as follows:

It is submitted that there were no protected teachers in the category of F.T. Hindi Teacher who is available at the time of appointment of the Petitioner. But at the same time, the Manager has executed agreement under Rule 6(viii) Chapter v. KER at the time of opening of the school to the effect that he is ready to absorb protected teacher. The Manager cannot evade from the liability of appointing protected teacher only on the ground that the protected teacher was not available in the educational district/sub district....

6. Subsequent Government Orders are also relied upon in that context. This aspect is covered in favour of the Petitioner in the light of the decision in Moosakutty's case (supra). The obligation of the Manager is only under Rule 6(viii) of Chapter v. KER and as it stood at the relevant time. Being a U.P school, there should have been a protected teacher available in the sub district.

7. Therefore, the contention that the Manager ought to have appointed a protected teacher from the revenue district and in terms of the Government circulars cannot be sustained.

Therefore, the Petitioner is entitled to succeed in the writ petition with regard to the claim for approval from 05.06.2006 onwards in the place of 19.12.2007.

8. The next issue is with regard to the approval on daily wage basis for the period from 04.02.2003 to 07.04.2003 and from 15.06.2004 to 14.08.2004. Evidently, Rule 7A(3) was introduced in the Statute by G.O.(P) No. 121/05 GE dated 16.04.2005.

9. Learned Counsel for the Petitioner relied upon the decision of a Division Bench of this Court in Abdulrahiman N.K. Vs. Government of Kerala and Others, to contend for the position that any appointment prior to an amendment cannot affect the rights of persons who are appointed to short term duration of vacancies exceeding two months. Therein, the proviso I to Rule 51A of Chapter XIV-A KER had came up for interpretation. The same principle can be applied herein also because the amendment in Rule 7A(3) is introduced only from 27.04.2005.

10. Evidently, the period from 04.02.2003 to 07.04.2003 and from 15.06.2004 to 14.08.2004 will not be covered by the embargo in Rule 7A(3). But the learned Government Pleader submitted that approval on daily wage basis was justified in the light of G.O.(P) No. 169/04/G. Edn. dated 15.06.2004 and G.O.(P) No. 104/2008/G. Edn. dated 10.06.2008. Evidently, the said issue was considered by this Court in K. Unni Narayanan, Manager and Others Vs. State of Kerala and Others, and it was held that the teachers are entitled for salary on regular basis. It is submitted that Special Leave Petitions are pending before the Supreme

Court. Therefore, in the event of the said judgment being upheld alone, the Petitioner will be getting the benefit of full salary for the two spells namely, from 04.02.2003 to 07.04.2003 and from 15.06.2004 to 14.08.2004. Therefore, the Petitioner is given liberty to move the Department once Special Leave Petitions are disposed of.

11. In that view of the matter, this writ petition is allowed. Ext.P4 to the extent to which approval is granted from 19.12.2007 and the orders passed in appeal and revision are quashed to that extent. It is declared that the Petitioner is entitled for approval from 05.06.2006.

It is then pointed out by the learned Counsel for the Petitioner that in the light of the judgment in Abdulrahiman N.K. Vs. Government of Kerala and Others, , the Petitioner is entitled for payment of salary for the periods from 04.02.2003 to 07.04.2003 and from 15.06.2004 to 14.08.2004. This aspect will be examined by the appropriate authority while approving the appointment from 05.06.2006 and appropriate orders will be passed within a period of three months from the date of receipt of a copy of this judgment and the Petitioner will also be entitled for consequential benefits on getting approval of appointment from 05.06.2006. No costs.