
(2013) 03 KL CK 0116
In the High Court Of Kerala
Case No : Writ Petition (C) No. 902 of 2013

Priyakumari

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 04-03-2013

Acts Referred:

Citation : (2013) 2 ILR (Ker) 839 : (2013) 3 KLJ 246 : (2013) 2 KLT 641

Hon'ble Judges : P.N. Ravindran, J

Bench : Single Bench

Advocate : Alexander Joseph and T.P. Joseph, for the Appellant; V. Vijulal, Sr. Government Pleader, M.V.S. Namboothiri and G. Biju, for the Respondent

Judgement

P.N. Ravindran, J.—The petitioner was appointed as H.S.A. (Hindi) by the Corporate Manager, Travancore Devaswom Board in Devaswom Board Higher Secondary School, Thiruvalla as per Ext. P1 appointment order dated 23.7.2007. The said appointment was in the vacancy of Smt. S. Sasikala, H.S.A. (Hindi) who was transferred to Devaswom Board High School, Vamanapuram with effect from 9.7.2007. The District Educational Officer, Thiruvalla approved the petitioner's appointment with effect from 23.7.2007 as per order dated 11.6.2008. The petitioner was thus continuing in service in Devaswom Board Higher Secondary School, Thiruvalla. The staff fixation for the year 2011-2012 in respect of Devaswom Board Higher Secondary School, Thiruvalla was made as per Ext. P2 order dated 14.8.2011 issued by the District Educational Officer, Thiruvalla. Though during the previous year (2010-2011) 03 posts of H.S.A. (Hindi) had been sanctioned, on account of fall in student strength, the District Educational Officer sanctioned only 2 posts of H.S.A. (Hindi) for the academic year 2011-2012. He directed that the junior most H.S.A. (Hindi) should be retrenched or adjusted in the available vacancy. The petitioner, the junior most H.S.A. (Hindi) thus faced retrenchment.

2. By Ext. P2 order, besides the post of H.S.A. (Hindi) 01 post of H.S.A. (Natural Science) was also reduced, which necessitated the retrenchment of Smt. R.

Sunitha, H.S.A. (Natural Science). Aggrieved by Ext. P2 staff fixation order, the Manager filed an appeal before the Deputy Director of Education. In that appeal, a copy of which is on record as Ext. P4, relying on Ext. P3 Government order dated 3.9.2011 he sought revision of the staff fixation order based on the teacher student ratio of 1:40 which was made applicable for the academic year 2011-2012 as well. The Deputy Director of Education rejected the appeal by Ext. P5 order dated 26.11.2011 on the ground that the posts of H.S.A. (Hindi) or H.S.A. (Natural Science) cannot be retained applying the 1:40 ratio. He held that the 1:40 ratio has to be applied to accommodate the junior most teacher in the service of the Corporate Educational Agency.

3. Aggrieved by Ext. P5 order, the Corporate Manager filed Ext. P6 revision petition before the Director of Public Instruction. While that revision petition was pending, the Government issued G.O. (P). No. 199/11/G.Edn. dated 1.10.2011, a copy of which is on record as Ext. P7. By that order the Government inter alia directed that the staff fixation order for the year 2010-2011 shall continue for the academic year 2011-2012 also. The Government also clarified that only those appointments made after 31.3.2011 in regular vacancies which arise due to promotion, resignation, death or retirement of teachers in the posts sanctioned as per the staff fixation order of 2010-2011 will be approved in the academic year 2011-2012. In short, the effect of Ext. P7 Government order is that the staff fixation order passed for the academic year 2010-2011 would govern the number of posts to be sanctioned for the academic year 2011-2012 as well. Yet another effect is that only those appointments made after 31.3.2011 in regular vacancies which had arisen due to promotion, resignation, death or retirement of teachers in the posts sanctioned as per the staff fixation order for the year 2011-2012 will be approved in the academic year 2011-2012. In the light of Ext. P7 Government order, the Director of Public Instruction disposed of Ext. P6 revision petition by Ext. P8 order dated 20.4.2012, with a direction to the District Educational Officer, Thiruvalla to dispose of the Corporate Manager's request in the light of paragraph 6B(i) of Ext. P7 Government order dated 1.10.2011, if it is otherwise in order.

4. Pursuant thereto, the District Educational Officer, Thiruvalla sent Ext. P9 letter dated 6.6.2012 wherein relying on Ext. P10 circular dated 3.5.2012 issued by the Government, the District Educational Officer, Thiruvalla called upon the Corporate Manager to clarify whether teachers found in excess in Devaswom Board Higher Secondary School, Thiruvalla can be adjusted in vacancies which have arisen in schools under the Travancore Devaswom Board on account of retirement, death, promotion, resignation or long leave during the year 2011-2012.

5. The Corporate Manager in turn sent Ext. P11 reply dated 14.6.2012 stating that 01 post of H.S.A. (Natural Science), 01 post of HSA (Hindi) and 02 posts of UPSA were reduced in Devaswom Board Higher Secondary School, Thiruvalla when the staff fixation order for the year 2011-2012 (Ext. P2) was issued. He stated that in terms of Ext. P10 circular dated 3.5.2012, the teachers who

became excess could not be provided in any school under the management against vacancies which have arisen on account of retirement, death, promotion, resignation or long leave after 2010-2011. He also stated that vacancies which arise after 31.3.2011 on account of retirement, death, promotion or resignation will be filled up only after accommodating the excess teachers in the respective categories. He also requested that the petitioner and the other teachers named therein may be accommodated in their respective schools based on the staff fixation order for the year 2010-2011. The said request was evidently based on paragraph 6B(i) of Ext. P7 Government order dated 1.10.2011.

6. On account of the Ext. P2 staff fixation order, payment of salary and allowances was declined to the petitioner. She however continued in service by working as H.S.A. (Hindi) in the High School section. This Writ Petition was filed on 8.1.2013 aggrieved by the non-payment of salary and allowances with effect from 15.7.2011. In this Writ Petition the petitioner challenges Ext. P2 and seeks an order directing the District Educational Officer, Thiruvalla to consider and pass orders in the light of Ext. P7 Government order and the directions issued by the Director of Public Instruction. The petitioner also seeks an order directing the respondents to pay arrears of salary and allowances to her.

7. The fourth respondent has sworn to a counter affidavit dated 25.2.2013. It is stated that the Government have by Ext. R4(a) circular dated 3.5.2012 (which is the same as Ext. P10) directed that excess teachers in their respective schools should be accommodated in vacancies which arise due to retirement, death, promotion, resignation or long leave before making fresh appointments, that the Government have by Ext. R4(b) circular dated 10.9.2012 reiterated the directions issued in Ext. R4(a) circular and also directed the Educational Officers concerned to approve appointments only after an undertaking is obtained from the Corporate Manager to the effect that excess teachers are not retained in any of the schools. As regards the petitioner it is stated that as per the staff fixation order for the academic year 2011-2012, there was reduction of one division in the High School section and two divisions in the U.P. section and accordingly 1 post of H.S.A. (Natural Science), 01 post of H.S.A. (Hindi) and 02 posts of U.P.S.A. were reduced. It is stated that the excess teachers were directed to be adjusted against available vacancies in the schools under the management but the Corporate Manager did not comply with the direction and therefore, the salary of the excess teachers including the petitioner was withheld from 15.7.2011 onwards. In paragraph 7 it is stated that notwithstanding Exts. R4(a) and R4(b) circulars, the Corporate Manager has not given an undertaking to the effect that excess teachers are not retained in any of the schools. It is contended that the Corporate Manager is bound to accommodate the excess teachers in the vacancies which are available in other schools, that a retirement vacancy of H.S.A. (Hindi) had arisen in Devaswom Board High School, Vamanapuram on 1.4.2011 and therefore, the Corporate Manager ought to have accommodated the petitioner in that retirement vacancy with effect from 15.7.2011, based on the directions contained in Exts. R4(a) and R4(b) circulars. It is also stated that

the Corporate Manager ought to have transferred the excess H.S.A. (Natural Science) and 02 Upper Primary School Assistants in the same manner as directed in the said circulars. As regards Ext. P7 Government order it is contended in paragraph 9 of the counter affidavit that Ext. P7 Government order would apply only if the fifth respondent had complied with the directions in Exts. R4(a) and R4(b) circulars.

8. I heard Sri. Alexander Joseph, learned counsel appearing for the petitioner, Sri. V. Vijulal, learned Senior Government Pleader appearing for respondents 1 to 4 and Sri. M.V.S. Nampoothiri, learned standing counsel appearing for respondents 5 and 6. Sri. Alexander Joseph, learned counsel appearing for the petitioner contended relying on Ext. P7 Government order more particularly paragraph 6B(i) thereof, that in view of the said Government order, the posts sanctioned in the Devaswom Board Higher Secondary School, Thiruvalla during the year 2010-2011 can be sanctioned for the year 2011-2012 also, that the Government have thereafter issued letter No. 31904/J2/2012/G.Edn. dated 6.6.2012 to the effect that the staff fixation order for the year 2011-12 shall govern the academic year 2012-2013 as well and therefore, denial of salary and allowances to the petitioner on the short ground that before Ext. P7 Government order was issued, the District Educational Officer, Thiruvalla had by Ext. P2 staff fixation order dated 14.8.2011 reduced 1 post of H.S.A. (Hindi), cannot be sustained. The learned counsel for the petitioner contended that Exts. R4(a) and R4(b) circulars can have effect only in respect of vacancies which arise after 31.3.2011 on account of retirement, death, promotion, resignation or on account of long leave, that in the instant case, the petitioner was appointed way back in the year 2007 and therefore, paragraph 6B(iii) of Ext. P7 Government order or Exts. R4(a) and R4(b) circulars cannot govern her rights. The learned counsel for the petitioner also contended that paragraph 6B(iii) of Ext. P7 Government order and Exts. R4(a) and R4(b) circulars can govern only appointments made after 31.3.2011 without providing the teachers rendered surplus in other schools under the management, that the petitioner was not rendered surplus on account of the fact that by virtue of paragraph 6B(i) of Ext. P7 Government order, Ext. P2 staff fixation order for the year 2011-2012 stood displaced by the staff fixation order for the academic year 2010-11, that Ext. P2 order itself shows that during the year 2010-2011, 03 posts of HSA (Hindi) had been sanctioned in the school and therefore, the stipulations in Exts. R4(a) and R4(b) circulars cannot govern the petitioner. The learned standing counsel appearing for Travancore Devaswom Board reiterated the said contentions.

9. Per contra, Sri. V. Vijulal, learned Senior Government Pleader appearing for the official respondents contended that it was the intention of the Government when it issued Exts. R4(a) and R4(b) circulars that a vacancy which arises in schools under a corporate management on account of retirement, death, promotion, resignation or long leave on or after 31.3.2011 should be filled up only by accommodating the excess teachers in the corporate educational agency and therefore, paragraph 6B(i) of Ext. P7 Government order can apply only if the

Corporate Manager has complied with Exts. R4(a) and R4(b) circulars. The learned Senior Government Pleader also contended that a vacancy of H.S.A. (Hindi) had arisen in Devaswom Board High School, Vamanapuram on 1.4.2011 when the incumbent retired from service and therefore, that vacancy should have been filled up by transferring the petitioner, an excess H.S.A. (Hindi) in Devaswom Board Higher Secondary School, Thiruvalla.

10. I have considered the submissions made at the Bar by the learned counsel appearing on either side. I have also gone through the pleadings and the materials on record. The fact that the petitioner's appointment as H.S.A. (Hindi) which was made on 23.12.2007 was duly approved is not in dispute. The fact that during the academic year 2010-2011, 3 posts of H.S.A. (Hindi) had been sanctioned in Devaswom Board Higher Secondary School, Thiruvalla is also not in dispute. The petitioner is admittedly not the junior most among the High School Assistants (Hindi) in the service of the Corporate Educational Agency. When Ext. P2 staff fixation order for the year 2011-2012 was issued in respect of Devaswom Board Higher Secondary School, Thiruvalla, 01 post of H.S.A. (Hindi), 1 post of H.S.A. (Natural Science) and 2 posts of Upper Primary School Assistant were reduced on account of fall in student strength. The District Educational Officer directed that the four teachers rendered surplus should be retrenched or adjusted in vacancies under the management. Though the Corporate Manager challenged the staff fixation order by filing an appeal in so far as it relates to the posts of H.S.A. (Hindi) and H.S.A. (Natural Science) claiming the benefit of the 1:40 teacher student ratio, that appeal was rejected by Ext. P5 order dated 26.11.2011 passed by the Deputy Director of Education. The Manager thereupon filed by Ext. P6 revision petition before the Government. Shortly after Ext. P2 staff fixation order was issued, the Government issued Ext. P7 order dated 1.10.2011 wherein it is inter alia provided as follows:-

6. Government are pleased to approve the following recommendations:-

A. xxx xxx xxx

B. (i) For the academic year 2011/12 the staff fixation orders of 2010-11 would be applicable and will be fixed as the sanctioned posts in each school.

(ii) No filling up of posts of additional division shall be allowed after 31.3.2011, except for posts which have hitherto not been filled up though allowed in the staff fixation orders of 2010-11.

(iii) Other than the proviso (ii) above, only those appointments made after 31/03/2011 in regular vacancies due to promotion, resignation, death or retirement of the teachers in the posts sanctioned as per the staff fixation orders of 2010-11 will be approved in the Academic Year 2011-12.

Taking note of the said stipulation, the Director of Public Instruction forwarded the revision petition filed by the Corporate Manager to the District Educational Officer along with Ext. P8 letter dated 20.4.2012 and directed him to pass orders

in the matter and to retain excess teachers as per paragraph 6B(i) of Ext. P7 Government order if it is otherwise in order. The District Educational Officer took the stand that the Manager should accommodate the teachers rendered surplus by Ext. P2 staff fixation order in other schools under the management. Such a stand was taken in Ext. P9 letter dated 6.6.2012 in view of Ext. P10 circular dated 3.5.2012 [same as Ext. R4(b)]. In my opinion, the stand taken by the District Educational Officer in Ext. P9 letter sent by him and in the counter affidavit filed in the instant case, cannot be sustained. It is evident from a reading of paragraph 6B(i) of Ext. P7 Government order that the staff fixation order for the year 2010-11 will govern the staff fixation for the year 2011-12 as well. It is not in dispute that the staff fixation order for the year 2010-2011 will govern the academic year 2012-2013 as well, as stipulated in Government letter No. 31904/J2/2012/G.Edn. dated 6.6.2012. It is not in dispute that in the staff fixation order for the year 2010-2011, 03 posts of H.S.A. (Hindi) had been sanctioned in Devaswom Board Higher Secondary School, Thiruvalla. In view of Ext. P7 Government order, more particularly paragraph 6B(i) thereof, it has to be necessarily held that the staff fixation order for the year 2010-2011 would govern the academic year 2011-2012. As per the stipulations in Government letter No. 31904/J2/2012/G.Edn. dated 6.6.2012, it would govern the academic year 2012-2013 also. The stipulation in paragraph 6B(iii) of Ext. P7 Government order that only those appointments made after 31.3.2011 in regular vacancies that arise due to promotion, resignation, death and retirement of teachers holding posts sanctioned as per the staff fixation order for the year 2010-2011 will be approved for the academic year 2011-12, can have application only to appointments made after 31.3.2011 and not to the continuance of teachers appointed earlier, who had approved service and are entitled to the benefit of paragraph 6B(i) of Ext. P7 Government order. Necessarily therefore, Exts. R4(a) and R4(b) circulars can also have application only to such vacancies. The circulars cannot on the terms thereof apply to the case on hand where the dispute is not about an appointment made after 31.3.2011, but about the continuance in service during the academic years 2011-12 and 2012-13 by virtue of the staff fixation order for the year 2010-11, of a teacher who was duly appointed on 23.7.2007. I am therefore of the considered opinion that Exts. R4(a) and R4(b) circulars cannot govern the case on hand. The stand taken by the fourth respondent in paragraph 9 of the counter affidavit dated 25.2.2013 that Ext. P7 Government order will be applicable only if the Corporate Manager complies with Exts. R4(a) and R4(b) circulars, can have no application to cases covered by paragraph 6B(i) of Ext. P7 Government order, though it may have application as regards the availability of benefits under paragraph 6B(iii) thereof. I accordingly hold that the petitioner is entitled to continue in service as H.S.A. (Hindi) in Devaswom Board Higher Secondary School, Thiruvalla based on the staff fixation order for the academic year 2010-2011, during the academic years 2011-2012 and 2012-2013 and thereafter also, in the event of the required number of posts being sanctioned in the schools under the management.

I accordingly dispose of the Writ Petition with a direction to the respondents to take steps to draw and disburse arrears of salary and allowances to the petitioner with effect from 15.7.2011 and to continue to pay salary and allowances to her so long as a post of H.S.A. (Hindi) is available to accommodate her.