

(2011) 04 KL CK 0045

In the High Court Of Kerala

Case No : Writ Petition (C) . No"s. 34486 of 2010 (I) and 9864 of 2011

P.V. Nathan

APPELLANT

Vs

The District Educational Officer and Smt. K. Indira, H.S.A.,
V.I.M. High School

RESPONDENT

Date of Decision : 06-04-2011

Acts Referred:

Citation : (2011) 04 KL CK 0045

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

Bench : Single Bench

Advocate : P.R. Venketesh, for the Appellant; N.N. Sugunapalan, for the Respondent

Judgement

T.R. Ramachandran Nair, J.—In W.P.(C) No. 34486/2010, the Manager of the school is the Petitioner and in W.P.(C) No. 9864/2011, a teacher who is working as H.S.A (Social Science) and who is aggrieved by the proceedings Ext.P6 informing that hurdles exist on the way of approval of appointment is the Petitioner.

2. The 2nd Respondent in W.P.(C) No. 34486/2010 was before this Court as Appellant in Writ Appeal No. 646/2007 and the same was disposed of by Ext. P1 judgment. She had entered service as Upper Primary School Assistant on 02.06.1997 in the school. A long leave vacancy arose in the school when one Anithakumari working as High School Assistant (Social Studies) availed leave from 12.01.1998 to 11.01.2003 by Ext. P1 order. Another High School Assistant Pushpalatha was appointed in the leave vacancy. Staff fixation during the year 1999-2000 allowed Anr. division in the school and Smt. Pushpalatha was appointed in the additional vacancy and the 2nd Petitioner herein was appointed on 03.01.2000 in the leave vacancy instead of Pushpalatha. The approval of appointment of the 2nd Respondent was rejected by the District Educational Officer stating that the appointment of Pushpalatha was not approved. Ultimately, the matter reached before this Court and by Ext. P1, the Division

Bench disposed of the matter. The operative portion of Ext. P1 judgment reads thus:

In the above circumstance, this writ appeal is allowed in part and it is hereby declared that the Appellant is entitled to have her service from 3.1.2000 to 3.3.2000 as HSA approved. She is also entitled to have her service approved with effect from 5.6.2002 or from the date on which she had been actually working as High School Assistant.

3. As evident from above, the 2nd Respondent's service from 03.01.2000 to 03.03.2000 as HSA has been directed to be approved and the service from 05.06.2002 or from the date on which she had been actually working as High School Assistant has also been directed to be approved. Thereafter, the Manager forwarded the appointment orders of the 2nd Respondent for approval. It is stated in paragraph 4 of the writ petition that on the retirement of one Sri. P. Sivakumar on 31.03.2002 Smt. Pushpalatha was shifted to the retirement vacancy of Sivakumar. Thus the 2nd Respondent became eligible and entitled to be appointed from 05.06.2002. Thereafter on 01.07.2003 a permanent vacancy arose when Sri. V. Govindankutty, a Physical Science Teacher retired on 30.06.2003 and therefore, the 2nd Respondent gets permanent appointment as H.S.A. from 01.07.2003. Therefore, in terms of the directions of the Division Bench, in the light of the above developments, Exts. P2 to P4 appointment orders were forwarded by the Manager to the District Educational Officer.

4. By Ext. P5, the District Educational Officer directed the Manager to furnish a detailed report about the service of the 2nd Respondent from 03.01.2000 with all connected documents such as Attendance Register of teachers, pupils Attendance Register for the years from 2000-01 to 2009-10 in which the 2nd Respondent had class charge. It is submitted that all those details have been furnished by the Manager.

5. The main prayer in W.P.(C) No. 34486/2010 is for a direction to the District Educational Officer to pass appropriate orders on the proposal forwarded by the Manager for appointment of the 2nd Respondent as H.S.A., as directed in Ext. P1 judgment.

6. In W.P.(C) No. 9864/2011, the Petitioner was appointed as UPSA and was promoted and posted as HSA against a long leave vacancy in the year 2003. She is seeking approval for the period from 01.07.2003 onwards. The objection taken by the District Educational Officer is that in view of the fact that orders are not passed in respect of Smt. K. Indira, who is the 2nd Respondent in W.P.(C) No. 34486/2010, no orders could be passed. It is in that circumstance, the said Petitioner approached this Court.

7. Learned Counsel appearing for the 2nd Respondent Smt. K. Indira, by relying upon the averments in the counter affidavit, submitted that the 2nd Respondent is entitled for appointment and approval for the period from 04.03.2000 to 06.06.2002 also. Learned Counsel for the Manager submitted that the rights of

the 2nd Respondent has already been declared by this Court in Ext. P1 judgment.

8. Learned Counsel for the 2nd Respondent submitted that in the light of Exts. R2(a) to R2(c), it can be seen that the vacancy exists. The counter affidavit filed by the 1st Respondent shows that the proposal for appointment of the 2nd Respondent in W.P.(C) No. 34486/2010 contained certain defects and this was informed to both parties. It is stated that Form 27 and the declaration endorsed are not seen signed by the 2nd Respondent. It is essential to establish the appointment. Therefore, what has caused delay in approval of appointment of the 2nd Respondent and other teachers of the school is the defect that is yet to be cured by the 2nd Respondent by signing Form 27.

9. It is the case of the learned Counsel for the 2nd Respondent that unless the issue regarding her claim for approval from 04.03.2000 to 06.06.2002 is finally settled, it may be taken as relinquishment of the said right, if she signs Form 27 as now proposed. Evidently, the remedy of the 2nd Respondent in the light of Ext. P1 judgment is only to approach the Division Bench or to challenge Ext. P1 to establish the rights if any with respect to the said period.

10. Faced with the situation, learned Counsel for the 2nd Respondent submitted that without prejudice to the said right of the 2nd Respondent, Form 27 will be signed by her for curing the defect. But, the said question namely, the right for appointment from 04.03.2000 to 06.06.2002 may be left open.

11. In that view of the matter, both these writ petitions are disposed of in the following manner:

(i) The Manager will see that in the light of the submission of the learned Counsel for the 2nd Respondent, the 2nd Respondent will sign Form 27 namely, the originals of Exts. P2 to P4 so that the Manager will be able to return it back to the District Educational Officer for approval. It is made clear that I am not entering anything on the merits of the claim of the 2nd Respondent for any appointment for the period from 04.03.2000 to 06.06.2002 and the directions as above will be without prejudice to the rights of the 2nd Respondent to get it agitated before the appropriate forum.

(ii) As far as W.P.(C) No. 9864/2011 is concerned, in the light of the above direction, the District Educational Officer will take every action to pass orders on the application for approval of appointment of the said Petitioner.