

(2009) 12 KL CK 0004
In the High Court Of Kerala
Case No : W.A. No. 60 of 2009

Unnikrishnan

APPELLANT

Vs

Manager, C.A.H.S.

RESPONDENT

Date of Decision : 11-12-2009

Acts Referred:

Kerala Education Act, 1958 — Section 7(2)
Kerala Education Rules, 1959 — Rule 51A, 51B, 7, 9A

Citation : (2010) 1 ILR (Ker) 193 : (2010) 1 KLT 354 : (2009) 7 SLR 477

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

Bench : Division Bench

Advocate : P.R. Venketesh, for the Appellant; K.R.B. Kaimal George Abraham, B. Unnikrishna Kaimal and R. Bindu, Government Pleader, for the Respondent

Judgement

K. Balakrishnan Nair, J.—The point that arises for decision in this appeal is whether the claim of the dependent of an employee to get appointment under the dying-in-harness scheme in an Aided School, could be defeated by the Manager, on the ground that the application for the same, though submitted within the prescribed time limit, was not in the prescribed format. The 4th respondent in the Writ Petition is the appellant and the writ petitioners are respondents 1 to 4 herein.

2. The skeletal facts, necessary for the disposal of the appeal, are the following:

The appellant's father was a Full-time Menial in the first respondent's school. He died in harness on 19.7.2000. Soon thereafter, the appellant's mother submitted Ext.P3 representation dated 22.7.2000, before the first respondent Manager, praying that the appellant may be given employment under the dying-in-harness scheme. A translation of the relevant portion of Ext.P3 representation reads as follows:

As you are aware, my husband C.V. Kesavan, who was working as a Full-time-Menial in C.A. High School, Peruvamba, under your management, died of heart

attack on the morning of 19.7.2000. It is understood that a power is vested in the Manager to give appointment in the institution, to a dependent of the employee, who dies in harness. I fully consent to give appointment to my son Sri. K.M. Unnikrishnan, under the dying- in-harness scheme, as a result of the death of my husband. I pray for appropriate orders, granting this request.

The Manager did not accept the above said representation, sent by registered post and it was returned, unclaimed. Later, the appellant obtained income certificate, legal heirship certificate etc. and submitted an application in the prescribed format, in October 2002. Since the Manager was not willing to accept the said application, it was sent to the District Educational Officer (D.E.O.), Palakkad, requesting him to forward it to the Manager. There was yet another claimant for employment in the 1st respondent's School, under the dying-in-harness scheme. Because of the claims raised by the appellant and the said claimant, the appointments made in the School of the 1st respondent, were not being approved by the D.E.O. Finally, as per the direction of this Court, the rival claims of all the parties were considered by the District Educational Officer, Palakkad, by Ext.P8 order dated 18.5.2006 and the Manager was directed to appoint the appellant and the other claimant, Smt. V. Rajeswary, in his School. The matter was carried in revision before the Government, by the Manager and the other candidates, who were appointed in the School, ignoring the claims of the appellant and Smt V. Rajeswary. The Government considered the rival claims and after hearing all the affected parties, upheld Ext.P8 order passed by the District Educational Officer, Palakkad, by Ext.P9 order dated 25.1.2007. The Writ Petition was filed, challenging Exts.P8 and P9. The learned Single Judge quashed the orders of the District Educational Officer and the Government, to the extent, they concerned Smt. V. Rajeswary, on the ground that at the relevant time, she was not a dependent of her mother, who died in harness. We are told that the said finding of the learned Single Judge, has been affirmed by the Division Bench also. In this appeal, we are concerned only with the claim of the appellant.

3. The claim of the appellant, raised in the Writ Petition, was resisted by respondents 1 to 4, mainly urging two points. The first point was that he was gainfully employed elsewhere and therefore, not interested in the employment under the School. Secondly, it was pointed out that his application for employment was submitted beyond the time limit of two years, prescribed in GO. (P)No. 12/99/P&ARD dated 24.05.1999, governing appointment under the dying-in-harness scheme in Government service. The said G.O. will mutatis mutandis apply to employment under the dying-in-harness scheme in Aided Schools, by virtue of Rule 51B of Chap.XIVA and Rule 9A of Chap.XXIV of the Kerala Education Rules (for short, K.E.R.). The writ petitioners canvassed for the position that the first application put in by the mother of the appellant, cannot be treated as an application at all, for the following two reasons: (1) The person, claiming employment, has not made the application and (2) It is not submitted in the prescribed format. The learned Single Judge accepted the said contention and held that since the application was not submitted in the format prescribed

under the aforementioned Government Order, within the time limit of two years, the appellant's claim was liable to be rejected. As a result, the impugned orders were quashed to the extent, they were in favour of the appellant. Feeling aggrieved by the said decision of the learned Single Judge, this appeal is preferred.

4. We heard the learned Counsel on both sides. The facts of the case are not disputed before us. The appellant's mother had filed Ext.P3 representation, claiming employment for the appellant, on 22.7.2000. The Manager refused to accept the said application, which was sent by registered post. The materials on record would show that in the case of V. Rajeswary, the other claimant under Rule 51B, the Manager has consistently refused to accept the applications submitted by her. In Ext.P9 order of the Government dated 25.1.2007, it was observed as follows:

Government has examined the case in detail with reference to the arguments of the parties, report of the District Educational Officer and the Director of Public Instruction, Government Orders/Rules. The case is that C.G. Lalitha, Music Teacher, C.A.H.S Peruvamba while in service expired on 12.7.2000. The deceased has got 23 years of service. Smt. Rajeswary. V., her daughter preferred her claim under Rule 51B Chap.XIVA K.E.R., A formal letter dt. 28.7.2000 was sent by registered post with acknowledgment to the Manager, C.A.H.S. Peruvamba, extending copies to the Head Master, C.A..H.S. Peruvamba, District Educational Officer, Deputy Director of Education and the Director of Public Instruction. All the addressees except the Manager accepted the letter dt. 28.7.2000. The postal authority returned the letter dated 28.7.2000 to the sender superscribing as "refused". During hearing, the petitioner produced the original acknowledgment cards, the cover which was returned back superscribing "refused" in order to substantiate their arguments. Again another application dt.31.12.2001, in terms of G.O.(P)12/99 dt.24.5.1999 was sent to all mentioned above. This was also accepted by all of them, except the Manager, which was returned to the sender, superscribing as "refused". The above said formal letter dt.22.7.2000 and application dated 31.12.2001 were kept as it is by the petitioner and produced before the District Educational Officer, Palakkad on 26.04.2004 at the time of hearing. It was opened by the petitioner before the Manager as directed by the District Educational Officer, Palakkad and was examined in detail. The Manager admitted that the application is dtd.31.12.2001 and this application, if accepted by the Manager, would have come within the given time limit as prescribed in G.O.(P) 12/99 dt.24.5.99. The petitioner also highlighted that if the Manager had acknowledged the registered letter dt.22.7.2000 and application dt.31.12.01 in time and had gone through the contents, any additional documents required could have been submitted to the Manager by the petitioner. The action of the Manager in having refused both the registered letters sent by the petitioner, is not justifiable and the argument made by him that the application was received only on 31.5.2003 is not sustainable. The above mentioned fact reveals that the 1st 51B claimant Smt. V. Rajeswary has preferred her application in time and is

in order. Since the Manager refused both the registered letters, the petitioner filed an O.P. No. 4709/01.

It would appear that refusal to accept applications, was the strategy adopted by the Manager, to ward off the claims under Rule 51B, so that he could go for appointment from the open market, which, for obvious reasons, is in his interest. So, the application submitted by registered post by the appellant's mother on 22.7.2000, claiming employment for him, was returned unclaimed by the Manager. The learned Counsel for the appellant submitted that the representation submitted by the mother of the appellant should be treated as a defective application for employment under the dying-in-harness scheme and the Manager was bound to accept the same and if it was found to be defective, he should have directed the appellant to cure the defects in it. The Manager has got such a duty under Rules 9A and 51B mentioned above. In support of his submission, the learned Counsel relied on the decisions of this Court in Baiju Kumar Vs. D.E.O., and S.N.G.S. High School v. Reji Sagar 2008 (1) KLT 1026. In support of the submissions made by the learned Counsel for the Manager, he relied on the decision of this Court in Corporate Manager, Diocese of Thrissur v. Jayanarayanan 2003 (1) KLT 33 (C. No. 45). Shri. K.R.B. Kaimal, learned Senior Counsel appearing for the additional 10th respondent submitted that since the appellant did not submit his application in time, the learned Single Judge was right in rejecting his claim.

5. We notice that Section 7(2) of the Kerala Education Act mandates that the Manager shall run the affairs of the Aided School in accordance with the provisions of this Act and Rules. The said sub-section reads as follows:

The Manager shall be responsible for the conduct of the school in accordance with the provisions of this Act and the rules thereunder.

Rule 9 of Chap.III, KER prescribes the duties of the Manager. Sub-rule (1) thereof reads as follows:

9(1) : The Manager shall be responsible for the conduct of the school strictly in accordance with the provisions of the Kerala Education Act and the Rules issued thereunder. He shall also abide by the orders that may be issued from time to time by the Government and the Department in conformity with the provisions of the Act and the rules issued thereunder."

(emphasis supplied)

If there is omission from the part of the Manager to run the school in accordance with the provisions of the Act and the Rules, he is liable to be disqualified. The relevant rule, dealing with the delinquency from the part of the Manager is Rule 7 of Chap.III, K.E.R. The Manager can be disqualified and the loss, if any, suffered by a Teacher or other claimant as a result of mal-administration can be recovered from the Manager.

Rule 51B of Chap.XIVA, K.E.R. reads as follows:

The Manager shall give employment to a dependent of an aided school teacher dying in harness. Government orders relating to employment assistance to the dependents of Government servants dying in harness shall mutatis mutandis apply in the matter of such appointments.

(emphasis supplied)

Rule 9A of Chap.XXIV A, KER reads as follows:

9A: The Manager shall give employment to a dependent of the non-teaching staff of an aided school dying in harness. Government orders relating to employment assistance to the dependents of Government servants dying in harness shall, mutatis mutandis, apply in the matter of such appointments.

(emphasis supplied)

In the light of the above statutory provisions, the Manager has got a duty to give employment to a claimant under the dying-in-harness scheme, provided, he is otherwise eligible and applies, as per the provisions of the relevant Government Order. In this case, the appellant's application was defective, but we are not inclined to hold that the appellant did not raise any claim in time. It was raised by the widow of the employee, who died in harness, on the fourth day of his death. An application or a representation from the widow, cannot be said to be irrelevant, going by the relevant GO., because, as per the GO., the widow gets the first preference for employment under the dying-in-harness scheme and only with her consent, somebody else's claim can be considered. That is the reason, why she submitted in Ext.P3 that she was agreeing to give employment to the appellant and also made a request for the same. So, definitely, it was a claim, in terms of the Government Order, governing appointment under the dying-in-harness scheme, but, it was defective, in as much it was not submitted in the prescribed format. As held by this Court in Baijukumar's case mentioned above, it is the duty of the Manager to alert the claimant, regarding the existence of a vacancy in his School and ask him to apply in the prescribed format. He has also got a duty to ask the claimant to cure the defects, if any, in the application submitted by him. In the said decision, it was held as follows:

7. A number of cases are coming up before this Court under Rule 51B of Chap.XIV A of the K.E.R. The Managers in most of the cases, contend that the application was not submitted in time, it was not in the prescribed format etc. All these contentions ill-come from the mouth of the Manager in the light of the mandatory provision in Rule 51B, which says that the Manager shall give employment to a dependent of an aided school teacher, dying in harness. When a teacher of his school dies, it must be presumed that the Manager knows, who are the dependents and whether anyone of them is eligible for appointment. Going by the provisions of the Act and Rules, he has to offer appointment to them whenever a suitable vacancy arises. He cannot take shelter behind the plea that the dependent did not apply in time etc. The Manager alone knows, when the vacancy arises. It is impossible for the dependent to keep track of the vacancies

that may arise in a school or schools under the management. The claimant cannot know whether anybody else is appointed, overlooking his claim. The Manager can inform the dependent about the vacancy and direct him to apply in the prescribed format within a time frame. At least these positive actions can be implied from the mandatory words of Rule 51B. It cannot be read down to mean that only if the dependent applies in time and pesters him, he need act under Rule 51B. In the absence of provisions containing procedures or orders for filling up the lacunae, this grey area is a breeding ground for so many disputes and litigations. I think, the Government should bestow its attention to this aspect.

So far, no Court has taken a contrary view, holding that the Manager does not have any duty as mentioned above. A Division Bench of this Court has referred to the above decision with approval while dealing with the claim of a dependent for appointment under Rule 51B in W.A. No. 1164/05. Kurian Joseph, J., speaking for the Bench, held as follows:

6. While Rule 51A deals with the preferential right of the teachers, Rule 51B provides for the obligation on the part of the Manager to give employment to a dependent of an aided school teacher, dying in harness, subject of course to the said dependent, satisfying the required conditions. In view of the mandatory expressions used under Rule 51B, casting an obligation on the Manager to give employment to the dependent of a deceased aided school teacher, the Manager has to offer appointment to the dependent whenever a suitable vacancy arises. As rightly held by a learned Single Judge of this Court in Baiju Kumar Vs. D.E.O., , he cannot take shelter behind the plea that the dependent did not apply in time etc. The Manager alone knows, when the vacancy arises. It is impossible for the dependent to keep track of the vacancies that may arise in a school or schools under the management. The claimant cannot know whether anybody else is appointed, overlooking his claim. The Manager can inform the dependent about the vacancy and direct him to apply in the prescribed format within a time frame. At least these positive actions can be implied from the mandatory words of Rule 51B. It cannot be read down to mean that only if the dependent applies in time and pesters him, he need act under Rule 51B. Since provisions like the one under Note 2 of Rule 51A regarding sending of registered notices are absent in Rule 51B, the learned Single Judge expressed the hope that the Government would bestow its attention to those aspects referred to above. Apparently, nothing has been done by the Government. Be that as it may, even in the absence of any specific procedure regarding registered notice, prescribed time etc., in view of the mandatory expressions used in Rule 51B of Chap. XIVA. K.E.R., it is fairly clear that it is the duty of the Manager to request the dependents of a deceased aided school teacher to apply in the prescribed format as and when a vacancy arises. If only there is no response from the dependent within a reasonable time as noted in the request, the Manager would be in a position to make appointment from the open market, ignoring the statutory claim available to the dependent. In case of ineligibility or if the application otherwise does not require consideration, the Manager has to enter a finding and inform

the applicant accordingly. Then alone, the Manager can proceed to make appointment ignoring the statutory claim. The benevolent piece of legislation would get force and life only if such an interpretation as above is given.

(emphasis supplied)

The SLP attempted against the above judgment of the Division Bench was dismissed by the Honourable Supreme Court on 24.11.2006. We are in respectful agreement with the above statement of the Division Bench regarding the duties of the Manager, emanating from Rule 51B. The decision relied on by the learned Counsel for the first respondent - Manager in Jayanarayanan's case (supra) only says that the application should be submitted within the prescribed time limit. We are in full agreement with that proposition, but in the case on hand, the claim was raised in time. The substance and not the form, is relevant. It was the duty of the Manager to ask the claimant to cure the defects in the application. But, in this case, the Manager refused to accept the applications from any claimants. At one point of time, the appellant had to approach this Court and file a Writ Petition, seeking a mandamus to the Manager to receive his application. In the above context, we feel that the contention of the Manager that the application was not submitted in time, as if, he was eagerly waiting to make appointment on receipt of an application in time, cannot be accepted. Quotation from the scripture ill-comes from the mouth of the Manager in this case. We hold that the application dated 22.7.2000, submitted on behalf of the appellant, by his mother, for employment under, the dying-in-harness scheme, was an application, in terms of the Government Order dated 24.5.1999, governing appointment under the dying-in-harness scheme. The application in the prescribed format, after curing the defects, was submitted in October 2002, a copy of which was produced as Ext.P10 in the Writ Petition. In the result, the finding of the learned Single Judge, on the above said point is reversed.

6. The learned Counsel appearing for respondents 1 to 4 also submitted that the appellant was gainfully employed elsewhere and therefore, not entitled to get employment. But, that is not a point upheld by the learned Single Judge. A successful litigant can support the Judgment on points not found in his favour, by the court below. But, going by the relevant Government Order, we find that having employment elsewhere is not a disqualification for appointment. If the income exceeds the prescribed limit of Rs. 1.5 lakhs, as a result of the employment of the claimant, then he may be ineligible. In this case, the competent Revenue Officer has certified that the income of the family of the appellant is below the prescribed limit. Everyone, including the Manager, is bound by that. If the Manager has got any grievance, as rightly pointed out by the Government in Ext.P9, his remedy is to move the superior Revenue Authority.

7. The learned Single Judge quashed Ext.P9, to the extent it concerns the appellant, only on the ground that his application, claiming employment was belated. We have already reversed that finding, made in the Judgment under appeal. In view of the above position, the Writ Appeal is allowed. The Judgment

of the learned Single Judge, to the extent, it concerns the appellant's claim, is reversed. The appellant shall be accommodated in the vacancy of Full-time Menial that first arose in the 1st respondent's school, after the date of receipt of the application in the prescribed format in October 2002 and his appointment shall be approved by the District Educational Officer, Palakkad. In case anybody is thrown out as a result of this Judgment, he/she shall be accommodated in the next arising vacancy, suitable for the said incumbent, arising in the school.