
(2001) 10 KL CK 0028
In the High Court Of Kerala
Case No : W.A. No. 359 of 2001

Rev. Mother, Delphine Mary	Vs	APPELLANT
State of Kerala		RESPONDENT

Date of Decision : 24-10-2001

Acts Referred:

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

Citation : (2002) 1 ILR (Ker) 337 : (2002) 1 KLJ 53

Hon'ble Judges : K.S. Radhakrishnan, J;K. Balakrishnan Nair, J

Bench : Division Bench

Advocate : George Varghese Kannamthanam, for the Appellant; P.K. Shakeela, Government Pleader and S. Gopakumaran Nair, for the Respondent

Final Decision : Dismissed

Judgement

K.S. Radhakrishnan, J.—The question that has come up for consideration in this case is whether a married son of a person who died in harness would get the benefit of Rule 51B Chapter XIV-A of the Kerala Education Rules in the case of teaching staff and Under Rule 9A of Chapter XXIV-A of K.E.R. in the case of non-teaching staff. Applicant's father was a Peon in the St. Joseph's High School who died on 20.12.1996 in harness. The Manager of the School immediately promoted one P.Krishnan who was a Menial as Peon on 2.1.1997 in that vacancy and the appointment was approved by the District Education Officer. In the vacancy which arose on promotion of Krishnan the Manager appointed Sr. Nirmala on 6.1.1997 as Menial. Approval was sought for to that appointment as well. Petitioner then filed a complaint before the District Educational Officer and filed O.P.4948/97, which was disposed of directing the District Educational Officer to dispose of the said representation.

2. District Educational Officer heard the applicant as well as the manager and passed order dated 1.7.2000 and found that Manager has overlooked the right of the applicant under Rule 9A of Chapter XXIV-A of K.E.R. A direction was issued to the Manager to appoint the applicant as full time menial in the first vacancy

which arose after the date of his application. Aggrieved by the same the Writ Petition has been preferred by the Manager.

3. Counsel appearing for the Manager submitted that the applicant has no legal right to claim appointment under dying in harness scheme. Reference was made to the Government Order G.O. (P) No. 7.95/P & ARD dated 30th March 1995 which deals with liberalised scheme for compassionate employment of the dependants of Government servant who die in harness. Counsel placing reliance on Clause 13 of the scheme and submitted that married son or daughter is not included in the said clause and consequently applicant is not entitled to get the benefit of the above mentioned Government Order. Reliance was also placed on the decision of this Court in *Reni K. Abraham v. State of Kerala*, 1999 (1) KLT 249.

4. Counsel appearing for the applicant on the other hand submitted that he has got a statutory right under Rule 9-A of Chapter XXIV-A of KER read with G.O.(P) No. 7/95/P & ARD dated 30.3.1995 and G.O.MS. No. 15/97/G.Edn. dated 16.1.1997 to get appointment under dying in harness scheme. Counsel submitted his father died as a Peon on 20.12.1996 while in service. He was expecting that Manager would appoint him to that vacancy. He submitted his application on 27-1.97 within a period of one month from the death of his father. Overlooking his claim the Manager however, appointed one Krishnan and Sr. nirmala in the vacancy of Krishanan. This according to him, is illegal. Their appointments have not been approved and consequently he is entitled to get appointment. The applicant submitted the application before the Manager was well within time.

5. We have to examine the question raised in this case in the abovementioned factual background. Rule 9-A of Chapter XXIV-A of KER cast an obligation on the Manager to give employment to a dependant of the non-teaching staff of an aided school dying in harness. In this connection it is relevant to extract the said provision for easy reference:

"9-A. The Manager shall give employment to a dependant of the non-teaching staff of an aided school dying in harness. Government Orders relating to employment assistance to the dependants of Government servants dying in harness shall, *mutatis muntandis*, apply in the matter of such appointments."

We have to read the abovementioned provision along with the liberalised scheme for compassionate employment of the dependants of Government Servant who die in harness under the Government Order GO(P)7/95/P & ARD dated 30th March 1995. It is relevant to refer to Clause 13(a) which we extract below:

"13(a). Only one dependent will be given employment assistance under the scheme in the event of the death of a Government Servant. Employment assistance shall be given to the widow/ widower, son, daughter, or sister in the said order of priority. Son and daughter shall include adopted son and adopted daughter respectively and will rank after son/daughter. No other dependent shall

be eligible or given appointment under the scheme."

Counsel for the management as we have already indicated submitted that the above mentioned clause has excluded married daughter/son from the purview of Clause 13(a) of the Scheme while the previous Government Order dated 23.12.92 specifically included married daughter and son also. Consequently the manager is justified in not entertaining the claim of the married daughter. Such a contention was however accepted by a learned Judge of this Court in 1999 (1) KLT 249 and WA 287/99 and WA 284/99 filed against the said judgment were dismissed. All the same we are of the view a more reasonable approach is to consider the claim of married son and daughter also. Provided they can show, in spite of the marriage, he/she was a dependent on the deceased and could not tide over the sudden crisis due to the death of the breadwinner of the family. The marriage may change the status of a person, but his or her status as a dependent of the deceased may continue. We are of the view that the mere fact that either daughter or son got married does not mean that he/she has lost his claim for appointment under Rule 51B of Chapter XIV-A of K.E.R. as well as Rule 9A of Chapter XXIV-A of KER read with Government Order dated 30.3.1995. The object and purpose of Rule 51B of Chapter XIV-A as well as Rule 9A of Chapter XXIV-A of K.E.R. is to give some assistance to the dependants of the deceased. Object of those provisions as well as the liberalised scheme framed by the Government would be defeated if the claim of a married daughter or son is rejected if they are otherwise dependants on the deceased. In view of the above mentioned circumstance we hold that married son or married daughter is also entitled to get benefit of Rule 51-B of Chapter XIV-A as well as Rule 9A of Chapter XXIV-A of K.E.R. read with the liberalised scheme.

6. We therefore find no merit in the Writ Appeal and direct the 1st appellant to give effect to Ext. P3 order within a period of two weeks from the date of receipt of a copy of this judgment.