
(1999) 11 KL CK 0038
In the High Court Of Kerala
Case No : W.A. No. 1614 of 1999

Prasanna Kumari

APPELLANT

Vs

Shobana Kumari and Others

RESPONDENT

Date of Decision : 27-11-1999

Acts Referred:

Kerala High Court Act, 1958 — Section 5

Citation : (1999) 2 KLJ 1107

Hon'ble Judges : K.S. Radhakrishnan, J;Arijit Pasayat, J

Bench : Division Bench

Advocate : K. Ramakumar, for the Appellant; K. Chandrasekharan (Sr.), V.I. Joseph, T.P. Kelu Nambiar (Sr) and P.G. Rajagopalan, for the Respondent

Final Decision : Dismissed

Judgement

Arijit Pasayat, J.—In this appeal u/s 5 of the Kerala High Court Act, 1959 (in short "the Act") challenge is to correctness of judgment passed by a learned single Judge in O.P. No. 5107 of 1999. Dispute relates to applicability of Rule 28(bbb) of the Kerala State and Subordinate Services Rules, 1958 (in short "the K.S.S.R.") in the absence of any corresponding provision in Kerala Education Rules, 1959 (in short "the K.E.R"). Factual position shorn of unnecessary details is as follows:- Sobhana Kumari, respondent No. 1 in the Writ Appeal, was appointed in a temporary vacancy in Durga Higher Secondary School, Kanhangad for the period from 17/09/1993 to 18/11/1993. Said school is a private aided institution. She was again appointed for another two months in a temporary vacancy of Lower Grade Hindi Pandit (U.P.S.A. Hindi). Her appointments were approved temporarily. She was appointed as lower grade Hindi teacher with effect from 6-6-1997 and probationary appointment was approved with effect from the date of appointment. She had earlier temporary experience in Government schools as Hindi teacher. For the post of H.S.A (Hindi) vacancy arose in the institution where she was working on 6/6/1997 because the H.S.A. (Hindi) in that school retired on 31-3-1997. As midsummer vacation had commenced,

appointment could only be made on the 6th day of reopening. Therefore, the vacancy of H.S.A. arose on 6/6/1997. On that day she had the required qualification for being appointed as H.S.A. But Manager appointed M. Prasanna Kumari, appellant in the Writ Appeal, to that post on 16/06/1997 and later to another vacancy. The District Educational Officer (in short "the D.E.O") rejected the appointment of Prasanna Kumari and Sobhana Kumari was directed to be appointed with effect from 6-6-1997. The reasoning was that Prasanna Kumari was not qualified on 6-6-1997, i.e. date of occurrence of the vacancy, whereas Sobhana Kurmari was qualified. The order of D.E.O was implemented. This decision was accepted by the Deputy Director of Public Instructions as well as the Director of Public Instructions. But on a revision filed by Prasanna Kumari, the order was set aside by the Government on the ground that Prasanna Kumari was more experienced, as she was working in the same school from 1988 onwards as U.P.S.A (Kannada). Further she wrote qualifying examination for becoming H.S.A (Hindi) on 30/04/1997 and result was declared on 12/06/1997. Government found that though Sobhana Kumari was qualified, she had only 10 days' service on the date of promotion, whereas Prasanna Kumari had over 9 years of service. Therefore, Sobhana Kumari was not qualified on the date of occurrence of vacancy. It was observed that in the circumstances of the case, the relevant rule need not be strictly followed. In that context it was observed as follows:

The position is that Smt. Sobhana Kumari who has put in a service of only 10 days on the date of promotion viz. on 16/06/1997 is preferred over one with 9 years service, by a rigid application of the rule. Rule 43 by itself cannot be considered as exclusive in this regard. It can be operative only subject to certain condition attached to it, of which an important condition is "consideration of efficiency". It would look preposterous to accept and conclude that a person with just 10 days service would have had occasion to prove efficiency. It may also be noted that under Rule 43B(iv) language teachers in other languages and having the prescribed qualification on the date on which the vacancy is filled up, are also in the field of choice. Smt. Prasanna Kumari was qualified on that date.

2. Original Petition was filed by Sobhana Kumari on two grounds; firstly the date of occurrence of vacancy was 06/06/1997 and secondly, she alone was qualified for appointment on that date. Prasanna Kumari took the stand that even though result was announced on 12/06/1997, since she wrote the last paper of the examination 30/04/1997, she was qualified as on 3.4.1997. For this purpose reliance was placed on Rule 28 (bbb) (in short "the K.S.S.R"). Alternatively it was submitted that Rule 44B of KER was applicable.

3. Learned, single Judge held that in the KER framed under the Kerala Education Act, 1958 (in short "the Act"), there is no provision corresponding to Rule 28 (bbb) of K.S.S.R. It was held that Rule 44B of K.E.R had no application to the facts of the case, as it related to Headmasters and fiction is with regard to departmental tests for granting increments. Factually it was observed that Prasanna Kumari became qualified only with effect from 12.6.1997 and therefore

on 6.6.1997 only Sobhana Kumari was qualified. Accordingly revisional order of the Government was set aside.

4. In support of the Writ Appeal Mr. Ramakumar submitted that in the absence of any provision in K.E.R, the fiction created by Rule 28 (bbb) of K.S.S.R can be applied and in any event, statutory intention is to prepone the date of eligibility, as is evident from Rule 44B. That being the position, learned single Judge was not justified in his conclusion. It is further submitted that Government had taken an equitable view because a teacher with only 10 days" experience was getting precedence over another teacher who had 9 years" experience. Mr. Chandrasekharan, learned counsel for 1st respondent on the other hand submitted that it is not permissible to bring in application of provision in another statute and read it into another statute. In any event, there being no provision in K.E.R and on the date of occurrence of the vacancy, Sobhana Kumari being the only eligible and qualified candidate, she was to get promotion automatically.

5. At this juncture it is to be noted that right to get promotion is automatic in the scheme of statutory provisions applicable. Occurrence of vacancy was on 6.6.1997 and appointment should have been made vis-a-vis the position on 6.6.1997. Rule 28(bbb) of K.S.S.R and Rule 44B of K.E.R., on which great emphasis has been laid by learned counsel for appellant, read as follows:-

Rule 28(bbb), K.S.S.R. where a pass in any examination or test confers on a person the title to any right, benefit or concession, such title to the right, benefit or concession shall be deemed to have accrued-

(a) in the case of a person who has passed such examination or test before the 14th August, 1971, on the day following the last day of such examination or test in the subject or subjects; and

(b) in the case of a person who has passed such examination or test on or after 14th August 1971, on the day following the last day of the whole examination or test in which he has successfully completed the examination or test by passing one or more subjects.

Rule 44B, K.E.R (1) Notwithstanding anything contained in Rule 61, in case of persons appointed to the posts of Head Masters of aided complete High/Training Schools prior to 6.11.1968 and who do not pass the test in the Act and Rules will continue as such but their increments falling after 6.11.1976 will be granted only after passing the test. They will be deemed to have satisfactorily completed their probation and will be eligible for increments in the scale of pay of Headmaster only after passing the test.

Note:- The benefit to increment on passing the obligatory departmental tests will be given from the last day of the qualifying examination which shall be applicable in the same grade and for promotion to posts not involving change of duties:

(2) Teachers who have attained the age of 50 years shall stand exempted permanently from passing the tests.

Explanation:- Untrained Service of the teachers shall also be taken into account for computing the 25 years Service.

(3) Headmasters of complete High/Training Schools who have opted for the rules in Chapter XIV B and who can continue in service up to 60 years of age will be granted exemption from passing the tests if they have passed the age of 55 years.

Explanation:- For the purpose of this rule "service", means, "aggregate qualified approved teaching service.

6. It is to be noted that Rule 43 in Chapter XIV - A of K.E.R details with filling up of vacancies. Said provision reads as follows:

Rule 43: - Subject to Rules 44 and 45 and considerations of efficiency and any general order that may be issued by the Government, vacancies in any higher grade of pay shall be filled up by promotion of qualified hands in the lower grade according to seniority, if such hands are available:

Provided that in the case of promotion to the post High School Assistant (Subject), the minimum subject requirements alone need be satisfied, to safeguard the interests of trained graduates who are awaiting promotions as High School Assistants.

Note:- (1) A teacher in a lower grade of pay in one category of post is eligible for promotion to a higher grade of pay in another category of post provided.

(i) he has the prescribed qualifications and

(ii) there is no teacher with prescribed qualifications in the lower grade of pay of the category of post to which promotions are to be made.

Note (2): - Promotion under this rule shall be made from persons possessing the prescribed qualifications at the time of occurrence of vacancy.

The Note makes it clear that promotion under this rule is to be made from persons possessing the prescribed qualifications at the time of occurrence of vacancy.

7. The right to get promotion being automatic as indicated above, the manager cannot appoint a more experienced person from outside, when a qualified hand eligible for promotion is available in the staff. Delay in claiming the vacancy is not fatal to right of the concerned person. Under Rule 6 (a) qualified teachers in the lower grade promoted to the higher grade under Rule 43 before completion of probation are to be treated to be on probation in the higher grade as if appointed under Rule 3 in that category.

8. It is not a sound principle of construction to interpret expressions used in one statute with reference to their use in another statute, and decisions rendered with reference to construction of one statute cannot apply with reference to the provisions of another statute, unless the two statutes are in *pari materia*.

Further, when there is no ambiguity in the statute, it may not be permissible to refer to, for purposes of its construction any previous legislation or decisions rendered thereon (see Board of Muslim Wakfs v. Radha Krishna and others: AIR 1979 289). As observed by apex Court in S. Mohan Lal Vs. R. Kondiah, , it is not a sound principle of construction to interpret expressions used in one Act with reference to their expressions in another Act, more so if the two Acts in which the same word is used are not cogent Acts. Neither the meaning nor the definition of the term in one statute affords the mode of construction of the same term in another statute, and the sense in which the term has been understood to several statutes does not throw any light on the manner in which the term should be understood generally. It is sound and well - known principle of construction that meaning of the words used in one Act must take their colour from the context they appear. As a general principle of interpretation, where the words of a statute are plain, precise and unambiguous, the intention of the Legislature is to be gathered from the language of the statute itself, and external aid is not admissible to construe those words. It is only where a statute is not exhaustive or where its language is ambiguous, uncertain, clouded or susceptible of more than one meaning or shades of meaning, that external aid as to the evils, if any, which the statute was intended to remedy, or of the circumstances which led to the passing of the statute may be looked into for the purpose of ascertaining the object which the Legislature had in view in using the words in question.

9. As indicated above, an expression occurring in one statute cannot be construed in the light of definition of such expression in another statute. When an expression is defined in a particular statute, such definition is meant for that statute. Definition of an expression in a particular statute cannot be used or borrowed to find out the meaning of the same expression in other statute or statutory instruments. In *Macbeth v. Chislett* (1910 AC 220 at 223) it has been held that:

In construing a word in an Act caution is necessary in adopting the meaning ascribed to the word in other Acts. It would be a new terror in the construction of Acts of Parliament if we were required to limit a word to an unnatural sense because in some Act which is not incorporated or referred to such an interpretation is given to it for the purposes of that Act alone.

10. Said principle was considered by apex court in *Msc. Pvt. Ltd. Vs. Union of India (UOI) and Others*, and apex court held thus: 4. The expression "industry" has many meanings. It means "skill", "ingenuity", "dexterity", "diligence", "systematic work or labour", "habitual employment in the productive arts", "manufacturing establishment", etc. But while construing a word which occurs in a statute or a statutory instrument in the absence of any definition in that very document it must be given the same meaning which it receives in ordinary parlance or understood in the sense in which people conversant with the subject matter of the statute or statutory instrument understand it. It is hazardous to

interpret a word in accordance with its definition in another statute or statutory instrument and more so when such statute or statutory instrument is not dealing with any cognate subject. Craies on Statute Law (6th Edn.) says thus at page 164.

In construing a word in an Act caution is necessary in adopting the meaning ascribed to the word in other Acts. "It would be a new terror in the construction of Acts of Parliament, if we were required to limit a word to an unnatural sense because in some Act which is not incorporated or referred to such an interpretation is given to it for the purposes of that Act alone" *Macbeth v. Chislett* - (1910) AC 220, 223.

Further, as rightly observed by learned single Judge, the concept of Rule 44B cannot be applied to the facts of present case as it operates in entirely different context. Above being the position, we find no infirmity in the conclusions of learned Single Judge to warrant interference. Writ Appeal is dismissed.