

(2014) 02 KL CK 0017

In the High Court Of Kerala

Case No : W.A. No. 30 of 2014 and C.M. Appl. No. 7 of 2014

The State of Kerala

APPELLANT

Vs

CIJI P. Jose

RESPONDENT

Date of Decision : 04-02-2014

Acts Referred:

Citation : (2015) 1 KHC 232 : (2015) 2 KLJ 279 : (2015) 1 KLT 458

Hon'ble Judges : T.B. Radhakrishnan, J;A. Muhamed Mustaque, J

Bench : Division Bench

Advocate : Muhamood T.T., Spl. Govt. Pleader, Advocate for the Appellant; S.P. Aravindakshan Pillay, Smt. N. Santha, Sri Peter Jose Christo and Sri S.A. Anand, Advocates for R1, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Thottathil B. Radhakrishnan, J.—This appeal by the State against a judgment of the learned single Judge comes up with an application seeking condonation of 760 days in its institution.

2. Having perused the affidavit filed in support of the application seeking condonation of delay, we do not find that there is any sufficient cause to condone the delay.

3. Yet, we looked into the merits of the appeal as well.

4. On the basis of accrued rights in terms of Chapter XIV A Rule 51A of the Kerala Education Rules, the first respondent herein was appointed against a retirement vacancy of L.P.S.A. that arose on 31/03/2007. That appointment was not approved though that was made on the basis of the first respondent's statutory right, in terms of the aforesaid rule, on the basis of the prior services that she had rendered with the approval of the competent authority. Department took the stand that in the light of Ext. P9 Government Order and Ext. P10 Circular, protected teachers had to be appointed in preference to others, including claimants under Chapter XIV A Rule 51A of the Kerala Education Rules.

Learned single Judge repelled that plea holding that the Circular will not override the statutory Rule; nor would an executive government order override the binding nature of Chapter XIV A Rule 51A of the Kerala Education Rules.

5. In this appeal, the learned Senior Government Pleader argued that having regard to the contents of Ext. P3 staff fixation order, it can be seen that the total number of students in the school were such that there was no clear vacancy or an absolute vacancy enabling the sanctioning of the division and that the learned single Judge was not justified in treating Rule 51A of Chapter XIV A of the Kerala Education Rules as effective overriding the contents of Ext. P10 Circular.

6. Ext. P9 is a Government Order which is the expression of the executive decision of the Government on a particular matter. Ext. P10 is a Circular. Chapter 14 A Rule 51A is part of the statutory rules made by the competent authority in exercise of the powers to make subordinate legislation in terms of the Kerala Education Rules. The statutory rules will prevail. The provisions of Chapter XIV A Rule 51A of the Kerala Education Rules are clear and unambiguous and do not admit any dilution based on the plea that the vacancy was as either not clear or, not absolute. The spread of the statutory Rules in the Kerala Education Rules does not admit any vacancies being identified as not absolute or not clear. The question of division fall and other issues cannot be raised by the State in this writ appeal because Ext. P3 is a statutory order, the finality of which binds the statutory authorities themselves as well as the educational agency, the Manager and the teachers who would fall within that statutory order. Though the learned Senior Government Pleader argued that the said staff fixation order contains a concession extended to retain the approval and recognition of the school, we are not inclined to take that a staff fixation order could be a concessional order. If that were so, there is no question of that order being available for review at the hands of the higher executive authorities in terms of statutory provisions by way of appeal and revision.

7. We see no legal infirmity in the reasoning of the learned single Judge leading to the judgment impugned in this appeal. The appeal, therefore, fails.

In the result, the application seeking condonation of delay and the writ appeal are dismissed.