
(2004) 06 KL CK 0038

In the High Court Of Kerala

Case No : Writ Petition No"s. 37879 of 2003 and 5628 of 2004

Rejimol

APPELLANT

Vs

Asst. Educational Officer

RESPONDENT

Date of Decision : 29-06-2004

Acts Referred:

Kerala Education Rules, 1959 — Rule 1, 34, 44, 44(1), 5

Citation : (2004) 2 KLT 899

Hon'ble Judges : Kurian Joseph, J

Bench : Single Bench

Advocate : E. Subramani and S. Easwaran, in W.P. 37879 of 2003, for the Appellant; Abraham Vakkanal, E.S.M. Kabeer, Saji Kuriachan, M.R. Nandakumar and Paul Abraham Vakkanal and Augustine Joseph, Government Pleader in W.P. 37879 of 2003, for the Respondent

Judgement

Kurian Joseph, J.—Rule 34 Chapter XIV-A KER provides for a combined seniority list of Upper Primary and Lower Primary School Teachers. Rule 1(b) of Chapter XXIII KER in the matter of fixation of staff strength provides that in any L.P. School there shall be as many posts of Lower Primary School Assistants as the number of class divisions reduced by one and that one is the Headmaster. Rule 5 of the said Chapter provides that in an Upper Primary School there should be one post of Headmaster, as many posts of Upper Primary School Assistants as the number of class divisions reduced by one and as many posts of Lower Primary School Assistants as there are divisions in the Lower Primary School classes. The post of Lower Primary School Assistant and Upper Primary School Assistant is not interchangeable. In a situation where the Headmaster of the Upper Primary School is a teacher qualified to teach only in the Lower Primary School, whether the consequential reduction of posts should be in the U.P. School or L.P. School is the question to be decided in these cases.

2. The petitioner in W.P.(C) No. 5628/2004 is an Upper Primary School Assistant having approved service from 15.7.1997 to 31.10.2000. It is not in dispute that

she is a claimant for future appointment in the school managed by the second respondent under Rule 51A of Chapter XIV-A KER. On 1.4.2002 there arose a vacancy pursuant to the retirement of the Headmaster. One Smt. Mariamma Thomas, the seniormost teacher who was an LPSA, was appointed as Headmistress. There are only four class divisions in Lower Primary and three divisions in Upper Primary Sections. When Smt. Mariamma Thomas was promoted as Headmistress, being a 51A claimant petitioner staked her claim. It appears the second respondent Manager was not inclined and he appointed the 3rd respondent. The justification for appointing the 3rd respondent is that in the staff fixation there are four posts sanctioned in the L.P. Section and there are only two in the U.P. Section. The petitioner being a claimant for appointment only as UPSA cannot be considered for the vacancy of LPSA.

3. Since the issue to be resolved is a legal question, it is sufficient to have reference only to the factual position as narrated above, though there are quite a few intervening developments which are not that germane to the issue. In a U.P. School with L.P. Section, when the Headmaster is an LPSA the consequential reduction is to be made whether from LPSA or UPSA is the issue.

4. Rule 34 of Chapter XIV-A KER reads as follows:-

"34. Every Management shall prepare and maintain in Form 11A a staff list otherwise called the seniority list of teachers as specified below:

(a) In the case of High Schools, a combined seniority list of teachers specified in Clauses (ii) and (iiA) of Rules 3, Chapter XXIII shall be prepared.

(b) In the case of Upper Primary School and Lower Primary School a combined seniority list of teachers if any, specified in Clauses (iii), (iv) and (v) of Rule 3 Chapter XXIII shall be prepared."

Rule 44(1) of Chapter XIV-A reads as follows:-

"44(1). The appointment of Headmasters shall ordinarily be according to seniority from the seniority list prepared and maintained under Clauses (a) and (b) as the case may be of Rule 34. The manager will appoint the Headmaster subject to the Rules laid down in the matter. A teacher if he is aggrieved by such appointment will have the right of appeal to the Department".

Rule 1(b) of Chapter XXIII KER dealing with L.P. School reads as follows:-

"1(b). In schools which do not work on shift system, there shall be -

(i) One post of Headmaster: and

(ii) As many posts of Lower Primary School Assistants as the number of class divisions reduced by one". ,

Rule 5 of Chapter XXIII reads as follows:-

"5. In every Upper Primary School, there may be -

(i) One post of Headmaster:

(ii) As many posts of Upper Primary School Assistants as the number of class divisions, reduced by one.

(iii) As many posts of Lower Primary School Assistants as there are divisions in the Lower Primary School classes.

Note:-If the Lower Primary Section of the school is working on the shift system the number of Lower Primary School Assistants shall be fixed in accordance with Rule 1".

5. A reading of the above provisions would show that (1) there has to be a combined seniority list of Lower Primary School Assistants and Upper Primary School Assistants in any Upper Primary School having both Sections; (2) school having only Lower Primary Section is entitled to have one post of Headmaster and as many posts of Lower Primary School Assistants as the number of class divisions reduced by one. In other words, the Headmaster of the Lower Primary School Assistant will additionally handle one class division also. (3) school having only U.P. section, it is entitled to have one post of Headmaster and as many posts of U.P. School Assistants reduced by one. In other words, the Headmaster of an Upper Primary School having only Upper Primary Section will handle one class division.

6. The question is what will be the situation in a school having both Lower Primary and Upper Primary Sections and where the Headmaster is to be from the Lower Primary Section? Before tackling the question yet another issue also has to be analysed. Whether a Lower Primary School Assistant can teach in an Upper Primary class and vice versa? That question is no more res Integra. In *Mary George v. State of Kerala* 1999 (3) KLT 912 it has been held that both the categories of teachers are not one and the same and that they are different in nature and duties. In the judgment dated.8.1.1996 in W.A.No. 1499/1995 also a Division Bench of this Court has held that under Rule 51-A of Chapter XIV-A KER a retrenched HSA cannot claim the vacancy of an UPSA and a retrenched UPSA cannot claim the vacancy of a LPSA. Therefore, there cannot be a dispute on the position that a Lower Primary School Assistant cannot teach in an Upper Primary class.

7. Under Rule 5 Chapter XXIII the prescribed staff strength in an Upper Primary School with the L.P. Section is one Headmaster and as many posts of Upper Primary School Assistants as the number of class divisions reduced by one, and as many posts of Lower Primary School Assistants as there are divisions in the Lower Primary classes, irrespective of the issue as to whether the Headmaster is from L.P. or U.P. School. Obviously there is a vacuum which has to be filled up by understanding the legislative intention and thus giving a purposive interpretation to the rule.

8. The provisions will have to be understood in the background of the general

scope of the statute and the legal mischief that it intended to remedy. The rule requires the Headmaster of L.P. School or U.P. School, as the case may be, to handle one class division. The L.P. School Teacher turned Headmaster is not competent to teach in the U.P. School. It is in the background of such legislative intention, Court has to give the meaning of the provisions by reading the statute as a whole. It is now well settled rule of interpretation that in order to ascertain the meaning of a clause in a statute the Court must look at the whole statute, at what precedes and at what succeeds and not at the clause itself as held by Dr. Lushington in *Queen v. Eduljee Byramjee* (1846) 3 MIA 468. In *State of West Bengal Vs. Union of India*, the Supreme Court has considered the same principle. To quote Chief Justice Sinha "The Court must ascertain the intention of the Legislature by directing its attention not merely to the clauses to be construed but to the entire statute: it must compare the clause with the other parts of the law, and the setting in which the clause to be interpreted occurs".

9. As already observed above, if it is a question of an Upper Primary School having only Upper Primary Section, there cannot be any dispute that it can have only as many teachers as the number of class divisions reduced by one and that one will be the Headmaster. Since the promotion is to be effected under Rule 44 of Chapter XIV-A KER on the basis of seniority and since the seniority under Rule 34 being a combined seniority of Lower Primary School Assistants and Upper Primary School Assistants, sometimes the seniormost teacher in an Upper Primary School will be a Lower Primary School Assistant as in the instant case. In such a situation the LPSA promoted as Headmaster in the U.P.School cannot teach in the U.P. section; he; is qualified to teach only in the L.P. Section. Under Rule 1 had there been only the L.P. Section he would be obliged to teach in the L.P. Section by handling one class division in addition to his duties as Headmaster. Similarly under Rule 5, had there been only U.P. Section, the Headmaster was obliged to handle one class division. On analysing the factual and legal position it is fairly clear that Rule 5 has to be understood to mean that when the Teacher promoted as Headmaster in the U.P.School having L.P.Section also happens to be from the Lower Primary Section, there will only be as many Lower Primary School Assistants reduced by one. The provision under Rule 5 regarding the number of teachers in U.P.Section as reduced by one can only be in a situation where the person appointed from the seniority list happens to be a U.P.School Assistant. Otherwise it will affect the functioning of the Upper Primary Section.

10. The legal position being what is stated above, it is easy to tackle the factual dispute involved in these two cases. The vacancy that arose on 1.4.2002 in the post of Headmaster in the School was filled up by Smt. Mariamma Thomas who was an LPSA. Therefore, in the staff fixation for the year 2002-2003 there can only be three LPSAs and 3 UPSAs since Smt. Mariamma Thomas is obliged to handle one L.P.Section also. The appointment of the 3rd respondent in W.P.(C) No. 5628/2004 against the vacancy which arose during 2002-2003 cannot be approved since he is only an LPSA. That vacancy should go to the Writ Petitioner.

11. W.P.(C) No. 37879/2003. In view of the judgment in W.P.(C) No. 5628/ 2004 it is not necessary to pass any further orders in this Writ Petition; the petitioner is the third respondent in W.P.(C) No. 5628/2004. Appropriate orders will be passed by the educational officer in the light of this judgment.

The Writ Petitions are disposed of as above.