

(2021) 01 KL CK 0317
In the High Court Of Kerala
Case No : Writ Appeal No. 1321 Of 2020

State Of Kerala And Ors

APPELLANT

Vs

Asha V And Ors

RESPONDENT

Date of Decision : 13-01-2021

Acts Referred:

Citation : (2021) 01 KL CK 0317

Hon'ble Judges : A.M. Shaffique, J;Gopinath P, J

Bench : Division Bench

Advocate : A.J. Varghese, K.R. Krishnakumari

Final Decision : Disposed Of

Judgement

A.M. Shaffique, J

1. This appeal is filed against the interim order dated 13/2/2020 in IA No.2/2019 in WP(C) No.24474/2018. State and its officers have preferred this

appeal against the aforesaid interim order by which the learned Single Judge modified its earlier order dated 20/7/2018 and directed the appellants to

pay salary to the writ petitioner from July 2018 onwards and continue to pay the same until disposal of the writ petition. It is made clear that directions

issued are subject to orders by the Division Bench in WA No.2440/2017 and connected cases.

2. The writ petition was filed by the 1st respondent herein challenging Ext.P8 order by which she was deployed from the school in which she was

working as Head Teacher to Government School, Malappuram. Her parent school was Upper Primary School, Edamon where she was working in the

capacity of Lower Grade Hindi Teacher w.e.f. 15/7/2007. Consequent to finalization of staff fixation of the parent school of the petitioner for the year

2015-16, petitioner was rendered surplus and she was included in the teachers bank. However, she was retained in the parent school as Head

Teacher. While the petitioner was working as Head Teacher, Government issued GO(P) No.199/2016/G.Edn dated 3/12/2016 by amending the Kerala

Education Rules. Since the petitioner was not qualified to be accommodated against the post of UPST, Ext.P8 order came to be issued, and in order to

accommodate the petitioner, she was deployed to Government School at Malappuram.

3. The contention urged by the petitioner is that she ought to be accommodated in the post of Head Teacher, as during the academic years 2016-17

and 2017-18, she was accommodated as Head Teacher. Therefore, she sought for continuance in the said post. According to her, even during the

academic year 2018-19, a vacancy of Head Teacher is available and therefore she should be accommodated in the said post. The Government

however contended that since the Head Teacher post is to be given to UPST and the petitioner does not have the qualification to be appointed as

UPST, she cannot continue in that position.

4. By an interim order dated 20/7/2018, while admitting the writ petition, the petitioner sought permission to continue in the same school at her risk and

without any salary and accordingly, the following interim order had been passed:-

“Notice before admission to the fifth respondent. Learned Government Pleader takes notice for respondents 1 to 4.

The petitioner shall be permitted to continue at her risk without any salary.

Post on 31/7/2018.”

5. However, during the pendency of the writ petition, she filed IA No.2/2019 seeking for modification of the said order and seeking salary to be paid

while she was working in the said school. Before the learned Single Judge, it was inter alia contended that the amendment to KER made as per

Government Order dated 3/12/2016 has been interfered by this Court in WA No. 2425/2017 and connected cases and since there was a direction to

maintain status quo as on 19/12/2017 to the appointments, approval and deployment of teachers on the basis of the 2016 amendment to the KER, the

petitioner is entitled for salary in the post of Head Teacher.

6. While impugning the aforesaid interim order, learned Government Pleader submits that the petitioner was permitted to work in her parent school at

Edamon only on account of the interim order dated 20/7/2018. But, she cannot work in the capacity of Head Teacher since she is not qualified. The interim order in WA No.2425/2017 and connected cases has no application to the case on hand insofar as the said interim order does not amount to a stay of 2016 amendment. But the direction is only to maintain status quo with reference to appointments, approval and deployment of teachers on the basis of the amendment. It is pointed out that no appointment had been made after the interim order based on the amendment nor was any approval granted and there was no deployment as well. As far as the petitioner is concerned, the amendment has no effect at all since she is not a person who is qualified to be appointed as a Head Teacher. She was given the posting of Head Teacher not on the basis of the amendment, but on the basis of sanctioning of such a post in order to accommodate her and therefore, according to the learned Government Pleader, the order of status quo cannot enure to the benefit of the petitioner.

7. In Ext.P8 order which is under challenge, orders had been passed with reference to the academic year 2018-19 by deploying protected teachers to the other districts temporarily. It cannot be stated that Ext.P8 order is in violation of the order of status quo issued in WA No. 2425/2017 and connected cases. The deployment of the petitioner to another district has not been made based on the 2016 amendment. An additional affidavit has been filed by the appellants as IA No.3/2020 producing certain additional documents. It is contended that Edamon U.P.School, Punalur is an Upper Primary School. The petitioner was appointed as a Lower Grade Hindi Teacher and she has no qualification to teach as an Upper Primary School Teacher. During 2014-15 also, the school in which the petitioner was working faced reduction of division. Government therefore deployed the petitioner as BRC Trainer in Sarva Siksha Abhiyan, Kollam District for a period of one year as per Annexure A3 and she was working in that capacity as evident from Annexures A4 and A5. She was thereafter relieved on 30/6/2016 by the Block Programme Officer. The Deputy Director of Education by order dated 26/8/2016 issued a direction to the Managers to deploy the excess protected teachers consequent to the finalisation of staff fixation orders for the year 2015-16, pursuant to which petitioner was sent back to her parent school. Further, as per order dated 16/6/2018, she was

sent to PMG UPS Punalur as Part Time Teacher to teach the subject of Hindi for the first three days and for the remaining two days at GUPS,

Maniyatt as Part Time Teacher. Annexure A9 had been produced to prove the aforesaid fact. Further to this, she was deployed to Malappuram

Government School. According to the appellants, there was no vacancy in Kollam district to accommodate the petitioner in the post of Lower Grade

Hindi teacher and it is for her benefit that she was deployed to Malappuram District. Since she does not have the requisite qualification to teach as

UPST in the Upper Primary section of the school, she cannot be retained in her parent school nor she is entitled to receive any salary.

8. The claim of the petitioner is that when a post of Head Teacher is available in her parent school and she was accommodated in that school for two

years, she should be permitted to continue as Head Teacher.

9. Of course, if the students exceed 100 in Standards V to VII, one post of Upper Primary School Teacher (UPST) is to be sanctioned additionally by

exempting the Headmaster from class charge. Petitioner does not have a case that she is qualified to be appointed as a Head Teacher. But, the

request is to accommodate her in that school.

10. This is a case in which the petitioner had obtained an interim order to continue in the school with an offer that she will work without any salary.

This is not a case where the petitioner was not deployed to any other school. The petitioner was admittedly deployed to a school at Malappuram. She

cannot claim to continue in the very same school where there was no post. Therefore, she was working only at her own risk and without any salary.

11. As far as the pendency of WA No. 2425/2017 and connected cases are concerned, we are of the view that the learned Single Judge had

proceeded on the basis that the judgment in the said case may have a bearing in the deployment of the petitioner. The petitioner lost employment in the

parent school only on account of the staff fixation orders right from 2014-2015. She was working in various other institutions including the parent

school but she cannot claim that she would work only in the parent school when an alternate deployment had been offered to her. Learned counsel for

the petitioner would submit that the petitioner was sent for election duty and was also deputed for the work relating to COVID and therefore, there is

justification to claim salary. We do not want to express any opinion in that

regard. We have only stated that taking into consideration the factual aspects involved in the matter, when the petitioner cannot be accommodated as Head Teacher in the school, she cannot claim salary as she had opted to remain in the school without salary. She had sought for an interim order in that fashion when she was deployed to another school where she would have been entitled to receive salary.

12. In the above circumstances, she cannot claim salary until a final decision is taken in the matter. Learned Single Judge was therefore not justified in directing payment of salary to the petitioner. We therefore set aside the interim order of the learned Single Judge. The 1st respondent/petitioner shall seek for an early hearing of the matter to have a finality of the issue involved in the case.

Writ appeal is disposed of as above.