
(2021) 01 KL CK 0366

In the High Court Of Kerala

Case No : Writ Petition (C) No. 28866 Of 2012

T. Nicy Baby

APPELLANT

Vs

State Of Kerala And Ors

RESPONDENT

Date of Decision : 15-01-2021

Acts Referred:

Citation : (2021) 01 KL CK 0366

Hon'ble Judges : Devan Ramachandran, J

Bench : Single Bench

Advocate : V.A. Muhammed, K.E. Hamsa, T. Issac, V. Madhusudhanan, Pramji Paul Vazhappilly, P.M. Manoj

Judgement

1. The petitioner says that she was appointed as a Lower Primary School Assistant (LPSA) in the National Lower Primary School, Kechery, Thrissur

- of which the 4th respondent is the Manager - and that she was accommodated against an additional division vacancy for the academic year 2006 - 2007.

2. She says that she has been continuing in service without break ever since 05.06.2002 and that on account of the retirement of the Headmistress of

the School on 31.03.2010, a vacancy of Lower Primary School Assistant arose w.e.f. 01.06.2010 and that she ought to have been adjusted against the

said vacancy in view of the various judgments, including in Geetha S. v. Geo Thomas K. and Others [2009 (4) KHC 296 (DB)]. She alleges that the

Manager, however, did not do so, but that he appointed the 5th respondent and contends that this is against Rule 51A Chapter XIVA of the Kerala

Education Rules (KER).

3. The petitioner says that she, therefore, moved the 3rd respondent - Assistant

Educational Officer at first, but that when it was rejected, she was constrained to file a statutory Revision before the Government, followed by W.P. (C).No.3303/2011 before this Court, which had been disposed of with a direction to the Government to consider and dispose of the said Revision.

4. The petitioner says that in purported compliance of the directions of this Court, the Government has now issued Ext.P10 order, rejecting the proposal for approval of her appointment w.e.f. 05.06.2002, solely for the reason that the Manager has not executed a bond, as is required under G.O.

(P) No.10/10/G.Edn dated 12.01.2010.

5. The petitioner, therefore, prays that Ext.P15 be set aside, particularly because, in similar circumstances, this Court has issued Ext.P14 judgment, directing consideration of the claim of the petitioners therein - who are similarly situated - affirmatively in terms of the directions in G.O.

(P).No.10/10/G.Edn 12.01.2010.

6. Sri.P.M.Manoj - the learned Senior Government Pleader, submitted that a counter affidavit has been filed on behalf of the first respondent, wherein, it has been averred that the fourth respondent had appointed the petitioner in an anticipated additional division vacancy w.e.f. 05.06.2006, which was, however, rejected because the proposal had not been submitted within the time stipulated as per Rule 8(1) Chapter XIVA of the KER. He affirmed that a vacancy arose in the School subsequently, on account of the retirement of the Headmistress and that it was filled up by promoting the senior most LPSA, which give rise to a vacancy in such post.

7. The learned Senior Government Pleader submitted that the 4th respondent - Manager instead of appointing the petitioner in the afore mentioned vacancy, appointed the 5th respondent, who was a fresh hand, which led the petitioner to approach this Court by filing W.P.(C). No. 31331/2010 seeking approval, and same was disposed of with a direction to the 3rd respondent to consider her representation. He submitted that the 3rd respondent, pursuant to the afore directions, conducted a hearing and issued orders rejecting the appointment of the 5th respondent as LPSA, because it had been made over-looking the rightful claim of the petitioner. He concluded his submissions by saying that the Government has gone through all the relevant aspects and inputs that are applicable and found that since the petitioner was appointed in anticipated additional vacancy and since the

said vacancy was not sanctioned - the Manager having not executed the bond as stipulated in G.O. (P).No.10/10/G.Edn dated 12.01.2010 - her

approval could not be granted, since there was no sanctioned post to accommodate her w.e.f. 05.06.2006. He, therefore, prayed that this writ petition be dismissed.

8. I have considered the afore submissions of the learned Senior Government Pleader very carefully and have also examined the various materials available on record.

9. It is evident from the impugned orders that the petitioner's approval has not been granted solely because the Manager of the School had not

executed a bond in terms of G.O.(P).No.10/10/G.Edn dated 12.01.2010. However, it is without doubt that this Court has, in a catena of judgments,

directed consideration of the approval of appointments in such similar matters, deeming that the Manager had executed a bond in terms of the afore-

mentioned Government Order. The Educational Authorities, however, has not done so, and have rejected the petitioner's approval merely on the

ground that no such bond has been executed by the Manager.

10. I am, therefore, certainly of the view that the impugned orders are improper, particularly when the question of the Manager deemed to have

executed a bond has not been considered by the Authorities until now. Consequently, I am of the firm view that the petitioner is entitled to have her

case considered on such terms.

In the afore circumstances and for the reasons above, I allow this writ petition and set aside Ext.P15 Government Order; with a consequential

direction to the competent Secretary of the Government to reconsider the Revision of the petitioner, after affording her, as well as the Manager an

opportunity of being heard - either physically or through video conferencing - thus culminating in an appropriate order thereon, as expeditiously as

possible, but not later than three months from the date of receipt of a copy of this judgment.

Needless to say, while completing the afore exercise, the Secretary of the Government will advert to the impact of G.O.(P).No.10/10/G.Edn dated

12.01.2010, and will be at liberty, subject to his version, to deem that the Manager has executed the bond in terms of the said Government Order.

After I dictated this judgment, the learned counsel for the petitioner submitted

that since the petitioner is a Rule 51A claimant, it may not be necessary for the Manager to execute a bond in terms of the aforementioned Government Order.

Needless to say, if the petitioner is found to be a Rule 51A claimant, as is claimed by her through Ext.P1 - on account of the prior approved service -

then this contention will also be kept in mind by the Secretary concerned, while the afore mentioned exercise is completed.