

(2011) 03 KL CK 0280

In the High Court Of Kerala

Case No : Writ Petition (C) . No. 28501 of 2009 (G)

T.S. Sindhu

APPELLANT

Vs

The State of Kerala and Others

RESPONDENT

Date of Decision : 16-03-2011

Acts Referred:

Citation : (2011) 03 KL CK 0280

Hon'ble Judges : T.R. Ramachandran Nair, J

Bench : Single Bench

Advocate : S. Subhash Chand, for the Appellant; John K. Joseph (Sajan), for the Respondent

Final Decision : Allowed

Judgement

T.R. Ramachandran Nair, J.—The Petitioner, who is working as LPSA in an aided school managed by the 6th Respondent is aggrieved by the denial of approval mainly on the plea that the school is an uneconomic one.

2. The Petitioner was appointed in a leave vacancy from 2.6.2003 to 31.3.2004. In the retirement vacancy of one Smt. Kumari Pramila LPSA, the Petitioner was shifted. The said order of appointment is produced as Exhibit P2. It is pointed out that the school had absorbed a protected teacher as per Exhibit P3 order dated 23.9.1983. But the approval of appointment was rejected on the ground that the school was a newly opened one and as per the provisions contained in Government Order, G.O. (P) No. 178/2002/G. Edn. Dated 28.6.2002, the management of newly opened/upgraded schools should fill up all existing/arising vacancies in their schools by appointing protected teachers.

3. The appeal filed against the same was rejected and finally the revision filed was also rejected by Exhibit P4. It was under challenge before this Court in W.P. (C) No. 30685/06. The revision petition was directed to be disposed of by an interim order and the revision was finally disposed of by Exhibit P5 order. It was held that the appointment cannot be approved since the Manager has not

appointed a protected teacher. The Petitioner, thereafter, filed a fresh Writ Petition as W.P.(C) No. 36868/07. The matter was considered later and finally by Exhibit P7 judgment, this Court quashed Exhibit P5 order and directed the Government to reconsider it. This Court directed reconsideration of the matter in the light of Exhibit P6 Government Order. Thereafter, by Exhibit P8 Government Order, a direction was issued to the Deputy Director of Education, Pathanamthitta to approve the appointment of the Petitioner on the date the protected teacher joined duty in the school. But the Assistant Educational Officer without forwarding it to the Deputy Director passed Exhibit P13 order wherein 18 objections have been taken for not approving the appointment.

4. The proceedings continued thereafter in appeal and revision and finally by Exhibit P19 order, even though it was found that a protected teacher was appointed on 14.8.2009, the Government took the view that it may not be possible to approve the appointment with effect from 14.8.2009 as the school is an uneconomic one.

5. The Respondents have filed a counter affidavit.

6. The learned Counsel for the Petitioner submitted that in the light of Exhibit P21 Government Order clarifying the earlier Government Order regarding appointments in uneconomic schools, the Petitioner is entitled to succeed.

7. The Government by Exhibit P20 order dated 12.10.2006 restrained appointments in economic schools. But, later, it was clarified by Exhibit P21 circular. Seven clarifications have been made by the Government in Exhibit P21. Item (2) therein is that in cases where appointments have been made prior to 12.10.2006 and proposals have been made within time, action can be taken for approval based on the legal position that was in existence prior to 12.10.2006. Evidently, therefore, the same applies to the case of the Petitioner.

8. Herein, the appointment was made as per Exhibit P2 order dated 2.6.2004. The Government itself had directed by Exhibit P8 order to approve the appointment and had sent back the matter for passing appropriate orders. It is at the second stage, the present objection was raised.

9. In the light of Exhibit P21 circular, it can be seen that the objection that the school is an uneconomic one will not apply as far as approval of appointment of the Petitioner is concerned. It is declared so. Therefore, Exhibit P19, to the extent to which it is held that the Petitioner's appointment cannot be approved as the school is an uneconomic one is quashed.

10. Evidently, a protected teacher was appointed from 14.8.2009. Therefore the directions contained in Exhibit P8 order that the Petitioner's appointment could be approved from the date of appointment of a protected teacher can be implemented and if that be so, the Petitioner will be eligible for grant of approval from 14.8.2009. The Assistant Educational Officer will pass appropriate orders approving the appointment of the Petitioner from 14.8.2009 within a period of six

weeks from the date of receipt of a copy of this judgment and the Petitioner will be disbursed the monetary benefits also without delay.

The Writ Petition is allowed as above.