

The Manager Vs. Government of Kerala

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Court : Kerala

Decided On : Aug-29-2014

Judge : Honourable Mr.Justice Antony Dominic

Appellant : The Manager

Respondent : Government of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE ANTONY DOMINIC & THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU FRIDAY, THE 29TH DAY OF AUGUST 2014 7TH BHADRA, 1936 WA.No. 238 of 2012 IN WP(C).1199/2007

JUDGMENT

IN WP(C) 1199/2007 APPELLANTS/PETITIONERS:

1. THE MANAGER, S.N.U.P.S., POOKODE, VARAKKARA P.O., TRICHUR DISTRICT.

2. SHINY YOHANNAN, D/O.YOHANNAN, THEKKETHALA HOUSE, PARAPPOOKKARA POST, TRICHUR DISTRICT. BY ADVS.SRI.T.M.CHANDRAN SRI.S.SUJITH SRI.V.A.SASIDHARAN SRI.JOSEPH ALBIN NEDUNTHALLY RESPONDENTS/RESPONDENTS:

1. GOVERNMENT OF KERALA REPRESENTED BY SECRETARY, GENERAL EDUCATION DEPARTMENT, THIRUVANANTHAPURAM - 695 001.

2. ADDITIONAL DIRECTOR OF PUBLIC INSTRUCTION (GENERAL), THIRUVANANTHAPURAM - 695 001.

3. DISTRICT EDUCATIONAL OFFICER, TRICHUR - 680 001.

4. ASSISTANT EDUCATIONAL OFFICER, CHERPU, TRICHUR - 680 561. BY SR. GOVERNMENT PLEADER SRI.P.M.SANEER THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 29.08-2014, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: Antony Dominic & Dama Seshadri Naidu, JJ.

----- W.A.No.238 of 2012
----- Dated this the 29th day of
August, 2014

JUDGMENT

Antony Dominic, J.

Denial of approval to the appointment of the second appellant as an Upper Primary School Assistant (UPSA) in the school, of which first appellant is the Manager, was the issue raised in the writ petition filed by them. By the judgment under appeal, learned single Judge dismissed the writ petition and therefore, this appeal is filed.

2. We heard the learned counsel for the appellant and learned Government Pleader appearing for the respondents.

3. According to the appellants, one of the UPSAs in the school resigned from service with effect from 04.03.2004, giving rise to a vacancy in that category. It is stated that by Exhibit P1, second appellant was appointed WA238/12 2 to the said vacancy with effect from 08.07.2004 onwards. By Exhibit P2 order, the Assistant Educational Officer (AEO) declined to approve the appointment and the appeal filed was also rejected by the District Educational Officer (DEO) by Exhibit P4 order. A further appeal filed to the Director of Public Instructions (DPI) was also

rejected by Exhibit P6 order. The Manager filed revision before the Government, a copy of which is Exhibit P7. That was also rejected by Exhibit P8 order stating that the request for approval of the appointment of the second appellant as UPSEA in S.N.U.P. School, Pookode is rejected, as there is no vacancy to accommodate her. It was, in these circumstances, the writ petition was filed.

4. In the judgment under appeal, learned single Judge has taken the view that there was no vacancy and therefore, refusal to approve the appointment of the second appellant cannot be said to be faulty. However, it is the WA238/12 3 specific case of the appellant that a vacancy was available in the school and it was to that vacancy second appellant was appointed. In Exhibit P7 revision petition filed before the Government, it was specifically contended thus: "According to the staff fixation orders for 2003-04, there were 6 posts of UPSAs and 8 posts of LPSAs in the school (including the post of H.M.). Out of these 14 teachers on the staff, Smt.K.V.Mini, LPSA and Smt.E.P.Jeena, UPSEA resigned from service on 10.02.04 and 04.03.04 respectively. Thus in the beginning of the year 2004-05 there were actually 5 UPSAs and 7 LPSAs in the school including the H.M. In the staff fixation 2004-05, one post of UPSEA was abolished for want of strength, and the sanctioned strength of UPSEA was reduced to 5. Since Smt.A.K.Radhamani the H.M. was a TTC holder, she was given classes charge in the LP section during 2004-05. Thus in effect there were 8 LPSAs (including the H.M.) and 4 UPSAs excluding the candidate Smt.Shini Yohannan during 2004-05. The appointment of Smt.Shini Yohannan was against the 5th post of UPSEA. I want to emphasize the point once again that there were altogether 13 teachers only in the school during 2004-05, against 13 sanctioned posts, including the candidate-8 LPSAs including the H.M. and 5 UPSAs including Smt.Shini Yohannan T. As such the argument of DPI that there was no established vacancy for Smt.Shini Yohannan is not true to facts." WA238/12 4 However, as rightly contended by the learned counsel for the appellants, the revision was rejected by the Government on the finding that there was no vacancy without dealing with the factual contention raised by the Manager in any manner. In other words, the revisional authority rejected the revision without any application of mind rendering the revisional order unsustainable. We feel that in such circumstances, the revisional authority ought to have been asked to reconsider Exhibit P7 revision with notice to the Manager and other affected parties.

In that view of the matter, we set aside Exhibit P8 order passed by the first respondent rejecting Exhibit P7 revision and dispose of the writ appeal itself setting aside the judgment of the learned single Judge and directing that fresh orders shall be passed on Exhibit P7 revision as expeditiously possible, at any rate, within three months from the date of receipt of a copy of this judgment. The WA238/12 5 appellants will produce a copy of this judgment and a copy of the writ petition before the first respondent for information and compliance. Antony Dominic, Judge Dama Seshadri Naidu, Judge tkv

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