

(2005) 06 KL CK 0014

In the High Court Of Kerala

Case No : Writ Petition (C) No. 21731 of 2004.

Praseetha S.V.

APPELLANT

Vs

The District Educational Officer, Palakkad and Others

RESPONDENT

Date of Decision : 24-06-2005

Acts Referred:

Kerala Education Rules, 1959 — Rule 51A

Citation : (2006) 1 KLJ 45

Hon'ble Judges : Pius C. Kuriakose, J

Bench : Single Bench

Advocate : Jijo Paul, for the Appellant; P.N. Krishnankutty Achan (Sr.), K. Mohana Kannan and Thomas Kutty M.A. (G.P.), for the Respondent

Judgement

Pius C. Kuriakose

1. The petitioner who is a member of a tharwad by name Sooryachira Variam, challenges the action of the first respondent, who is Ex-Officio Manager of S.V.S.M.U.P. School, Pudussery, belonging to the said tharwad, in appointing the fourth respondent as U.P.S.A. in the vacancy which arose on account of the retirement of one Mr. P.K. Jayaram senior U.P.S.A. of that school on 31-3-2004, overlooking the claim of the petitioner. The petitioner relies mostly on Ext. P1, which is an order passed by the Munsiff Court, Palakkad, in the final decree application in a suit for partition between the members of the family. According to the petitioner, Ext. P1 has attained finality and the same binds all the members of the Sooryachira Variam which constitutes the educational agency of the school and are entitled to manage the school. According to the petitioner, under Ext. P1 the school building, compound, the furniture of the school and the right to manage the school is retained as a common property of the members of the family. According to the petitioner, provisions have been made by the court in paragraph 15 of Ext. P1 regarding the school and she highlights clause 10 of paragraph 15 which quoted as follows

It shall be the exclusive privilege of the Manager to appoint teachers and peons

when vacancy arises with the approval of the Education authorities and qualified members of the family including their wives :or husbands and children shall have first preference to be appointed as teacher. A stranger shall be appointed only if a qualified family member is not an applicant for the post.

According to the petitioner, after Ext. P1 was passed, the Management of the School was being conducted strictly in terms of paragraph 15 of Ext. P1 till 19-2-1992 when further disputes arose regarding the management of the School. The petitioner submits that in the wake of the disputes, the Government under Ext. P2 order took over the management of the school and the first respondent - D.E.O. was appointed as Ex. Officio Manager for a period of 5 years till such time as the disputes regarding the managership of the school is settled. After the expiry of five years, when the Government noticed that the disputes were not settled, the Government passed Ext. P3 order continuing the appointment of the D.E.O. as Ex. Officio Manager until further orders. According to the petitioner, Ext. P1 order, particularly clause 10 of paragraph 15 of Ext. P1 shall bind the D.E.O. the first respondent also. To show that the petitioner is a member of Sooryachira Variam, she relies on Ext. P4 family meeting notice and also on the list of members of Sooryachira Variam prepared by the D.E.O. According to the petitioner, from amongst the members of this family she was the only person who applied for appointment to the vacancy which arose on account of the retirement of Sri. P.K. Jayaram.- Ext. P5 is a copy of the application submitted by the petitioner. Respondents 3 and 4 also applied for the same post. But, according to the petitioner, they are not members of the Sooryachira Variam family and she has a preferential claim above respondents 3 and 4 and, therefore, she filed Ext. P6 representation before the first respondent seeking issuance of appointment order. The petitioner conceded that respondents 3 and 4 had earlier worked in the L.P. School of the family in leave vacancies and for that reason they are having claims under Rule 51A of Chapter XIV-A of K.E.R. But the 51A claims of these respondents, according to the petitioner, can only be for appointment as L.P.S.A. and will never be for appointment as U.P.S.A. When the petitioner noticed that no action was taken on Ext. P6, she issued lawyer notice to the first respondent as Ext. P7. The petitioner's grievance is that overlooking the preferential claim of the petitioner, the first respondent appointed fourth respondent as U.P.S.A. and the 3rd respondent as L.P.S.A. Exts. P8 and P9 respectively are the appointments orders. It is challenging Exts. P8 and P9 on grounds A to D and the writ petition memorandum, the petitioner has filed the writ petition seeking the following reliefs.

- i) Call for the originals of the records leading to Exhibits P8 and P9.
- ii) Issue a writ of certiorari or any other appropriate writ, order or direction quashing the originals of Exhibits P8 and P9.
- iii) Issue a writ of mandamus or any other appropriate writs, orders or directions directing the 1st respondent to appoint the petitioner in the vacancy of U.P.S.A. in the S.V.S.M.U.P. School arising upon the retirement of P.K. Jayaram U.P.S.A.

iv) Declare that the petitioner is entitled to preference over respondents 3 and 4 in the matter of appointment to the vacancy of U.P.S.A. in the S.V.M.U.P. School arising on the retirement of P.K. Jayaram and other reliefs.

2. Separate counter affidavits have been filed by respondents 3 and 4. In paragraph 2 of the counter affidavit filed by the 3rd respondent, she quotes clause 10 of paragraph 15 of Ext. P1 order and contends that her husband is also a member of Sooryachira Variam family and, therefore, under Ext. P1 order she is also entitled to a preferential claim for appointment. According to her, relevant material facts have been suppressed by the petitioner. Producing Ext. R3(a) she contends that, she was earlier appointed in the school on leave vacancy of Sri. Aravind K.V., Assistant Teacher for 74 days. The said appointment was approved by the Assistant Educational Officer. Thereafter, upon expiry of that leave vacancy, she was appointed as Assistant Teacher in the leave vacancy of one Smt. B. Prasanna Kumari and that appointment was also approved by the A.E.O. vide Ext. R3(b). Thereafter, she was permanently appointed as Assistant Teacher in the retirement vacancy of one V. Saramma, which appointment was also approved by the A.E.O. and Ext. R3(c) is the order in that regard. Thereafter, due to division fall in the school, she has been continuing as a teacher without salary with effect from 15-7-2002 to 28-6-2004. According to her, the fourth respondent was appointed in the retirement vacancy of Sri. P.K. Jayaram, Assistant Teacher. The first respondent appointed the fourth respondent under Ext. P9 to the post which was hitherto held by the 4th respondent i.e. the post arising due to the leave vacancy of one Smt. Prassanna Kumari. Ext. P9 was issued in that context only. According to the counter affidavit there is no substance in challenging Ext. P9 alone. Producing Ext. R3(d), the 3rd respondent contends that one Smt. V.V. Geetha, who is the wife of her husband's brother was appointed in the school as a member of the Sooryachira family and that appointment was approved by this court. According to the 3rd respondent, apart from her claims as a member of the Sooryachira Variam, she has a claim under Rule 51A of Chapter XIVA of the K.E.R., in view of her previous appointments; a claim for promotion under Rule 43 of Chapter XIVA of K.E.R. and a further claim under Rule 42 of Chapter XIVA of K.E.R. on the basis of her seniority for confirmation. According to her, claims under Rule 43 of Chapter XIVA of K.E.R. should be given priority over claims under Rule 51A of Chapter XIVA and, therefore, the Manager was bound to give her the appointment in terms of the Kerala Education Rules. The counter affidavit points out that one Sri. S.V. Venugopal, another person who claimed as a family member of Sooryachira Variam, challenged the 3rd respondent's posting this court in O.P. No. 5342/2002. The challenge in that original petition was against the order passed by the Assistant Director of Public Instructions directing the educational agency to appoint 3rd respondent and this court directed the Government to consider the revision filed by Sri. S.V. Venugopal, against the order of the D.P.I. The revision was later dismissed by the Government vide Ext. R3(e) order. It is pointed out that the prominent contention before the Government that the 3rd

respondent was not a member of the Sooryachira Variam family was repelled by the Government. The 3rd respondent has produced Ext. R3(f) seniority list of the staff of the school as on 2-6-2003. The name of the 3rd respondent is shown as Sl. No. "12" in Ext. R3(f) and the name of the fourth respondent C.V. Sasikalaprabha is shown as serial No. "16", it is pointed out.

3. The fifth respondent, Smt. C.V. Sasikalaprabha has produced the appointment order (Ext. R4(a)) issued to her at the time of her appointment as Assistant Teacher in a leave vacancy in the school from 18-6-1997 till 12-9-1997 claiming that the said appointment was approved by the Department. Thereafter, she has produced Exts. R4(b) and R4(c) - further appointments received by her against subsequent leave vacancies in the school. Thereafter, though the fourth respondent was shifted to a regular vacancy which arose due to the death of an incumbent, with effect from 29-11-1999 under Ext. R4(d), there was a division fall in the school and she has been accommodated in a leave vacancy with effect from 15-7-2002. According to her, she was continuing in the very same school and was shifted and appointed to the retirement vacancy of Shri. P.K. Jayaram, Assistant Teacher with effect from 2-6-2004. Ext. P8 is the appointment order so issued to her and the same is issued strictly in accordance with the provisions of the K.E.R. and in terms of the Rules framed as per Ext. P1, it is contended. The 5th respondent has a further claim that she is also a member of the Sooryachira Variam family. It is contended in the counter affidavit that the basic premise on which the writ petition has been filed is that, her claim as a member of the Sooryachira Variam family, has not been considered by the authorities below and the premises is a wrong one. It is further contended that this court in the Judgment in O.P. No. 2554/1993 held that the daughter in law of one Krishnan Kutty Warriar, who was the 22nd defendant in Ext. P1, was entitled to get preference in the matter of appointment as per clause 10 of paragraph 15 of Ext. P1. Accordingly, she contends that, since she is the daughter in law of the 21st defendant in Ext. P1, she is also entitled for preferential claims. As regards the request of the petitioner that the vacancy in question should be filled up by appointing the petitioner the 4th respondent contends that under Rule 43 of Chapter XIV A of K.E.R. she is entitled for promotion. In this context she relies on the judgment of the Supreme Court in Latha v. State of Kerala (2003 (1) KLT 949). It is pointed out that the present petitioner is a graduate with B.Ed. and, therefore, she cannot claim the post of L.P.S.A. at all.

4. Controverting the averments in the counter affidavit and reiterating those impugned through the writ petition, the petitioner has filed a reply affidavit in this case producing Ext. P10 document along with the same. It is pointed out that Ext. R3(d) is a judgment based on the decree granted by the Learned Munsiff, Palakkad in O.S. No. 105/89 in a suit preferred by a person who is similarly placed as respondents 3 and 4. It is further pointed out that Ext. R3(d) judgment was challenged in appeal by the defendants in the suit before the District Court Palakkad in A.S. No. 192/1992. It is conceded that Ext. P10 is pending before this court in second appeal, but it is stated that this court in

second appeal has not granted any stay for the operation of Ext. P10 judgment.

5. Through the reply affidavit, the petitioner has contended that Latha's case has no application to the facts of the present case and that the preferential claim of the Rule 43 claimants over Rule 51A Claimants under Chapter XIVA of the K.E.R. can never get priority over claims like the present one, which is based on binding court order Ext. P1.

6. Sri. Jijo Paul, has addressed me detail on behalf of the petitioner's. Sri. K. Mohanakannan on behalf of respondents 3 and 4 and Sri. M.A. Thomaskutty learned Government Pleader on behalf of the official respondents. Sri. Jijo Paul, on the basis of pleadings in the writ petition and the documents produced along with the petition submitted that, Ext. P1 has become final and on the basis of Ext. P1 the members of the Sooryachira Variam are having preferential claims in the matter of appointments in the school. Eversince Ext. P1 was issued by the Munsiff Court, appointments in the school were being made from time to time on the basis of clause 10 of paragraph 15 of Ext. P1. According to Mr. Jijo Paul, it will be improper to deviate from the terms of Ext. P1 in the case of the appointment to the vacancy which arose due to the retirement of Sri. P.K. Jayaram. Relying on the judgment of this court reported in Mary George v. State of Kerala 1993 KLT 192), Mr. Jijo Paul submitted that though it may be correct to say that the K.E.R. recognises claims under Rule 51A of Chapter XIVA in as much as at the time when the vacancy in question arose, the 4th respondent was working in a leave vacancy it cannot be said that she is entitled for appointment in the vacancy of Sri. P.K. Jayaram. Rule 51A claims are allowed only for those teachers who are waiting outside without any employment.

7. Sri. K. Mohanakannan, who appeared on behalf of the contesting party respondents, would submits mainly on the basis of the contentions raised by his clients through the counter affidavit. According to him, Smt. T. Jayasree, 3rd respondent is certainly a claimant under Rule 51 A. Apart from that, since at the time of occurrence of the vacancy she was working in the school as Assistant Teacher, she has a claim to the post of Sri. P.K. Jayaram under Rule 43 for promotion. She was the seniormost among the L.P.S.As. and ought to have been entitled for promotion under Rule 43. Mr. Mohana Kannan argued that the petitioner has no claim whatsoever to appoint in the school under the provisions of K.E.R., superseding the claims of respondents 3 and 4, which were founded on K.E.R. He further submits that Ext. P1 was issued to his clients and, therefore, they are also members of the family and they have claims based on Ext. P1 also over and above their claims under the K.E.R. To fortify his submissions, Mr. Mohana Kannan relied on the judgment of this court reported in Suseela v. The Manager, Sreenarayana Dharmasangam School, & Others (1976 KLT 670), Latha v. State of Kerala (2003 (1) KLT 949 (SC) & Iridium India Telecom Ltd. Vs. Motorola Inc., . Mr. Mohana Kannan further submitted that the CPC is a general law while the K.E.R. is a special law regarding the appointment and service conditions regarding all teachers in an aided school. The rule according to him is

that general law shall pave way for the special law which governs a particular field. Therefore, according to Mr. Moahana Kannan, his clients are to be given priority in the matter of appointments in aided school based on Kerala Education Rules and not claims based on order like Ext. P1 which cannot bind the educational authorities.

8. I have considered the rival submissions made before me. I have examined the rival pleadings and have gone through various documents produced by the authorities. I have also taken into account the legal principles laid down by the various decisions cited before me. The basic premise on which the petitioner claims appointment in the school in question is that she is a member of Sooryachira Variam family and as such in terms of clause 15(1) of Ext. P1 she has a preferential claim in the matter of appointments. Even though respondents 3 and 4 have also claimed that they are also entitled to the preferential claims on the terms of Ext. P1 as members of the Sooryachira Variam family, I have observed that those respondents have not been placed on record any materials which will show that they are members of Sooryachira Variam family and are entitled to the preferential claim allowed as per Ext. P1. But as far as the petitioner is concerned, it has become obvious that she is a family member who is entitled for preferential claims, if any, guaranteed under clause 10 of para 15 of Ext. P1. But question before me is whether just because she is a member of the Sooryachira Variam family and Ext. P1 allows preferential claims for family members she can insist on the appointment presently given to the 4th respondent being given to her. Under the scheme of the Kerala Education Rules, the Manager of the school has the power to make appointments. But the appointments to be made by the Manager are to be approved by the educational officer concerned. So long as the concerned educational officer does not approve the appointments made by the manager, the appointment will not enable the appointee concerned to receive any emoluments from the Government, salary and other emoluments due to the employees of the aided school. In other words, appointments without approval will be ignored for all practical purposes until they are approved. The educational officers will inter alia take into account and the time he considers the grant of approval made to the appointment made by a particular Manager as to whether the Manager had ignored any claims under Rule 51A of Chapter XIVA or claims for promotion under Rule 43 of the same chapter or any other preferential claim recognised by the K.E.R. So also the approving officer will consider whether while making the appointments, the Manager concerned has taken into account qualifications and other eligibility criteria laid down as per the rules or executive orders of the rule making authority in the matter of appointments to a E.O. concerned to ensure at the time grants approval that the appointments made are all valid in terms of K.E.R. Ext. P1 order of the civil court will not bind the State or the authorities under the Kerala Education Rules, since they are not parties to the same. But at the same time, Ext. P1 will bind the manager and all the members of the Sooryachira Variam family. But at the same time, it should be noticed that even on the terms of Ext.

P1, the management of the school is to be conducted by the manager elected by the members of the Sooryachira Variam family on the basis of the Kerala Education Act and Rules and not otherwise. The argument was raised before me that, since the manager of the school in question is the District Educational Officer himself, Ext. P1 in as much as the same binds the manager will bind the educational officer also. The above argument has only service attraction. Managership has come to be conferred on the D.E.O. only Ex. Officio on account of the disputes among the members of the Educational Agency and on account of their inability to come to an agreement regarding proper person to be appointed as Manager. Even otherwise it will be difficult to accept the proposition that the D.E.O. who presently is the Ex. Officio manager of the school shall ignore the K.E.R. and make appointment based on Ext. P1. Under the scheme of the K.E.R., the D.E.O. himself is the approving authority in the matter of appointments to the post of H.S.As and he is the appellate authority in the case of approval orders granted by the A.E.O. who is the approving authority in the case of appointments to the post in the L.P. and U.P. Sections. To say that the provisions of K.E.R. should be ignored and appointments ought to be made only on the basis of Ext. P1 will be to allow the K.E.R. to be flouted.

9. Under the above circumstances, I find that the petitioner is not entitled for any preferential claim for the appointment as U.P.S.A. in the school in question to the vacancy which arose due to the retirement of Sri. P.K. Jayaram. But the petitioner has a further claim that the appointment given to respondents 3 and 4 in the post which she aspire for are irregular due to other reasons also. Even though I am not very much impressed by the arguments raised by Sri. Jijo Paul in this context, I feel that an opportunity can be given to the petitioner to ventilate her grievance before the Government by filing a revision under Chapter XIV A Rule 92 of the K.E.R. Under these circumstances, I am inclined to dispose of the writ petition itself in the following terms.

The petitioner's claim to preference in the matter of appointment based on Ext. P1 is repelled. The petitioner is permitted to file a revision petition before the Government impugning the appointments given to respondents 3 and 4 on reasons other than the reasons of violation of Ext. P1 and, if such a revision is filed by the petitioner within a maximum period of one month of the petitioner receiving a copy of this judgment, the Government will entertain the revision, hear the petitioner, respondents 3 and 4, the educational officer concerned and dispose of the same in accordance with law, within a maximum period of another three months of the Government receiving the revision.

The Writ Petition is disposed of as above.