

(1993) 08 KL CK 0062
In the High Court Of Kerala
Case No : W.A. No. 964 of 1993

State and Others

APPELLANT

Vs

A. Leelamani Amma and Others

RESPONDENT

Date of Decision : 25-08-1993

Acts Referred:

Citation : (1993) 2 KLJ 717

Hon'ble Judges : M. Jagannadha Rao, C.J;K. Sreedharan, J

Bench : Division Bench

Advocate : M. Krishnan Nair and B. Gopakumar in W.A.No. 1041 and 1042 of 1993, for the Appellant; V. Bhaskara Menon, Sr. Govt. Pleader, for the Respondent

Judgement

K. Sreedharan, J.—These four Writ Appeals arise out of O.P. Nos. 16815/1992 and 17088/1992, which were disposed of by a common judgment. These Original Petitions were filed by the Manager of Mannam Memorial High School, Nariyampara, Idukki. Writ Appeals 964/1993 and 1042/1993 arise from O.P. 17088/1992 and other two appeals from O.P. 16815/1992. Writ Appeals 964/1993 and 1030/1993 are filed by the State and Deputy Director of Education, Idukki, who were respondents in the Original Petitions, Writ Appeals 1041/1993 and 1042/1993 are by the writ petitioner, namely the Manager of the aided school.

2. The short facts necessary for the disposal of these writ appeals, which are being disposed of by this common judgment, are as follows.- Due to reduction in the strength of students in the school run by the writ petitioner, there occurred reduction of the number of teachers. About 39 teachers were consequently sent out of the school during the period from 1977-78. Those teachers were granted protection in terms of the various Government orders. Those teachers were at first accommodated in Government schools on working arrangement. "Later some of them were assigned to other aided schools newly established. As per the agreements executed by the management of the new schools under sub-rule (viii) of Rule 6 of Chapter V of the Kerala Education Rules, hereinafter referred to

as "the Rules", these protected teachers were absorbed in to the staff of their schools. A permanent vacancy "of U.P.S.A. arose in the school run by the writ petitioner during the year 1991-92. That vacancy was to be filled up by reinstating one of the protected teachers working in Government schools. Writ petitioner requested the Deputy Director of Education by letter dated 25-1-1991 to issue orders permitting one Mr. M.K. Thankappan, the senior-most protected teacher working in Government school, to rejoin duty in the school. Deputy Director did not pass any order on that request. Another vacancy of a U.P.S.A. and one in the category of L.P.S.A. arose in the school run by the writ petitioner during the academic year 1992-93. Deputy Director was then requested by letter dated 24-8-1992 to issue orders directing Smt. E.M. Radhamani and Smt. P.K. Radhamani Amma, who were continuing as protected teachers in government schools, to be sent back to his school. Since the Deputy Director was not passing any order on the above requests, writ petitioner approached this Court by filing O.P. 16815/1992 praying for the issue of a writ of mandamus directing the Deputy Director to issue immediate orders posting the protected teachers, namely Smt. E. M. Radhamani and Smt. P.K. Radhamani Amma, in the school. This Original petition was filed on 17-12-1992. By that time, Sri. Thaokappan, the first protected teacher, who was sought to be posted back in to parent school, retired from service on superannuation.

3. Immediately after the filing of O.P. 16815/1992, Deputy Director of Education issued Ext. P3, an order dated 23-11-1992, and directed the writ petitioner to take back three teachers who were sent out from his school on account of fall in strength and who- were absorbed by the management of newly established schools in compliance with the provisions contained in Rule 6 (viii) of Chapter V of the Rules. Writ petitioner challenged that order in O.P. 17088/1992. His contention was that the teachers directed to be taken back as per Exhibit P3 have become permanent teachers in the newly established aided schools and so they are not to be accommodated in the parent school. It was also contended that only teachers accommodated in Government schools on protection are to be sent back to the parent school. Since no such teacher was ordered to be taken back in the school run by the writ petitioner, he prayed for a direction to the educational authorities to permit recruitment of fresh hands in the existing vacancies.

4. The main question that arises for consideration in these writ appeals is whether a teacher who has been absorbed in a school pursuant to the agreement executed by the management, as contemplated by clause (viii) of Rule 6 of Chapter V of the Rules, is to be taken by the parent school from where he was retrenched as a result of the fall in strength of students.

5. Rule 55 of Chapter XIV-A of the Rules states that the number of permanent teachers in the staff should not exceed the aggregate number of sanctioned posts in that category This staff strength is based on the strength of the classes fixed in accordance with sub-rule (1) of Rule 12 of Chapter XXIII. If any teacher

becomes excess, then he will be retrenched by throwing him out of service. The person to be thrown out on retrenchment should be the junior-most hand. In throwing out the junior-most the subject requirement of the school must be taken into consideration. Thus it is seen that the excess hand is to be retrenched by throwing him out of service. According to Rule 52 of Chapter XIV-A of the Rules a teacher who is relieved on account of reduction in the number of posts shall on appointment be paid the salary which he was drawing at the time of relief. This protection is given to the teacher even if he is absorbed in a school belonging to a different management and also whether the new appointment is permanent or not. As per Rule 51A of Chapter XIV - A of the Rules, a teacher who is relieved on account of termination of vacancy, shall have preference for reappointment to future vacancies in the parent- school. This right is subject to the proviso that he should not have been appointed in permanent vacancies in schools under any other educational agency. The cumulative effect of these provisions is that the number of permanent teachers of a school should depend on the number of sanctioned posts, depending on the strength of students. If the teachers are more than the sanctioned strength under each category, they will have to be retrenched by throwing them out from the school. The junior - most hand, subject to the requirement of subjects to be taught in the school, is to be retrenched and thrown out. Such a retrenched and thrown out teacher from one school, if appointed in any other school, he will have his pay and allowances protected. So also if he has not been appointed in a permanent vacancy in the schools run by another educational agency, he will have a preferential right to be appointed in the parent school in the vacancies which arise in future.

6. Teachers who are retrenched and thrown out, as a result of the fall in strength of students are given protection as a result of various Government orders. They are accommodated in Government schools as well.

7. While sanctioning new schools managements of those schools were directed to enter into an agreement as provided by Rule 6 (viii) of Chapter V of the Rules. Rule 6 deals with documents which are to accompany the application for sanction to start new schools. Clause (viii) of the Rules provides that the application should be accompanied by "an agreement duly executed by the applicant to the effect that he is prepared to absorb qualified teachers/non-teaching staff who, after putting in service of 2 years and drawing 2 vacation salaries, have been retrenched from any of the aided high schools in the Education district or aided primary schools in the Education Sub-district in which the applicant proposes to open/upgrade the school". As per this agreement, the management of the new school is to undertake to absorb the qualified retrenched teacher. The new schools are having open vacancies of teachers. The retrenched teacher is to be absorbed in that open vacancy. The absorption of a retrenched teacher pursuant to the agreement contemplated by the above clause, can only be against a permanent vacancy. This is more so when it is seen that a new school can have only the minimum staff required as per the Rules. It is against that minimum sanctioned post can be retrenched teacher, who is entitled to protection, be

absorbed.

8. As seen from the provisions of the Rules referred to earlier, on account of the reduction of the number of posts teachers are relieved from the parent school. Their relief from the school is governed by Rule 55 of Chapter XIV-A of the Rules. Excess hands are retrenched by throwing out the junior-most hands with due regard to the requirement of subjects. Teachers who are thus relieved on termination of vacancy have only a preference to appointment to future vacancies in the school. This right is subject to the proviso that they should not have been appointed in permanent vacancies in schools belonging to other educational agencies. The protected teacher who has been absorbed in a new school in terms of the agreement contemplated by Rule 6 (viii) of Chapter V, therefore, cannot have any right for appointment in the future vacancies in the parent school.

9. The stand taken by the State is that the teacher thrown out from the parent school as a result of the fall in strength of the students is having a lien to the post and as and when future vacancies arise, he will have to be taken back, irrespective of the fact whether he was absorbed in a new school or not. A question whether a teacher, who was thrown out has got a lien in the parent school or not, was considered by one of us (Sreedharan, J.) (which was confirmed in Writ Appeal 207/1990) in *Manager, Mar Sreeba U.P. School v. State of Kerala* (1990 (1) K. L. T. 626). In that case the question was whether a fully qualified hand who was thrown out from service and was given protection can be appointed as Headmaster of the school. After considering the various provisions of the Rules, it was observed :-

The cumulative effect of the above provisions appears to be that a teacher who is found to be an excess hand on fixation of the staff strength during an academic year will be retrenched by throwing him out. Such a thrown out teacher has got a preferential claim to be appointed to future vacancy in the parent school. When he is thrown out of service can he be considered as a member of the staff in the parent school Rule 55, Chapter XIV-A states that excess hand based on the strength of class will be retrenched by throwing cut the junior most hand. The word "retrench" as per Chambers 20th Century Dictionary means "to cut off, or down", It means that excess hand based on the strength of class should be cut off from the staff of the school. If he is so cut off from the staff of the school he cannot thereafter be considered as a member of the staff of the school. The teacher so thrown out thereafter is entitled to a preferential claim for appointment to future vacancy in the school as provided under R. 51-A of Chapter XIV-A. He has no other right in the parent school.

In view of this, we are of the opinion that a teacher who was retrenched and thrown out of service from the parent school can have only the right under Rule 51-A of Chapter XIV-A of the Rules. He can have no other right or claim as against the management of the parent school. The moment he is absorbed in a permanent vacancy in another school, the right under Rule 51-A of Chapter XIV-

A is also lost to the teacher.

10. The learned Government Pleader was relying on Government orders to state that the protected teacher will be having a lien to the post left by him in the parent school. At first there is no provision conferring any lien on this retrenched and thrown out teachers in the Rules. The right that is conferred on the teacher is only that under Rule 51-A of Chapter XIV-A. That is only a preferential claim for future vacancy. That claim is lost when the teacher is appointed in permanent vacancy in another school. The vacancy to which the teacher is absorbed as per the agreement in Rule 6 (viii) of Chapter V can only be a permanent vacancy. The teacher absorbed in that vacancy cannot have any preferential claim under Rule 51-A of Chapter XIVA. Therefore the order Exhibit P3, issued by the Deputy Director of Education, is clearly against the statutory provisions. No executive order can supersede the Rules.

11. Even assuming for argument sake that a retrenched teacher is having a Hen to the post in the parent school, that lien cannot continue after he is absorbed in a permanent vacancy by another management pursuant to the agreement under Rule 6 (viii) of Chapter V of the Rules. It is trite law that a person cannot have lien in two posts. By absorption in the new school, he gets a lien in the post to which he is absorbed. Thereafter under no provision of law can that teacher retain the so-called lien in the post in the parent school. Further while passing Exhibit P3 order the Deputy Director has no case that the teachers retrenched from the school managed by the writ petitioner were facing retrenchment from the new schools consequent on the fall of strength of staff in those schools. If that be the case, we fail to comprehend the situation which prompted the Deputy Director to issue an order like Exhibit P3. It is abundantly clear that a teacher retrenched from the parent school as a result of fall in strength and who was subsequently absorbed in a new school, pursuant to the agreement contemplated by Rule 6 (viii) of Chapter V, cannot be imposed on the management of the parent school.

12. In the instant case when a vacancy of U.P.S.A. arose in the school run by the writ petitioner, he requested the Deputy Director to send back Sri. M.K. Thankappan who was being accommodated in the Government School Deputy Director did not pass any order during that academic year. In the succeeding academic year 1992-93 there arose two vacancies, one of U.P.S.A. and another of L.P.S.A. For filling up those vacancies, the Manager requested the Deputy Director to deploy another two thrown out teachers who are accommodated in the Government school. That application was also being kept in cold storage. That was the circumstance which compelled the writ petitioner to approach this Court by filing O.P. 16815/1992 praying for the issue of a writ of mandamus. Thereupon the Deputy Director without deploying the teachers accommodated in the Government school, ordered the writ petitioner to take back three teachers who were absorbed in the new schools in terms of the agreements executed under Rule 6 (viii). of Chapter V of the Rules. We fail to find any rhyme or reason

in the action by the Deputy Director of Education. Pursuant to Exhibit P3 order impugned in O.P. 17088/1992, the third respondent, A. Leelamani Amma, a Lower Primary School Assistant, has been relieved by the Manager, who executed the agreement under Rule 6 (viii) of Chapter V. Respondents 4 and 5 have not been relieved from the new school pursuant to Exhibit P3 order of the Deputy Director. Therefore, they should continue in the present post and they are not to be relieved. Since A. Leelamani Amma has been relieved from the school and the writ petitioner has agreed to accommodate her in his school, we order that the writ petitioner - Manager of Mannam Memorial High School to accommodate Smt. A. Leelamani Amma, Lower Primary School Assistant, in his school.

In view of what has been stated above, we quash Exhibit P3 order, Order No. K. Dis./19377/91/B5 dated 23-11-1992 passed by the Deputy Director (Education). Idukki in so far as it relates to respondents 4 and 5 in O.P. 17088/1992 is concerned. As far as A. Leelamani Amma the third respondent is concerned, Manager, Mannam Memorial High School is directed to accommodate her in school as a Lower Primary School Assistant.

Writ Appeals are disposed of in the above terms. We make no order as to costs.