

(2005) 11 KL CK 0025
In the High Court Of Kerala
Case No : O.P. No. 14586 of 1999

Priyesh Aramana

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 25-11-2005

Acts Referred:

Kerala Education Rules, 1959 — Rule 51B, 9A

Citation : (2006) 1 KLT 615

Hon'ble Judges : Kurian Joseph, J

Bench : Single Bench

Advocate : Kaleeswaram Raj, for the Appellant; K.P. Dandapani and P.K. Shakeela, Government Pleader, for the Respondent

Judgement

Kurian Joseph, J.—The issue raised in this Writ Petition pertains to the claim made by the petitioner for appointment under the dying in harness scheme under Rule 9 A of Chap.XXIV A of KER. The Deputy Director in the impugned Ext.P5 order has taken a strange stand that since Sri. Damodaran, late father of the petitioner, continued by virtue of deemed option under Chap.XXIV B and since Rule 9A comes under Chap.XXIV A the petitioner was not entitled to get the appointment. In the counter affidavit filed on behalf of the State, the State has however clarifies the intention of the rule stating that in the matter of compassionate appointment, there is no distinction between Chap.XXIVA and Chap.XXIV B. That apart, it is seen from Section Rule Order 484/90 amending the Kerala Education Rules by introducing Rule 51 B under Chap.XIV A in the case of teaching staff and Rule 9A under Chap.XIV A in the case of non teaching staff for extending the benefit of compassionate appointment that:

Dependants of government employees who die in harness are being appointed in Government Service. There is no provision in the Kerala Education Rules for appointing the dependants of aided school teachers/non-teaching staff who die in harness. The amendment is intended to incorporate necessary provision in the rules.

2. Inviting reference to the decision of this Court in *Alexander v. State of Kerala* 1985 KLT 1075 the contention of the learned Counsel appearing for the party respondent is that the nonteaching staff governed by Chap.XXIV A and Chap.XXIV B of the Kerala Education Rules are to be treated differently. There is no quarrel with the proposition; but it has to be noted that the different treatment therein pertains only to the retirement and retirement benefits and nothing else. A member of the non-teaching staff coming under Chap.XXIVB continue to be covered by the Kerala Education Rules. The intention of Rule 9A of Chap.XXIVA being the extension of the benefit of compassionate appointment to those covered by the Kerala Education Rules, for the only reason that the person who died while in service was an optee under Chap.XXIV B, the benefit of compassionate appointment cannot be denied to the eligible applicant. Therefore it is declared that the application of the petitioner cannot be rejected on the only ground of her father being governed by Chap.XXIV B of Chap.XIV KER.

3. In the light of the declaration, the petitioner may approach the 3rd respondent and in case there is still any refusal, the petitioner may approach the 2nd respondent in which case the matter will be considered the said respondent with notice to the petitioner and the 3rd respondent and appropriate action thereon in accordance with law in the matter will be taken be the 2nd respondent. The impugned orders are accordingly quashed.

The Writ Petition is disposed of as above.