
(2007) 07 KL CK 0012
In the High Court Of Kerala
Case No : W.A. No. 2276 of 2002

Rethinath K. Menon

APPELLANT

Vs

The Secretary to Government and Others

RESPONDENT

Date of Decision : 27-07-2007

Acts Referred:

Kerala Education Act, 1958 — Section 14(2)
Kerala Education Rules, 1959 — Rule 51A, 7A(3)

Citation : (2007) 3 KLJ 611

Hon'ble Judges : K.S. Radhakrishnan, J;Antony Dominic, J

Bench : Division Bench

Advocate : Chincy Gopakumar, for the Appellant; V.A. Muhammed, Benny Gervasiz, GP and B. Gopakumar, for the Respondent

Final Decision : Allowed

Judgement

K.S. Radhakrishnan, J.—Writ Appeal No. 2199 of 2002 is preferred by the Manager of an aided high school, who was the fifth respondent in O.P. No. 30612 of 2002 and Writ Appeal No. 2276 of 2002 is preferred by the seventh respondent in the original petition. Original petition was preferred by the seventh respondent seeking a writ of certiorari to quash Exts. P4 and P12 orders and also for a declaration that he is entitled to have all the service benefits including salary and other consequential benefits.

2. For the disposal of these appeals we may refer to the parties according to their status in the original petition. Fifth respondent was the Manager of V.V.S. High School, Mannuthy which was taken over by the Government as per notification issued u/s 14(2) of the Kerala Education Act for a period of five years. Petitioner was appointed by the District Educational Officer, Thrissur who was in management of the school, as a full time menial on 29-06-1992, the said appointment could not be approved. On fixation of staff strength petitioner's service was terminated with effect from 14-07-1992. However when a vacancy of Peon arose in the school on 01-12-1994 the District Educational Officer

appointed the petitioner to the said post without notifying the said vacancy to the Employment Exchange though the petitioner was overaged on the date of the appointment. District Educational Officer however granted approval of her appointment with effect from 01-03-1995. District Educational Officer further promoted her to the post of Clerk as per Ext. P3 order dated 27-04-1995.

3. The management of the school was later taken over from the District Educational Officer. The Manager on joining duty appointed the seventh respondent. The Headmaster of the school then issued Ext. P4 order relieving the petitioner with effect from 3-4-1998. Ext. R5(a) along with Ext. P4 were tendered to the petitioner who refused to accept the same. Petitioner filed a complaint before the District Educational Officer, who passed Ext. P7 order dated 8-6-1998, cancelling Ext. R5(a) order and the Manager was directed to re-admit the petitioner to duty with immediate effect. Manager then filed an appeal before the Deputy Director of Public Instruction. Appeal was dismissed as per order dated 23-03-1999. Manager also filed revision petition before the Director of Public Instruction which was dismissed as per order dated 12-07-1999. Later Manager took up the matter in revision before the Government. Government after considering the various contentions allowed the revision petition vide Ext. PI 2. It was found that the appointment of the petitioner as full time menial and as Peon and the promotion as Clerk was illegal. However, it was ordered that since the petitioner had already discharged her duties, salary paid to her need not be recovered from her. The order passed by the Director of Public Instruction was set aside and the appointment of seventh respondent with effect from 03-04-1998 was approved. Aggrieved by the same the writ petition has been preferred.

4. Learned single Judge quashed Exts. P4 and P12 order. In paragraph 9 of the judgment it is stated as follows;

Now, coming to the facts of this case, it can be seen that the appointment of the petitioner directly as Peon was illegal. So her further appointment as Clerk was also illegal. But those appointments, being approved appointments, were valid for all purposes. The Educational Agency or the Manager should have moved the competent authority and got those orders cancelled. But instead of that, the Manager arrogated to himself, the power to set aside an approved appointment and cancelled it by

Ext. P4. This action is also equally illegal.

Learned Judge gave a declaration that the petitioner should be notionally accommodated in the first vacancy of full time menial that arose after 15-07-1992 and she would be entitled to all consequential benefits including promotion to higher post or posts as the case may be according to her turn. For implementing that direction and other consequential directions issued by the learned single Judge, Exts. P4 and P12 were quashed. Aggrieved by the same these appeals have been preferred.

5. We have first to examine whether the appointment of the petitioner on 29-06-1992 by the District Educational Officer was legal or not. Admittedly period of vacancy of a full time menial in the school was only for sixteen days. The question is whether the District Educational Officer could legally fill up that vacancy by appointing the petitioner. Rule which governs the vacancies in the year 1992 was Rule 7A(3) of Chapter XIV-A of the Kerala Education Rules, which reads as follows:

Vacancies, the duration of which is less than one academic year, shall not be filled up by any appointment.

The District Educational Officer, Thrissur who was acting as Manager at the relevant time was bound to follow the above mentioned statutory provision, but violated it with impunity evidently to favour the petitioner. The District Educational Officer should not have appointed the petitioner to that vacancy which was only for sixteen days. The District Educational Officer himself, had approved that appointment which itself was illegal. The District Educational Officer who was well aware of the staff strength and the period of the vacancy should not have appointed the petitioner contrary to the above mentioned statutory provision. Further, a vacancy of Peon arose on 01-12-1994 and the very same District Educational Officer issued Ext. P2 order appointing the petitioner to the post of Peon without notifying the vacancy to the Employment Exchange which was also illegal. D.E.O. himself approved that appointment also. Petitioner could not have been appointed as Peon since she was not a Rule 51A claimant and the post could be filled up from candidates sponsored by the Employment Exchange. D.E.O. feigned ignorance of those statutory provisions. Petitioner had no preferential right to claim the post of Peon.

6. We therefore fully agree with the view of the Government that the petitioner was not qualified to be appointed as full time menial, Peon as well as Clerk.

7. We are of the view since appointments given to the petitioner as full time menial, Peon as well as clerk are all irregular and illegal, non-challenge of approval orders is of no consequence especially in a case where approval was given by the very same District Educational Officer who had effected all these illegal appointments. Learned Single Judge was not justified in taking the view that since the petitioner had not challenged the approval orders those appointments were valid. We find it difficult to agree with that reasoning. Manager had challenged the appointment orders before the District Educational Officer, Deputy Director of Education, the Director of Public Instruction and also before the Government and once the appointment orders go naturally the approval orders would also go. Learned Counsel appearing for the petitioner submitted that the Government was not justified in upsetting the order passed by the District Educational Officer in appointing the petitioner as Full Time Menial, then as Peon and then as Clerk since the petitioner has only three years to retire. Argument cannot be accepted since she is holding the post illegally. Learned single Judge in our view was not justified in upsetting the order passed

by the Government, which in our view, is perfectly legal.

8. We are therefore inclined to allow these appeals and set aside the judgment of the learned single Judge.