
(2013) 02 KL CK 0123

In the High Court Of Kerala

Case No : Writ Petition (C) No. 8782 of 2011-W

Suman Paul and Another

APPELLANT

Vs

District Educational Officer, Malappuram and Others

RESPONDENT

Date of Decision : 01-02-2013

Acts Referred:

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

Citation : (2013) 2 KHC 598

Hon'ble Judges : A.M. Shaffique, J

Bench : Single Bench

Advocate : George Abraham, for the Appellant; Rose Michael, Government Pleader, for the Respondent

Judgement

A.M. Shaffique, J.—The petitioner challenges Ext. P8 order passed by the Government confirming the rejection of petitioner's appointment. The facts involved in the case disclose that the petitioner was appointed as a Craft teacher in the 2nd petitioner school as per Ext. P1 appointment order dated 04/06/2007. The appointment was made to the post of HSA - Craft in a newly created post for the academic year 2007-2008. This was not approved by the District Educational Officer on the ground that as per GO (P) No. 317/2007/G.Edn. dated 17/08/2005, no additional post can be sanctioned. Ext. P1(a) is the said order. Ext. P2 is the staff fixation order. Though a revision was filed, the same came to be rejected as per Ext. P8. The main contention urged by the petitioner is that the authorities have refused to approve her appointment on a wrong interpretation of proviso to Rule 6(4)(c) of Chapter XXIII of Kerala Education Rules (hereinafter referred as KER).

2. In the counter-affidavit filed by the 2nd respondent they supported Exts. P1(a) and P8 orders.

3. Heard learned counsel for the petitioner and the learned Government Pleader.

4. The question for consideration is the interpretation of third proviso to Rule 6(4)

(c) of Chapter XXIII of KER. The relevant Rule 6(4) reads as under:

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 period 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 the High School Classes;

Provided that the existing part time post of Physical Education, Drawing, Music, Sewing or Needle work 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.

5. It is not in dispute that the 2nd petitioner had already appointed a Sewing teacher in the school. It is also not in dispute that the number of periods exceeded 25 in the Craft group. A Sewing Teacher can be appointed in a school in terms of Rule 6(4)(c), if there is no Craft teacher provided there are not less than 200 girls in High School Classes. Already there is a person appointed as Sewing Teacher as the number of girl students were more than 200.

6. The third proviso to Rule 6(4)(c) further indicates that if there is already a post of Drawing teacher under the Art group, the second post in the Art group which is specified as "music teacher" or "a post in the Craft group" will be sanctioned when the periods under "each group exceeds 25 periods per week".

7. In Ext. P2 it is stated that the Craft group has 27 1/2 periods, but the Art group was having only 17? periods. In Ext. P8, the Government had come to a conclusion that since the number of girl students were more than 200 and the periods were more than 25 per week and since a Needle teacher is already appointed, there cannot be another post of a Craft teacher.

8. In the counter-affidavit filed by the Government, it is indicated that unless the periods in the Art group as well as in the Craft group exceeds 25 periods, another Craft teacher cannot be appointed. In other words, only after the second post in the Art Group is filled up, and the period of craft group exceeds 25, craft

teacher can be appointed.

9. Learned counsel for the petitioner however, submits that the interpretation given either in Ext. P8 or in the counter-affidavit is not in terms with the prescribed rules. As the Rule is very clear that when it differentiates between Art group, which has a Drawing teacher and a Music teacher whereas the Craft group contains Sewing teacher or Needle Work teacher and also Craft teacher. If a reference is made in that particular angle, there cannot be any ambiguity to the aforesaid provision. There are two contingencies visualised for appointment of Craft teachers or persons in Craft group. It may not be disputed that Sewing teacher also comes under Craft group. As per Rule 6(4)(c), definitely there is one post of Sewing teacher which comes under Craft group if there is no Craft teacher and the girl students are more than 200 in High School classes. The proviso refers to sanctioning of "a post in the Craft group" since already a Sewing teacher is appointed in terms of Rule 6(4)(c), apparently the proviso concerns sanctioning of another post of Craft teacher and only if the said Craft group exceeds 25 periods per week. It cannot be contended for a moment that the word "each group" has to mean that for appointing a teacher in the Craft group, even the Art group should exceed 25 periods. That being the situation, the interpretation given by respondents in Exts. P1(a) and P8 is not in accordance with the provisions of the Statute and therefore the petitioner is entitled for getting approval with effect from the date of appointment as stated in Ext. P1. Learned Government Pleader relied upon a Division Bench judgment of this Court in *State of Kerala v. Satheeshkumar*, 2011 KHC 270. On a careful reading of the said judgment I do not think that the said decision lays down a different proposition.

In the result the Writ Petition is allowed. Ext. P1(a) and Ext. P8 are quashed. Respondents 1 and 2 are directed to pass appropriate orders in the light of the interpretation given to the third proviso to Rule 6(4)(c) as stated above and pass appropriate orders within a period of two months from the date of receipt of a copy of this judgment.