

(2011) 01 KL CK 0042
In the High Court Of Kerala
Case No : W.A. No. 2679 of 2009

State of Kerala and Others

APPELLANT

Vs

P. Satheeshkumar and Another

RESPONDENT

Date of Decision : 19-01-2011

Acts Referred:

Kerala Education Rules, 1959 — Rule 6(4), 7

Citation : (2011) 2 ILR (Ker) 433 : (2011) 2 KLJ 565 : (2011) 2 KLJ 558

Hon'ble Judges : C.N. Ramachandran Nair, J;B.P. Ray, J

Bench : Division Bench

Advocate : T.B. Ramani, for the Appellant; Kaleeswaram Raj, M.A. Thomas Kutty and Asha Cherian, for the Respondent

Final Decision : Allowed

Judgement

C.N. Ramachandran Nair, J.—The question arising in this batch of cases wherein nine are Writ Appeals filed by the State against judgment of the learned Single Judge, is on the scope and meaning of Rule 6(4) of Chapter XXIII of the Kerala Education Rules which provides for appointment of teachers in Physical Education, Drawing, Music and Sewing in High Schools in the Aided sector. The learned Single Judge held that irrespective of number of periods available in a High School, every school is entitled to appoint a full time Physical Education Teacher and a Music Teacher. The case of the State is that under the second proviso to Rule 6(4) a teacher in the specialist subject can be appointed only if there are a minimum of 5 periods of work for the concerned subject in the school. Similarly according to the State, under the third proviso to the said Rule, in order to appoint a second teacher in Music or Drawing both falling under Art Group or in the Craft Group which covers sewing and needle work, there should be more than 25 periods of work under each Group in the school. The teachers involved in these cases are teachers whose appointments by the management were disapproved for the reason that the minimum period of work is not available in the school under the second proviso or that the school does not have

more than 25 periods in the Group concerned for appointment of second teacher which are the requirements of provisos 2 and 3 of Rule 6(4). Even though the provisos support the case of the State, the learned Single Judge ignored the provisos by holding that main provisions will prevail over provisos and accordingly upheld the claim of the teachers and the managements that neither minimum period is required for appointment of a teacher in the specialist subject nor is there any requirement of more than 25 periods for appointment of a second teacher in the Art and Craft Groups. It is against this judgment the Writ Appeals are filed. We have heard Government Pleader appearing for the State/Appellants in the Writ Appeals, counsel appearing for the teachers and the managements involved.

2. Since the controversy is on the interpretation of Rule 6(4) of Chapter XXIII of K.E.R. wherein Rule 7 is also referred, we extract hereunder the said provisions for easy reference:

Rule 6(4) Notwithstanding anything contained in Rule 7, in High School Section of every complete High School there shall be:

(a) One full time post of Physical Education Teacher and one full time post of Drawing Teacher irrespective of the number of periods of work per week in each of the concerned subject.

(b) One full time post of Music Teacher irrespective of the number of periods of work per week for Music.

(c) One full time post of Sewing Teacher if there is no Craft Teacher provided that there are not less than 200 girls in High School Classes:

Provided that the existing part-time post of Physical Education, Drawing, Music, Sewing or Needlework shall not be converted into full time posts unless the incumbents holding the posts are fully qualified to hold the full time posts:

Provided further that no full-time post of specialist teacher under any category mentioned above shall be sanctioned, if the number of periods of work per week in the concerned subject is less than 5.

Provided also that if there is already a post of Drawing Teacher under the Art Group the second post in the Art Group, namely a post of Music Teacher or a post in the Craft Group will be sanctioned only when the periods under each group exceeds 25 periods per week.

Before considering the scope of the Rule, we feel at least the facts of the main case i.e., W.A. No. 2679/2009 should be stated with reference to which the scope of the Rule has to be considered. In that case, the school had three teachers, one in Physical Education, one in Drawing and the other in Music. While Physical Education is an independent subject under the specialist category, Music and Drawing constitute a single Group called the Arts Group. The Drawing Teacher who was in the school, retired on 31-5-2000. Soon after retirement, the

management appointed a teacher as Drawing Teacher on 5-6-2002 and sought for approval of his appointment. However, vide Ext.P-1 dated 20-8-2000 produced in the W.P.(C) the District Education Officer fixed the staff strength of the school wherein the post of the Craft Teacher stands abolished for the reason that under Ext.P-5 Government Order dated 28-10-1995 the number of periods required for appointment of a second teacher in the Craft Group should be above 25. Admittedly under the norms for fixing curriculum, the periods available in the Craft subject in the school was only 15 periods and for Arts, the number of periods available in the school is 20. Since the school had already a teacher in Music which falls within the Art Group, a second teacher in the Art Group cannot be appointed under the third proviso to Rule 6(4) as the number of periods available is only 15, whereas the minimum periods for appointment of a second teacher in the Art Group under the said proviso is above 25. The appointment of a second Drawing Teacher in the Art Group in violation of the third proviso to Rule 6(4) was rejected by the Educational authority. Even though successive appeals were filed before the statutory authorities and ultimately a revision before the Government, all the petitions filed by the teacher concerned was rejected and the last order issued by the Government is the revisional order issued by the Government, produced as Ext.P-4 in W.P.(C) No. 23531/2008. One fact that requires mention at this stage is about Ext.P-5 Government Order issued on 28-10-1995, which was declared invalid by Ext.P-6 judgment of this Court. However, the position covered by the said Government Order is introduced in the last proviso to Rule 6(4) with retrospective effect from the date of Government Order cancelled by the court i.e., 28-10-1995 and, therefore, Ext.P-6 judgment is got over through amendment of the Rule. The case against the teacher was decided based on the last proviso to Rule 6(4). It is against this the teacher filed W.P.(C) which was allowed by the learned Single Judge holding that the proviso cannot control the main Clause (a) wherein it is stated that every school is entitled to have a Physical Education Teacher as well as Drawing Teacher irrespective of number of periods of work per week in each of the concerned subjects.

3. Government Pleader appearing for the Appellants first brought to our notice an earlier Single Bench judgment of this Court in *Sree Vidhya H.S. v. State of Kerala* reported in 2008 (1) KLT 1016 wherein the interpretation placed on the Rule by the Government was upheld by the Single Judge. It is seen that the above judgment was not brought to the notice of the learned Single Judge while deciding the cases under the impugned judgment and so much so, he had no occasion to consider the same. If the reported decision above referred is based on the correct law on the scope of the second proviso, then the same squarely applies as far as third proviso is concerned because both the provisos control the main Clauses (a), (b) and (c) of Rule 6(4). We are of the view that the view taken by the Single Judge under the impugned judgment is not the correct position because provisos were later introduced to the main Rules only to qualify or control the scope of the main provisions. In fact Rule 6(4) as originally

enacted provided for the post of a Physical Education Teacher and one Teacher each in Drawing and Music irrespective of the number of periods of work in each subject in the school concerned. Similarly a Sewing Teacher was also to be compulsorily provided in addition to the teachers in the other specialist subjects stated above, if the school had not less than 200 girls. While this was the provision until 1974, second proviso was introduced on 25-6-1974 wherein it is provided that in order to appoint one teacher in any of the specialist subjects mentioned in Clauses (a) to (c), there should be minimum five periods of work in a week in the concerned subject. There can be no doubt that the proviso is introduced to qualify the main clauses of Rule 6(4) which provide for appointment of a teacher in any of the specialist subjects irrespective of number of periods of work in the School. Government obviously felt that in order to employ a teacher in the specialist subject, he should have minimum of five periods of work in that subject in the school, While this is the restriction in regard to appointment of a single teacher in a school, the Government later issued Ext.P-5 order on 28-10-1995 which when cancelled by the court was incorporated in the Rule itself through a proviso to introduce a restriction in regard to appointment of a second teacher in Art Group or Craft Group, wherein the requirement for appointment of a second teacher is availability of more than 25 periods of work in each of the two Groups. So far as this proviso is concerned, the same does not go against Clauses (a),(b) or (c) of the main provision because those provisions only provide for appointment of at least one teacher in each subject compulsorily, whereas the third proviso introduced as a substitute for the Government Order and with effect from 28-10-1995 is to provide condition for appointment of a second teacher in either Art Group or Craft Group. As already stated in the batch case, appointment of a first teacher as well as a second teacher are involved. Since second proviso is effective from 25-6-1974, no appointment could be made to the post of Physical Education Teacher or Drawing Teacher or Music Teacher, if in any of the subjects the period of work for the teacher in the school in a week is less than five periods. So far as the appointment of a second teacher is concerned, the restriction came only with effect from 28-10-1995 when the third proviso was introduced to Rule 6(4), which makes it mandatory that in order to appoint a second teacher either in the Arts Group or in the Craft Group, there should be more than 25 periods of work for each of the Groups. In the case of the school involved in W.A. No. 2679/2009, the periods of work in the Art Group was 15 and the periods of work in the Craft Group was 20. After retirement of the Drawing Teacher, the Music Teacher who was already in service continued in the school and since the period of work available in that Group was not in excess of 25, the Educational authority declined approval of appointment of the teacher concerned who happens to be a second teacher in the same Group whose appointment is impermissible under the third proviso for want of required periods of work. So far as the Craft Group is concerned, the period of work available was 20 and there is already a Craft Teacher in service in the school and so much so, no second teacher can be appointed in the Craft Group as well. Since we have taken the view that the

provisos were introduced subsequently to qualify the main Rule, the main clauses of Rule 6(4) namely, (a) and (b) will be subject to the provisos in as much as minimum of five periods of work in a week is required for appointment of at least one teacher in the school and in order to appoint a second teacher in the Art or Craft Group, the minimum period of work required is more than 25 in a week in the Group concerned. So much so, we allow the appeals by reversing the orders of the learned Single Judge on the interpretation placed on Rule 6(4) of Chapter XXIII of K.E.R. Consequently we uphold the rejection of approval of appointment of the teacher concerned including the Government Order in revision namely, Ext.P-5. Since the issue involved is one and the same in the connected Writ Appeals and W.P.(C)s, all the Writ Appeals are allowed vacating the common judgment of the learned Single Judge and declaring the position above stated. So far as W.P.(C)s are concerned, the claim made by the managements and the teachers concerned are not tenable by virtue of the interpretation placed by us above and, therefore, the W.P.(C)s are dismissed.

4. Before parting with the matter, we feel Rule 6(4) as explained above will work in a discriminatory manner so far as the students of various schools are concerned. Since Rule 6(4) does not authorise appointment of a single teacher without the minimum period of work for the subjects Physical Education, Music, Craft etc., smaller schools with less number of divisions will not have sufficient periods to employ even a single teacher in any of the specialist subjects, whereas large schools with several divisions would have teachers in all these specialist subjects. The consequence will be that in smaller schools students will not be entitled to the services of a Physical Education Teacher, Music Teacher or a Craft Teacher, whereas the service of such teachers will be available to students of larger schools. In our view, the entire student community should get training in Physical Education, Craft and the like and in order to achieve this, Government can probably appoint teachers in these subjects combining the periods of work in different schools. In other words, common teachers can be appointed by combining the periods of work in U.P. Section and High School Section of the same school under the same management or by clubbing periods of work in different schools under different managements but in the same area. Probably with a limited travel the same teacher appointed for different schools could serve all such schools. If this arrangement is made, probably the teachers appointed and whose appointments have been disapproved by educational authorities and upheld by us through this judgment could be given preference in employment as well. If common teachers are appointed to schools coming under different managements, then a dispute may arise as to which school management is entitled to appoint the common teacher. We feel this problem could be sorted out by Government appointing teachers in the Government schools and sending them on working arrangement to the aided schools because so long as Government pays salary, it makes no difference whether the Government school teachers are sent to aided schools where appointments are not allowed for want of required number of period of work of the teachers. Since there is more

transparency in the appointment of teachers by Government in Government schools, it would be desirable for the Government to take over the appointment of specialist teachers for aided schools where the schools are not authorised to appoint teachers on account of lack of required period of work. The Government is directed to identify the schools where the service of specialist teachers are not available and make appointment of common teachers for such schools so that every school get the facility and the same should be done within a period of three months from the date of receipt of copy of this judgment. Wherever appointments made in violation of the Rules are approved by the educational agency, it is for the Government to recover the salary paid to such teachers from the management concerned for making illegal appointments against the Rules. Further, if the approval is granted in a hurry and against norms, it is for the Government to initiate disciplinary action against the educational authority concerned for perpetuating illegality in the appointments.