
(2009) 11 KL CK 0111

In the High Court Of Kerala

Case No : W.A. No's. 1060 and 1063 of 2008

The Corporate Manager, CMS Schools and The Principal

APPELLANT

Vs

Josephine Sherly Paul and Others

RESPONDENT

Date of Decision : 02-11-2009

Acts Referred:

Kerala Education Rules, 1959 — Rule 10(1), 10(5)

Citation : (2009) 11 KL CK 0111

Hon'ble Judges : P. Bhavadasan, J;K. Balakrishnan Nair, J

Bench : Division Bench

Advocate : Babu Varghese, for the Appellant; S. Subhash Chand, for the Respondent

Judgement

Balakrishnan Nair, J.—These appeals are directed against the judgment of the learned Single Judge in O.P. No. 38429 of 2002 filed by the first respondent, Smt. Josephine Sherly Paul. W.A. No. 1060 of 2008 is treated as the main case for the purpose of referring to the parties and the exhibits.

2. The first respondent is at present working as Lower Grade Hindi Teacher in the C.M.S. Higher Secondary School at Mallappally. There was dispute concerning her posting at Kalavankode in Cherthala, her re-transfer to Mallappally and the alleged non-joining duty etc. But, in view of the judgment of the learned Single Judge, which is under appeal, the only dispute that survives for consideration by the Division Bench is concerning the claim of the first respondent for transfer to CMS High School at Pallom. The claim of the first respondent for payment of salary for the period from 12.2.2002 to 4.3.2003 has been resolved to the satisfaction of the first respondent. Since the Government did not file any appeal against the judgment, we need not go into the said part of the decision of the learned Single Judge. But, in the judgment under appeal, there is a direction to accommodate the first respondent/writ petitioner at CMS High School, Pallom, if necessary by transferring the 6th respondent. In view of the said direction, W.A. No. 1060 of 2008 is preferred by the Manager of the Corporate Educational

Agency and the Principal of CMS Higher Secondary School, Mallappally and W.A. No. 1063 of 2008 by the 6th respondent.

3. According to the first respondent/writ petitioner, she is senior and therefore, by virtue of Rule 10(1) of Chapter XIV-A of Kerala Education Rules, she is entitled to get posting at Pallom. The above said rule permits deviation from the seniority rule to the extent of 25%. The deviation can be made to make the transfer on compassionate grounds. The sixth respondent was transferred to Pallom overlooking the seniority of the first respondent on compassionate grounds. The learned Single Judge interfered with the transfer based on the finding that transfer order does not spell out the reason for transferring the sixth respondent. The learned Single Judge also took the view that presence of aged parents cannot be a ground for overlooking the seniority rule, as aged parents are there in all families. Attacking the above finding of the learned Single Judge, the learned Counsel for the appellants, submitted that the father of the sixth respondent is critically ill with heart disease and her mother is physically challenged. Therefore, it is not a case of presence of aged parents alone, but there are special grounds for showing compassion. So, the learned Single Judge should not have interfered with the said order, it is submitted. The learned Counsel for the first respondent/writ petitioner, on the other hand, pointed out that, the sixth respondent though junior has been continuing at Pallom for the last several years whereas first respondent has got only two years for retirement and so, at the fag end of her service, she is entitled to be given a posting in her native place. The first respondent also pointed out that she has also parents who are more aged than the parents of the sixth respondent.

4. The Manager is bound to issue transfer orders having regard to the seniority of the incumbents involved, ordinarily. If special grounds are available, the Manager can deviate from the seniority rule, upto an extent of 25%. Regarding the said deviation, an aggrieved teacher has a right of appeal before the Director of Public Instruction. This Court while exercising the power of judicial review, can examine whether the order was within jurisdiction. Normally, this Court should not have entertained a writ petition filed against a communication issued by the Manager. Not that no writ will lie against a Manager, but there are other forums to consider the grievance raised by the petitioner. This Court, grappling with the issue of pendency of cases, should not normally entertain matters which could be effectively considered by statutory authorities and forums and should confine itself dealing with matters which this Court alone can handle. Of course, if the learned Single Judge has found that the transfer order was effected by the Manager without jurisdiction, then the interference may be sustained. Broadly there is no dispute that Manager has jurisdiction to order transfer as the one ordered in this case. But, while exercising that power, he may stray out of jurisdiction by considering irrelevant matters or omitting to consider relevant matters. But, we find there is no jurisdictional error in this case. Therefore, the direction of the learned Single Judge to post the first respondent in the place of sixth respondent was not warranted having regard to the limited scope of the

power of judicial review exercised by this Court. But, whether the decision of the Manager in favour of the sixth respondent is justifiable on facts can be considered by the appellate authority. The said authority can look into the factual disputes involved in the case and weigh the relevant merits of the contentions of the parties and issue appropriate orders. So, the remedy of the first respondent against the refusal of the Manager to post her at Pallom and the decision to retain there the sixth respondent who is relatively junior to her, can be challenged by filing an appeal under Rule 10(5) of Chapter XIV-A, of the K.E.R. before the D.P.I. Since the matter was pending before this Court for a long time, it is ordered that, if the first respondent files an appeal within one month from today, against the omission of the Manager to post her at Pallom, the D.P.I. shall hear and dispose of the appeal as expeditiously as possible, after affording an opportunity of being heard to the first respondent, the Manager and the sixth respondent, without being influenced by anything said in the judgment of the learned Single Judge.

5. The first respondent has got a case that because of the interim order passed by this Court, the monetary benefits payable to her as per the judgment under appeal have not so far been released. If that be so, the respondents 4 and 5 shall take necessary steps to release the monetary benefits payable as per the judgment under appeal to the first respondent within two months from the date of production of a copy of this judgment. If the pay revision benefits have not so far been released, the said respondents shall also take steps to release the pay revision arrears due to her. With the above directions, the Writ Appeals are disposed of.