

(2015) 11 KL CK 0067
In the High Court Of Kerala
Case No : WP(C) No. 22485 of 2013 (I)

Shereena M.

APPELLANT

Vs

The State of Kerala and Others

RESPONDENT

Date of Decision : 23-11-2015

Acts Referred:

Citation : (2015) 11 KL CK 0067

Hon'ble Judges : K. Vinod Chandran, J.

Bench : Single Bench

Advocate : M.V. Bose, Vinod Madhavan and Nisha Bose, Advocates, for the Appellant; T.R. Rajesh, Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

K. Vinod Chandran, J.—The petitioner, a part-time Sanskrit Teacher, claims full-time service from the date of her appointment. The petitioner was appointed on 19.6.2009 as per Ext. P2, to a vacancy which arose in 2007, on the retirement of a full-time Sanskrit teacher.

2. The petitioner's contentions are two fold: one, that the vacancy arising, in which the incumbent was full-time, should be continued as a full-time post; and two, that even otherwise by Group "C" diversion the petitioner is entitled to be conferred the full-time benefits in the post to which she was appointed.

3. The contention with respect to the appointment to a full-time post, for reason of the earlier incumbent having been full-time, is based on G.O.(MS) No. 371/2000/G.Edn. dated 13.11.2000, specifically paragraph 4, which clarifies that the posts created by virtue of Group "C" diversion cannot be treated as protected and such full-time posts cannot be converted into part-time posts. However, the said contention is answered in Ext. P8 order of the Government; at the first round of litigation. There, it has been specifically noticed that Smt. C. Suseela, Sanskrit teacher of the school was enjoying full-time benefit only in terms of G.O. (MS) No. 62/73/G.Edn. dated 2.5.1973. It was by reason of her retirement that

the vacancy arose, to which the petitioner was appointed. Obviously, the incumbent was not continuing in a full-time post for reason of Group "C" diversion, and it was only for reason of the afore cited Government Order, which granted full-time status to a teacher, continued as part-time for five years, and who had more than eight periods. Ext. P8 also has not been challenged. Hence, the petitioner's contention with respect to continuance as a full-time post cannot be countenanced. The conferment of full-time post to the earlier incumbent, who retired, was individual teacher centric and not one conferred on the post.

4. Ext. P8, on consideration of the petitioner's claim for Group "C" diversion, directed a remand which resulted in a rejection by order No. RA(3)8987/12/DPI dated 20.4.2012. The Joint Director, in the said order, produced along with a memo, takes a position that, for sanction of a second full-time post by Group "C" diversion there should be remaining at least 24 periods. However, there is no such stipulation found in the Kerala Education Rules, 1959 (KER) or in the orders passed by the Government under the KER.

5. The petitioner's case has to be considered with reference to the facts. The staff fixation order, for the year in which the petitioner was appointed, is produced at Ext. P6. For Sanskrit and Urdu only part-time posts were sanctioned. For Arabic, though there were no sufficient periods, which is to be 15 for sanctioning a full-time post by Chapter XXIII Rule 6(1) of the KER, Group "C" diversion was granted and three periods were diverted from Group "C" subject - Music, so as to confer a full-time benefit on the Arabic teacher. A full-time Physical Education teacher was also sanctioned in the school, on a clubbing arrangement with another school. The Urdu teacher had also been sanctioned Group "C" diversion and conferred full-time benefit by G.O.(Rt) No. 1054/2010 dated 9.3.2010, as is evidenced from Ext. P14; though subsequent to the staff fixation order.

6. The periods available has to be verified from the Curriculum for Distribution of Existing Periods, introduced as per Note dated 12.7.1985 and A6.1848/86/SIE dated 13.12.1986. The said curriculum is the time-table now followed for fixation of staff strength by the educational officers, which indicates that, there is permissible one period each in the classes from V to VII (U.P. Section) for Music and Drawing respectively and two each for classes V and VI and one for class VIII in Physical Education. The other specialist subject being Work Experience/Craft has two periods each in Classes V to VIII. To consider the claim of the petitioner, Physical Education need not be looked into since there is a full-time Physical Education teacher available in the school, though, on clubbing arrangement. Hence, there could be no periods diverted from Group "C" subject of Physical Education.

7. The position of the periods available in the petitioner's school for each of the specialist subjects being Music, Drawing and Work Experience/Craft would be as herein below:

8. Three periods each from Music, in the respective divisions were diverted for making the Arabic post full-time and three from Drawing to make the Urdu post full-time. The petitioner's claim is that three periods could be diverted from Craft to grant full-time Sanskrit status to the petitioner. Admittedly, Sanskrit was sanctioned 12 periods as per Ext. P6 staff fixation order. Hence, on diverting three period from the Group "C" subject, the petitioner would have the status of a Full-Time teacher.

9. The learned Government Pleader however would contend that when one Physical Education teacher was already working, there could not be any Group "C" diversion granted to any other teacher. Further, it is also contended that by G.O.(MS) No. 220/2010/G. Edn. dated 4.11.2010, the above facility for Group "C" conversion was cancelled and any extension of such facility to the teachers would be available only till the Academic Year 2010-2011.

10. In answer to the grounds raised by the learned Government Pleader, the petitioner specifically takes me through the various Government Orders, which enable the petitioner to the aforesaid benefit. G.O. (MS) No. 5014/68/G.Edn. dated 8.11.1968 was the Government Order by which Group "C" diversion was first introduced, granting such benefits to Arabic teachers. In the said Government Order, it was specified, by clause 2, that in Upper Primary and High School, one period from any subject under Group "C" (Craft, Music, Drawing & Painting and Physical Education) will be diverted for teaching Arabic, provided no existing teacher of such subject is affected. The said benefit given to Arabic was also extended to Sanskrit by G.O.(MS) No. 43/78/G.Edn dated 13.4.1978.

11. As to the procedure by which Group "C" diversion can be effected, reference has to be made to Government Letter No. 51064/J2/91/G.Edn. dated 27.12.1991, wherein paragraph 3 is relevant and extracted hereunder:

"3. It is, further clarified that:

(a) If there is post and teacher in a particular subject under group C and the periods available is not more than 15 and above for the subject, diversion of periods from that subject cannot be permitted.

(b) If there is no post of specialist/Craft teacher in the school, the periods for the Group - C subject for which there is no specialist/Craft teacher can be diverted to

12. By clause 3(a), if there is a post of teacher in a particular subject under Group "C" and the period available is not more than 15 and above for the subject, diversion of periods from that subject cannot be effected. In the present case, there is a Physical Education teacher available in the school, who has been conferred the benefit of full-time only on a clubbing arrangement with another school. Hence, no diversion could be made of any period available in the subject Physical Education. However, Clause (b) specifies that for each standard, diversion could be made of one period from the Group "C" subjects to grant full-time benefit to Arabic, Sanskrit, Urdu and Hindi teachers.

13. In such circumstance, in the present case, as has been noticed above, since there are remaining four periods in Work Experience/Craft in Class V and six periods each in Class VI and VII, there is absolutely no difficulty in taking one each from the aforesaid divisions for granting full-time status to the Sanskrit teacher, the petitioner herein.

14. The contention with respect to there being a Physical Education teacher available and no diversion being possible from a subject in which there is a teacher as part-time of full-time status, cannot be countenanced. On existence of a teacher in a particular Group "C" subject; diversion is prohibited only from that subject. In taking such view this Court is fortified by the decision of another learned Single Judge in W.P.(C) No. 19035 of 2009 dated 25.3.2013 which states so in paragraph 8:

"8. Fact remains that, the petitioner had requested for sanctioning of a Full-Time post in the year 1995-96, on the basis of Group-C diversion. The said request was declined stating that there was no post of specialist teacher in the subjects like Craft, Drawing and hence the period of Group-C subjects cannot be diverted to Urdu by one period each per standard. It was noticed that one post of Physical Education Teacher remained protected in the U.P. School and one protected post of Music Teacher remained in L.P. section. Admittedly, the periods handled in Urdu was 12. This Court in Exhibit P10 judgment, after referring to the relevant Government Orders, observed that, the only hurdle in effecting Group-C diversion is that no teacher in the Group-C subject concerned shall be affected. But merely because there is a protected Teacher in the U.P. Section in one of the subjects (Physical Education) there is no impediment for diverting one period each from subjects like Craft, Music, Drawing and Painting. Hence, contention of the petitioner that, even going by the pattern of staff fixation made with respect to the year 1995-96, Group-C diversion would have been possible in order to sanction Full-Time post, finds force. Declining the request for sanctioning the Full-Time post of Urdu Teacher in the 4th respondent's School for the year 1995-96 is therefore not sustainable."

15. The further contention raised by the learned Government Pleader is based on the Government Order 220/2010. In this context, it is to be noticed that immediately after the said Government Order the Government had issued a clarification bearing No. H2/51483/11/DPI dated 20.9.2011 in which it was clarified that Group "C" diversion granted for full-time benefit to the language teachers would be available to such teachers till their retirement. In the petitioner's case, the same need be available only for five years, since admittedly, she has been granted full-time benefit in 2014, when she completed five years and when the school is having more than eight periods for the subject.

16. On a consideration of the various Government Orders as also the facts arising in the particular school on that particular year, the petitioner's claim for a full-time status is upheld. The petitioner shall be granted full-time status from 19.6.2009 and her status shall be continued in the following years, subject to

periods being available in the following years in Sanskrit and on a similar diversion of Group "C" subjects. The petitioner is hence, conferred with the benefit of full-time status from 19.6.2009 and the salary of the petitioner shall be re-fixed in accordance with law and the entire arrears paid within a period of three months from the date of receipt of the certified copy of this judgment.

The writ petition would stand allowed. Parties shall suffer their respective costs.