

(1986) 10 KL CK 0038
In the High Court Of Kerala
Case No : O.P. No. 4102 of 1986-L

S. Saroja

APPELLANT

Vs

A.E.O., Pattambi and Others

RESPONDENT

Date of Decision : 17-10-1986

Acts Referred:

Kerala Education Rules, 1959 — Rule 12, 6B, 6B(1), 6B(2)

Citation : (1986) 10 KL CK 0038

Hon'ble Judges : V. Sivaraman Nair, J

Bench : Single Bench

Advocate : M.M. Cherian, Asok M. Cherian and K. Sasikumar, for the Appellant;
Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Sivaraman Nair, J.—This Original Petition involves the interpretation of Rule 6B of Chapter XXIII of the Kerala Education Rules. That rule, which was substituted by G.O. (P) No. 160/74/G. Edn., dated 12th August 1974, provides.

Notwithstanding anything contained in any other rule in this Chapter, no posts of Specialist Teacher or Craft Teacher shall be created in any Upper Primary Schools or upper primary sections of High Schools for a period of 6 years from the school year 1969-70:

Provided that the posts sanctioned before 1969-70 against which Specialist Teachers and Craft Teachers are appointed and approved and such teachers who are qualified according to the rules then in force may however continue as such.

Sub-rule (2) thereof was added by notification, dated 9th February 1979 and is in the following terms:

Notwithstanding anything contained in any other rules in this Chapter, no post of Specialist Teacher or Craft Teacher shall be created in any Upper Primary School or upper primary sections of High School except as specified herein:

(a) One post of Specialist Teacher namely Music Teacher or Physical Education Teacher or Drawing Teacher or Sewing Teacher as decided by the District Educational Officer concerned during staff fixation in the case of departmental schools and as required by the manager in the case of aided schools will be sanctioned in each Primary School or upper primary section of a High School having an effective strength of 500 pupils and above in the complete upper primary sections on the 6th working day of each academic year.

Sub-clause (b) of that rule was to the effect-

A post of Specialist Teacher in a particular category shall not be sanctioned if a specialist teacher of the same category is already working in the upper primary school or upper primary section.

That Sub-clause was substituted by promulgation of G.O. (P) No. 46/82/G. Edn, dated 12th April 1982. The present Sub-clause (b) of the rule reads as follows:

No post of Specialist Teacher shall be sanctioned in any category under Clause (a), if a Specialist Teacher is already working in the Upper Primary School or upper primary section of the High School.

Sub-clause (c) there of is in the following terms:

A post of Sewing Teacher shall be sanctioned only subject to the following conditions also:

(i) that there are not less than 200 girl pupils in the complete Upper Primary Section, and

(ii) that there is no post of Craft Teacher under needle work in the Upper Primary School or upper primary section of High Schools.

Petitioner, who is a Drawing Teacher, claims that by virtue of the proviso to Rule 6B(1)(a) of the rules, the post of a Drawing Teacher which was sanctioned during the school year 1968-69 should continue indefinitely in spite of the retirement/resignation or expiry of the person who was holding the post prior to 1969-70, and the Manager is free to appoint Anr. teacher in that sanctioned post whenever the post falls vacant. It is her further submission that the negative direction contained in Sub-rule (2) against creation of the post of Specialist Teacher or Craft Teacher, does not apply to the post of Drawing Teacher, which had already been sanctioned and continuance of which was authorised by the above proviso. She submits that the prohibition contained in Clause (b) may perhaps be operative against any other post of Specialist Teacher in the school. If this position is to be accepted, the orders, Exts. P-4, P-6 and P-8 refusing to approve the appointment of the Petitioner as a Drawing Teacher (Specialist Teacher) ordered in Ext. P-2 order, dated 11th June 1984 in the school of the fifth Respondent may have to be vacated.

2. The relevant facts are the following: A full-time post of Drawing Teacher was sanctioned in that Aided Upper Primary School conducted by the fifth Respondent

for the school year 1968-69. Late Shri T.N. Narayanan Namboodiri was working in that post till his death in 1980. During the school year 1981-82, one Shri Mohanan was appointed as Drawing Teacher in that vacancy. In the staff fixation order for 1981-82, the Assistant Educational Officer abolished that post and refused to approve the appointment of Shri Mohanan. The reason mentioned for doing that was that there was Anr. Specialist Teacher in the school as Sewing Teacher, who was appointed during the school year 1980-81. Though the District Educational Officer approved the refusal of approval the Director of Public Instruction in Ext. P-1 order, dated 19th November 1981, for the school year 1981-82, ordered restoration of the post of Drawing Teacher with effect from 15th July 1981 to accommodate Shri Mohanan. This was done under Rule 6B of Chapter XXIII of the Kerala Education Rules. The appointment of Shri Mohanan was approved from 15th July 1981 to 14th July 1982. Shri Mohanan was appointed from 8th December 1980. The Manager filed a petition before the Government. Ext. P-2 order, dated 9th July 1985 was passed by the Government holding that since the post of Drawing Teacher was in existence in the school prior to 1969-70 and as 8th December 1980, the required number of periods were available for accommodating a Drawing Teacher in the school, the post would be restored with effect from 8th December 1980 and the appointment of Shri Mohanan as Drawing Teacher would be approved with effect from that date. Shri Mohanan resigned from the school when he was selected by the Public Service Commission on 21st November 1983. In Ext. P-3 order, dated 11th June 1984, Petitioner was appointed against the vacancy of Drawing Teacher for the school year 1984-85. The Assistant Educational Officer approved the appointment of the Petitioner for the academic year 1984-85 only for a period of three months. The second Respondent, however, ordered that-

according to Rule 6B(2)(b) added as per G.O. (P) 45/82/G. Edn., dated 12th April 1982, no post of Specialist Teacher shall be sanctioned in any category if a Specialist Teacher is already working in the U.P. section. As such the sanction of the post of Drawing Teacher in the school is against the provisions in K.E.R. Therefore, the post of the Drawing Teacher sanctioned in the school for 1984-85 is hereby cancelled.

The other post of Specialist Teacher, which was already approved in the school, was that of a Sewing Teacher, who was appointed in the academic year 1980-81. The post of Sewing Teacher was not sanctioned in the staff fixation order by the Assistant Educational Officer for that year. The Manager appealed to the Deputy Director of Education, Palghat. In Ext. P-5 order, dated 18th August 1980, the post of Sewing Teacher was sanctioned with effect from 18th August 1980 in view of the fact that there are 344 girl students in the school. Obviously, the authority for passing an order was Rule 6B(2)(a) and (c) of the rule extracted above.

3. Since approval of appointment of the Petitioner as Drawing Teacher was refused by the Assistant Educational Officer in terms of Rule 6B(2)(b) of Chapter

XXIII of the Kerala Education Rules, the Manager filed a revision petition which was disposed of by Ext. P-6 order dated 6th June 1985 by the Additional Director of Public Instruction. He found that the post of Sewing Teacher should not have been sanctioned from 1980-81, but since the Sewing Teacher appointed earlier was working in the school, the question of restoration of the post of Drawing Teacher, which existed prior to 1969-70 would be considered only after abolishing the post of Sewing Teacher. The position adopted by him was apparently that only one post of Specialist Teacher but not both could be sanctioned. The Manager filed Ext. P-7 revision petition before the Government. His argument before the Government was that the ban contained in Rule 6B(2)(b) as amended by G.O. (P) No. 46/82/G. Edn., dated 12th April 1982 could not operate in the case of revival or restoration of the post of Drawing Teacher, which was saved by the proviso to Rule 6B(1) and that it did operate only against creation of post. It was his submission that the drawing teacher's post being one which was already in existence and not one to be created during the school year 1984-85, the District Educational Officer and the Additional Director of Public Instruction were wrong in refusing approval of the appointment of the Petitioner. In Ext. P-8, dated 25th February 1986, Government dismissed Ext. P-7 application for the reason that two Specialist Teachers could not be accommodated in an Upper Primary School in view of the ban contained in Rule 6B(2)(b) of Chapter XXIII. As already stated, Petitioner challenges Exts. P-4, P-6 and P-8 orders.

4. Counsel for the Petitioner submits that what Rule 6B(1) proviso authorises is the continuance of the post of Specialist Teacher, which was in existence prior to the academic year 1969-70. According to him, posts of Specialist Teachers which were sanctioned before 1969-70 in which specialist teachers were appointed and whose appointments were approved as also qualified teachers who were so appointed would continue notwithstanding any other rule in Chapter XXXIII. According to him, the retirement, resignation, death etc., of the incumbent resulting in a vacancy therein would not affect the continuance of the post, and filling up of the post which so became vacant would not amount to creation of a post. It is also submitted that the non-obstante clause, with which Sub-rule (2) begins, and the prohibition against creation of posts of Specialist Teachers do not affect posts which were saved by the proviso to Rule 6B(1) of Chapter XXIII, Kerala Education Rules. So shall it be, submits the Petitioner, in relation to sanction subsequent to 12th April 1982 of new posts. This is sought to be made out by reference to Exts. P-9 and P-10 clarification issued by Government. The former-Government Letter No. 71694/J1/69/Edn., dated 24th September 1969 provides:

Post of Specialist/Craft Teachers sanctioned before 1969-70 will be continued even if the incumbent retires or leaves the post on other reasons, the posts will be allowed to be filled up by qualified hands. This clarification will apply both to Government and Aided Schools.

In G.O. (Ms.) No. 87/79/G. Edn., dated 2nd June 1979, it was clarified:

When part-time posts which existed prior to 1969-70 and which have become full-time according to the G.O. read as first paper above will be converted to a part-time post when such full-time became vacant unless a full-time post could be sanctioned on the basis of the number of periods of work now available in the school.

5. The Liaison Officer appearing for the Respondents submits that it is true that the proviso to Rule 6B(1) enables continuance of a post of Specialist/Graft Teacher, which was sanctioned prior to 1969-70. But, in any case, there shall be not more than one Specialist Teacher in an upper primary section in view of the provisions contained in Rule 6B(2)(b), and in that sense, the orders Exts. P-4, P-6 and P-8 are perfectly legal. It is also submitted that in view of Rule 6B(i)(c) of the rules, the post of Sewing Teacher had to be sanctioned since there were more than 200 girl students in the school and that the post of Sewing Teacher was sanctioned prior to the amendment of Rule 6B(2)(b) by G.O. (P) No. 46/82/G. Edn., dated 12th April 1982. The Liaison Officer also pointed out that the revival of the post or its restoration was effective only from 8th December 1980; and as such, the Petitioner is not entitled to maintain that the post was in existence for all times. He referred further to the fact that as on 8th December 1980, with reference to which date the post of Drawing Teacher was revived, Rule 6B(2)(b) did not contain the absolute prohibition against appointment of an additional Specialist Teacher.

6. It is evident from the facts stated above, that neither the revival nor restoration of the post of Specialist Teacher with effect from 8th December 1980, nor the appointment and approval of a Specialist Teacher for the school year 1980-81 was approved in Ext. P-5 order, or subsequent to the amendment of Clause (b) of Rule 6B(2) of Chapter XXIII of the Kerala Education Rules. The post of Sewing Teacher was sanctioned for the school year 1980-81 at a time when the previous incumbent in the post of Drawing Teacher, Shri Namboodiripad, was alive. Ext. P-5 order sanctioned the post with effect from 18th August 1980. Shri Namboodiripad died only on 3rd November 1980. At the time when the Sewing Teacher was appointed, there was no bar against the appointment of that teacher. Sanction for continuance of the post for the academic year subsequent to 12th April 1982 could be rendered illegal only if there was Anr. sanctioned post of Specialist/Craft Teacher available in the school as on that date. It may also be seen that the post of Drawing Teacher in which the Petitioner was appointed by Ext. P-3 order with effect from 11th June 1984 was sanctioned only for the period from 8th December 1980 to 14th July 1982 as specially ordered in Ext. P-2. The post was occupied only till 21st November 1983. By the time the question of staff fixation for the year 1984-85 and approval of appointment of teachers were to be taken up, there was already a Sewing Teacher whose appointment was liable to be approved in terms of Rule 6B(2)(a) and (c) of Chapter XXIII of the rules.

7. It is true that in Ext. P-6 order, the Additional Director of Public Instruction

had taken up the position that the appointment and sanction of the post of Sewing Teacher in the school for the period 1980-81 was against the rules in force that the claim of the Petitioner for restoration of the post of Drawing Teacher could be considered only after abolition of the post of Sewing Teacher. Counsel for the Petitioner submits that in view of the above finding, it may now be directed that the post of Drawing Teacher shall be restored and the appointment to the post may be directed to be approved abolishing the post of Sewing Teacher.

8. This is hardly possible for more reasons than one. It is extremely doubtful whether the observations contained in Ext. P-6 order, that the sanction of the post of Sewing Teacher in the school year 1980-81 was illegal is correct or legally sustainable. Admittedly, there were more girl students than necessary to justify the sanction of a post of Sewing Teacher during that school year. This position apparently continued during subsequent academic year also. There was hardly any justification for the Additional Director to observe that the sanction of the post of Sewing Teacher was against rules. Secondly, it is not possible to hold that the Additional Director was competent to observe that the post of Sewing Teacher should not have been sanctioned and the post was liable to be abolished in a proceeding in which that teacher was not a party at all. The Additional Director should not have made observations which were likely to have serious consequences on the continuance of the Sewing Teacher in service. Thirdly, it was extremely doubtful whether the Additional Director had any power to retrospectively abolish the post of Sewing Teacher, which was duly sanctioned in the school in the staff fixation order and was duly approved in competent proceedings, Ext. P-5, by the Deputy Director of Education and for subsequent years by the relevant statutory authorities. Even assuming that there was any such power, the retrospective abolition of the post should not have been made without notice to the party who was likely to be affected.

9. There is yet Anr. hurdle in accepting the Petitioner's submission that a post of Specialist/Graft Teacher sanctioned before 1969-70 shall continue indefinitely and the Manager shall be free to appoint incumbents in that post notwithstanding the fact that the person appointed and whose appointment was approved prior to 1969-70 has vacated that post without any reference to the number of students or class divisions in the Upper Primary School and without reference to the requirement of such Specialist Teacher. It appears to me that the proviso protects only continuance of the post as long as the teacher whose appointment was approved against the sanctioned post prior to 1969-70 continues in that vacancy. Orders of staff fixation and consequent appointment of teachers ordinarily ensure only for the respective academic years as is clear from the provisions contained in Rule 12 of Chapter XXIII of the Kerala Education Rules. An exception is made now in the case of Specialist Teachers/Craft Teachers whose appointments were approved before 1969-70. This exception is applicable for the sanctioned post irrespective of the amendment contained in Rule 6B(2) (b) that no post of Specialist Teacher or Craft Teacher should be created in any

Upper Primary School or upper primary section of the High School for a period of six years from 1969-70. Obviously, the ban was imposed since there was no need for giving instruction, and therefore there was no justification for appointment of Craft Teachers. The proviso only states that persons who were already appointed against sanctioned posts may continue in service till such time as they can. The sanctioned posts were continued only to entitle continuance of such teachers in service. The proviso was not enacted to give any licence to the Manager to appoint teachers in unnecessary posts at their whims and fancies. It was only a transitory provision meant to protect teachers in posts which were directed to be discontinued. Sub-rule (2) of Rule 6B read with Sub-clause (c) thereof enables a Specialist Teacher or a Drawing Teacher or a Sewing Teacher to be appointed in the school, notwithstanding the total prohibition contained in Rule 6B(1). The choice of deciding who the Specialist/Craft Teacher shall be is left to the Manager. An obligation to appoint a Sewing Teacher is also incorporated in Sub-clause (c), in Upper Primary Schools where there are not less than 200 girl students. The conjoint effect of these provisions seems to be that a post of Specialist Teacher sanctioned prior to 1969-70 and the incumbent in that post may continue till that incumbent validly holds that post and not thereafter. In any case in Upper Primary Schools where there are more than 200 girl students, a post of Specialist Teacher may be sanctioned notwithstanding the total prohibition contained in Rule 6B(2) of Chapter XXIII of the Kerala Education Rules. If that be the position, I do not find anything wrong in the orders Exts. P-4, P-6 and P-8, whereby approval for appointment of the Petitioner in the post of Drawing Teacher was refused by the respective authorities under the Kerala Education Rules. The relief sought by the Petitioner, in these circumstances, cannot be granted.

The original petition accordingly fails and the same is hereby dismissed.