
(2005) 07 KL CK 0053

In the High Court Of Kerala

Case No : W.A. No"s. 1177 of 2003 and 1225 of 2003

St. Ignatius High School

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 22-07-2005

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2005) 3 ILR (Ker) 666 : (2005) 3 KLJ 51 : (2005) 3 KLT 1000

Hon'ble Judges : K.A. Abdul Gafoor, J;K. Hema, J

Bench : Division Bench

Advocate : V. Giri, for the Appellant; Vaheeda Babu (GP) and K.R.B. Kaimal, for the Respondent

Final Decision : Allowed

Judgement

K.A. Abdul Gafoor, J.—An aided school manager is the appellant in both these writ appeals. He is the Manager of St. Ignatius High School, Kanjiramattom. The 6th respondent filed Ext. R6(a) application before the appellant for appointment as a teacher in the school managed by him on compassionate ground invoking Rule 51B Chapter XIV-A KER, which reads as follows;

The Manager shall give employment to a dependent of an aided school teacher dying in harness. Government orders relating to employment assistance to the dependents of Government Servants dying in harness shall mutatis mutandis, apply in the matter of such appointments.

This application was made on 25-07-1990 consequent on death of her mother, A.L. Rosy on 21-4-1990 who was a teacher in the school managed by the appellant. The appellant manager did not consider this request. Finally, the 6th respondent took up the matter before the District Educational Officer who considered her claim with due advertence to the objections of the manager as contained in Ext. P1 and passed Ext. P2 order with direction to the manager "to give employment to the petitioner (6th respondent) in the next arising vacancy

in his school, after obtaining relinquishment letters of senior preferential claimants." This was assailed by the Manager before Government as is revealed by Ext. P3 revision petition. It was disposed of as per Ext. P4 with a direction to the manager "to appoint Smt. Meena K. John (the 6th respondent) with immediate effect, since she is eligible for appointment under Rule 51B of Chapter XIV A KER". This was under challenge in O.P. No. 22066/2001. In the meantime, as Ext. P2 was not implemented, she complained to the Deputy Director of Education, Ernakulam. There upon the Deputy Director of Education passed Ext. P1 in O.P. No. 5502/02 with a further direction to the Manager to consider her appointment particularly considering the fact that she was eligible for appointment at the time when she applied. This was impugned by the Manager before the Director of Public Instruction and the Director of Public Instruction disposed of that matter as per Ext. P3 marked in O.P. No. 5502/2002 re-enforcing the direction to the manager "to obey the departmental direction by appointing Smt. Meena K. John under the management." The Government had also in the meantime issued a clarification that married son/married daughter shall also be considered under compassionate employment scheme if they are otherwise eligible, as per Ext. P4 marked in O.P. No. 5502/02. It is in the above circumstances the Manager again filed O.P. No. 5502/2002 impugning Exts. P1, P3 and P4. Both these Original Petitions were dismissed as per the judgment impugned in these two writ appeals by a common judgment. Therefore, this writ appeals at the instance of the appellant/petitioner manager.

2. The main contention urged before the authorities and before us is that the 6th respondent who claimed compassionate appointment was not at all a dependent of the teacher who died in harness, because she got married when her claim was considered on 16-6-1991. Admittedly and going by Ext. R1(a) application this was far later then she urged her claim for appointment under Rule 51B. Either Rule 51B or the Government orders referred to in Rule 51B does not make a married daughter disentitled to such appointment.

3. The further contention urged was that the family of the applicant was in sound financial situation. Therefore, she did not deserve a compassionate appointment under Rule 51B read with Government orders mentioned therein. Reiterating this contention it is pointed out that clause 15 of GO(P) No. 34/87/P & ARD dated 17-12-1987, the relevant Govt. order applicable at the relevant point of time as referred to in Rule 51-B, fixed an income limit in order to make one eligible for compassionate appointment. Special reference is made to clause 15 therein, which reads as under.

15.(i). The maximum income of the family of a Government Servant who died in harness on or after 1-1-1982 should not exceed Rs. 9000 per annum to make a dependent eligible for the employment assistance. In cases where the Government Servants died prior to 1-1-1982 the income limit applicable will be Rs. 6000.

(ii) In respect of Government Servants dying in harness or after 1-7-1983 the

employment assistance under the scheme will be given without considering the annual income of the family of the applicant.

Note:- This benefit of giving employment assistance under the scheme without reference to income limit will however be available to the minor dependents of Government Servants who died prior to 1-7-1983 and who become eligible for making their application for employment assistance on or after 1-7-1983, on attaining majority or within the permissible period of three years after attaining majority.

4. The specific contention taken by the appellant in Ext. P1 objection, marked in O.P. No. 22066/01, before the District Educational Officer is that husbands of two elder sisters of the 6th respondent were earning members and her father was a pensioner. It is common knowledge in Indian family condition that the income drawn by the husband's of elder sisters cannot be taken as one's family income. It is true that the father of the applicant, 6th respondent was a pensioner. If the pension drawn is sufficient enough to disentitle the incumbent, it should have been specifically mentioned that the income was beyond that limit. Nothing of that sort is mentioned in Ext. P1. No other contention was also urged before the District Educational Officer to deny the appointment. Therefore even if the contention relating to income limit is taken, going by the materials placed before the District Educational Officer by the appellant, it cannot be stated that family income of the 6th respondent was beyond the limit now canvassed before us.

5. Even otherwise a close reading of clause 15 of the said G.O. extracted above will disclose that no income limit at all was relevant at the relevant point of time when 6th respondent made application Ext. R6(a) on 25-7-1990 or on the date of the death of her mother, on 21-4-1990. Sub clause (i) and (ii) of clause 15 of the said Govt. Order make it clear that the income limit mentioned therein was applicable only in respect of the family of the Government servant who died in harness before 1-7-1983 at different rates of Rs. 9000/- and Rs. 6000/-. On the other hand sub clause (ii) thereof makes it further clear that in respect of the Government servant died in harness on or after 1-7-1983 the employment assistance under the scheme would be given without considering the annual income of the family. Admittedly, death of the mother of the 6th respondent was after 1-7-83. Therefor at the relevant point of time the income limit was not at all applicable.

6. It is further contended relying on the note under clause 15 of the said Govt. Order that in respect of those who became eligible after 1-7-1983 also the income limit is made applicable. But the note does give any such indication. Its purpose is, on the other hand, to exclude minor dependents of Govt. servant who died in harness before 1-7-1983 and attained majority after the said date. In other words, in such situation, as on 1-7-1993 when one becomes eligible for such appointment, the income limit is not made applicable. Necessarily in the case of 6th respondent, the appellant/manager could not have denied appointment on the ground of financial soundness of her family.

7. Does the 6th respondent becomes disentitled to get the benefit of compassionate appointment because of her getting married later? Admittedly, even by the appellant the 6th respondent applicant was not married when she submitted Ext. R6(a) application. She got married far later on 16-6-1991. Her eligibility has to be decided with reference to the date of death of her mother Or at the latest by the date of her application. One cannot wait unendingly, expecting that the manager will once concede to the request, to marry. As rightly found by the learned single judge to contend so is inhumane and violative of the human rights. Therefore, that contention is not also available to the appellant. The appellant also attempted to substantiate the contention introducing more facts than those were placed before the statutory authorities. When the fact finding authorities have successively considered the details urged to uphold the claim of the 6th respondent, that cannot be defeated now, introducing any further more facts in proceedings under Article 226, where disputed questions of facts could not be resolved, especially when the appellant did have an opportunity to raise such disputed facts before the fact finding authorities like District Educational Authority or the Government as the case may be. Necessarily the impugned judgment has to be Upheld. We do so.

Appeals are accordingly dismissed.