

The Manager vs the State of Kerala

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Court : Kerala

Decided On : Feb-15-2024

Judge : Honourable Mr.Justice Mohammed Nias C.P.

Appeal No. : WP(C)/20092/2022

Appellant : The Manager

Respondent : The State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE MOHAMMED NIAS C.P.
THURSDAY, THE 15TH DAY OF FEBRUARY 2024 / 26TH MAGHA,
1945 PETITIONERS :- 1 THE MANAGER KIZHAKKE PALATT
SANKARA MENON MEMORIAL HIGH SCHOOL, VARODE,
OTTALAPALAM, PALAKKAD DISTRICT - 679101. 2 R. SUDHA,, AGED
42 YEARS, D/O. K RAMANKUTTY, HST (SOCIAL SCIENCE)
,KIZHAKKE PALATT SANKARA MENON MEMORIAL HIGH SCHOOL,
VARODE, OTTALAPALAM, PALAKKAD DISTRICT - 679101. BY ADV
R.K.MURALEEDHARAN RESPONDENTS :-

1 THE STATE OF KERALA REP BY SECRETARY TO GENERAL EDUCATION DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM - 695001. 2 THE DIRECTOR OF GENERAL EDUCATION, DIRECTORATE OF GENERAL EDUCATION, JAGATHI, THIRUVANANTHAPURAM-695014. 3 THE DEPUTY DIRECTOR OF EDUCATION, OFFICE OF THE DEPUTY DIRECTOR OF EDUCATION PALAKKAD, PALAKKAD DISTRICT - 678001 4 THE DISTRICT EDUCATIONAL OFFICER, OFFICE OF THE DISTRICT EDUCATIONAL OFFICER, OTTALAPALAM, PALAKKAD DISTRICT - 679101

SMT.K.G.SAROJINI, GP THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 15.02.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

The first petitioner is the Manager of the School and the second

petitioner was appointed when a teacher by the name of Sunanda availed leave from 29-7-2019 preparatory to retirement (LPR) under Rule 72 of Part I KSR. The proposal for approval was submitted on 03.01.2020, but the same was rejected on the ground that the petitioner could have been appointed only on a daily wage basis to a vacancy for a period of less than one academic year. By Ext.P7, the Government finally rejected the revision and the proposal for approval of the second petitioners appointment adding a further reason that since the School was upgraded after 1979, a protected teacher ought to have been appointed Chapter V Rule 6 of the KER.

2. The first petitioner Manager submits that the appointment of

the second petitioner in the LPR vacancy which commenced on 29.07.2019 and the teacher who took leave did not rejoin on 31.05.2020 and therefore, the appointment of the second petitioner is continuous from 29.07.2019 and which spread over to the next academic year. The

petitioner also submits that in view of the Covid pandemic, there was a lockdown from March 2020 and School was not reopened during the academic year 2020-21. The Government had issued orders not to fill up the vacancies of teachers except for non-teaching staff and head teachers with a further direction that the staff fixation order of the year 2019-20 will continue order. It is only w.e.f 15.07.2021 based on the Government

Order dated 06.07.2021 that permission was granted to make

appointments. The petitioners submit that in identical cases, by Ext.P6 appointment order, the appointment of one Muhammed Khaleefa K as

Physical Education Teacher w.e.f. 17.07.2017 when one K.V.Manikandan, PET availed leave preparatory to retirement from 04.07.2017 to 31.05.2018, was approved which is evident from Ext.P6 . The petitioners submit that the same treatment should have been accommodated to the second petitioner as well. The learned counsel submits that the vacancy in which the petitioner was appointed is a retirement vacancy, and as such, the second petitioner is entitled to approval. Accordingly, he seeks quashing of Ext.P7 order of the first respondent declining approval on the ground mentioned and seeks for approval of appointment of the second petitioner as HST (SS) appointed

as per Ext.P1 from 29.07.2019 onwards on a regular scale of pay with all consequential benefits.

3. The Government has filed a counter contending that the

vacancy arising from the leave preparatory for the retirement period shall not be considered as an establishment vacancy and since the vacancies so created are not considered regular vacancies as per KSR Rule 72. The Government submits that there is a chance of the reinstatement of an officer, who goes on leave before retirement. Appointments in the leave vacancy and regular vacancy shall be treated separately. However Paragraph 15 of the counter affidavit reads as follows:-

15. In the above circumstances the appointment of the 2nd petitioner can be as below:-

1. The appointment of 2nd petitioner from the period of LPR from

19) considered to be treated as daily wage basis and the 1st petitioner should submit the appointment proposal in the manner of entitling leave vacancy as per G.O.(Rt) 3748/2023/G.Edn dated 23/06/2023.

2. It cannot be denied that the appointment is governed by the rules and

orders and the conditions prevailing at the time of appointment and the staff fixation. Order continuing in the Year of 2021-22, Government permitted to make appointments with effect from 15/07/2021 treating it as established vacancy on the regular basis. The 1st petitioner has to submit fresh proposal appointing the 2nd petitioner w.e.f. 15/07/2021 onwards in regular basis.

3. Apart from this the matter of appointment of the 2nd petitioner from

provisionally as per the conditions laid down by the existing Court Orders and guidelines of Government with effect from 15/07/2021 in terms of the Reservation for Persons with Disabilities Act.

4. Heard Sri. R.K. Muralidharan, the learned counsel for the petitioner and Smt.Sarojini K.G, the learned Government Pleader.

5. In view of the averments in the counter affidavit that the

appointment of the second petitioner during the period of LPR from 29.07.2019 to 20.03.2020 (school was closed due to the Covid pandemic) can be considered treating the same as on daily wages and as far as regular appointment from 15.07.2021 is concerned, the first petitioner has to submit a fresh proposal and the said proposal could be considered by the Government in terms of the applicable regulations.

6. The fact remains that the petitioner had continuous service from 29.07.2019 in the vacancies that arose on 01.06.2020. Under such circumstances, the

Government will reconsider the revision preferred by

the petitioner. The first petitioner, the Manager also submits that a vacancy is already set apart for a protected teacher and the objection to that extent stands rectified. The learned counsel for the petitioners however submits that if the second petitioners case is treated as a fresh appointment w.e.f 01.06.2020 disregarding her previous appointment, she will be treated as overaged and therefore, requested for a direction to the Government to exercise its power under Rule 3 of Chapter I of KER for granting exemption offering relaxation to the extent necessary. No doubt, the Government has the power to dispense with or relax the requirements of any rule to such extent and subject to such conditions as they may consider necessary for dealing with the case in a just and equitable manner. In the instant case, since the petitioner did work from 29.07.2019 if the power of relaxation is not exercised by the Government, there is every likelihood of the second petitioner being put to difficulties. Under such cases, it is expected that the Government invoke its power of relaxation sympathetically as far as the second petitioner is concerned, on the facts and circumstances of the instant case.

Accordingly, Ext.P7 is quashed. There will be a direction to the Government to reconsider the case of granting approval of the second

petitioner on the first petitioner Manager submitting an appropriate proposal. The Government shall consider the case of the second petitioner for appointment on a regular basis from 15.07.2021 as HST (Social Science) based on the observations made above. It shall be done at any rate, within a period of three months from the date of receipt of a copy of this judgment. The consequential benefits shall depend on the orders should be passed as directed above and in case, the approval is granted, the benefits shall be granted within a further period of two months thereafter

The writ petition is allowed as above. Sd/- MOHAMMED NIAS C.P. JUDGE SMA
APPENDIX OF WP(C) 20092/2022 PETITIONER EXHIBITS :- Exhibit P1 A TRUE COPY OF THE APPOINTMENT ORDER OF 2ND PETITIONER IN FORM 27 DATED 29.07.2019 Exhibit P2 A TRUE COPY OF THE ORDER NO. K.DIS/03.01.2020 Exhibit P3 A TRUE COPY OF THE ORDER NO. B5/211940/ 2020 OF

THE 3RD RESPONDENT DATED 12.10.2020 Exhibit P4 A TRUE COPY OF THE ORDER NO. EM1/232926 /2021 DATED 02.04.2021 ISSUED BY THE 2ND RESPONDENT Exhibit P5 A TRUE COPY OF THE GO(MS) NO. 28/2021/ G.EDN DATED 22.01.2021 ISSUED BY THE GOVERNMENT Exhibit P6 A TRUE COPY OF THE APPOINTMENT ORDER OF

MOHAMMAD KHALEEFA AS PHYSICAL EDUCATION TEACHER (PET) DATED 17.07.2017 AND THE PROCEEDINGS OF APPROVAL DATED 05.04.2019 Exhibit P7 A TRUE COPY OF THE GO(RT) NO. THE 1ST RESPONDENT Exhibit P8 A TRUE COPY OF THE BOND EXECUTED BY THE MANAGER RESPONDENT EXHIBITS :- Exhibit R4(a) True copy of G.O.(Rt)3748/2023/GEDN

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