
(2001) 01 KL CK 0064
In the High Court Of Kerala
Case No : O.P. No. 36445 of 2000

Raghava Kurup and Another

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 11-01-2001

Acts Referred:

Citation : (2001) 1 KLJ 944

Hon'ble Judges : K.A. Abdul Gafoor, J

Bench : Single Bench

Advocate : K.P. Kylasanatha Pillay, P. Sreekumar, B. Prabhath Kumar, S. Saumya and Sreedevi Kylasanath, for the Appellant; C.T. Ravikumar, Govt. Pleader, for the Respondent

Final Decision : Allowed

Judgement

K.A. Abdul Gafoor

1. The first petitioner appointed the second petitioner on 1-8-2000 as High School Assistant (Hindi). That appointment was approved by the 3rd respondent. But the 4th respondent objected. Fourth respondent is a peon in the school managed by the first petitioner. The 4th respondent claims promotion to that post under Note 1 of Rule 1 of Chap.XIV-A K.E.R. and contend that no outsider like the second petitioner can be appointed. The 4th respondent is qualified to hold the post of High School Assistant (Hindi). This contention was found to be sustainable by the second respondent who reversed the approval order granted to the appointment of the 2nd petitioner, as per Ext.P6. The petitioners have approached this court challenging Ext.P6. The petitioners have also filed Ext.P7 revision petition. When this case came up for hearing, the parties agreed that as the matter involves only interpretation of the rules, it can be heard by this court notwithstanding the pendency of the revision petition. It is contended by the 4th respondent that Ext.P6 order is perfectly justified in terms of note 1 to Rule 1 of Chap.XIV-A KER and that the issue is covered by the decisions of this court in Reghu v. State of Kerala (1993 (2) KLT 82), in Reghu v. State of Kerala 2000 (2)

KLT 29). In these decisions claim for promotion of a member of non-teaching staff had been recognised on the strength of the aforesaid provision. Note 1 to Rule 1 of Chap.XIV-A KER reads that:

A member of the non-teaching staff under the category of clerks, peons, sweepers and other staff shall also be eligible for appointment as teacher provided he has prescribed qualifications and that there is no teacher eligible for promotion or for appointment to such post under these rules.

The rules in Chap.XIV-A are pertaining to "conditions of service of aided school teachers". Rule 43 is the general provision for promotion. Rule 43 provides that

Subject to Rule 44 and 45 and considerations of efficiency 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

In such circumstances, it may be stated that Rule 43 will confine only to teachers. Note 1 to rule 1 of Chap.XIV-A KER clarifies the position to the effect that in the absence of teachers eligible for promotion, teaching posts shall be filled up by promotion of members of non-teaching staff belonging to the category mentioned in the said note. It was in the above circumstances the claim for promotion by members of non-teaching staff to the post of Primary School Assistant was recognised in *Reghu v. State of Kerala*, 2000 (2) KLT 29.

2. But the posts in question here is that of a language teacher viz. High School Assistant (Hindi). Promotion to that post is specifically covered by a special provision in Rule 43 B Chap.XIV-A KER. The said Rule provides that a post of full time High School Assistant in any particular language shall be filled up by promotion from among the feeder categories in the order of preference mentioned in that rule. The feeder categories are lower grade language teachers, part time High School Assistants, other lower grade language teachers, regular primary teachers, craft and specialist teachers etc. In rule 43, general provision dealing with promotion, no feeder category is mentioned. That means qualified persons in any category can be promoted to the Higher Grade. But in the case of High School Assistants (Language), rule 43B Chap.XIV-A KER governing promotion is more specific that promotion to that post shall be confined to the feeder categories alone, that too in the order of preference mentioned in the rule itself. If the rule had stopped there, the 4th respondent could have contend that if no body is available in any of the feeder categories, Note 1 to rule 1 of Chap.XIV-A KER can be applied in his case. But sub-rule 2 of Rule 43B Chap.XIV-A KER further provides that if qualified teachers as mentioned in sub-rule 1, are not available in the schools under the same educational agency for promotion to the post of High School Assistant in that language, "qualified candidates from the outside may be appointed to the post". The Manager is thus free to appoint a qualified hand from outside, in the absence of qualified incumbents in the specified feeder categories. Admittedly the petitioner a peon, does not come

within the feeder categories mentioned in Rule 43B. The petitioner has also no case that there is any other incumbent belonging to feeder categories to be promoted. In such circumstances the appointment of a fresh hand, against the post of High School Assistant (Hindi) is perfectly justified under sub rule (2) of Rule 43B Chap.XIV-A KER. Admittedly the 4th respondent is a Peon and does not come within any of the feeder categories. Therefore the 4th respondent cannot have a claim for promotion. In such circumstances, appointment of the second petitioner is in order. Ext.P6 is therefore illegal. It is quashed.

O.P. is allowed. No costs.