

John (M.C.) Vs. District Educational Officer and ors.

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SooperKanoon Citation : sooperkanoon.com/722691

Court : Kerala

Decided On : May-24-1968

Reported in : (1969)IILLJ216Ker

Judge : M.U. Isaac, J.

Appellant : John (M.C.)

Respondent : District Educational Officer and ors.

Judgement :

M.U. Isaac, J.

1. The petitioner was working as a senior Hindi teacher from the year 1963 in an aided high school. During the years 1963-64, 1964-65 and 1965-66, there were two posts of senior Hindi teachers; and the petitioner was the junior among the two. The strength of the staff in this school for the year 1966-67 was fixed by respondent 1, the District Educational Officer, Irinjalakuda, by his order, Ex. P. 1, dated 15 July 1966. In this order, he fixed the number of posts of senior Hindi teacher as one and also created the post of a Junior Hindi teacher. The petitioner, being junior among the two senior Hindi teachers could, therefore, be appointed only as junior Hindi teacher during the above year. The manager filed an appeal before respondent 2, the Regional Deputy Director of Public Instruction, Trivandrum, against the order, Ex. P. 1, claiming that he was entitled to have two senior Hindi teachers in the school. This appeal was rejected by respondent 2 by

his order, Ex. P. 3, dated 28 September 1966. Exhibit P. 3 relies on an earlier order of the Government, Ex. P. 4, dated 16 July 1966; and according to respondent 2, this school was entitled only to one post of senior Hindi teacher. This original petition has been filed to quash Exs. P. 1 and P. 3 and to direct respondent 1 to fix the strength of senior Hindi teachers as two. The petitioner claims that according to Rule 8 in Chap. XXIII of the Kerala Educational Rules, 1959, this school is entitled to have two senior Hindi teachers; and he is entitled to be appointed to such a post.

2. There is no dispute that the Question is governed by Rule 8; and it reads as follows:

The number of posts of language teachers for each language shall be distributed between the high school and the primary school grades in accordance with the number of periods of work in the high school and upper primary sections. When the number of posts of work in the high school section is such that there is still a balance after providing at the rate of one post for 25 periods of work, a full-time post may be allowed for this balance also if there is an upper primary section attached to the school.

During the year 1966-67 the number of periods in the high school has admittedly increased. There is no case that the appointment of two senior Hindi teachers in the high school during the previous years was not in accordance with the above rule. Apparently the modification has been made on the basis of the Government's order, Ex. P. 4. It is well-established that an administrative order cannot cancel, amend or alter a statutory rule. Therefore, if this school was entitled to have the posts of two senior Hindi teachers, according to Rule 8, it is not open for the respondents to contend that according to Ex.P. 4, it is entitled to have only one post. There is no dispute that this school is entitled to have two permanent posts of Hindi teachers. By the order, Ex.P. 1, it has been granted; but one of the posts is of the junior Hindi teacher. The only controversy is whether under Rule 8, both of them should be of the senior grade. According to my reading of the rule, it states that after providing one post for 25 periods of work, a full time post may be allowed for the balance, if there is an upper primary section attached to the school.

The balance referred to is the balance of periods available in the high school section; and the appointment is for the said balance periods. I can find no warranty for the contention that for this balance, which is in the high school section, a teacher who is competent, only for the upper primary section can be appointed. In this school, there is a balance of eight periods in Hindi in the high school section; and there is also an upper primary section attached to the school. Hence, another full-time teacher for the said balance has to be appointed; and he can only be of the senior grade, which is the grade for the high school section. I, therefore, hold that the respondents were in error in not granting two posts of full-time senior Hindi teachers in this school for the year 1966-67. Hence, Exs.P. 1 and P.3 are quashed; and the respondents are directed to issue appropriate orders in accordance with my above finding. There will be no order as to costs.