
(2009) 06 KL CK 0029
In the High Court Of Kerala
Case No : W.A. No. 1130 of 2006 (C)

Sam Joseph

APPELLANT

Vs

State of Kerala and others

RESPONDENT

Date of Decision : 10-06-2009

Acts Referred:

Kerala Education Rules, 1959 — Rule 4

Citation : (2009) 3 ILR (Ker) 733 : (2009) 2 KLJ 623 : (2009) 3 KLT 99

Hon'ble Judges : K. Balakrishnan Nair, J;C.T. Ravi Kumar, J

Bench : Division Bench

Advocate : Benoy Thomas and Paulson Thomas, for the Appellant; T.R. Bindu (G.P), V.M. Kurian, Mathew B. Kurian, K.T. Thomas and Liji. J. Vadakkedom, for the Respondent

Judgement

K. Balakrishnan Nair, J.—The writ petitioner in W.P. (C) No. 18998/2005 is the appellant. The brief facts of the case are the following: The appellant is working as Higher Secondary School Teacher (for short HSST) (Junior) (Commerce) in St. Sebastian Higher Secondary School, Cheenthalar, which is one of the schools managed by the 3rd respondent, Corporate Manager. Two vacancies in the post HSST in Commerce arose in Mount Carmel Higher Secondary School for Girls, Kottayam in 2005 under the 3rd respondent. According to the appellant, ignoring his claim, the 5th respondent was appointed in the first vacancy on 14.2.2005. It was followed by the appointment of the 4th respondent as HSST (Commerce) in the second vacancy. The appellant claims, appointment in the first of those two vacancies, as he is senior to both of them in the cadre of HSST (Junior). He filed Exts. P3 and P4 representations before the Director of Secondary Education, highlighting his grievances. Finding that no action was taken on them, the Writ Petition was filed, seeking appropriate reliefs. He claimed appointment by transfer to the post of HSST (commerce) in preference to respondents 4 and 5. He prayed for setting aside the appointments of respondents 4 and 5. Other incidental reliefs were also sought in the Writ Petition.

2. According to the appellant, going by Rule 4 of Chapter XXXII of the Kerala Education rules (for short "KER"), the post of HSST in a subject has to be filled up by appointment by transfer from HSST (Junior) in that subject. For that, all the Higher Secondary Schools under the same Educational Agency should be taken as one unit. If such a seniority list is prepared, among HSSTs (Junior) Commerce, he will be senior to respondents 4 and 5. But ignoring his superior claim, the appointments were made, it was submitted.

3. The 3rd respondent, Corporate Manager, filed a counter affidavit, resisting the prayers in the Writ Petition. He submitted that the schools under the Educational Agency are divided into two units. Ext. R3(a) is the constitution of the Corporation Educational Agency of Schools, Diocese of Vijayapuram. The Director of Public Instruction has approved the same. The schools under the said Educational Agency are bifurcated into Unit "A" and Unit "B" for the purpose of appointment, seniority, retrenchment etc. Unit "B" consists of Girls Schools and only lady teachers are appointed there. In other words, the teachers under Unit "A" have no claim over the vacancies in Unit "B". Separate seniority lists are maintained for the said two units as sanctioned by rule 35 of Chapter XIVA of the KER. According to the Manager, the present vacancies arose in Unit "B". So, the appellant, who is working under Unit "A", cannot stake his claim for them. The respondents 4 and 5 also supported the stand of the 3rd respondent Manager. The learned Single Judge, who heard the Writ Petition, upheld the contention of the Manager and dismissed the Writ Petition. Hence this appeal.

4. The learned counsel for the appellant relied on Ext.P5 order of the Government dated 14-6-1991 and submitted that Higher Secondary Classes should be considered as Mixed Classes and admissions should be given to both boys and girls. Further, me two units for the purpose of seniority mentioned in Ext.R3(a), applies only to the teaching and non-teaching staff of schools other than Higher Secondary Schools under the KER. The provisions of various Chapters of the KER, unless expressly made applicable by the Government, do not apply as such to Higher Secondary Schools. The qualifications and methods of appointment to various posts under the Higher Secondary wing are prescribed in Chapter XXXII of the KER. Various provisions like Rule 51B, contained in Chapter XIVA of the KER, are made applicable to Higher Secondary wing by specific orders of the Government. Rule 51A has not so far been made applicable, which is evident from the Division Bench Judgment of this Court in Jayasree T. (Former Hsst of ZHS School) Vs. The Director of Higher Secondary, The Educational Agency (Manager) and P.C. Ranjith Raja, .

5. There is no Government Order extending Rule 35 of Chapter XIVA of the KER to Higher Secondary Schools, it is submitted. Further, the learned counsel for the appellant pointed out that Serial No.2 of Rule 4 of Chapter XXXII of the KER deals with transfer of Junior Lecturers/Higher Secondary School Teachers (Junior) under the same management. The said Rule further deals with appointment by transfer of High School Assistants, U.P. School Assistants etc. working under the

same Educational Agency. In this case, the Educational Agency and the management are one and the same, though there are two Units for the purpose of seniority etc for the teachers in the schools, other than Higher Secondary Schools. So, for the purpose of appointment by transfer to the post of Higher Secondary School Teacher, all the teachers working under various schools, including Units "A" and "B", should be treated as one Unit and promotions should have been effected accordingly. The learned counsel for the appellant also relied on Rule 2 of Chapter XXXII of the KER, which provides that notwithstanding anything contained in the Rules the method of appointment and qualifications of teaching and non-teaching staff in Aided Higher Secondary Schools in the State shall be as prescribed in this Chapter. Therefore, the view taken by the learned Single Judge is unsustainable and so, the learned counsel prayed for allowing the Writ Appeal.

6. The learned counsel for the 3rd respondent referred to G.O(RT) No. 2455/97/G.Edn. dated 18-7-1997, wherein it is stated that admission of boys in Higher Secondary Classes in Girls' Schools and girls in Boys' Schools will be decided by the Principal of the concerned school, in consultation with the P.T.A. The said order would indicate that even in Higher Secondary wing, segregation of students is permissible. The learned counsel also took us through Rule 35 of Chapter XIVA of the KER in support his submission.

7. We also heard the learned counsel for the respondents 4 and 5 and also the learned Government Pleader for the official respondents.

8. The Government have prescribed the qualifications and method of appointment to various posts under the Higher Secondary wing by framing Rules, which are contained in Chapter XXXII of the KER. The various provisions in other Chapters of the KER are not applicable to the Higher Secondary wing. But, the Government have issued specific orders, extending the applicability of certain Rules to the Higher Secondary wing also. This Court had occasion to consider the above aspect in Jayasree's case (supra). Rule 2 of Chapter XXXII of the KER also provides that the special provisions contained in Chapter XXXII will prevail over the Rules in other Chapters.

9. In view of the above legal position, unless the Government issue an order making applicable the provisions of Rule 35 of Chapter XIVA of the K.E.R. to the Higher Secondary wing also, all the Higher Secondary Schools under the Educational Agency should be treated as one Unit, for the purpose of appointment, promotion, transfer, retrenchment etc. Rule 35 of Chapter XIVA of the K.E.R. relied on by the Manager reads as follows.

35. If the Educational Agencies have more than one school in a District they shall be constituted into one unit and a common seniority list shall be prepared for all the schools in the unit together and shall be submitted to the concerned District Educational Officer for approval. If the Educational Agencies have schools in more than one District within a Revenue District they shall be constituted as one

unit and a common seniority list shall be prepared for all the schools in the unit together and submitted to the concerned Deputy Director (Education) for approval. If the Educational Agencies have schools in more than one (Revenue District) they shall be constituted as one unit and a common seniority list shall be prepared for all the schools together and shall be submitted to the Director for approval.

The District Educational Officer, the Deputy Director (Education) and the Director, as the case may be may approve the list provisionally pending finalisation of appeal if any preferred by aggrieved teachers.

Provided that the Educational Agency may at its option constitute the existing Girls High Schools and Training Schools for women under it as a separate Unit and draw up a separate seniority list for teachers in those institutions solely intended for women. New Girls Schools to be opened by such Educational Agency shall be allowed to include the staff therein with the Girl's Section while those who do not have Girl's Section while those who do not have Girls's schools on the 24th July, 1962 as a separate unit, shall include the teachers in the new Girl's Schools in the common seniority list referred to in this rule. In preparing this list, the teacher's option to be in one list or the other will be ascertained.

Note 1: The option under this proviso shall be exercised within one month from the 24th July, 1962 and shall be final.

10. But, in view of the decision in Jayasree's Case (supra), the provisions of Rule 35 can have no application to Higher Secondary wing. The Government order dated 18-7-1997 relied on by the learned counsel for the Manager reads as follows:

In partial modification of the directions contained in the Government orders read above, Government are pleased to order that admission of boys in Higher Secondary classes in Girl's Schools and Girls in Boy's School will be decided by the Principal of the concerned school in consultation with the P.T.A.

2. The Government orders read above will stand modified to this extent.

The above order enables the Principal to decide whether boys should be admitted in Higher Secondary classes in Girl's Schools and girls in Boy's Schools, in consultation with the P.T.A. The said order will not have the efficacy to bifurcate the Higher Secondary schools under the management into two Units.

11. Further, Rule 4 of Chapter XXXII of the K.E.R. specifically speaks of the method of appointment by transfer of Junior Lectures under the management and High School Assistants/U.P. School Assistants under the Education Agency. The relevant portion of the Rule reads as follows: 4(2):- Higher Secondary School Teachers:

(1) By transfer from Junior Lecturer in the subject concerned under the management/Higher Secondary School Teacher (Junior).

(2) In the absence of qualified hands under clause (1) above, the vacancies shall be apportioned in the ratio 1:3 between appointment by transfer and direct appointment as detailed below:

(1)(a) By transfer from High School Assistants, who possess the requisite qualifications, under the Educational Agency.

(b) In the absence of qualified persons under (1) above, by transfer from qualified Upper Primary School Assistants/Lower Primary School Assistants who possess the requisite qualification in the subject concerned, under the Educational Agency.

Note:- (1) When qualified persons are not available to fill up the vacancies set apart for appointment by transfer under item 2(i) above such vacancies shall also be allotted for direct appointment.

(ii) Appointments under item (1) above shall be made from select lists of qualified persons prepared on the basis of seniority and merit.

In view of the express mentioning regarding the management and Educational Agency in the above Rule, it can be safely concluded that the Rule making authority intended that all the Higher Secondary Schools under the management/ Educational Agency to be a single Unit for appointment by promotion/transfer. So, we are inclined to uphold the contention of the appellant. In the result, the judgment of the learned Single Judge is reversed. The 3rd respondent Manager is directed to consider the claim of the appellant for appointment as HSST (Commerce) in Mount Carmel Higher Secondary School for Girls, Kottayam, to the 1st vacancy, which arose in that school. He is entitled to get appointment, if he is otherwise qualified. The Manager shall appoint the appellant, if he is found to be qualified, and forward the appointment order to the 2nd respondent Director, Higher Secondary Board, for further appropriate orders, for approval, payment of salary etc. The Manager shall pass orders as directed above within one month from the date of production of a copy of this judgment. The person retrenched from the post of HSST, as result of the appointment of the appellant, should be accommodated as HSST (Junior).