
(2013) 11 KL CK 0030
In the High Court Of Kerala
Case No : W.A. No's. 1729, 1735 of 2013

Vinayaraj K.

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 18-11-2013

Acts Referred:

Citation : (2014) 1 ILR (Ker) 621 : (2014) 1 KHC 205 : (2014) 1 KLJ 731 : (2014) 1 KLT 709

Hon'ble Judges : Thottathil B. Radhakrishnan, J; Babu Mathew P. Joseph, J

Bench : Division Bench

Advocate : Cibi Thomas, for the Appellant; Noble Mathew, Senior Government Pleader and P.T. Antony, for the Respondent

Final Decision : Dismissed

Judgement

Thottathil B. Radhakrishnan, J.—These writ appeals are by the manager of an aided school. The contesting respondent is the appellant's niece who was a teacher in that school, having worked in that capacity in a leave vacancy from 07/10/1998 to 07/12/1998. At that point of time, it was the appellant's mother who was the manager of the school. That spell brought home to the teacher a claim referable to Rule 51A of Chapter XIVA of KER which gives preference as regards appointment to subsequent vacancies. Going by the materials on record by way of pleadings, including representations etc., it appears that the teacher got married and moved to Madhya Pradesh sometime in 1994-95 immediately after her spell of work against the leave vacancy. Thereafter, another leave vacancy arose on account of a teacher K. Sudharani availing maternity leave. The manager, on the premise that the teacher before us had relinquished her claim under Rule 51A of Chapter XIVA of KER, appointed yet another person against that vacancy. The teacher was not offered any other appointment as against any vacancies that arose thereafter. We see that there were some earlier writ petitions. Ultimately, the matter was before the statutory authorities and the decision was given in favour of the teacher directing the manager to appoint her

in a particular vacancy. The manager challenged it by filing a writ petition. The teacher filed a writ petition seeking enforcement of the decision of the statutory authority. Those writ petitions were taken up by the [earned Single Judge and in the course of consideration of those writ petitions, the statutory authorities were required to look into the matter after hearing both the parties, at the level of the Deputy Director of Education. The parties were heard and detailed report was placed before this Court. The learned Single Judge, on the basis of the materials, accepted the report and confirmed the decision of the statutory authority in favour of the teacher. The manager was directed to comply with those directions. Hence, these writ appeals by the manager.

2. The learned counsel for the appellant, referring to the decision of the learned Single Judge in *Jaimy v. Dy. Director* 1993 KHC 327 : 1993 (2) KLT 275, argued that the quality of relinquishment under Rule 51A would affect on a permanent basis, even if such relinquishment is in relation to the offer of appointment towards a temporary vacancy. Relying on the decision of the Division Bench of this Court in *F.A.C.T. Manager's Staff House Construction Co-operative Society Vs. Karthiyani Unni*, it was argued that the relinquishment amounts to abandonment and extinguishment of right for ever.

3. The learned Single Judge relied on the judgment in *V.K. Saramma and Others Vs. D.E.O. and Others*, which was rendered holding, among other things, that any distinction as to whether the post was permanent or temporary may not be decisive. We may note here that *Krishnakumar* (supra) was decided without noticing *Saramma* (supra).

4. Having looked into the entire materials in the light of the submissions made by the learned counsel for the appellant and having regard to the quality of findings of the learned Single Judge based on the report of the Deputy Director of Education, we think that nuances as to any conflict of opinion or the manner in which Rule 51A would apply to permanent vacancies, need not hold us back from having a deeper look on to the facts of the case, more particularly in the light of Note-2 occurring after Rule 51A and which has been relied on by the Deputy Director of Education in his report. We see abundant substance in the stand taken by the Deputy Director of Education relying on Note-2 occurring at the foot of Rule 51A. We say this because, the statutory rules oblige the manager to issue an offer for appointment and wait for the teacher to report within fourteen days. If such reporting does not occur, the manager has to issue yet another letter indicating that if in another seven days the teacher does not report for duty, it will be taken that the teacher has relinquished the right under Rule 51A and that another person will be appointed. It is only by following the statutorily prescribed sequence of events and actions, would the relinquishment, deprivation or abandonment of the statutory right under Rule 51A get dissolved by operation of law on a particular fact situation. There is no material to hold that in the case in hand, the manager had observed the procedure provided for in Rule 51A of Chapter XIVA of KER, as rightly noted by the Deputy Director of Education in his

report.

5. The aforesaid position notwithstanding, taking the fourteen days" period, i.e., the gestation period for the offer of appointment to a 51A claimant and adding to it another one week, for it to be treated as fructified into an abandonment, it cannot but be conceded that a total period of 21 days at the minimum, excluding the time taken for delivery of the postal articles, has to be gone through, to say that a particular vacancy has got itself cleared out of the effect of Rule 51A of Chapter XIVA of KER. Here, what looms into importance is that the vacancy that was allegedly offered was the one that occurred on 12/12/1994; K.V. Ramachandran was issued an appointment order dated 12/12/1994 and it was received by him on that day, 12/12/1994 itself; and, approval order was also issued for that appointment with effect from 12/12/1994. That being so, no further material is necessary to dislodge the manager's claim that the teacher before us had relinquished her claim as against the vacancy of 12/12/1994 in accordance with the provisions of Rule 51A, including Note-2 therein.

6. Appellant manager's contention is based on Ext. P6, a letter written by the teacher to the manager. It does not bear any date. It is in vernacular. Its content is to the effect that she has obtained the appointment order issued by the manager and that, since she is in Madhya Pradesh and working on permanent basis, she does not need the appointment that was being then offered to her by the manager. The plea of the manager is that this amounted to relinquishment and it was on that premise that another person, one K.V. Ramachandran, was appointed. For one thing, the fact of the matter remains that, what was offered to the teacher was an appointment as against a temporary leave vacancy on account of another teacher availing maternity leave. The teacher's reply was to that offer of appointment. What she said in her reply was that, since she is working on a permanent basis in Madhya Pradesh, she does not need the appointment that was being offered. This means that she preferred to continue on permanent basis in Madhya Pradesh rather than join a temporary leave vacancy in Kerala merely because, she has statutory claim under Rule 51A of Chapter XIVA of KER. Even if we take that the manager had acted on the so-called relinquishment by the teacher, he ought to have accepted the contents of the letter in toto thereby meaning that what the teacher purported to relinquish is only her right to be appointed as against the temporary vacancy during the maternity leave of another teacher and not her right to appointment referable to Rule 51A of Chapter XIVA of KER for all times to come. In our view, any other approach in deciding the issues of law and facts in this case would violate the insulation provided in Rule 51A of Chapter XIVA of KER as regards the teacher in the aided school sector; that provision being one intended to provide aid to such teachers and protect them from institutional oppression by private schools which also get aid from Government. Having examined the findings of the learned Single Judge and the resultant decision and directions, we do not find any ground to interfere with the judgment in these intra-Court appeals u/s 5 of the Kerala High Court Act.

In the result, these writ appeals fail and accordingly, the same are dismissed.