

(2022) 12 KL CK 0002

In the High Court Of Kerala

Case No : Review Petition Nos.1025, 1030, 1035, 1036 Of 2022 in Writ Appeal
Nos.1253, 1128, 1081, 1123 Of 2022

Sri.C.C.Clement

APPELLANT

Vs

T.M.V.H.S.School, Perumbilavu, Thrissur 680503

RESPONDENT

Date of Decision : 01-12-2022

Acts Referred:

Kerala State And Subordinate Services Rules, 1958 — Rule 60(c), 62, 63

Citation : (2022) 12 KL CK 0002

Hon'ble Judges : P.B.Suresh Kumar, J;C.S.Sudha, J

Bench : Division Bench

Advocate : George Mathew, M.D.Sasikumaran, Sunil Kumar A.G, George K.V.,
Praveen S., Elsa Denny Pindis, Dipu James, Mathew K.T., George Abraham,
V.A.Muhammed

Final Decision : Dismissed

Judgement

P.B.Suresh Kumar, J.

1. The writ appeals from which the above review petitions arise were preferred against the common judgment in two writ petitions namely, W.P.(C) No.2896 of 2021 and W.P.(C) No.3353 of 2022. As the writ petitions and the writ appeals were disposed of by common judgments, the review petitions are also disposed of by a common order. Parties and documents are referred to in this order for convenience as they appear in W.P.(C) No.2896 of 2021.

2. As the facts have been exhaustively stated in the common judgment sought to be reviewed, it is unnecessary to refer to the facts again. As revealed from the judgment sought to be reviewed, the dispute in the writ petitions was pertaining to the claim of the right of the petitioner for regular appointment as Physical Education Teacher in the school referred to in the writ petition in the vacancy that arose on account of the retirement of one Denny Job, who was working as the Physical Education Teacher. According to the Manager of the school, the vacancy arose on 01.06.2018, and since the petitioner who is entitled to a

preferential claim for appointment, was not qualified as on 01.06.2018, the eighth respondent was appointed against the said vacancy. The case set out by the petitioner in the writ petition was that since he has acquired the qualification, viz, a degree in Physical Education in the examination held during May 2017, notwithstanding the fact that the result of the said examination was published only on 5.07.2018, he should have been appointed in the vacancy of Denny Job. It was also his case that Denny Job had attained the age of superannuation only in the month of June 2018; that Denny Job was therefore, entitled to continue as teacher in the School till 30.06.2018; that the vacancy of Physical Education Teacher in the circumstances, can be said to have arisen only on 01.07.2018; that the result of the degree course undertaken by the petitioner was confidentially communicated by the University to the District Educational Officer on a request made by the petitioner much before 01.07.2018 and that therefore, at any rate, he should have been appointed in the place of the eighth respondent.

3. This Court found, having regard to the provisions contained in Rule 63 of Chapter XIVA of the Kerala Education Rules (KER) and Rule 60(c) of Part I of the Kerala Service Rules (KSR) that the vacancy can be treated to have arisen on 01.06.2018. This Court also found that the relevant date for considering the date of acquisition of qualification is the date of publication of the result and that even assuming the date of communication of the result by the University to the District Educational Officer is to be regarded as the date of acquisition of the qualification, the District Educational Officer has received the communication only on 04.06.2018, much after the occurrence of the vacancy. On the basis of the aforesaid findings, this Court held that the appointment of the eighth respondent effected by the Manager on 01.06.2018 as Physical Education Teacher in the school in the vacancy which arose on the retirement of Denny Job is in order and the concerned District Educational Officer was consequently directed to approve the appointment of the eighth respondent, reversing the decision of the learned Single Judge. It is aggrieved by the said decision of this Court that the petitioner has preferred the above review petitions.

4. Heard the learned counsel for the petitioner, the learned counsel for the eighth respondent, the learned counsel for the Manager of the School as also the learned Government Pleader.

5. The learned counsel for the petitioner raised two contentions. The first and foremost was that the finding rendered by this Court that the vacancy on account of the retirement of Denny Job should be treated to have arisen on 01.06.2018 is contrary to the dictum of this Court in *Bhaskaran v. Viswanathan*, 2000 KHC 320. According to the learned counsel, going by the decision aforesaid, the vacancy on account of the retirement of Denny Job can be treated to have arisen only on 01.07.2018 and if that be so, inasmuch as the result of the degree course undertaken by the petitioner has been communicated to the District Educational Officer by the University much before 01.07.2018 itself, the petitioner should have been appointed in the vacancy. The second contention was that the eighth

respondent was on maternity leave for 180 days from 01.10.2018 and that she abandoned the service thereafter, and the said fact was not divulged by the Manager in their pleadings or at the time of the arguments. According to the learned counsel, the claim of the petitioner, in the circumstances, should have been upheld by this Court.

6. Per contra, the learned counsel for the eighth respondent contended that in the light of the second proviso to Rule 62 of Chapter XIVA KER introduced with effect from 5.01.2007, the decision of this court in Bhaskaran (supra) is no longer good law. It was also argued by the learned counsel that the contention raised by the petitioner that the eighth respondent has abandoned the service after availing the maternity leave is also incorrect and made without ascertaining the true facts.

7. We have examined the arguments advanced by the learned counsel for the parties on either side.

8. The contention raised by the learned counsel for the petitioner that the eighth respondent was on maternity leave for a period of 180 days from 01.10.2018 and that she abandoned the service thereafter, is not a contention that was raised by the petitioner in the writ petition. The said contention being one that could have been raised by the petitioner in the writ petition, it cannot be raised for the first time in a review petition. Coming to the contention as regards the date of occurrence of the vacancy that arose on account of the retirement of Denny Job based on the decision of this court in Bhaskaran(supra), we are of the view that insofar as it was found by us that the relevant date for considering the date of acquisition of the qualification is the date of publication of the results of the examination, even if the proposition that in a case of this nature, the vacancy can be treated to have arisen only on 1.07.2018 is accepted, the petitioner cannot claim appointment against the said vacancy insofar as the results of the examination undertaken by the petitioner was published only on 5.07.2018. Needless to say, the consequence of acceptance of such an argument would only be that the appointment of the eighth respondent will have to be shifted from 1.06.2018 to 1.07.2018 and the petitioner will not, in any manner, be benefited by such shifting. The review petitions in the circumstances, are without merits and are, accordingly, dismissed.