
(2024) 01 KL CK 0092
In the High Court Of Kerala
Case No : Writ Petition (C) No. 6916 Of 2023

Sharsha M.M

APPELLANT

Vs

State Of Kerala

RESPONDENT

Date of Decision : 12-01-2024

Acts Referred:

Citation : (2024) 01 KL CK 0092

Hon'ble Judges : Mohammed Nias C.P., J

Bench : Single Bench

Advocate : B.Raghunathan, Asokakumar B., M.Salim, R.Srinath, Sarojini K.G.,
Dr.Stanly Chazhoor Chazhoor

Final Decision : Disposed Of

Judgement

Mohammed Nias C.P., J.

1. Petitioner was appointed to the post of Language Teacher (Part-Time) (Arabic) in the school managed by the 6th respondent, on 30.12.2019, in the retirement vacancy of one S.Pathumma Beevi, a Full-Time Arabic Teacher, who retired on 01.06.2019. Though the order of appointment along with the required documents was submitted by the 6th respondent Manager to the 5th respondent Assistant Educational Officer on 07.01.2020, he did not take any decision within the time stipulated in the K.E.R but passed an order on 03.02.2021 rejecting the approval of her appointment stating that the 6th respondent was having no authority as the Manager of the school. In the meantime, there were disputes regarding the approval of the Manager of the school, which led to the Director of General Education passing orders on 26.03.2015 cancelling the order of approval of the appointment of the Manager. The said action was challenged, and this Court, in its judgment dated 9.12.2020 in W.P(C) No.13441/2015, quashed the said order directing a fresh consideration. It is also to be noted that, throughout the writ petition, there was an order of stay of the order dated 26.3.2015.

2. The refusal of the approval of appointment of the petitioner was challenged in

appeal before the 4th respondent District Educational Officer, who rejected the same by Ext.P4 order dated 06.7.2021. Though a revision was filed to the 2nd respondent, it was also rejected by Ext.P8 communication on 14.6.2022. The rejection was because the Manager had no recognition, and no appointment could have been made during 2019-2020, in view of the declaration of national lockdown with effect from 21.3.2020. Though the petitioner had also moved the Government seeking approval, the same was also rejected. The petitioner is a physically disabled person with hearing impairment, and the same is evident from Ext.P21. The petitioner, therefore, challenges Exts.P2, P4, P8, P9 and P20 orders and also seeks a mandamus to direct the respondents to approve the appointment of the petitioner with effect from 30.12.2019 with all consequential benefits.

3. The Government has filed a counter affidavit on behalf of the 2nd respondent stating that the management transfer was done in the year 2001 without obtaining proper sanction from the Director of General Education and, therefore, the order appointing the Manager was illegal. Consequently, the order dated 26.3.2015 was passed, cancelling the approval of the Manager and also appointing the District Educational Officer, Kottarakkara, as the Manager temporarily. It is stated in the counter affidavit that the appointment of the petitioner was rejected for the reason that an unapproved Manager made it and that the appointment made during the period 2019-2020 could not be allowed in view of the declaration of national lockdown. It is also urged that as per the Government Order dated 06.7.2021, the appointments in regular posts could be considered only with effect from 15.7.2021, if it is otherwise eligible.

4. The 6th respondent Manager has filed an affidavit stating that the 3rd respondent all along had tried to cause difficulty to the change of managership and had placed all hurdles to block the change of managership. Several writ petitions and contempt of court cases were filed in that regard. The 6th respondent also submits that the petitioner is entitled to get approval for his appointment with effect from 30.12.2019 with all consequential benefits and the grounds stated for non-approval are all illegal.

5. I have heard the learned counsel for the petitioner, Sri. B. Raghunathan and the learned Government Pleader Smt. Sarojini K.G.

6. It is seen that two reasons are given to deny the approval for the appointment of the petitioner: that his appointment was made by a person who is not an authorised Manager and that it was made during the national lockdown during the COVID-19 pandemic. The said reasons are untenable for more reasons than one. Firstly, the appointment of the petitioner was made by Smt.R.Sudharma, who was the approved Manager of the school till 21.01.2021. Though an order was passed on 26.3.2015, the said order was stayed till it was quashed by this Court directing a reconsideration. Under such circumstances, the assertion of the respondents that an unapproved Manager made the appointment cannot be sustained. There is no dispute about the fact that the appointment was made to

a retirement vacancy. Under such circumstances, no objection could have been taken to the appointment of the petitioner on that ground. The second objection that there was a national lockdown and there were no regular classes from 21.03.2020 to 31.10.2020 and hence no new appointments could have been made is again incorrect. Exts.P15 and P16 orders approving the appointments during the relevant period by the 3rd respondent clearly show that the second reason pointed out against the approval is factually wrong and unacceptable. The petitioner's appointment was much before the national lockdown and at a point of time when there was no interdiction against the Manager in making an appointment. In view of Exts.P15 and P16, the 3rd respondent cannot be heard to contend that the appointments made during the period in question could not be approved. The said conduct on the part of the 3rd respondent is unbecoming of a Government official which clearly displays the double standards adopted by him. Ext.P15 shows that orders of approval of ten appointments were made for the period from December 2019 onwards. Ext.P16 is passed by the very same officer who has taken the objection in the present case. There has been undue delay in considering the approval of the petitioner, and the same is against Rule 8(2) of the K.E.R. That apart, Rule 9 specifically stipulates that the appointment order shall not be affected by any change in the educational agency or the Manager. This Court, in various judgments had taken the view that even if the approval of the Manager was found to be invalid, the official duties discharged by him cannot be rendered as void. If the Manager provisionally approved could have exercised the right of appointment of a teacher unless there was any rider disabling the Manager from carrying out such appointment. Teachers are insulated from adverse consequences by the subsequent orders or verdicts affecting the appointment of the Manager and Rule 9(1) of Chapter XIV directs such teachers who had already been appointed. (See:- Padmanabhan Nambiar v. Government of Kerala [1997 (2) KLT 725], Manager, St.Mary's H.S. v. Beji Abraham [2002 (1) KLT 406] and Noushar P.K. v. State of Kerala and others [2016 (3) KHC 339]).

7. In the light of the above discussion, I hold that the petitioner is entitled to the reliefs claimed. Accordingly, Exts.P2, P4, P8, P9 and P20 are quashed. There will be a direction to the respondents to approve the appointment of the petitioner to the post of Language Teacher (Part-Time) (Arabic) with effect from 30.12.2019 in the 6th respondent school within a period of one month from the date of receipt of a copy of this judgment. The consequential benefits that the petitioner is entitled to will be paid within a further period of three months from the date of approval to be granted as directed above.

The writ petition is allowed.