

Vijimon Vs. State of Kerala

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Court : Kerala

Decided On : Jul-26-2013

Judge : Honourable Mr.Justice a.M.Shaffique

Appellant : Vijimon

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE A.M.SHAFIQUE FRIDAY, THE 26TH DAY OF JULY 2013 4TH SRAVANA, 1935 WP(C).No. 18529 of 2012 (M) ----- PETITIONER(S): ----- VIJIMON.N.P. H.S.A. ENGLISH, MSM HIGHER SECONDARY SCHOOL KALLINGALPARAMBA, KALPAKANCHERRY.P.O. MALAPPURAM DISTRICT-676551. BY ADVS.SMT.P.V.ASHA SMT.VINEETHA B. RESPONDENT(S): ----- 1. STATE OF KERALA REPRESENTED BY ITS SECRETARY TO GOVERNMENT, GENERAL EDUCATION DEPARTMENT SECRETARIAT, THIRUVANANTHAPURAM.

2. DIRECTOR OF PUBLIC INSTRUCTION, THIRUVANANTHAPURAM.

3. DEPUTY DIRECTOR OF EDUCATION, MALAPPURAM.

4. DISTRICT EDUCATIONAL OFFICER TIRUR, MALAPPURAM DISTRICT.

5. MANAGER MSM HIGHER SECONDARY SCHOOL KALLINGALPARAMBA, KALPAKANCHERRY.P.O. MALAPPURAM DISTRICT. R5 BY ADV. SMT.P.RANI DIOTHIMA R1 BY GOVERNMENT PLEADER MR.NOUSHAD THOTTATHIL THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 26.07-2013, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: MNS WP(C).No. 18529 of 2012 (M) APPENDIX PETITIONER(S) EXHIBITS EXT.P1:TRUE COPY OF THE DEGREE CERTIFICATE ISSUED TO PETITIONER ON 4.1-2006. EXT.P1A:TRUE COPY OF THE B.ED DEGREE CERTIFICATE ISSUED TO PETITIONER ON 15-5-2009. EXT.P2:TRUE COPY OF THE ORDER DATED 1 6-09 ISSUED TO PETITIONER BY 5TH RESPONDENT. EXT.P3:TRUE COPY OF THE ORDER DATED 1 04-09 OF 5TH RESPONDENT ISSUED TO HEADMASTER. EXT.P4:TRUE COPY OF THE ORDER DATED 17 12-09 OF 4TH RESPONDENT. EXT.P5:TRUE COPY OF THE APPEAL DATED 11 1-10 OF MANAGER TO THE 3RD RESPONDENT. EXT.P6:TRUE COPY OF THE ORDER NO. K. DIS B4/1738/10 DATED 31 3-2010 OF THE 3RD RESPONDENT. EXT.P7:TRUE COPY OF THE APPEAL DATED NIL OF THE MANAGER TO 2ND RESPONDENT. EXT.P8:TRUE COPY OF THE ORDER NO. E.M.(2) 52689/10/DPI/K.DIS DATED 22 3-2011 OF THE 2ND RESPONDENT. EXT.P9:TRUE COPY OF THE REVISION PETITION DATED 9 5-2011 OF THE MANAGER TO GOVT. EXT.P10:TRUE COPY OF THE G.O.(Rt) NO.1836/2012/G.EDN.DATED 18 4-2012. EXT.P11:TRUE COPY OF THE STAFF FIXATION ORDER OF THE SCHOOL FOR THE YEAR 2008 09. EXT.P12:TRUE COPY OF THE STAFF FIXATION ORDER OF THE SCHOOL FOR THE YEAR 2009 10. EXT.P13 TRUE COPY OF THE JUDGMENT DATED 12 6-2009 IN WPC DATED 32539 2008. RESPONDENTS' EXHIBITS: EXT.R5-a:TRUE COPY OF THE APPOINTMENT ORDER PROMOTING THE PETITIONER AS H.S.A DATED 8 1.2002 EXT.R5-b:TRUE COPY OF THE RELEVANT PAGES OF THE SERVICE BOOK OF THE PETITIONER INDICATING QUALIFICATION AND APPOINTMENT EXHIBIT R4(a): TRUE COPY OF SUBJECT WISE STAFF LIST OF THE SCHOOL AS ON 01.06.2009 EXHIBIT R4(b): TRUE COPY OF REVISED STAFF FIXATION ORDER //TRUE COPY// P.A TO JUDGE A.M.SHAFFIQUE,J.

----- W.P.(C).No.18529 OF 201.----- Dated this the 26th day of July, 2013 JUDGMENT Petitioner was appointed as HSA(English)

in a vacancy that had arisen on 1.6.2009. Her appointment was not approved by the education department which resulted in a series of challenges before various authorities. The District Educational Officer had rejected her approval as per Ext.P4 for the reason that the promotion of Mr.Prabhakaran as Headmaster, on account of which the said vacancy had arisen, was not approved and the proposal reached only on 8.9.2009, and that the joining report was not available. The Manager preferred an appeal before the Deputy Director of Education and Ext.P6 is the order passed in which it is reiterated that the appointment of Sri.Prabhakaran as Headmaster was not approved. It is also stated that 56 teachers under core subjects are reported to have been working against 52 sanctioned posts under the core subject and therefore, there was no vacancy to accommodate the petitioner.

2. The Manager preferred a further appeal before the Director of Public Instructions as Ext.P7 against which Ext.P8 order was passed inter alia stating that though Mr.Prabhakaran's appointment as Headmaster was approved since another teacher is waiting in the 1:40 ratio, the request of the Manager for approving the W.P.(C).No.18529 OF 2012 appointment of the petitioner as HSA(English) cannot be approved.

3. Against Ext.P8 order the Manager filed Ext.P9 revision which resulted in Ext.P10 order inter alia stating that though the Government had created a new cadre of HSA(English) by re- allocating the periods allotted to core subjects without causing retrenchment to existing teachers in core subjects, Smt.Raseena is an excess HSA(Social Science) who has approved service with effect from 12.1.2002. Since she is eligible to be appointed as HSA (English) against the existing promotion vacancy created on account of promoting Sri.Prabhakaran, HSA(Mathematics) the request of the Manager cannot be acceded in regard to the appointment of the petitioner.

4. Petitioner therefore challenges Ext.P4, P6, P8 and P10 and also seeks for a direction to the authorities to approve her appointment with effect from 1.6.2009 and to pay her salary and other benefits with interest.

5. Petitioner strongly relies upon the judgment of this Court in WP(C) No.32539 of 2008 produced as Ext.P13. In that case this Court while considering the appointment of a person as HSA (English) took into consideration the staff strength in respect of the academic year 2003-2004, and formed an opinion that the total sanction strength has not been reached on appointing the said petitioner in the post of HSA(English), even after accommodating W.P.(C).No.18529 OF 201.3 two teachers by adopting 1:40 ratio, the appointment of that petitioner can be approved. The learned counsel appearing for the petitioner relies upon the fact that in that case also though the appointment was made on 1.12.2004 the staff fixation for the academic year 2003-2004 was taken into consideration by the learned Single Judge.

6. Counter affidavit is filed by the 1st respondent and the 4th respondent as well. It is inter alia contended that as per the staff fixation order of 2008-2009, 54 divisions and posts were sanctioned to the school and at the relevant time there were 55 teachers working. During 2009-2010 two divisions and posts were reduced in High school section due to division fall and 52 divisions and posts were sanctioned of which there was a reduction of one post in English. Since there were excess teachers, by applying 1:40 ratio 53 divisions were sanctioned in the staff fixation order itself and the junior most HSA(Social Science) was retained. Accordingly, the total number of divisions had come to 53. It is stated that it was only for the limited purpose of accommodating retrenched HSA (Social Science) teacher that the divisions had been increased to 53. It is further contended that 52 approved teachers after excluding teachers retained in 1:40 ratio are working against 52 sanctioned posts as on the date of appointment of the petitioner. Therefore, there is no scope for the petitioner to be appointed in the 53rd post. W.P.(C).No.18529 OF 201.4 Two teachers one each in HSA(Natural Science) and HSA(Social Science) are retained by applying 1:40 ratio and if the petitioner is also accommodated, the total number of teachers strength will come to 52+2+1 i.e, 55. In such circumstances, it is contended that the petitioner's appointment cannot be approved at all.

7. The 5th respondent is the Manager of the school. He has filed counter affidavit supporting the stand taken by the petitioner.

8. Having regard to the aforesaid factual situation, the short question to be considered is whether there was an established vacancy for appointing the petitioner to the post of HSA(English) as on 1.6.2009. For making an appointment for a particular post at the time when the school re-opens what is to be looked into is the staff fixation order as applicable for the academic year 2009-2010. There is no dispute about the fact that if one looks at the staff fixation order 2008-2009 there were 54 sanctioned posts, whereas if one looks at the staff fixation order of 2009-2010 there were only 52 sanctioned posts. In addition to that it is stated that 53 divisions were sanctioned in the staff fixation order itself for retaining the junior most HSA(Social Science) teacher. Therefore going by the staff fixation order of 2009-2010, there was no established vacancy.

9. Learned counsel for the petitioner relies upon the judgment of this Court in Ext.P13. That was a case in which this Court made reference to the staff fixation order for the academic year 2003- W.P.(C).No.18529 OF 201.5 2004 when the petitioner was appointed with effect from 1.12.2004. Probably the said approach had been made by the learned Single Judge as the appointment was made in between the academic year. Of course in that case also the respondents had taken a view that a protected teacher had to be accommodated in the year 2004-2005 as the staff fixation order in the ratio 1:40. But the fact remains that such an approach cannot be taken in this case especially when petitioner's appointment is on 1.6.2009 and what is relevant is the staff fixation order as on 2009-2010. That being the situation, I do not find the orders impugned are liable to be set aside. Of course the impugned orders states different reasons but on over all consideration of the factual circumstances, the fact remains that there is no established vacancy and if the petitioner is to be accommodated another teacher will have to be retrenched. In that view of the matter, I am of the view that the petitioner has no legal right to make a demand as prayed for. Accordingly, this writ petition is dismissed. A.M.SHAFIQUE, JUDGE cms