
(2003) 03 KL CK 0026
In the High Court Of Kerala
Case No : O.P. No. 19079 of 2002

Shameena

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 17-03-2003

Acts Referred:

Citation : (2004) 101 FLR 1185 : (2004) 2 KLT 37

Hon'ble Judges : K. Balakrishnan Nair, J

Bench : Single Bench

Advocate : P.K. Suresh Kumar and K.P. Sudheer, for the Appellant; M. Vijayakumar and P. Nandakumar, Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

K. Balakrishnan Nair, J.—The petitioner is the Manager of Punnur Cherupalam Aided Upper Primary School. He is challenging Ext.P5 order of the second respondent AEO directing appointment of the third respondent under the Dying-in-Harness Scheme, The third respondent's father was a teacher of the School and he died in harness on 10.4.1980. The third respondent is a posthumous child born on 23.9.1980. He submitted Ext.P1 application claiming appointment under the dying-in-harness scheme on 29.11.2000. The said application was rejected by Ext.P2 communication on the ground that the date of birth of the third respondent is 31.5.1981. But, subsequently, the third respondent got it corrected as 23.9.1980. This Court by Ext.P4 Judgment directed the AEO to consider the claim of the petitioner for appointment on compassionate grounds and in obedience to that direction, after hearing both sides, Ext.P5 order has been passed. The petitioner challenges Ext.P5 on several grounds. The main ground urged before me is that the third respondent is a posthumous child and he was never dependant on the deceased employee. As per Rule 51B, the Government Orders relating to employment assistance to dependants of Government servants dying-in-harness shall mutatis mutandis apply to aided schools also. So, when the third respondent submitted his application, the relevant Government Order in

force governing compassionate appointments under the Dying-in-Harness Scheme in Government service was G.O.(P) No. 12/99/P&ARD dated 24.5.1999. In the opening paragraph of the said Government Order, it is stated as follows:

"As per the Government Order read as 1st paper above, the Government introduced a scheme to provide employment assistance to the dependants of Government servants who die-in-harness. The intention of the Scheme was to provide expeditious relief to the immediate family of the Government servants who will suffer in the absence of such a relief....."

In paragraph (4) it is stated:

"Applications from dependants of Government servants who die-in-harness will be considered for appointment under the Scheme".

2. Therefore, in the light of the said G.O. which is incorporated in Rule 51B, the applicant for appointment has to be a dependant. The third respondent herein was never a dependant of the deceased Government servant.

3. The learned counsel for the third respondent submitted that the petitioner attained majority only on 23.12.1998. The above mentioned G.O. allows a minor dependant to apply for appointment three years" time from the date of attaining majority. Therefore, it is submitted that the application is submitted in time.

4. But, the same is no answer to the ground that the third respondent was never a dependant of the deceased employee as he was born only after his death.

5. I find considerable force in the submission of the petitioner that the third respondent was never a dependant of the deceased teacher and, therefore, the claim of the third respondent cannot be considered under the dying-in-harness scheme. Accordingly, the Original Petition is allowed and Ext.P5 is quashed. If any appointments are not approved because of the non-implementation of Exts.P5, the AEO shall reconsider them and shall grant approval to those appointments, if they are otherwise in order.