

(1993) 08 KL CK 0060
In the High Court Of Kerala
Case No : O.P. No. 11711 of 1990

Sherin M. Chandy

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision : 28-08-1993

Acts Referred:

Kerala Education Rules, 1959 — Rule 51A

Citation : (1993) 2 KLJ 872

Hon'ble Judges : K.K. Usha, J

Bench : Single Bench

Advocate : K. P. Parameswara Menon, for the Appellant; S. Venkitasubramanya Iyyer, Mary Benjamin, Govt. Pleader and Kunan Joseph, for the Respondent

Final Decision : Dismissed

Judgement

Mrs. K.K. Usha, J.—The issues arising in this original petition is whether the provisions contained under Rule 51A of Chapter XIV-A Kerala Education Rules are applicable in the case of teachers appointed in the special schools for handicapped in the State. While the petitioner contends that the schools for Deaf Children, Thiruvalla managed by the 2nd respondent is a private aided school covered by the provisions contained under the Kerala Education Rules, the manager, 2nd respondent takes the stand that the school is covered by Special Rules issued by the Government in respect of the school for defective. According to the 1st respondent, State of Kerala, the aided special schools are governed by Special Rules framed by the Government from time to time. Even then a teacher appointed in the above school is entitled to the benefit of the provisions contained under Rule 51A of Ch. XIV-A of K.E.R. The petitioner was appointed as Assistant teacher in a temporary vacancy in the School for Deaf Children, Thiruvalla under the management of the 2nd respondent. She was relieved on 31-3-89. Her appointment was later approved on 30-3-90. She was then sponsored for training by the management and on successful completion of the training course namely a diploma D. Ed. (Deaf) the petitioner approached the

2nd respondent for employment. Even though she participated in the interview for selection, she was not selected for appointment. She made representations before the educational authorities as well as the manager contending that she is entitled to the preference given under Rule 51A Ch. XIVA of K. E. R. for appointment in the vacancies which had arisen later to which she made application. Appointments made by the manager in disregard of her claim under Rule 51A, the petitioner contended, were illegal. Ultimately Ext. P13 reply was given to the petitioner by the manager informing her that aided schools for handicapped are not brought under the purview of the Kerala Education Rules and therefore she cannot put forward any claim under Rule 51A Ch. XIV-A of K. E. R. It was also mentioned therein that at the time of her first appointment and relief from the post, she did not possess the required basic qualification. The above stand taken by the 2nd respondent is under challenge in this original petition.

2. According to the petitioner, the order of appointment issued to her Ext. P14 would show that the appointment was subject to the provisions of Kerala Education Act and Rules. Reliance is placed on Ext. P18 communication dated 26-12-90 from the District Educational Officer, Thiruvalla to the 2nd respondent wherein attention of the manager was drawn to Rule 7 of Appendix II of G. O. (P) 412/69/Edn dated 3-11-1969 and Rule 51A Ch. XIV-A of K. E. R. The Appendix II referred above relates to rules for the award of Government grant to aided schools for the handicapped issued by the Government of Kerala. Rule 7 reads as follows :--

7. The procedure for appointment will be the same as in the case of other aided schools. Advertisement in newspapers and reference to the Employment Exchange will be insisted on to ascertain availability of qualified hands before unqualified hands are appointed.

3. The necessity of approval of appointment made in the school of the 2nd respondent is also pointed out as a reason by the petitioner to support her contention that the provisions contained under Rule 51A are applicable to the teachers in the school of the 2nd respondent. Referring to the provisions contained under Rule 4 of Ch. II, it is contended by the petitioner that the schools for defective children would also be governed by the provisions of Kerala Education Rules. The relevant portion of Rule 4 reads as follows:-

Schools for the education of particular categories of students:-

Schools for the education of particular categories of students comprise the following:-

(i) school for defective children such as the Deaf, the Dumb, the Blind, and the mentally handicapped.

xx xx xx

(iii) Schools for handicapped where admission is restricted to children affected

with Polio, or other similar diseases.

Reference is also made by the learned counsel for the petitioner to the provisions contained under Clause (iii) and (vi) of Rule 17 of Ch. V of K. E. R. which provide that recognition shall be granted only to schools which satisfies the following conditions.

(iii) "Teachers must have been appointed in accordance with the relevant provisions in the Kerala Education Act and the Rules under it :

xx xx

(iv) It must be conducted in accordance with the provisions of the Kerala Education Act, the Rules under it, and the directions issued by the Government or the Department from time to time.

The definite stand taken by the management is that the conditions of service of the teachers in the school for deaf under his management are not governed by the provisions of the Kerala Education Rules. Therefore the petitioner cannot put forward a claim under Rule 51A of Ch. XIV-A K. E. R. for preferential treatment. In support of his stand he relies on Exts. R2(b), R2(b) - 1, R2(b) 2 and R2(b) - 3. Ext. R2(b) is a Govt. order G. O. (Rt) No. 594/82/G. Edn dated 3-3-82 granting permission to Smt. Aliamma Joseph, a teacher in the school of the 2nd respondent to continue in service till the age of 60 years as a special case. In the above order, it is stated as follows:-

The Schools for the handicapped have not been brought under the purview of KER. Teachers in such schools have neither opted for Chapter XIV B or XIV C KER" as these rules are not made applicable to them.

Ext. R2(b)- 1 is another Govt. order G. O. (Rt) No. 312/87/G. Edn. dated 4-2-87 giving similar concession to another teacher, Smt. C.V. Aleyamma. This order also would show that the school for the deaf children are not brought under the purview of K. E. R. Ext. R2 (b) - 2 is Govt. order G. O. (Ms) No. 73/87/G. Edn. dated 26-3-87 issued in the matter of grant of provident fund to the aided special school staff. The relevant portion of the above Govt. order reads as follows :

2. Government have examined the demand of the Kerala Federation of the Blind in detail. The Education of the handicapped is not yet brought under the purview of K. E. R. Therefore the rules applicable to the ordinary Aided School Teachers are not applicable to the staff of Aided Special Schools for the Handicapped. But the salary of both the Aided School staff and the staff of Aided Special Schools are being met from the public Fund of the State. Apart from this, a proposal for inclusion of the "Education of the handicapped" within the purview of K.E.R. is now under the consideration of Government.

3. In view of facts, Government are pleased to accord sanction admit the Aided special School Staff in the Kerala Aided School Employees provident Fund

Account from the academic year 1987-1988 onwards pending finalisation of the Rules for inclusion of the Education of the Handicapped within the purview of the K. E. R. The Rules in Chapter XXX of the K E. R. will be applicable to all Aided Special School Staff from the academic year 1987-1988 onwards.

Ext. R2(b)-3 is another Govt. order G. O. Rt. 1069/90 G.Edn dated 2-4-1990. The above order would also show that the qualifications and conditions of service of the staff in aided special schools are governed by the provisions under G. O. (P) 412/69/G.Edn. dated 3-11-69. Draft rules to amend the Kerala Education Rules to bring the staff of Aided Special Schools under the provisions of Kerala Education Rules have been under the consideration of Government since 1979 and the process of bringing the special schools and staff under the provisions of the Kerala Education Rules would take some more time. Therefore, pending amendment to the K. E. R., Government sanctioned pension and other retirement benefits to the staff of aided special schools as admissible to the staff of aided schools. It is further contended by the 2nd respondent that at the time of appointment of the petitioner, the qualification and method of appointment to the post of teachers in the school for handicapped were governed by the provisions contained under the G. O. (MS) 198/79/G. Edn. dated 22-1-79. According to the above Govt. order, the method of appointment to the post of teachers is by direct recruitment. The above Govt. order did not contain any provisions, as the one which is contained in Rule 51A of Ch. XIV-A of K. E. R. Even otherwise the 2nd respondent would contend that the petitioner is not entitled to the benefit of Rule 51A as she was not qualified to hold the post of a teacher in the blind school when she was appointed in the short term leave vacancy on 1.9.88. Only in the case of teachers who are fully qualified to hold the post a claim for preference under Rule 51A can be made.

4. In the counter affidavit filed on behalf of the State Government it is contended as follows:-

The schools for Deaf Children, Thiruvalla is an aided special school. In fact the aided special schools are governed by special rules framed by Government from time to time for the purpose. In respect of approval of the appointment of the staff of the school, the procedure prescribed in K.E.R. is followed.

Thereafter it is contended that in the light of Rule 7 in Appendix II which provides that procedure for appointment in aided school for the handicapped will be the same as in the case of other aided schools Ch. XIV-A of K.E.R. is applicable in the case of appointments in the aforesaid school. It is further contended that Govt. order dated 3-11-69 is still in force. Since the order of appointment, issued by the 2nd respondent showed that the petitioner's appointment was subject to the provisions of K. E. R. the petitioner's claim ought to have been considered by the 2nd respondent for future appointments. The approval of appointment of 2 teachers namely respondents 5 and 6 are declined for the reason that they were appointed overlooking the preferential claim of the petitioner.

5. One fact admitted by both sides in this case is that education of handicapped in the State are covered by the rules issued under G. O. (P) 412/69/Edn dated 3-11-69. Appendix I to the above Govt. order contains rules for recognition of the schools for defectives. Under Appendix II Rules for the award of Government grants to the aided schools for the handicapped are provided. Appendix III contains the rules for the grant of educational concessions to the deaf, dumb and blind and or orthopaedically handicapped pupils and Appendix IV contains rules for the grant of full fee concession in colleges to the children of the disabled persons. The above would show that Govt. order dated 3-11-69 is a complete code by itself in the matter of recognition grant, educational concessions etc. in respect of schools for handicapped. Therefore the larger contention that the schools for handicapped are also covered by the Kerala Education Rules as a whole, cannot be accepted. Merely because under Chapter II of K. E. R. where schools are classified into different types, reference is made to schools for defective children such as the deaf, the dumb, the blind and the mentally handicapped it cannot be contended that a school like the one belonging to the 2nd respondent would come within the purview of the Kerala Education Rules. Reliance placed by the petitioner on Clause (iii) and (vi) of Rule 17 of Ch. V of K. E. R. is also of no merit. Rule 17 refers to conditions to be satisfied for grant of recognition which can mean only recognition as per the provisions contained under the K. E. R. Therefore when Clause (iii) says that teachers must have been appointed in accordance with the relevant provisions in the Kerala Education Act and Rules and Clause (vi) provides that the schools shall be conducted in accordance with the provisions of Kerala Education Act, the rules under it and the directions issued by the Government or department from time to time as a condition for grant of recognition, it refers to schools covered by K.E R. But as mentioned earlier, as far as schools for handicapped are concerned G. O. dated 3-11-69 has laid down specific conditions which are to be followed for recognition of the schools for defectives. Those rules which are included in Appendix I to the Govt. order dated 3-11-69 alone are applicable for the schools for handicapped and not the conditions provided under the Kerala Education Rules. Merely because in the appointment order issued to the petitioner in a printed form, it is mentioned that the appointment is subject to the provisions of Kerala Education Act and Rules there under, the appointment cannot automatically become one under the Kerala Education Act and Rules. Therefore I find no basis for the contention raised by the petitioner on the basis of Ext. P14. So also approval of appointment of the teachers in the school by District Education Officer cannot also be treated as a basis for the contention that the conditions of service of the teachers are governed by Ch. XTV-A of K. E R.

6. Reliance is placed both by the petitioner and the 1st respondent on Rule 7 of the Rules for the award of Government grants to aided schools for the handicapped to contend that the provisions contained under Rule 51A of Ch. XIV A of K. E. R. are applicable to the teachers in the school of the 2nd respondent. What is provided under Sub Rule 7 is that procedure for appointment in the

school for handicapped will be the same as in the case of other aided schools, that the advertisement in newspapers and reference to Employment Exchange will be insisted on to ascertain availability of qualified hands before unqualified hands are appointed. The procedure for appointment in the case of aided schools are contained in Rule 7 of Ch. X1V-A of K. E. R. It provides that as soon as teacher is appointed in a school, the manager shall immediately issue an appointment order to the teacher and the appointment shall be effective from the date on which the teacher is admitted to duty, provided the appointment is duly approved. The date on which the vacancy has to be filled up, the manner in which the appointment order is to be forwarded to the Educational authorities and how the order granting a proval or declining approval shall be communicated to the manager are all provided under this rule. Rule 2(1) of the rules for the award of Government grants to the aided schools for the handicapped empowers the District Educational Officer to fix the staff pattern of the school for handicapped. It is under these circumstances approval of appointment of teachers in school for handicapped is being granted by the District Education Officer. To make it more clear, it is not because the conditions of service of the teachers in the school for handicapped are covered by Ch. XIV A of K. E. R. but only because by the provisions contained under Sub-rule (7) of the Rules for the award of Government grants to aided schools for the handicapped, the procedure for appointment in the case of other aided schools are adopted in the case of appointment in the school for handicapped also and approval of appointment is sought from D E. O. also. The 1st respondent, State Government also has no case that K. E. R. as such is applicable to the schools for handicapped. On the other hand, as mentioned earlier it is admitted in their counter affidavit that K. E. R. as such is not made applicable to the schools for handicapped. Ext. R 2 (b), R 2 (b)-I R2(b)-2 and R2 (b)-3 documents also would go to show that the Government had always treated the schools for handicapped outside the purview of K. E. R.

7. The amendment which was brought under Govt. order G. O. Ms. 198/79/G. Edn dated 22-11-79 relates only to the qualification and method of appointment to the posts of different types of teachers in the schools for handicapped. The above Govt. order, copy of which is produced as Ext. R2-C- by the 2nd respondent does not supersede the rules issued as Appendix I II, III and IV under Govt. order dated 3.11.69. The qualifications of teachers were originally prescribed under Rules for recognition of the schools for defectives under Appendix I to the Govt. order dated 3.11.69. Rule 1(vi) contained the provisions regarding qualification of teachers. Those provisions are amended under Ext. R2(C) Govt. order. Therefore it is not fully correct to say that the entire rules are superseded by Ext. R2(C). The method of appointment provided under Ext. R2(c) in the matter of assistant teachers is by direct recruitment. There is no provision giving protection by re-appointment to teachers who had earlier service in the same school, as the one contained in Rule 51A of Ch. XIV-A of K. E. R. In the light of the above discussion, the only conclusion which can be arrived at is that

the petitioner is not entitled to claim any preference for appointment as a teacher in the school of the 2nd respondent on the basis of the provisions contained under Ch. XIV-A of K. E R. Merely because she was sent for training as sponsored by the 2nd respondent it will not give her any right to claim appointment in the school. The principles of promissory estoppel will not apply in the present case as by undergoing training, the petitioner cannot be held to have changed her position to her disadvantage on the alleged promise made by the 2nd respondent. The petitioner had not made out a case of having any legal right which would entitle her to seek a writ of mandamus directing the 2nd respondent to appoint her as a teacher in the school even if it is conceded that a writ of mandamus is maintainable against the 2nd respondent. In the result, the Original Petition fails and it stands dismissed.