
(1997) 10 KL CK 0016
In the High Court Of Kerala
Case No : O.P. No. 430 of 1990

Shobhana, A.

APPELLANT

Vs

Manager and Others

RESPONDENT

Date of Decision : 01-10-1997

Acts Referred:

Kerala Education Rules, 1959 — Rule 51A

Citation : (1997) 2 KLJ 700

Hon'ble Judges : C.S. Rajan, J

Bench : Single Bench

Advocate : P.K. Lakshmanan, for the Appellant; T.G. Rajendran, for 1st Respondent and P.V. Asha, Government Pleader for Respondents 2 to 4, for the Respondent

Judgement

C.S. Rajan, J.—The Petitioner was appointed by the first Respondent as Hindi teacher in his school. She continued in the above school till 14th July 1986. The above appointment was approved by the second Respondent. The Petitioner's services were terminated for want of vacancy due to division fall. An additional post of Junior Hindi Teacher was sanctioned with effect from 15th July 1987 by the second Respondent for the academic year 1987-88. According to the Petitioner she was fully qualified to be appointed to the above post. She was also entitled to get preferential treatment under Rule 51A of Chapter XIV-A K.E.R. But the first Respondent did not issue any appointment order to the Petitioner. Instead of that, the first Respondent appointed one K.P. Lilly. The Petitioner filed Ext. P-6 representation before the first Respondent requesting to appoint her in the above vacancy. The Petitioner also filed a representation before the second Respondent. The second Respondent, after considering the above representation, refused to approve the appointment of Smt. K.P. Lilly. Accordingly her services were terminated. Still the first Respondent did not appoint the Petitioner in the above vacancy. According to the Petitioner, the above vacancy continued in the year 1988-89 also.

2. The Petitioner filed O.S. No. 1085/87 before the Munsiff's Court, Kozhikode praying for a declaration that she has a preferential claim for appointment to the post of Additional Junior Hindi Teacher sanctioned by the second Respondent in the school of the first Respondent. The above suit was dismissed by the learned Munsiff on the ground that the Petitioner had an equal and efficacious remedy before the educational authorities under the provisions of the K.E.R. and therefore the Petitioner was not entitled to the relief of declaration and mandatory injunction prayed for. It was also made clear in the judgment of the learned Munsiff that this would not prejudice the rights of the parties to raise their contentions before the educational authorities. The Petitioner filed Ext. P-7 representation before the third Respondent. By Ext. P-8 the second Respondent informed the third Respondent that the Petitioner is the rightful claimant to the post sanctioned in July 1987. It is also stated that the post of Hindi Teacher was vacant from 1987-88 onwards.

3. This Original Petition has been filed by the Petitioner for a direction to the Respondents to pay salary to the Petitioner from 1st June 1987 onwards and to grant all other service benefits.

4. A counter-affidavit has been filed by the first Respondent. According to the counter-affidavit, the first Respondent orally asked the Petitioner to join duty when a vacancy arose but she refused and the first Respondent thereafter appointed Smt. Lilly to the above post. The Petitioner also had informed that she no longer required the post. The first Respondent has also produced the judgment of the Munsiff's Court as Ext. R-1(a).

5. A counter-affidavit has been filed by Respondent No. 4. In the counter-affidavit it has been admitted that the Petitioner is a Rule 51A claimant for the post of Junior Hindi Teacher. It is further stated that the third Respondent had initiated action against the first Respondent for disobeying departmental orders. The second Respondent has also issued necessary direction to the first Respondent to fill up the vacancy of full time Junior Hindi Teacher. The first Respondent is solely responsible for the non-appointment of the Petitioner and that the department is not in any way responsible for the loss sustained to the Petitioner.

6. The stand of the first Respondent that he had orally requested the Petitioner to join duty is unsustainable in law in view of the mandatory provisions contained in Note 2 to Rule 51A. According to Note 2 to Rule 51A Chapter XIV-A of the K.E.R., the Manager should issue an order of appointment to the teacher by registered post with A.D. and wait for 14 days. If the teacher does not join duty during the above period, the Manager should give a further notice to the teacher stating that another person would be appointed. Still if the teacher refused to join duty, the preferential right under the Rule would be forfeited. The above provision has been held to be mandatory by this Court (Please see 1986 KLT 166, Pathumma v. State of Kerala). Therefore the stand of the first Respondent in this case is absolutely unsustainable and unsupportable in law.

7. Therefore it is declared that the Petitioner is entitled to be considered for appointment to the post of full time Junior Hindi Teacher in the school of the first Respondent with effect from 15th July 1987. Respondents 2 and 3 are directed to take necessary steps for implementation of their orders as well as the declaration made by this Court in this judgment. This must be done within one month from the date of receipt of a copy of this judgment.

8. A Division Bench of this Court in the ruling reported in *Manager M.M.H.S. v. Deputy Director 1994 (1) KLT 321* held that the Manager is duty bound to provide the staff required for the school and the Government had taken upon itself the liability to pay the salary to the teachers. It is the duty of the Manager to fill up all the posts in accordance with the orders of the educational authorities finding the staff strength. In the above case it was further held that the failure of the Manager in not appointing a teacher against a vacancy which was duly sanctioned would cause loss to the teacher and such a loss caused to the teacher can be recovered from the Manager as provided by the rule. Therefore the Petitioner is free to approach the appropriate educational authorities for the purpose of enforcing the relevant rule under the K.E.R. to enforce her right against the Manager.

With the above observations and directions the Original Petition is disposed of.