

(1983) 01 KL CK 0002
In the High Court Of Kerala
Case No : O.P. No. 5048 of 1980 E

Sarojini Amma and Another

APPELLANT

Vs

Director of Public Instruction and Another

RESPONDENT

Date of Decision : 04-01-1983

Acts Referred:

Kerala Education Rules, 1959 — Rule 12E(3), 15, 16, 6C, 6G

Citation : (1983) 01 KL CK 0002

Hon'ble Judges : R.Bhaskaran, J

Bench : Single Bench

Advocate : V.P. Mohan Kumar and V. Ramkumar, for the Appellant; Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

Bhaskaran, J.—Rule 6C of Chapter XXIII of the Kerala Education Rules, 1959, lays down:

In an Upper Primary School or Upper Primary Sections of High School, where any of the languages other than regional languages or mother tongue is first introduced in Standard V there shall be not less than 12 pupils learning the language in that Standard. When once it is introduced in Standard V there shall be at least half the number of pupils to learn that language in Standard VI or the total number in Standards V, VI and VII shall not be less than 30. But nothing in these rules will apply to posts already sanctioned against which qualified teachers are working.

The first Petitioner, the manager of the school, appointed the second Petitioner to be a part-time Sanskrit Teacher, the post having been sanctioned by the 2nd Respondent, Assistant Educational Officer on the basis of the staff fixation for the year 1973-74. Subsequently the 2nd Petitioner was appointed to be a full-time Sanskrit teacher with effect from 15th July 1978 by the 2nd Respondent in terms of his Order No. 3665/78/G., dated 30th June 1978. While matters stood like

this, on 18th October 1980 the 1st Respondent, the Director of Public Instructions, Trivandrum, issued notice No. S.L.(2) 112128/80, dated 11th October 1980, a true copy of which is Ext. P-1, calling upon the 1st Petitioner to make representations, if any, against the proposal to abolish the Sanskrit post and consequent reduction of the number of posts in the school. Therein it was pointed out that the effective strength of pupils studying Sanskrit were 7 in Standard V and 5 in Standards VI and VII and that as per Rule 6C of Chapter XXIII of the K.E.R. the total number of pupils studying the non-regional languages shall not be less than 30 in U.P. section for the continuance of the post. Ext. P-2 is the copy of the representation submitted by the 1st Petitioner to the 1st Respondent in response to Ext. P-1 notice. Therein it was pointed out that the strength and attendance of Sanskrit pupils of the school from 1977-78 to 1980-81 were as follows:

It was also pointed out that the benefit of the word "or" in Rule 6G might be extended to the post of Sanskrit teachers also as in the case of Arabic teachers. In spite of the request made by the 1st Petitioner in Ext. P-2 representation for retention of the post, by Order No. S.L. (2)/80, dated 17th December 1980 made in proceedings of the 1st Respondent, a true copy of which is Ext. P-3, in the purported exercise of the powers conferred on the 1st Respondent under Rules 12E(3), 15 and 16 of Chapter XXIII of the K.E.R., the post of Sanskrit teacher in the school was abolished with effect from the date of that order. It is aggrieved by this order of the 1st Respondent that this writ petition has been filed.

2. The counsel for the Petitioners submitted that to satisfy the requirements of Rule 6C, only the following conditions need be satisfied:

- (i) when any of the languages other than regional languages or the mother tongue is first introduced in Standard V, there should be not less than 12 pupils learning that language in that Standard: and
- (ii) once that language is introduced in Standard V, there shall be not less than half the number of pupils to learn that language in Standard VI, or, in the alternative, the total number of pupils in Standards V, VI, and VII shall not be less than 30.

There is no dispute, it is pointed out by the counsel for the Petitioners, that, when Sanskrit was first introduced, the first of the conditions, namely, the requirement of having not less than 12 pupils to study that language, was fulfilled. After the stage of introduction of that language, the requirements of the rule would be satisfied, according to him, if it is also shown that not less than half the number of students which was the minimum for introduction of that language in Standard V was there in Standard VI for studying that language or that the total number of students studying that language in Standards V, VI and VII was not less than 30. In other words, for retention of the post once sanctioned for the language in question, it would be sufficient to show either that in the VI Standard not less than half the number of pupils who were studying

that language in the V Standard were available or that the aggregate number of pupils studying that language in the Upper Primary Classes, namely, Standards V, VI and VII was not less than 30. According to the counsel for the Petitioners the figures furnished by him in paragraph 3 of the writ petition would go to show that in no year the number of pupils studying Sanskrit in the VI Standard was less than half the number of minimum pupils who were required to learn that language in the V Standard when it was introduced in that class, and once that condition is shown to have been satisfied the continuation of the post should follow automatically.

3. The Government Pleader on behalf of the Respondents submitted that the expression "half the number of pupils to learn that language in Standard VI" used in Rule 6C should be understood to mean the number of pupils who were wanting to study that language in the year immediately after the year of introduction of that language. According to him the Sanskrit language in Standard V was first introduced in the school in 1973-74; therefore, the reference to half the number of pupils to learn that language in Standard VI connotes the number of pupils who should be available or studying that language in 1974-75; and that it has no relevance to the number of pupils who were wanting to study that language in 1980-81. He also submitted that there is reason to believe this to be the intention of the framers of the rules as mention is made only in regard to Standard VI, omitting deliberately Standard VII.

4. It appears that the wording of Rule 6C, Chapter XXIII is not free from ambiguity. On a plain reading of the rule without reading into it the ideas put forward by the Government Pleader, it is difficult to subscribe to the stand taken by the Respondents that the reference to half the number of pupils to learn that language is to the position as it obtained immediately after the year of introduction of the language in Standard V. On a proper construction of the rule as it stands it could reasonably be held that where the manager or the affected teacher is able to show that the number of pupils in Standard VI learning the particular language is not less than half the minimum number of pupils who were learning that language in Standard V when first introduced, or when the total number of pupils to learn that language in Standards V, VI and VII is not less than 30, he would be entitled to claim for the retention of the post of the language teacher sanctioned. Assuming that the expression "there shall be at least half the number of pupils to learn that language in Standard VI" used in the rule would admit also of a construction to restrict its applicability to the position as it obtained in the year immediately next to that of the year during which that language was first introduced in Standard V, the interpretation which would advance the object of the rule has to be preferred, and in that view it should be held that the requirements of the rule would be satisfied if the number of pupils to study that language in Standard VI would not be less than that of the pupils who studied that language in Standard V when it was first introduced or the aggregate number of pupils to study that language in Standards V, VI and VII came to not less than 30.

5. The counsel for the Petitioners also submitted that in any event the 2nd Petitioner is entitled to the protection under G.O.Ms. 62/73, dated 2nd May 1973. In view of my conclusion that the number of pupils learning Sanskrit in Standard VI during the material time was shown to be not less than half the minimum number of pupils who studied Sanskrit in Standard V when it was first introduced in Standard V, and, therefore, the Petitioners are entitled to claim that the post was to continue, I do not think that it is necessary for me to decide the question whether the 2nd Petitioner is or is not entitled to the protection under the said Government Order. I leave it open without being decided.

For the foregoing reason Ext. P-3 is quashed and it is declared that the 2nd Petitioner is entitled to continue in service on the strength of the appointment already made. The writ petition is allowed as above. In the circumstances of the case I would direct the parties to bear their respective costs.