
(2010) 06 KL CK 0115

In the High Court Of Kerala

Case No : W. P. (C) No. 20646 of 2008 (G)

Tha Manager M.N.K.M. Higher Secondary School,
Chittilancherry

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 08-06-2010

Acts Referred:

Kerala Education Rules, 1959 — Rule 6B

Citation : (2010) 2 KLJ 667

Hon'ble Judges : C.T. Ravikumar, J

Bench : Single Bench

Advocate : V.A. Muhammed and K.E. Hamza, for the Appellant; N.N. Sugunapalan (Sr.), S. Sujin, M. Chandra Bose, A.Rajasimhan and M.R. Sreelatha (G.P.), for the Respondent

Final Decision : Allowed

Judgement

C.T. Ravikumar

1. The first petitioner is the Manager of M.N.K.M. Higher Secondary School, Chittilancherry. The second petitioner is a Music Teacher in its High School section. This writ petition has been filed challenging Exts.P4, P5, P6 and P10 and for issuance of a writ of mandamus commanding the respondents to refrain from shifting the 6th respondent from its U.P. Section to the High School Section. The facts, in succinct, are as follows:-

The second petitioner was appointed as Music Teacher in High School Section from 13.07.1992. The said appointment was approved as per Ext.P1. The 6th respondent was appointed as Music Teacher in the U.P.Section of the same school from 15.09.1982. Her appointment was also approved by the competent educational authority. Earlier, pursuant to the staff fixation order for the year 2000-2001, the post of Music teacher in the U.P. Section was abolished. Since the 6th respondent was entitled to protection, she was deployed to Govt. School. Later, pursuant to the staff fixation for the year 2002-2003, the Full Time post of

Music Teacher in the High School Section was converted to a Part-Time post. However, the second petitioner was given protection in clubbing arrangement. Later, in the year 2008, the full time post of Music teacher in the High School Section was restored. The 6th respondent was actually clamouring for posting as Music Teacher in the High School Section from 2004-2005 academic year onwards. She had earlier approached this Court by filing W.P.(C) No.26941/2005 raising the said claim and seeking appropriate reliefs. The said writ petition was closed as per Ext.P2 judgment in the light of the amendment brought to Rule 6B of Chapter XXIII of Kerala Education Rules(hereinafter referred for brevity "KER"). The submission on behalf of the first petitioner was that even in case of any subsequent threat of retrenchment, the petitioner therein/6th respondent herein, would not be retrenched from service in the light of the above position and in such eventuality, the second petitioner herein alone would have to face retrenchment. While so, the husband of the 6th respondent filed a petition before the second respondent. Subsequently, Ext.P10 order was passed by the second respondent without affording an opportunity of being heard to the petitioner. As per Ext.P10, the second respondent issued a direction to shift the 6th respondent from the U.P. Section to the High School Section. But, the inescapable and inevitable impact of such a direction is shifting of the second petitioner from the High School Section to U.P. Section. Though such a direction is not specifically issued as per Ext.P10 its effect can only be the shifting of the second petitioner from High School Section to the U.P. Section. Despite such consequences, no opportunity of being heard was afforded to the second petitioner. It is in the aforesaid circumstances that this writ petition has been filed by the Manager as also the concerned teacher in the High School Section, viz., the second petitioner, with the aforesaid prayers.

Respondents 1 and 6 have filed counter affidavits in this writ petition refuting the claims and contentions of the petitioners.

2. I have heard Sri. V.A.Mohammed, the learned counsel for the petitioner, the Senior Counsel Sri. M.N.Sugunapalan for the 6 respondent and also the learned Government Pleader.

3. Before advertng to the rival contentions, I think it is apposite to refer to the decision of this Court reported in Rani George Vs. Deputy Director of Education, to know the position of law on the subject. In fact, the said decision covers almost all the points raised in this writ petition. Paragraphs 31 and 32 of the said decision assumes relevance in the context of the rival contentions and they read thus:-

31. Though a junior may work in the High School, yet, as and when the question of termination of the service of specialist teacher for want of vacancy arises the services of the junior are liable to be terminated whether he works in U P Section or High School, subject to the provisions contained in R.51A of Chapter XIV-A of KER.

32. In view of the legal principles discussed above, it is held as follows:

i. If the educational agency is having an Upper Primary School and a High School or a High School with Upper Primary in the same district, both sections shall be treated as a single unit,

ii. The seniority of the specialist teachers working in such units shall be prepared in accordance with R.37 treating the above said U.P Schools and High Schools as a single unit, in. The post of specialist teachers in the above said schools/ sections are interchangeable.

iv. The post of the specialist teacher attached to the High School is not a promotion post of the specialist teacher working in the U P School or UP School section of High School.

v. In case of any post of a specialist teacher in such a unit is to be abolished, the service of the Junior specialist teacher in the combined seniority list is liable to be terminated even if he/she is working in the High School subject to the provisions of R.51A of Chapter XIV-A KER.

vi. A senior teacher working in the UP Section has no legal right to claim that he/she shall be transferred and posted in the high School on the ground of seniority alone.

vii. The Educational Agency is having the right to transfer a specialist teacher working in the U P Section to High School of the same unit or vice versa subject to the Rules.

4. It is thus obvious from the aforesaid decision in Rani George Vs. Deputy Director of Education (Supra) that the 6th respondent cannot have any legal right to claim that she shall be transferred and posted to High School section on the ground of seniority alone. Going by the said decision in the event of any threat of termination, a Junior Special Teacher in the combined seniority list has to be terminated, even if he/she is working in the High School section. In fact, Ext.P2 judgment also suggests the same. However, in the light of the subsequent amendment brought to Rule 6B of Chapter XXIII of the KER. there is absolutely no reason for the 6th respondent to believe that she would be retrenched from the service of the school.

5. The situation envisaged in Ext.P2 judgment and the judgment reported in Rani George Vs. Deputy Director of Education (Supra) would not arise in this case in the light of the amendment brought to Rule 6B of Chapter XXIII of the Kerala Education Rules. Rule 6B as amended reads thus:-

6B. (1) Notwithstanding anything contained in any other rule in this Chapter except sub-rule (2) hereunder no post of Specialist Teacher or Craft Teacher shall be allowed to continue in any Upper Primary School or Upper Primary Section of a High School except for the continuance of the qualified teachers who were actually holding the said post on the 6th day of March, 1979.

Provided that the Specialist Teachers appointed in Upper Primary Schools or Upper Primary Sections of High Schools after the 6th day of March 1979 but before the 22nd day of August 1989 and whose appointments were approved shall be allowed to continue as such till their retirement, resignation, death or transfer and the post of such Specialist Teachers shall be allowed to continue for their such continuance till they vacate the posts.

(2) Notwithstanding anything contained in Rule 7 or any other rule in this Chapter no post of Specialist Teacher shall be allowed to continue in any Upper Primary School or Upper Primary Section of High School except as specified herein:

(a) One post of Specialist Teacher namely Music Teacher or Physical Education Teacher or Drawing Teacher or Sewing Teacher as decided by the Educational Officer concerned during staff fixation in the case of Departmental Schools and as required by the Manager in the case of Aided Schools will be sanctioned in each Upper Primary School or Upper Primary Section of a High School having an effective strength of 500 pupils and above in the complete Upper Primary Section on the 6th working day of each academic year.

(b) No post of Specialist Teacher shall be sanctioned in any category under Clause (a) if a Specialist Teacher is already working in the Upper Primary School or Upper Primary Section of the High School:

Provided that a post of Sewing Teacher shall be sanctioned only subject to the condition that there are not less than 200 girl pupils in the complete Upper Primary Section.

6. A bare perusal of the proviso to Rule 6B would reveal that those specialist teachers appointed in the U.P. Schools or UP. Sections of High Schools after the 6th day of March 1979 but before the 22nd day of August 1989 and whose appointments were approved shall be allowed to continue as such till their retirement, resignation, death or transfer and the post of such specialist teachers shall be allowed to continue for their continuance till they vacate the post. In this case, admittedly, the 6th respondent was appointed as the Music Teacher in the U.P. Section of the school on 15-09-1982. Therefore, she is entitled to the statutory protection in terms of Rule 6B of Chapter XXIII of the Kerala Education Rules.

7. One disturbing aspect involves in this case. Ext.P10 would make it clear that the same was issued on the petition submitted by the husband of the 6th respondent. Obviously, Ext.P2 judgment has become final and, therefore, in the light of Ext.P2 judgment as also the Division Bench judgment in Rani George Vs. Deputy Director of Education (Supra), the 2nd respondent should not have entertained the petition submitted by the husband of the 6th respondent. I am of the view that it is undesirable to entertain petitions submitted by the relatives of the concerned employee, especially in a service related issue like this where individual interests are involved and inter party judgment is holding the field. At

any rate, a strict adherence to the principles of natural justice could have easily averted the present situation. If the petitioners were issued with notices of hearing, they would have definitely placed the entire materials before the 2nd respondent. I am of the considered view that allowing to resurrect an issue that has attained finality, that too, at the instance of a relative, howsoever close she/he is to the concerned employee, is highly deprecatative and authorities concerned should refrain from entertaining such petitions. When this Court held that a senior specialist teacher working in the UP. Section has no legal right to claim that he or she shall be transferred and posted in the High School Section on the ground of seniority alone, the 2nd respondent went wrong in entertaining the petition filed by the husband of the 6th respondent and then holding a view which runs contrary to the decision of this Court. A scanning of Ext.P10 in the light of the law laid down by this Court in the aforesaid judgment would make the same unsustainable and liable to be interfered with. Accordingly, Ext.P10 is set aside.

8. Consequently, Exts.P4, P5 and P6 are also liable to be set aside. Accordingly, they are also set aside. In the light of the aforesaid findings and quashment of Exts.P4, P5, P6 and P10, the respondent shall not shift the 6th respondent from the U.P. Section of the School, and shall permit the second petitioner to continue in the High School Section of the School and also to draw her salary from there. The writ petition is allowed as above.