
(1989) 11 KL CK 0012
In the High Court Of Kerala
Case No : O.P. No. 8877 of 1989

T.V. Luciamma and another	Vs	APPELLANT
State of Kerala and Others.		RESPONDENT

Date of Decision : 29-11-1989

Acts Referred:

Constitution of India, 1950 — Article 30(1)

Citation : (1990) 1 KLJ 137

Hon'ble Judges : K. Sreedharan, J

Bench : Single Bench

Advocate : M.I. Joseph and Legy Abraham, for the Appellant; M.C. Gopi Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

K. Sreedharan J.

1. First petitioner was appointed on 20-6-1963 as High School Assistant (Physical Science), in the St. Mary's Girls High School, Ernakulam. She was relieved on 1-6-1964 due to want of training qualification. First petitioner then took B. Ed degree in April, 1969. Thereupon she was appointed as H.S.A. in the St. Joseph's Girls High School, Karukutty. She has got continuous service from 5-5-1970 onwards. She was then appointed as Headmistress in the St. Joseph's Upper Primary School on 1-6-1989. The said appointment has not been approved by the Educational Authorities. Hence this original petition inter alia praying for the issuance of a writ of certiorari quashing Exts. P2 and P4 orders. Ext. P2 is copy of letter No. 83482/JI/88/G Edn. dated 21-3-1989 issued by the Government to the Director of Public Instruction. That deals with the guidelines for the approval of the appointments of Headmasters in aided schools. It was in conformity with the directions contained in that order Ext. P4 happened to be issued by the District Educational Officer declining the approval of the appointment of the first petitioner. Learned counsel representing the petitioners submit that the school run by the second petitioner, Corporate Educational

Agency are established by a minority community entitled to the protection under Article 30(1) of the Constitution of India. The school being an institution run by a minority community second petitioner can appoint any teacher having the required qualification as per the Rules as Headmaster. That appointment has to be approved by the authorities. They are to verify the qualifications of the appointee. If they satisfy the qualification prescribed by the Rules the appointment should be approved. Since the first petitioner has got the required qualification as per Rule 45 of Chapter XIV AKER she is entitled to be appointed Headmistress of the school and the Educational Authorities are not justified in refusing to grant the approval relying on Ext. P2 communication. In this view it was submitted, that the action taken by respondents in refusing to approve the appointment of the first petitioner has to be quashed.

2. When this petition came up for admission on 23-10-1989 a copy of the same was served on the learned Government pleader. On behalf of the third respondent, the District Educational Officer a counter affidavit has been filed. The contentions taken therein are that the approval of the appointment of the first petitioner as Headmistress was declined by virtue of the guidelines contained in Exts. P2 as also on the ground that the said appointment was contrary to the provisions contained in Rule 45 of chapter XIV A.K.E.R. First petitioner was not a member of the staff of the Upper Primary School. She was an H.S.A. Only a graduate teacher with B. Ed. in the staff of an Upper Primary School can claim the post of Headmaster of that Upper Primary School, if that teacher has got half of the total service of the senior-most under - graduate teacher of the School. Rule 45 of Chapter XIV A does not enable the Manager to appoint a H.S.A in the service of another school as Headmaster of the Upper Primary School. No. H.S.A. has got a right to be appointed as Headmaster of an Upper Primary school. The appointment of H.S.A. as Headmaster of an Upper Primary School is contrary to the provisions contained in Rule 44 and 45 of Chapter XIV A.K.E.R. It is the common case that the first petitioner was appointed as H.S.A. in a high school belonging to the second petitioner, Corporate management. She was never a member of the staff of the Upper Primary School to which she has been appointed as Headmistress. Sri. M. I. Joseph, learned counsel representing the petitioners attempted to support the appointment of the first petitioner as Headmistress only on the basis of Rule 45 of Chapter XIV A.K.E.R. According to counsel petitioner, a graduate teacher with B. Ed and having more than 5 years experience in teaching after graduation is entitled to be appointed as Headmistress of an Upper Primary School. The first petitioner has got 5 years teaching experience after graduation and so her appointment as Headmistress is in consonance with the provisions contained in the said Rules. I find it difficult to agree with this argument. Rule 45 deals with the appointment of Headmaster of an Upper Primary School. When that Rule refers to qualified teachers on the staff of the school, it can only mean the staff of an Upper Primary School. In the case of Corporate Management, the staff referred to in Rule 45 must be taken as members of the staff of the various Upper Primary Schools under the Educational

Agency. In deciding" the competence of a teacher to be appointed as Headmaster the qualifications of the members of the staff of the Upper Primary Schools alone is to be considered. The staff of the Upper Primary School are not to compete with the members of the staff of the High Schools for claiming the post of Headmaster. This is made" further clear when we look into the Special benefits given to the graduate teachers with B. Ed qualification under Rule 45 itself. For a proper understanding of it. I will read the same:

If there is a graduate teacher with B. Ed or other equivalent qualification and who has got at least 5 years experience in teaching after graduation, he may be appointed as Headmaster provided he has got a service equal to half of the period of service of the senior-most under graduate teacher.

The under graduate teacher mentioned can only be one belonging to the Upper Primary School. So the graduate teacher with B. Ed who is to be appointed as Headmaster of the Upper Primary School must not only have five years experience in teaching after graduation but also should have service equal to half the period of service of the senior-most under graduate teacher of that Upper Primary School. The period of service of the senior-most under-graduate teacher is not to be compared with the service rendered by the graduate teacher "with B. Ed belonging to the High School Section. The teaching staff of the Upper Primary School and the teaching staff of the High School belong to different categories. They have no common seniority. No provision of K.E.R. has been brought to my notice which enjoins a corporate management to prepare a common seniority list of the members of the teaching staffs of primary schools and High Schools even if they are run by a Corporate management. The statutory provisions are to the contrary. Separate seniority lists are to be maintained. So according to me, the graduate teacher with B. Ed who claims preference over an under-graduate teacher for appointment as Headmaster of the Upper Primary School must be a member of the teaching staff of the Upper Primary School. First petitioner being a High School Assistant is not entitled to be appointed as Headmaster of the Upper Primary School. Viewed in this light, the decision taken by the Educational Authorities in refusing to grant approval is not open to challenge. Learned counsel representing the petitioners did not advance a contention that the second petitioner can appoint a Headmaster ignoring the provisions contained in Rules 44 and 45 of Chapter XIV A of K.E.R. So I do not consider it necessary to go into the legality or otherwise of Ext. P2 order for the disposal of this case.

The original petition fails. It is dismissed.