
(2006) 10 KL CK 0026

In the High Court Of Kerala

Case No : Writ Petition (C) No. 21227 of 2005

The Corporate Manager

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 06-10-2006

Acts Referred:

Constitution of India, 1950 — Article 19(1), 30(1)
Kerala Education Rules, 1959 — Rule 51B

Citation : (2006) 10 KL CK 0026

Hon'ble Judges : A.K. Basheer, J

Bench : Single Bench

Advocate : Kurian George Kannamthanam, V.A. Mohammed, K.E. Hamza and Shoby K. Francis, for the Appellant; T.T. Muhamood and D.P. Renu, Government Pleaders, for the Respondent

Judgement

A.K. Basheer, J.—These Writ Petitions are being disposed of by this common Judgment since the issues involved in them are closely interconnected.

2. The primary question that arises for consideration is whether the Petitioner in W.P. No. 22172/2005 (hereinafter referred to as the claimant) is entitled to get appointment under the Dying-in-Harness Scheme as contemplated under Rule 5 IB of Chapter XIV A, Kerala Education Rules in the school under the management of the Petitioner in W.P. No. 21227/2005 (hereinafter referred to as the Manager).

3. The grievance of the Petitioners in the other two writ petitions is that approval of their appointment is being unnecessarily delayed because of the pendency of the claim made under Rule 51B before the management. They seek appropriate direction to the Controlling Officers concerned to approve their appointments and disburse their salary and allowances.

4. Essential facts may be briefly noticed.

5. Sri P.T. Mathai, father of the claimant died-in-harness on October, 22, 1996 while he was working as Headmaster in one of the schools under the corporate

educational agency. Shortly after the death, viz., on December 11, 1996, the widow of late Mathai submitted an application before the Manager requesting for employment assistance to her minor son Julius Mathew on attainment of majority and acquisition of requisite qualifications. Later, in October 2001 she requested the management to give employment to her daughter (the claimant). Still later, on July 29, 2002 the widow along with her son Julius Mathew sent Ext.P-3 communication to the Manager requesting that the claimant may be given employment instead of Sri Julius Mathew. Ext. P-3 application was considered by the Manager and it was rejected on the ground that the claimant was not entitled to get the benefit of the Scheme as envisaged under the relevant order of the Government and also under Rule 5 IB. However the Deputy Director of Education reversed the said order and directed the Manager to treat the application as valid and give employment to the claimant. A copy of the order is on record" as Ext.P-6. The Director of Public Instruction and the Government confirmed the above order by Exts. P-9 and P-13 orders respectively. The Manager has challenged Ext.P-13 order in W.P. No. 21227/2005. He further prays for a declaration that Rule 5 IB of Chapter XIV AKER is violative of Article 19(1)(g) and 30(1) of the Constitution of India and that the said rule cannot be made applicable to the minority institutions.

6. In W.P. No. 22172/2005, the claimant seeks for appropriate direction for implementation of Ext. P-13 order issued by the Government.

7. It is beyond controversy that at the time when the claimant submitted Ext.P-3 application for employment assistance in the prescribed format in 2002 she had crossed the age of 27 years. It may be remembered that her father passed away in the year 1996. At that time the claimant who was the second child of the deceased employee was 21 years old and her elder sister was aged 23 years. Her younger sister was 19. The youngest child (Sri Julius Mathew) on whose behalf assistance was sought by the widow immediately after the death of the employee, was only 15 years old. But, for reasons best known to the claimant and her family members, no request was made for employment assistance either for the widow or for any of the three major children. Anyhow, it has come out on record that the claimant got qualified to hold the post of High School Assistant only in March 2002 as admitted by her in W.P. No. 22172/2005. In other words, the claimant had waited till she got qualified to hold the post of High School Assistant and it was at that stage that the family decided to give up the claim made on behalf of the youngest child and instead put forth a claim for and on behalf of the claimant.

8. There is yet Anr. aspect of the matter. The Manager in his counter-affidavit in W.P. No. 22172/2005 asserted that late P.T. Mathai, the father of the claimant, was riot the sole breadwinner of the family at the time of his death. Smt. Annie Mathew, the widow of late Mathai was a Central Government employee. She was working in the cadre of Sub Postmaster at the time of her husband's death. Further, the claimant was married to a Senior Grade Auditor in the Office of the

Accountant General under the Central Government. It was in the above context that the Manager asserted that the claimant cannot be treated as a dependant of the deceased employee and therefore she was not entitled to get the benefit of the Dying-in-Harness Scheme. Significantly, the above assertions made by the Manager in the counter-affidavit had not been controverted or denied by the claimant.

9. In this context it is also pertinent to note that the revisional authority, the Government, had not adverted to the above aspects. In Ext. P-10 memorandum of revision petition, the Manager had given the details of the family members of the deceased employee. Apart from the details regarding the widow and the claimant mentioned above, it was also stated by the Manager that the first daughter of the deceased employee Smt. Gladis was married to a businessman who owned a petrol pump and was running an oil mill. It was also mentioned that the family of the claimant's husband owned 5 to 8 acres of agricultural land. The third daughter of the deceased employee Smt. Ilin Mathew is a doctor. She was given in marriage in September 2002. At the time of her marriage she was working in the Medical College Hospital. As regards the youngest son Julius Mathew on whose behalf the widow had staked a claim for compassionate appointment, it is seen stated by the Manager in Ext P-10 that he is a B.Tech student in Cochin University.

10. Reference has been made to the above aspects only to highlight the fact that the authorities below had not adverted to the question whether the family of the deceased employee was in an impecunious condition or not. In other words, there was nothing on record to show that the family was faced with any financial crisis. It is also on record that the claimant was given in marriage on May 26, 1996 even before the death of her father. Thus understandably no claim was made on behalf of the claimant or her elder sister since both of them were married and their husbands were very well placed. As far as the third daughter was concerned, she was presumably doing her M.B.B.S. course at that time and the youngest son who was hardly 15 years of age was too young for any employment. Nevertheless the widow had staked a claim on behalf of her minor son requesting the manager to give employment as and when he attained majority and acquired requisite qualifications. But it has now turned out that the son is pursuing his studies in an engineering college. All the above aspects undoubtedly show that the family of the deceased employee was not in need of any immediate assistance at all. There is also nothing on record to show that the financial position had become worse between 1996 and 2002, even assuming that the claim made by the so-called dependant of the deceased employee can be treated to be valid and within reasonable time.

11. I am unable to accept the contention raised by learned Counsel for the claimant that the application has to be treated as valid because no time limit has been prescribed under Rule 5 IB of Chapter XTV A KER. It is trite that the scheme of employment assistance to the dependant of an employee dying in

harness is intended to tide over a sudden and unexpected crisis that the family of the employee may face due to the death of the head of family. It has been repeatedly held by the Apex Court as well as this Court that appointment under the Compassionate Employment Scheme shall not be treated as Anr. channel of recruitment. It has also been held that there should be proximity or nexus between the date of death of the employee and the application for compassionate appointment [See the various decisions on this aspect in Umesh Kumar Nagpal Vs. State of Haryana and Others, , Director of Education (Secondary) and Another Vs. Pushpendra Kumar and Others, , Sanjay Kumar Vs. The State of Bihar and Others, , Deepak v. Secretary, General Education Department 2002 (3) KLT 288, Manager, Parli High School v. Narayanan 2002 (3) KLT 912.

12. The very intent and purpose of the Scheme shall never be defeated by giving employment to undeserving dependants. A claimant under the Scheme cannot expect or demand an employer to keep a post vacant for him/her till he/she acquire the requisite qualification. In such an event the object of the Scheme itself will be rendered nugatory and meaningless. As noticed already, the claimant in this case waited till she passed the B.Ed. examination in March 2002 and submitted the application in July 2002. No explanation is forthcoming from the claimant or her mother as to why her younger brother had opted out from the scene or why claimant or her sister had not sought employment immediately on the death of Sri Mathai. Obviously the younger brother could not have staked a claim because he had been pursuing his B. Tech. course.

13. Strangely, the Departmental authorities have taken the view that the application submitted by the claimant ought to be treated as valid and within time, since the claim made on behalf of the younger brother of the claimant was given up only in 2001. It is true that in 2001 the youngest son was aged only 18, and going by the Rules, he could have submitted the application within 3 years of his attaining majority. The reasoning of the departmental authorities is that since the claimant had submitted her application in the year 2002 within the extended period of 3 years, and since the said claim had been withdrawn by his mother, the application submitted by the claimant was valid and well within time. The above reasoning, in my view, is wholly untenable. As rightly pointed out by learned Counsel for the Manager, the youngest son had never submitted any application, though his mother had made a request at the time when he was hardly 15 years of age. Therefore in the absence of any application by the youngest son, there was no question of withdrawal of his application. That being the position, the delay on the part of the claimant in making the application cannot be condoned or justified at all. There is considerable force in the contention raised by the Manager in this regard. It is significant to note that the claimant on her part has not given any explanation as to why she did not choose to stake a claim for employment under the Scheme for 6 years after the death of her father. As is obvious from the records, she had been waiting for acquiring the requisite qualifications to hold the post of HSA.

14. Having regard to the entire facts and circumstances and the materials on record, I have no hesitation to hold that the claimant is not entitled to get the benefit of Rule 5 IB of Chapter XIV AKER and the rules framed by the Government [G.O. (P) No. 12/99/P & ARD dated 24-5-1999]. Therefore Ext. P-1 3 order is liable to be quashed. I do so.

15. As far as the prayer made by the Petitioners in W.R. No. 14277/2006 and 16528/2006 is concerned, it is made clear that the Controlling Officers concerned will be at liberty to consider the respective orders of appointment of the Petitioners and pass appropriate orders on them in accordance with law. Pendency of the claim under Rule 51B must not be cited as a reason for non approval. Since the two writ petitions arising from the claim by the claimant under Rule 51 B has now been disposed of, I do not find any reason why the Controlling Officers concerned shall not pass appropriate orders in the matter without any further delay, if there is no other legal impediment. More importantly, in W.P. No. 22353/2005 (Ext.P-8 in W.P. 14277/2006) this Court had made it clear that "subsistence of Rule 51 B claims of additional Respondents 3 to 5 will not be a reason for denying approval to the appointment given to the Petitioners" in that writ petition, (Respondent No. 5 in the above writ petition is the claimant in this case.)

16. Petitioners in W.P. Nos. 14277 and 16528/2006 seek approval of their appointments to the post of UPSA and HAS respectively. As mentioned earlier, the approval of their appointment need not be stalled since the claim made by the 51B claimant has now been settled ultimately. Appropriate orders shall be passed by the Controlling Officers concerned, in the matter of approval of appointment of the Petitioners in these writ petitions as expeditiously as possible, at any rate within one month from the date of receipt of a copy of this judgment.

In the result W.P. No. 21227/2005 is allowed. W.P. No. 22172/2005 is dismissed. W.P. Nos. 14277/2006 and 16528/2006 are disposed of as indicated above.