

(2009) 05 KL CK 0096

In the High Court Of Kerala

Case No : WP (C) No. 5578 of 2008 (L)

S. Sugathan and Sreelatha V.G.

APPELLANT

Vs

The Secretary and Others

RESPONDENT

Date of Decision : 29-05-2009

Acts Referred:

Kerala Education Rules, 1959 — Rule 7A, 7A(3)

Citation : (2009) 05 KL CK 0096

Hon'ble Judges : S. Siri Jagan, J

Bench : Single Bench

Advocate : R. Reji, for the Appellant; Government Pleader, for the Respondent

Judgement

S. Siri Jagan, J.—The 1st petitioner is the Manager of the SNDP Union Schools, Mavelikkara which includes S.N. UPS, Kadavoor. The 1st petitioner in his capacity as Manager of the SN UPS, Kadavoor appointed the 2nd petitioner as UPSA in a leave vacancy of a teacher by name Smt. R. Jyothi for the period from 31.08.05 to 30.08.10. Ext.P1 is that appointment order. That appointment order was forwarded to the 5th respondent for approval. The 5th respondent by Ext.P4 order refused to approve that appointment on the ground that there is a dispute pending before the Civil Court in respect of the right of the 1st petitioner to be the Manager of the school. By Ext.P5 order the 4th respondent District Educational Officer affirmed the same. The revision filed before the Director of Public Instruction also met with the same fate for an additional reason that the petitioner worked only for a period of nine months in the school. The 1st petitioner challenged the same in WP(C) No. 9989/07 in which this Court directed the 1st petitioner to file a revision under Rule 92 of Chapter XIV A KER. The revision so filed by the 1st petitioner was disposed of by Ext.P11 order by the Government, wherein although the Government upheld the right of the 1st petitioner to appoint the 2nd petitioner, approval was again rejected on the ground that the period of appointment of 2nd petitioner was from 19.10.05 to 31.07.06, which is less than one academic year. Petitioners are challenging

Exts.P4, P5, P7 and P11 orders, seeking the following reliefs:

i. Issue a writ of certiorari or any other appropriate writ or direction, call for the records leading to Ext.P4, P5, P7 and P11, scrutinize and quash the same.

ii. Issue a writ of mandamus or any other appropriate writ or order directing the 5th respondent to approve the appointment of the petitioner with effect from 19.10.05.

2. With the help of the counter affidavit filed on behalf of the 1st respondent, the Government Pleader supports Ext.P11 order.

3. I have considered the rival contentions in detail. I note that by Ext.P3 order of the Munsiff's Court, Mavelikkara, the right of the 1st petitioner to be the Manager of the school during the period when Ext.P1 appointment order was issued, had been upheld. In fact that right has also been upheld in Ext.P11 order by the Government. Therefore, the dispute regarding management is no longer an issue for the purpose of deciding the claim for approval of appointment of the 2nd petitioner. The only question that needs to be considered is whether the finding in Ext.P11 that as the period of appointment of the 2nd petitioner as UPSA is from 19.10.05 to 31.07.06 which is less than one academic year, the approval is liable to be rejected.

4. Ext.P1 is the appointment order. It categorically states that the 2nd petitioner is appointed as UPSA for the period from 19.10.05 to 30.08.10, in the vacancy of Smt. R. Jyothi, UPSA entering on leave without allowances from 31.08.05 to 30.08.10. When an appointment order is forwarded to the 5th respondent for approval what the 5th respondent is expected to ascertain is whether that appointment is in accordance with the provisions of KER. The 5th respondent cannot wait till the expiry of one year to see that the appointee has in fact worked for one year and grant approval only if the appointee has worked for one year. Such a procedure is not contemplated in the KER at all. Further, if appointments are made to vacancies having duration of one academic year or more, they are liable to be approved. It has been held so by a Division Bench of this Court in K. Unni Narayanan, Manager and Others Vs. State of Kerala and Others, . In paragraph 7 & 8 of that decision it is held thus:

7. In certain circumstances, the Government may be able to issue executive instructions, but they have no efficacy to override the statutory provisions. We agree with the contentions of the writ petitioners that the offending conditions in Ext.P2 Government Order cannot stand with the statutory rules. Therefore, for enforcing them, the relevant rules require amendment. As long as the rules are not amended, Ext.P2 cannot be pressed into service by the Government. In this context, we notice Rule 7A of Chap.XIV A of the KER., which reads as follows:

7A(1) xxx xxx

(2) Posts that my fall vacant on the closing date shall not be filled up till the reopening date except in the case of posts of non-vacation staff.

(3) Vacancies, the duration of which is less than one academic year, shall not be filled up.

8. We notice that Sub-rule (3) of Rule 7A speaks of vacancies, the duration of which is less than one academic year. In other words, if the vacancy is having a duration of one academic year or more, appointment can be made to fill up the same. The term of appointment need not be co-terminous with the term of the vacancy. If, in fact, the vacancy is having a duration of one academic year or more, even if, there is some delay in making the appointment, such appointment will have to be approved. The reason is that Rule 7A speaks of duration of vacancy and not duration of appointment. So, we are of the view that if appointments are made to vacancies, having duration of one academic year or more, they are liable to be approved.

5. Here in Ext.P11 the Government has stated that the period of appointment of the 2nd petitioner is from 19.10.05 to 31.07.06 which is totally wrong, insofar as in Ext.P1 appointment order, the 2nd petitioner has been appointed for the period from 19.10.05 to 30.08.10, which is for a period of more than one academic year. I also note the contention of the 2nd petitioner that she could not work in the school after 31.07.06 only because the contesting factor of the SNDP Union, which owns the school physically prevented her from entering the school. Whether that is correct or not, insofar as the appointment of the 2nd petitioner is clearly in accordance with the provisions of KER, approval could not have been rejected as done in the impugned orders.

Accordingly, the impugned orders are quashed. The 5th respondent is directed to approve Ext.P1 appointment order by which the 1st petitioner has appointed the 2nd petitioner as UPSA in Kadavoor SN UP School for the period from 19.10.05 to 30.08.10. For this purpose the present Manager shall re-present Ext.P1 appointment order or another identical appointment order, if Ext.P1 is not traceable now, before the 5th respondent. The 5th respondent shall pass orders approving that appointment of the 2nd petitioner within one month of the date of receipt of the same. Arrears of salary due to the 2nd petitioner for the period she actually worked should also be disbursed within another period of two weeks therefrom. The writ petition is disposed of as above.