

(2021) 01 KL CK 0150

In the High Court Of Kerala

Case No : Original Petition (KAT) No. 372 Of 2020

State Of Kerala And Ors

APPELLANT

Vs

Syam Kumar S.V And Ors

RESPONDENT

Date of Decision : 05-01-2021

Acts Referred:

Constitution Of India, 1950 — Article 226, 227

Citation : (2021) 01 KL CK 0150

Hon'ble Judges : Alexander Thomas, J;T.R. Ravi, J

Bench : Division Bench

Advocate : P. Ramakrishnan, T.C. Krishna, P.C. Sasidharan

Final Decision : Disposed Of

Judgement

Alexander Thomas, J

1. The prayer in the aforecaptioned Original Petition filed under Articles 226 & 227 of the Constitution of India is as follows :

"..... to stay the implementation of the direction in Exhibits P2 & P3 order in O.A.No.1957/2019 of the Kerala Administrative Tribunal, Thiruvananthapuram, pending disposal of the above original petition (KAT)."

2. Heard Sri.B.Vinod, learned Government Pleader appearing for the petitioners, Sri.P.Ramakrishnan, learned counsel appearing for contesting respondent No.1/ original applicant before the Tribunal and Sri.P.C.Sasidharan, learned Standing Counsel appearing for Kerala Public Service Commission appearing for respondent Nos.2 & 3.

3. The petitioners herein (State of Kerala & others) are aggrieved by the impugned Ext.P-2 interim order dated 16.01.2020 and the impugned Ext.P-3 interim order dated 04.06.2020, both rendered by the Kerala Administrative Tribunal in O.A No.1957/2019 filed by contesting respondent No.1 herein. Contesting respondent No.1 herein has filed Ext.P-1 O.A No.1957/2019 before

the Kerala Administrative Tribunal, Thiruvananthapuram Bench, with the following main prayers :

"A. To call for records connecting to Annexure A4 and to quash the same to the extent it denied appointment to the applicant on the ground that there are no vacancies consequent to the abolishment of post, overlooking the Government orders providing various relaxations/modifications to the existing rules.

B. To declare that the applicant is eligible and entitled to be appointed in the vacancy of Physical Education Teacher - UP-Malayalam Medium reported and notified in Annexure A1 or any other vacancy that would be created by application of provision for clubbing as per the various Governments orders on this behalf.

C. To direct the 2nd and 3rd respondents to appoint the applicant to the post of Physical Education Teacher -UP- Malayalam Medium, after making necessary arrangements for clubbing different sections of school/s by following the relevant Government orders.

D. To declare that the applicant is eligible and entitled to be given all and every benefit including seniority and other service and monetary benefits, on the basis of the advice date, even if he is issued appointment order only later, as the delay happened solely due to the mistake and laches on the part of the department in applying the provisions existing for the appointment/retention of Specialist teachers."

4. The Tribunal has initially passed Ext.P-2 interim order dated 16.01.2020, whereby it was ordered that since the applicant is a candidate, who has already been advised by the Kerala Public Service Commission for the post of Physical Education Teacher, Upper Primary School (Malayalam Medium), Idukki District on 14.02.2019 and as he has not been given appointment order even after the expiry of about one year and as the advice for appointment made by the Public Service Commission is to be honoured, the denial of appointment due to the non-issuance of the appointment order by the appointing authority cannot be accepted. Hence, the Tribunal has granted the interim order at Ext.P-2 directing that the respondents therein shall ensure that appropriate orders granting the appointment to the petitioner are issued before the next posting date. Later, the Tribunal has passed the impugned Ext.P-3 interim order dated 04.06.2020, whereby, it was ordered that 2nd & 3rd respondents therein (2nd & 3rd petitioners herein) are directed to ensure that appointment order is issued to the applicant therein (contesting respondent No.1 herein), without any further delay.

5. The case of contesting respondent No.1 herein is that he was duly included in the rank list prepared by the respondent-Kerala Public Service Commission for advice and appointment to the post of Physical Education Teacher, Upper Primary School, Malayalam Medium, Idukki District, which came into force on 17.01.2018 and he was having rank No.2 in the rank list. Further that, a vacancy was already reported and pending in the respondent-Kerala Public Service Commission, to

which the Service Commission had issued advice memo ordering that rank No.1 in the rank list should be appointed to the said vacancy in question. Further that, the said advised candidate, who is having rank No.1 had not reported for duty within the stipulated time and thereupon, the competent authority of the department had issued the necessary requisition to the respondent-Kerala Public Service Commission about the factum of the non-joining of duty vacancy pertaining to the non-joining of duty of rank No.1, who is the advised candidate. Thereafter, the respondent-Public Service Commission has advised the petitioner herein for the said vacancy, as he was having rank No.2 and as per his turn. That therefore, the appointing authority and the competent authority of the State Government were legally obliged to ensure that the appointment order is also issued to the original applicant, who is the advised candidate and that therefore, the interim order passed by the Tribunal does not require any legal interdiction.

6. Per contra, Sri.B.Vinod, learned Government Pleader appearing for the petitioners-State authorities would point out that it is true that the vacancy in question was earlier reported to the Public Service Commission. That later, the vacancy in question should be abolished due to staff fixation order and it appears that formal intimation was not then sent by the department to the Public Service Commission intimating about the abolition of the post and not to advise any candidate therefrom, as the vacancy in question was already abolished. That it is thereafter that rank No.1 in the present rank list has been advised, which resulted in non-joining of his duty. That in view of the conventions as between the appointing authority and the Public Service Commission, the appointing authority has sent the necessary report regarding the non-joining of duty by the first advised candidate. Simultaneously, the department had also sent a report as per Ext.P6 dated 19.01.2020 intimating the Public Service Commission about the factum regarding the abolition of abovesaid vacancy in question, etc.

7. Further that, the main claim of the petitioner is on the basis of Annexure-A9 G.O(Rt.) No.111/2017/GEDN dated 07.09.2017 regarding clubbing of posts and that the said scheme made by the State Government as per Annexure-A9 government order dated 07.09.2017 is pertaining only for the limited purpose of granting benefit for protecting teachers in the Government schools and the aided school and the said scheme, as per Annexure-A9 cannot be pressed into service, for a creation of a vacancy, which is already abolished for the purpose of advising and appointing a fresh candidate, etc. Hence, it is pointed out by the learned Government Pleader that the legal basis pursuant to which the Tribunal has granted the impugned order, is not tenable for the simple reason that Annexure-A9 will not be applicable to the facts and circumstances of this case, inasmuch as the present case does not deal the claim of a protected teacher. Further, it is pointed out that the Tribunal has gone wrong in granting the impugned interim orders, which amounts to granting the main reliefs in the main matter in the original application, etc.

8. After hearing both sides, this Court is of the considered view that it may not

be right and proper for this Court to enter into the merits of the controversy in this lis, lest, it may prejudice any of the parties herein. However, we find force in the submission made by the learned Government Pleader that the interim orders now granted by the Tribunal virtually amounts to granting the main reliefs in the main matter in the original application. Hence, we are inclined to take the view that the matter could be remitted to the Tribunal to ensure the adjudication of the various issues and render a final order in the matter, without much delay.

9. Accordingly, for effectuating such a remit, we order that the impugned interim orders are Exts.P-2 & P-3 rendered by the Kerala Administrative Tribunal in O.A.No.1957/2019, will stand set aside with the direction that the Tribunal may take all reasonable endeavours possible in the circumstances to ensure the early disposal of the main matter in O.A.No.1957/2019, after hearing both sides, without much delay, preferably within a period of six weeks from the date of production of a certified copy of this judgment. In order to obviate the further delay, we order that the petitioners herein (State authorities) shall immediately complete the necessary pleadings, within ten days and without even waiting for a certified copy of this judgment. Advance copy of such pleadings of the petitioners herein shall be given to the counsel for the 1st respondent herein, in order to avoid any further delay. The 1st respondent herein, may file his rejoinder to any such reply statement, within one week thereafter.

10. Having regard to the nature of the facts and circumstances of this case, the Tribunal may ensure that top priority is accorded to this case, to ensure its early disposal, without any further delay. We make it clear that we have not entered into the merits of the controversy in any manner and none of the observations and findings made by this Court hereinabove, shall even be remotely construed as an opinion made by this Court regarding the merits of the main controversy, which would fall exclusively within the domain and province of the Tribunal, as the court of first instance.

11. The Registry will forward a copy of this judgment to the Kerala Administrative Tribunal, Thiruvananthapuram Bench, for necessary information.

With these observations and directions, the above Original Petition will stand disposed of.