

(2014) 11 KL CK 0027

In the High Court Of Kerala

Case No : Writ Appeal Nos. 1108, 1349/11, 1376/12, WP(C) No. 9148/11 and R.P. No. 691/12 in WA No. 119/2012

Thresia M.L.

APPELLANT

Vs

Preethy M.P.

RESPONDENT

Date of Decision : 13-11-2014

Acts Referred:

Citation : (2014) 4 KHC 822 : (2015) 1 KLJ 171 : (2014) 4 KLT 837 : (2015) LabIC 2282 : (2015) 3 SCT 333

Hon'ble Judges : K. Ramakrishnan, J;Antony Dominic, J;Anil K. Narendran, J

Bench : Full Bench

Advocate : P. Sreekumar and K.S. Manu, Advocate for the Appellant; T.T. Mohamood, Sr. Government Pleader, P. Sankarankutty Nair and T.C. Suresh Menon, Advocate for the Respondent

Judgement

Antony Dominic, J.—In these cases, the issues that arise for consideration is whether retrenchment of teachers is to be based on the combined seniority list of LPSAs and UPSAs of L.P. Section and U.P. Section of the school under the same management or whether the retrenchment should be based on separate seniority list of LPSAs and UPSAs.

2. When W.A. Nos. 1108 and 1349/11 came up for consideration before a Division Bench of this Court, doubting the correctness of the judgments in Mary George v. State of Kerala (1999 (3) KLT 912), Rejimol Vs. Asst. Educational Officer, and the S.N.D.P. L.P. School Vs. Roy, , the Division Bench referred the cases to be heard by a Full Bench. Subsequently, the other writ appeals, writ petition and the review petition were also ordered to be posted along with these cases. It is accordingly that all these cases were listed for hearing before us.

3. We heard the respective counsel appearing for the appellants, the petitioners and the respondents in all these cases.

4. As we have already noticed, the only question that arises for consideration is

when teachers are to be retrenched from a school consisting of both L.P. sections as also U.P. sections, whether common seniority of LPSAs and UPSAs should be followed, or whether the seniority to be reckoned for retrenchment should be based on separate seniority of UPSAs and LPSAs.

5. In *Mary George (supra)*, *Rejimol (supra)* and W.A. No. 1903/11 noticed above, the view taken by this Court is that the post of LPSAs and UPSAs belong to two different grades and categories. Therefore, if those principles are to be followed, separate seniority list of LPSAs and UPSAs should be the basis for reckoning the seniority for the purpose of retrenchment. It is the correctness of this view which calls for consideration.

6. Before we make reference to the relevant judgments, we shall refer to some of the statutory provisions that were brought to our notice. Chapter II of the Kerala Education Rules deals with the classification of schools. As per Rule (1), schools in the State are generally classified into four categories and among them, the first category is schools for general education. As per Rule 2, schools for general education shall be of two grades viz., primary and secondary. Rule 2(2) provides that the first seven standards, i.e., standards I to VII, shall be collectively known as the Primary Grade which is again sub-divided into lower primary and upper primary. Chapter XXIII of the KER provides for fixation of strength of teachers in departmental and aided schools. Rule 3 of Chapter XXIII provides the strength of teaching staff in Upper Primary and Secondary Schools and that the same shall be fixed on the basis of number of recognised class divisions and periods of work. Rule also provides that the various posts of teachers shall be referred to by the designations indicated in Rule 3. Rule 5 provides that in every Upper Primary School, there shall be one post of Headmaster and as per Rule 5(iii), in LP schools, there shall be as many posts of Lower Primary Assistants as there are divisions in the Lower Primary School classes. Chapter XXXI of the KER provides for qualifications of private schools teachers. As per Rule 3 of Chapter XXXI, the qualifications of teachers in the Upper Primary School are prescribed. Similarly, qualification of Lower Primary School Assistants are prescribed as per Rule 4 of Chapter XXXI.

7. The above provisions of the Kerala Education Rules indicate that for all purposes, teachers in the LP Section and Upper Primary Section are treated as separate category of teachers with separate and distinct qualifications. The provision governing maintenance of seniority list is contained in Rule 34 of Chapter XIV A KER and Rule 34(b) provides for the maintenance of a combined seniority list of Upper Primary School Assistants and Lower Primary School Assistants.

8. Rule 34(b) prior to its amendment by GO(P) No. 85/2011/G.Edn dated 7/3/2011 w.e.f. 18/12/84, reads as follows;

"34(b) In the case of Upper Primary School and Lower Primary school a combined seniority list of teachers if any, specified in clauses (iii), (iv) and (v) of

Rule 3, Chapter XXIII shall be prepared."

9. Rule 34(b), as amended, read thus;

"34(b) In the case of Upper Primary Schools and Lower Primary Schools, a combined seniority list of Upper Primary School Assistants, Lower Primary School Assistants, Junior Language Teachers and Specialist Teachers specified in Rules 3 and 4 chapter XXXI, shall be prepared. The purpose of the seniority list will be only to determine the position of persons eligible for promotion as Primary School Headmaster by virtue of length of service and prescribed qualifications for promotion as Primary School Headmaster."

10. Apart from this provision in the Rules, there is no other provision in the Kerala Education Act or the Rules for maintenance of combined seniority list of UPSAs and LPSAs. Reading of the unamended Rule 34(b) shows that the combined seniority list was meant to be for all purposes and amended Rule 34(b) shows that the purpose of the combined seniority list is only to determine the position of persons eligible for promotion as Primary School Headmaster by virtue of length of service and prescribed qualifications for promotion as such. Once the purpose of the combined seniority is thus specified in the rule itself, it has to be concluded that the combined seniority list cannot be made use of for any purpose other than that is specified by the Rule making authority. Therefore, Rules show beyond any doubt that UPSAs and LPSAs, except for the purpose indicated in Rule 34(b), are treated for all other purposes as different categories and that the combined seniority list maintained in terms of Rule 34(b) as amended w.e.f. 18/12/1984, is for the limited purpose of determining the position of persons eligible for promotion as Primary School Headmaster and nothing else.

11. Turning to the judgments that are cited before us, Mary George (*supra*) was a case where the appointment of teachers as UPSAs was declined to be approved by the educational authorities and the Government on the ground that the teachers had got preferential claim for appointment as LPSA. This order was contested on the basis that both posts were not similar, but were different in nature and duties. This contention was accepted by this Court following the earlier judgments in *O.N. Gopalakrishnan Nair Vs. District Educational Officer and Others*, *P.P. Sreekumari Amma Vs. State of Kerala and another*, and *Saramma v. D.E.O., Kothamangalam* (1991 (2) KLT 883). Finally, the learned single Judge held thus in para 10.

"10. Applying these principles it has to be examined as to whether a post of L.P.S. Assistant and U.P.S. Assistant are two different posts or posts of similar nature. According to the petitioners, posts of L.P.S. Assistant and U.P.S. Assistant are two different and distinct categories as per Chapters XXIII and XXXI of K.E.R. Qualifications prescribed for these posts are S.S.L.C. and T.T.C. The senior claimants about whom reference had been made by the Educational Authorities are persons appointed as U.P.S. Assistants with B.Ed., qualification. They did not

have T.T.C. qualification. Chapter XXIII of the K.E.R. deals with fixation of strength of teachers in Departmental and Aided Schools. R. 5 of the above Chapter deals with staff of the Upper Primary Schools and Lower Primary Schools. The above Rule mentions separately the posts of U.P.S. Assistants and L.P.S. Assistants. Chapter XXXI of the K.E.R. deals with the qualifications of Private School Teachers. R. 3 of the above Chapter mentions qualifications prescribed for U.P.S. Assistants. R. 4 specifies the qualifications of L.P.S. Assistants. In both these posts, pass in S.S.L.C. and pass in T.T.C. examination are the qualifications prescribed. No B.Ed., qualification has been prescribed for appointment as either U.P.S. Assistant or L.P.S. Assistant. L.P.S. Assistants are teaching students in L.P. School and U.P.S. Assistants are teaching students in the U.P. Schools. From these circumstances, it can be safely inferred that both these categories of teachers are not one and the same. They are different in nature and duties."

12. Subsequently, in *Rejimol's case (supra)*, this Court considered the question whether in a situation where the Headmaster of the Upper Primary School is a teacher qualified to teach only in the Lower Primary School, the consequential reduction of posts should be in the U.P. School or L.P. School. This question was answered by the learned Judge thus;

"On analysing the factual and legal position it is fairly clear that R. 5 has to be understood to mean that when the Teacher promoted as Headmaster in the U.P. School having L.P. Section also happens to be from the Lower Primary Section, there will only be as many Lower Primary School Assistants reduced by one. The provision under R. 5 regarding the number of teachers in U.P. Section as reduced by one can only be in a situation where the person appointed from the seniority list happens to be a U.P. School Assistant. Otherwise it will affect the functioning of the Upper Primary Section."

13. Again, in the judgment in *Praveena V. Kamath v. State of Kerala 2011 (2) KLT S.N. 93*), the dispute raised was with respect to the steps taken by the management to retrench UPSAs in preference to LPSAs on reduction of posts of LPSAs by transferring them as UPSAs. In this case, after referring to *Mary George's case (supra)* and *Rejimol's case (supra)*, the learned single Judge declined to accept the contention that the retrenchment should be on the basis of common seniority list.

14. Still later, in the judgment in *Manager, M.M.U.P. School Vs. Deputy Director of Education*, , this Court had occasion to consider the right of the Manager to shift a teacher working in the U.P. section as UPSA to the L.P. Section and the contention raised was that in the absence of a prohibition in the Kerala Education Act and the Rules, the Manager can do so in exercise of the right of the management of the school. This contention was negated by the learned single Judge following the principles laid down in *Mary George's case (supra)* and *Rejimol's case (supra)* and holding that the post of UPSA and LPSA are different in category and that the nature of duties are also different. This judgment of the

learned single Judge was confirmed by the Division Bench of this Court by dismissing W.A. Nos. 25/11 and 26/11. In so far as the judgment in W.A. No. 1903/2011 is concerned, that appeal was rendered following the earlier judgments.

15. Our attention was also invited to the judgment of this Court in W.P.(C) Nos. 3427/06 and 25115/06. In that case also, the same question was considered and in para 5 of the judgment, the learned judge held thus;

"5. Ext. P2 order proceeds on the basis that when a reduction in staff strength occurs in a U.P. Section of a School, the junior-most U.P. School Assistant has to be retrenched and not a L.P. School Assistant on the basis of a common seniority list among UPSAs and LPSAs depending on their comparative length of service. To me that appears to be the correct legal position. Admittedly, U.P. Section and L.P. Section are separate. Scale of pay of U.P. School Assistant and L.P. School Assistant are different. U.P. School Assistant is a promotion post for L.P. School Assistant. I am of the opinion that the word "grade" referred to in Rule 37 of Chapter XIVA cannot be the primary grade mentioned in Rule 2 of Chapter II. If that interpretation is accepted that would militate against commonsense. In fact, in this connection I may also refer to a decision of the Supreme Court in Hari Nandan Sharan Bhatnagar Vs. S.N. Dixit and Another, , wherein it has been held that all officials working in the same scale of pay in a department, although holding posts with different designations, shall be deemed to be holding posts in the same grade, because their rank in the same department will be the same and equal to one another. As far as U.P. School Assistant and L.P. School Assistant are concerned, their scales of pay are different. For all purposes U.P. Section and L.P. Section are treated separately. While fixing all staff strength, the staff strength is fixed separately for U.P. Section and L.P. Section. Therefore, when reduction of staff strength occurs in U.P. School, the junior-most U.P. School Assistant alone can be retrenched. Otherwise, an anomalous situation would occur. For example, if there is reduction of staff strength in the L.P. Section and if there is a U.P. School Assistant who is appointed after the appointment of the junior-most L.P. School Assistant then the U.P. School Assistant would have to be retrenched which does not stand to reason. Further a common seniority list among U.P. School Assistant and L.P. School Assistant is beyond comprehension. Therefore, I am of opinion that when reduction of staff strength occurs in U.P. Section, the junior-most U.P. School Assistant has to be retrenched and not the junior most among U.P. School Assistants and L.P. School Assistants put together. In that view, it is clear that the petitioner who is the junior-most U.P. School Assistant herein should be retrenched and not the 4th respondent who is the junior most L.P. School Assistant."

16. In so far as the Full Bench judgment in S.N.D.P., L.P. School's case (supra) noticed by the Division Bench in the reference order is concerned, para 2 of the judgment itself shows that the question that was considered was whether a Lower Primary School Assistant possessing B.Ed. degree but not TTC is qualified

for the post of Headmaster of a Lower Primary School governed by the Kerala Education Rules. This itself shows that the question that fell for consideration of the Full Bench is totally different from what arises for resolution in these cases. Therefore, we do not think that the principles laid down in the judgment of the Full Bench has any relevance.

17. In our considered opinion, in the light of the language of Rule 34(b) of Chapter XIVA KER, the judgments noticed above lay down the correct principle of law that the teachers in the U.P. Section and the teachers in the L.P. Section of a school belong to two different and separate categories and that, therefore, if there is occasion for retrenchment of an UPSA or a LPSA, the seniority that is to be followed is the seniority in the respective category and not the common seniority as canvassed before us.

18. RP No. 691/12 is filed seeking review of the judgment in W.A. No. 119/12. W.A. No. 119/12 was filed against the judgment in W.P.(c) No. 25061/10, which was disposed of by judgment dated 29th of March, 2011 along with W.P.(C) No. 23519/10 and connected cases. It is this judgment which is reported in Praveena's case (supra). This appeal was dismissed by judgment dated 23rd of January, 2012 and the RP is filed seeking review of this judgment of the Division Bench.

19. We have already confirmed the principles laid down by the learned single Judge in the judgment in Praveena's case (supra) and therefore, we have to necessarily uphold the judgment dismissing W.A. No. 119/12. Consequently, there is no reason to review the said judgment.

Accordingly, Writ Appeal Nos. 1108, 1349/11, 1376/12, W.P.(C) No. 9148/11 and RP No. 691/12 are dismissed.