
(2009) 06 KL CK 0166

In the High Court Of Kerala

Case No : Writ Petition (C) . No. 23531 of 2008

Satheeshkumar

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 26-06-2009

Acts Referred:

Kerala Education Rules, 1959 — Rule 6, 6(4), 7, 7(1)

Citation : (2009) 3 KLT 439

Hon'ble Judges : T.R. Ramachandran Nair, J

Bench : Single Bench

Advocate : Kaleeswaram Raj, for the Appellant; P. Sreekumar, K.S. Manu (Punukkonoor), P.S. Sidhan and T.T. Muhamood, Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

T.R. Ramachandran Nair, J.—An interpretation of Rule 6(4) of Chap. XXIII K.E.R. and its provisos arises for decision in this case.

2. The petitioner was appointed by the Manager of the Palora Higher Secondary School, the 6th respondent herein as a Drawing Teacher with effect from 5.6.2000. He is appointed in a vacancy which arose consequent to the retirement of one Shri S. Reghuvaran, on 31.5.2000. In the staff fixation order of the year 2000-2001, Ext.PI, the post was abolished for want of periods. Ext.PI is the said order.

3. Appeals and revisions filed by the Manager as well as by the petitioner against the same were rejected by the Deputy Director of Education, Director of Public Instruction and then by the Government as per Exts.P2 to P4 orders. In fact, these were rejected based on Ext.P5 order passed by the Government dated 28.10.1995. Substantially the view taken is that as there is a Music Teacher in the school, no second post in the Art Group, viz. Drawing Teacher could be sanctioned. And such sanction can be accorded only if the periods exceed 25. By

Ext.P6 judgment, this Court allowed the Writ Petition filed by the petitioner and the 6th respondent Manager, wherein it was held that without amending the statutory rules, Ext.P5 Government Order cannot be enforced. Accordingly, the District Educational Officer was directed to reconsider the question of retention of the post of Drawing Teacher in the school. The Writ Appeal filed by the State against Ext.P6 judgment, was also dismissed as per Ext.P7 judgment.

4. Later on, successive orders were passed by the District Educational Officer, Deputy Director of Education and Director of Public Instruction as per Exts.P8 to P10 refusing to sanction the post. Finally, the Government passed Ext.P11 order taking the view that as the rules have been amended incorporating the provisions contained in Ext.P5 with retrospective effect, no second post of Specialist Teacher in Art Group can be sanctioned. The above orders are under challenge in this Writ Petition.

5. Learned Counsel for the petitioner mainly raised two contentions. Firstly it is contended that the inter-parties judgments rendered by this Court as per Exts.P6 and P7 are binding on the respondents and therefore the orders culminating in Ext.P11 cannot be sustained. On the interpretation of Rule 6(4) and the third proviso, it is contended by the learned Counsel for the petitioner that the proviso actually restricts the sanctioning of a second post in Art Group, viz. the post of Music Teacher or a post in the Craft Group and therefore as far as the post of Drawing Teacher is concerned, merely because a Music Teacher is there in the school, the petitioner who was appointed in a retirement vacancy of the Drawing Teacher, cannot be denied the benefit of approval.

6. Heard Shri Kaleeswaram Raj, learned counsel for the petitioner, Shri T.T. Muhamood, learned Government Pleader and Shri P. Sreekumar, learned Counsel for the 5th respondent Manager.

7. Learned Counsel for the petitioner relied upon various judgments of the Apex Court and this Court in support of his arguments, viz. Dwarka Prasad Vs. Dwarka Das Saraf, , A.N. Sehgal and others Vs. Raje Ram Sheoram and others, and Director General Council Of Scientific and Industrial and Industrial Research Vs. DR. K. Narayanaswami and others, . He also relied upon the principles delineated in the decisions of the Apex Court in Sunu v. Union of India 2000 (2) KLT 747, Jacob v. Regional Transport Officer 2002 (1) KLT 411 , Peirce Leslie India Ltd. Vs. Secretary, Commissioner of Income Tax U., ; P. Raghava Kurup and Another Vs. V. Ananthakumari and Others, . Learned Government Pleader relied upon an unreported judgment of this Court in W.P.(C) No. 4918/2004 and connected case.

8. Before going into the rival contentions, the scope and ambit of the rules have to be considered. Rule 6(4) and Rule 7 of Chap. XXIII K.E.R. are extracted below:

6(4). Notwithstanding anything contained in Rule 7, in High School section of every complete High School there shall be:

(a) One full time post of Physical Education Teacher and one full time post of

Drawing Teacher irrespective of the number of periods of work per week in each of the concerned subject.

(b) One full time post of Music Teacher irrespective of the number of periods of work per week for Music.

(c) One full time post of Sewing Teacher if there is no Craft Teacher provided that there are not less than 200 girls in High School Classes:

Provided that the existing part time post of Physical Education, Drawing, Music, Sewing or Needle-work shall not be converted into full time posts unless the incumbents holding the posts are fully qualified to hold the full time posts:

Provided further that no full-time post of specialist teacher under any category mentioned above shall be sanctioned, if the number of periods of work per week in the converted subject is less than 5.

Provided also that if there is already a post of Drawing Teacher under the Art Group the second post in the Art Group, namely a post of Music Teacher or a post in the Craft Group will be sanctioned only when the periods under each group exceeds 25 periods per week.

7. (1). The post of a language Teacher or High School Assistant - Language as the case may be or of a specialist Teacher or Craft Teacher created for less than 15 periods of work per week in the concerned language or subject shall be part-time.

Provided that no part time post shall be sanctioned if the number of periods of work per week is less than four in the case of Hindi, Urdu, Sanskrit and Arabic and less than 5 in other cases.

Exception:- If there is only one post under any of the under mentioned designations in the particular type or grade of school noted there against, such post shall be a full time post even though the number of periods of work is less than 15.

Provided that the teachers holding such posts were appointed prior to the date of issue of these Rules and provided further that they were treated as full time.

9. Going by Sub-rule 4(a), in High School section there shall be one full time post of Drawing Teacher irrespective of the number of periods of work per week. Similar is the case of one Music Teacher which is covered by Sub-rule 4(b). In the case of Sewing Teacher there shall be one full time post if there is no Craft teacher provided there are not less than 200 girls in High School classes.

10. There are three provisos to Rule 6. The first proviso concerns conversion of the existing part-time post of Physical Education, Drawing, Music, Sewing or Needle Work Teacher into full time post. It is stipulated that unless the incumbents holding post are fully qualified to hold the full time post, it shall not be converted. The second proviso is to the effect that for sanctioning of such a

full time post in these categories the number of periods in the concerned subject per week shall be not less than five.

11. The third proviso is important for the purpose of this case. It is clear from this provision that if there is already a post of Drawing Teacher under the Art Group, the proviso permits the sanctioning of the second post of Music Teacher in the Art Group or a post in the Craft Group only when the periods under each group exceeds 25 per week.

12. The tricky question that arises here is whether, the argument of the respondents that, this proviso applies in the case of a Drawing Teacher also, when there is already a Music Teacher in the school and hence for sanctioning such a post of Drawing Teacher in the Art Group a minimum 25 periods is required, is right.

13. The cardinal rule of interpretation is that the words of the statute have to be understood in their natural, popular or ordinary sense, unless that leads to some absurdity. We may have to refer to the enacting part of Sub-rule (4) to understand the scope and effect of the proviso to see whether it controls the enacting part or it is only an exception. Going by Sub-rule 4(a) irrespective of the number of periods per week a full time post of Drawing Teacher shall be there. When the enacting part is clear in terms that one full time post shall be there "irrespective" of the "number" of periods, it cannot be imagined that the proviso curtails the same by introducing a particular number of periods for sanctioning a full time post of Drawing Teacher. Plainly, the answer is clear in that the proviso cannot restrict the enacting part of the rule. Going by Sub-rules 4(a) and 4(b) of Rule 6, as regards the post of Drawing, Music and Physical Education Teachers, they have to be sanctioned irrespective of the number of periods in the concerned subject. Of course, this is applicable only in the case of one full time post each. Therefore, a High School is entitled to have one full time post each in these three different subjects irrespective of the number of periods. The same cannot be denied, by resort to the third proviso.

14. Then the scope and object of the three provisos have to be gone into. One thing that is discernible is that mainly these provisions govern the conversion of part-time post into a full time one and the second post in specified subjects. Going by the first proviso, a part-time post can be converted into a full time one if the incumbent holding the post is fully qualified. The second proviso only provides a further rider regarding the conversion of the said part-time post into a full time one by specifying that if the number of periods is less than five, no full time post of Specialist teacher "under any category mentioned above" shall be sanctioned. The words "under any category mentioned above shall be sanctioned" has clear nexus with the first proviso alone and not in respect of Sub-clauses (a), (b) and (c) of Rule 6(4).

15. Then we may have to come to the third proviso to understand its scope. The important words therein provides a clue undoubtedly. It envisages a case where

"if there is already a post of Drawing Teacher under the Art Group", the second post in the Art Group, "namely, a post of Music Teacher or a post in the Craft Group will be sanctioned" only when "the periods under each group exceeds 25 periods per week." Therefore, what is envisaged under the proviso is only sanctioning of a second post in the Art Group, i.e. Music Teacher or a post in the Craft Group. The proviso does not refer to sanctioning of the second post of Drawing Teacher, when one post of Music Teacher is sanctioned already as per the staff fixation. Great emphasis is made in the third proviso to the post of Music Teacher which is clear from the word "namely". Therefore, the proviso was carving out an exception as far as sanctioning of a second post of Music Teacher when there is already a post of Drawing Teacher. The contrary position as propounded by the respondents that when there is a sanctioned post of Music Teacher, the post of Drawing Teacher cannot be sanctioned unless there are 25 periods, is not envisaged by it. Therefore, we cannot add anything in the proviso which is not intended by the rule making authority. It is well settled that the court cannot add words to the provisions of a statute or a piece of subordinate legislation.

16. Learned Government Pleader vehemently argued that the said position as emerging from the facts of this case is also covered by the proviso. It is contended that when the Drawing Teacher retired from service, one post of Music Teacher was already there. The filling up of the retirement vacancy of Drawing Teacher will result in the filling up of the second post in the Art Group, viz. the post of Drawing Teacher, since already there is a Music Teacher. It is therefore submitted that the third proviso will curtail the power to sanction the said post of Drawing Teacher if the periods under each group is below 25.

17. Plainly, the said interpretation cannot be accepted for more reasons than one as indicated already. Going by Sub-rule 4(a), one full time post of Drawing Teacher "irrespective of the number of periods of the work" has to be there. Therefore, the said argument cannot be accepted. Secondly, as already indicated, the third proviso concerns only sanctioning of a specific post of Music Teacher or a post in the Craft Group. Therefore, it is clear that the rule making authority was clearly bearing in mind the effect of Sub-rules 4 (a) and 4(b) wherein one full time post of Drawing Teacher and that of Music Teacher has to be there irrespective of the number of periods.

18. Herein, going by the admitted facts, the vacancy arose due to retirement of the existing Drawing Teacher which was a sanctioned post. Therefore, irrespective of the number of periods, being in a High School; a full time post of Drawing Teacher had to be sanctioned. In that view of the matter, the staff fixation order, Ext.Pl refusing to sanction the post for want of periods cannot be sustained.

19. I will now come to the rules of interpretation as regards a proviso. In Dwarka Prasad Vs. Dwarka Das Saraf, , the scope of a proviso was examined. V.R. Krishna Iyer, J. held thus in paras. 16 and 18:

If on a fair construction, the principal provision is clear, a proviso cannot expand or limit it. Sometimes a proviso is engrafted by an apprehensive draftsman to remove possible doubts, to make matters plain, to light up ambiguous edges.

A proviso must be limited to the subject-matter of the enacting clause. It is a settled rule of construction that a proviso must prima facie be read and considered in relation to the principal matter to which it is a proviso. It is not a separate or independent enactment. Words are dependent on the principal enacting words, to which they are tacked as a proviso. They cannot be read as divorced from their context.

A proviso ordinarily is but a proviso, the golden rule is to read the whole section, inclusive of the proviso, in such manner that they mutually, throw light on each other and result in a harmonious construction.

In *A.N. Sehgal and others Vs. Raje Ram Sheoram and others*, , K. Ramaswamy, J. explained the legal position as follows, in paras. 14 and 15:

It is a cardinal rule of interpretation that a proviso to a particular provision of a statute only embraces the field which is covered by the main provision. It carves out an exception to the main provision to which it has been enacted by the proviso and to no other. The proper function of a proviso is to except and deal with a case which would otherwise fall within the general language of the main enactment, and its effect is to confine to that case. Where the language of the main enactment is explicit and unambiguous, the proviso can have no repercussion on the interpretation of the main enactment, so as to exclude from it, by implication what clearly falls within its express terms. The scope of the proviso, therefore, is to carve out an exception to the main enactment and it excludes something which otherwise would have been within the rule. It has to operate in the same field and if the language of the main enactment is clear, the proviso cannot be torn apart from the main enactment nor can it be used to nullify by implication what the enactment clearly says nor set at naught the real object of the main enactment, unless the words of the proviso are such that it is its necessary effect.

In the subsequent decision in *Sales Tax Commissioner and Others Vs. B.G. Patel and Others*, , it was held that the proviso has to be construed harmoniously with the main provision. In *Romesh Kumar Sharma Vs. Union of India (UOI) and Others*, , Arijit Pasayat, I, after examining the relevant principles held that ""normally a proviso does not travel beyond the provision to which it is a proviso. It carves out an exception to the main provision to which it has been enacted as a proviso and no other." (para. 12)

20. It is therefore clear that a proviso cannot expand or limit the contents of the principal provision. It cannot be separated from the main provision. It is also well settled that the proviso cannot be used to nullify what the enactment clearly says nor set at naught the real object of the enactment.

21. If the above principles are borne in mind, there cannot be any doubt regarding the scope of the third proviso to Rule 6(4) of Chap.XXIII K.E.R. If the interpretation that is placed by the respondents is accepted, then Sub-rule 4(a) will be come otiose. Such a conclusion is not envisaged by the third proviso. The correct interpretation of the third proviso will lead to the only one conclusion as already indicated. It cannot have the effect of treating the post of a Drawing Teacher which has become vacant due to retirement as the second post in the Art Group in the light of an existing post of Music Teacher warranting total number of periods exceeding 25 for its sanction. Therefore, the view taken by the respondents cannot be sustained.

22. Learned Government Pleader relied upon an unreported decision of this Court in Writ Petition No. 4918/2004 in support of his argument. The facts of the said case show that a Drawing Teacher was appointed in a retirement vacancy. A Music Teacher was working in the school on protection and she was available to be appointed against the post of Music Teacher. The Director of Public Instruction cancelled the staff fixation orders for the relevant year finding that the post of Drawing Teacher could not have been sanctioned and it is the post of Music Teacher which should have been sanctioned. After referring to the arguments on either side, this Court was of the view that when a protected teacher was working, it was not correct on the part of the authorities to sanction a Staff Fixation Order without providing for the post of Music Teacher, which is one of the posts under the Arts Group and it is this anomaly which was corrected by the orders passed by the authority concerned. Accordingly, the Writ Petition was dismissed. The facts of the case and the question considered therein are totally different. The interpretation of the third proviso to Rule 6(4) did not arise for consideration therein.

23. The principles stated in the other decisions cited by the learned Counsel for the petitioner relates to the well known principles regarding harmonious construction.

24. One more aspect to be mentioned herein is that Sub-rule (4) starts with a non-obstante clause, that the said provision is notwithstanding anything contained in Rule 7. In fact, Rule 7(1) provides that when the periods are less than 15 per week, then the post sanctioned should be a part-time one. This is applicable in the case of language teacher or a specialist teacher or craft teacher. Going by the non-obstante clause the said provision will not apply as far as sanctioning of full time posts of Drawing, Music and Physical Education teachers are concerned in the High School. This also strengthens the view that in High School section one full time post of Drawing Teacher has to be sanctioned irrespective of the number of periods of work per week as provided in Sub-rule 4(a).

25. Therefore, the petitioner is entitled to succeed in the Writ Petition and the same is allowed. Exts.P8 to P11 orders are quashed, There will be a direction to the 4th respondent to grant approval of appointment of the petitioner as Drawing

Teacher on his appointment in the retirement vacancy which arose on 31.5.2000. Appropriate orders shall be passed within a period of six weeks from the date of receipt of a copy of this judgment. The petitioner will be entitled for grant of all monetary benefits. No costs.