

The Manager and Another Vs. the State of Kerala and Others

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SooperKanoon Citation : sooperkanoon.com/1165896

Court : Kerala

Decided On : Oct-09-2014

Judge : Honourable Mr. Justice a.K.Jayasankaran Nambiar

Appellant : The Manager and Another

Respondent : The State of Kerala and Others

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR THURSDAY, THE 9TH DAY OF OCTOBER 2014 17TH ASWINA, 1936 WP(C).NO. 14275 OF 2010(H) ----- PETITIONER(S): ----- 1. THE MANAGER, A.U.P.SCHOOL, KANNAMBRA, PALAKKAD DISTRICT.

2. K.P.KRISHNA DAS, S/O.K.R. PEETHAMBARAN, AGED 32 YEARS, PEON, A.U.P.SCHOOL, KANNAMBRA, PALAKKAD DISTRICT. BY SRI.K.JAJU BABU, SENIOR ADVOCATE. ADV. SMT.M.U.VIJAYALAKSHMI. RESPONDENT(S): ----- 1. THE STATE OF KERALA, REPRESENTED BY ITS SECRETARY TO GOVERNMENT, GENERAL EDUCATION DEPARTMENT, SECRETARIAT, TRIVANDRUM.

2. THE DISTRICT EDUCATIONAL OFFICER, PALAKKAD DISTRICT.

3. THE ASSISTANT EDUCATIONAL OFFICER, ALATHUR, PALAKKAD DISTRICT.

4. SMT.P.VIJAYAKUMARI, CHALLIPARAMBU, PARUVASSERY.P.O., KANNAMBRA, PALAKKAD DISTRICT-678 686. R1 TO R3 BY GOVT. PLEADER MR.NOUSHAD THOTTATHIL. R4 BY ADVS. SRI.NOORJI NOUSHAD, SRI.R.RAJESH (PALUKAL). THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON0910-2014, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: rs. WP(C).NO. 14275 OF2010(H) APPENDIX PETITIONER'S EXHIBITS:- EXT.P1 COPY OF THE LETTER OF THE MANAGER DATED0109/2008. EXT.P2 COPY OF THE SUBMISSION OF THE MANAGER DATED2802/2009. EXT.P3 COPY OF THE CONSENT LETTER DATED2107/2008. EXT.P4 COPY OF THE

ORDER

NO.K.DIS.F.2077/08 OF THE ASSISTANT EDUCATIONAL OFFICER DATED2608/2009. EXT.P5 COPY OF THE APPEAL FILED BEFORE THE DISTRICT EDUCATIONAL OFFICER DATED3103/2009. EXT.P6 COPY OF THE

ORDER

NO.B6/2195/09/K.DIS. OF THE DISTRICT EDUCATIONAL OFFICER DATED0907/2009. EXT.P7 COPY OF THE REVISION FILLED BEFORE THE GOVT. DATED2507/2009. EXT.P8 COPY OF THE ARGUMENT NOTES(1ST PETITIONER) DATED0701/2010. EXT.P8A COPY OF THE -DO- 2ND PETITIONER DATED NIL. EXT.P9 COPY OF THE G.O.(RT) NO.590/10/G.EDN. OF THE GOVERNMENT DATED0602/2010. RESPONDENT'S EXHIBITS:- EXT.R4(1) COPY OF THE APPLICATION IN THE REQUISITE PROFORMA AS CONTEMPLATED IN G.O.(P) 12/99/P& ARD SUBMITTED BY4H RESPONDENT. EXT.R4(2) COPY OF THE REPRESENTATION DATED1009/2008 BY THE4H RESPONDENT. EXT.R4(3) COPY OF THE REPLYDATED1311/2008. EXT.R4(4) COPY OF THE

JUDGMENT

IN WP(C).NO.380861/2008. //TRUE COPY// P.A. TO JUDGE rs. A.K.JAYASANKARAN NAMBIAR, J.

..... W.P.(C).No.14275 of 2010
..... Dated this the 9th day of October, 2014

JUDGMENT

The 1st petitioner is the Manager of A.U.P School and the 2nd petitioner is her son, who was appointed as a Peon in the School to a vacancy that arose with effect from 01.09.2008. The challenge in the writ petition is against Exts.P4, P6 and P9 orders passed by the educational authorities under the Kerala Education Act and Rules, whereby a direction was given to the 1st petitioner to appoint the 4th respondent as Peon in the School to the vacancy that arose on 01.09.2008, in preference to the 2nd petitioner who was actually appointed by the 1st respondent. The 4th respondent is the wife of a deceased teacher of the School, who died on 04.06.2008 while in service. She and her son became entitled for consideration to the vacancy to the post of Peon, that arose with effect from 01.09.2008, pursuant to the rights conferred under Rule 51B of Chapter XIVA of the KER. It would appear that, initially, the 4th respondent had given a letter of relinquishment so as to facilitate the consideration of her son's candidature to the post that arose with effect from 01.09.2008 in the School. The relinquishment was given for the specific purpose of considering her son in terms of Rule 51B of Chapter XIVA of the KER. The candidature of the 4th respondent's son was not, however, considered by the 1st petitioner Manager and W.P.(C).No.14275 of 2010 -2- his application was rejected on the ground that, as on the date of arising of the the vacancy, he was underaged for the purposes of appointment. Thereafter, on the same day, the 2nd petitioner was appointed as Peon in the School to the same vacancy. The 4th respondent approached this Court, challenging the action of the 1st respondent Manager, and pursuant to the directions issued by this Court in the said writ petition, the 3rd respondent passed Ext.P4 order dated 26.03.2009, directing the 1st petitioner Manager to grant appointment to the 4th respondent, to the vacancy of Peon that arose with effect from 01.09.2008. In Ext.P4 order, the 3rd respondent refers to the provisions of Rule 51B of Chapter XIVA of the KER, as also the Government orders dated 30.03.1990 and 24.05.1999 that deal with the procedure to be followed in connection with making appointments under the dying-in-harness scheme. It was also found that the 4th respondent had not actually relinquished her claim for consideration of her candidature for the purposes of Rule 51B of Chapter XIVA of the KER. In an appeal filed by the 1st petitioner against Ext.P4 order, the 2nd respondent was not inclined to modify Ext.P4 order

and hence by Ext.P6 order dated 09.07.2009 the appeal filed by the 1st petitioner was dismissed. A further revision preferred by the 1st petitioner before the 1st respondent also did not meet with any success and, by Ext.P9 order dated 06.02.2010, the revision petition was also W.P.(C).No.14275 of 2010 -3- rejected. It is under these circumstances that the present writ petition is filed by the 1st and 2nd petitioners impugning Exts.P4 , P6 and P9 orders.

2. A counter affidavit has been filed on behalf of the 3rd respondent and also on behalf of the 4th respondent. In the said counter affidavits, it is pointed out that the relinquishment by the 4th respondent was only for the purposes of facilitating a consideration of the candidature of her son for appointment in terms of Rule 51B of Chapter XIVA of the KER. It is contended that when the appointment of the son did not materialise, it was incumbent upon the 1st petitioner to offer the appointment to the 4th respondent, who was also a dependent of the teacher who died in harness. It is contended that, insofar as this was not done by the 1st petitioner Manager, the appointment of the 2nd petitioner with effect from 01.09.2008 was illegal and liable to be set aside. Exts.P4, P6 and P9 orders passed by the educational authority are sought to be justified on the basis of the said contention.

3. I have heard Sri.K.Jaju Babu, the learned Senior counsel appearing on behalf of petitioners and Smt.Noorji Noushad, the learned counsel appearing on behalf of the 4th respondent as also the learned Government Pleader appearing on behalf of the W.P.(C).No.14275 of 2010 -4- respondents 1 to 3.

4. On a consideration of the facts and circumstances of the case as also the submissions made across the Bar, I am of the view that the writ petition, in its challenge against Exts. P4, P6 and P9 orders, must necessarily fail. Rule 51B of Chapter XIVA of the KER reads as follows: "51B. 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]".

5. A perusal of the rule would indicate that as per the said Rule there is an obligation cast on the Manager of the School to give employment to a dependent of an aided School teacher dying in harness. The decisions of this Court in Unnikrishnan v. Manager, C.A.H.S (2010 (1) KLT354 as also of the Supreme court reported in Shreejith v. Deputy Director (Education) Kerala (2012 (3) KLT214 would clearly indicate that while there is no obligation on the Manager of a School to make enquiries with regard to the existence and the whereabouts of the dependants of the teacher, who died in harness, for the purposes of W.P.(C).No.14275 of 2010 -5- granting them employment in terms of Rule 51B, once an application is made on behalf of the dependants for consideration in terms of Rule 51B, then the candidature of the applicant cannot be rejected solely on technical reasons. In the instant case, it is not in dispute that on the date of arising of the vacancy of Peon in the School namely, 01.09.2008, The 1st petitioner Manager had before him the application preferred by the son of the 4th respondent. The said application was also supported by a relinquishment letter given by the 4th respondent, in favour of her son, so as to indicate that she had no objection in the son preferring a claim for employment under Rule 51B. This was obviously for the reason that among the dependants, the priority for consideration would accrue to the wife of the deceased teacher and the son would get a chance for employment only in the event of the former not pursuing her claim. The facts in this case would clearly show that the candidature of the 4th respondent's son was rejected for the reason that he was under aged. Under those circumstances, I am of the view that the 1st petitioner Manager ought to have immediately informed the fact of disqualification of the 4th respondent's son to the 4th respondent, and sought her willingness to be considered for the post in question, before offering the same to anybody else. This requirement on the part of the 1st petitioner Manager, has to be read into the scheme of Rule 51B Chapter XIVA KER so as to make W.P.(C).No.14275 of 2010 -6- it in conformity with its object. It is not in dispute that the 4th respondent is qualified for holding the post of Peon in the School, to the vacancy that arose on 01.09.2008. Under these circumstances, I do not find any reason to interfere with Exts.P4, P6 and P9 orders passed by the respondent educational authorities, that hold the 4th respondent entitled to the post.

6. The learned Senior counsel appearing for the petitioners would refer to a Division Bench decision of this Court in *Sherly Idikula v. Union of India* (2012 (1) KLT SN51 to contend that, although the candidature of the 4th respondent's son was rejected by the 1st petitioner Manager for the vacancy that arose on 01.09.2008, this did not put an end to the obligation of the Manager in terms of Rule 51B to offer employment to the 4th respondent's son on a later occasion by which time he would have the necessary age qualification. Although the said contention of the learned Senior counsel might have been relevant in a situation where the 4th respondent's son was the sole candidate seeking employment in terms of Rule 51B of Chapter XIVA of the KER, in the instant case it is not in dispute that apart from the 4th respondent's son, the 4th respondent was also a candidate who could be considered for employment in terms of Rule 51B. As already noted, it is only on account of the disqualification of the 4th W.P.(C).No.14275 of 2010 -7- respondent's son that the question of considering the 4th respondent as a claimant under Rule 51B arose. As I have already held that such a claim by the 4th respondent was maintainable and valid in terms of Rule 51B, the decision relied upon by the learned Senior Counsel does not, in any way, advance the case of the petitioners. Resultantly, I find no merit in the writ petition and dismiss the same. The 1st petitioner shall take steps to appoint the 4th respondent as a Peon in the School, to the vacancy that arose on 01.09.2008, forthwith and at any rate within a period of one month from the date of receipt of a copy of this judgment. A.K.JAYASANKARAN NAMBIAR JUDGE mns W.P.(C).No.14275 of 2010 -8-