

State of Kerala Vs. Saritha

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Court : Kerala

Decided On : Jun-24-2005

Reported in : 2005(3)KLT1033

Judge : K.A. Abdul Gafoor and; K. Hema, JJ.

Acts : Kerala Education Rules - Rules 2(3), 5B(2) and 6B(2)

Appeal No. : W.A. Nos. 798/99 and 2269 of 2004 etc.

Appellant : State of Kerala

Respondent : Saritha

Advocate for Def. : P.K. Suresh Kumar and; K.P. Sudheer, Advs.

Advocate for Pet/Ap. : V.K. Beeran, Addl. Adv. General and; Vaheeda Babu, Government Pleader

Judgement :

K.A. Abdul Gafoor, J.

1. An interesting question in relation to sanctioning of the post of a Specialist Teacher namely Music teacher or Physical Education Teacher, Drawing teacher or Sewing teacher as the case may be, in an Upper Primary School is raised in these Writ Appeals. The relevant provision in this regard is Clause (a) of Sub-rule 2 of

Rule 6 B Chapter XXIII of the Kerala Education Rules, which reads as under:

'One post of Specialist teacher namely Music teacher or Physical Education Teacher or Drawing Teacher or Sewing Teacher as decided by the District Educational Officer concerned during staff fixation in the case of departmental schools and as required by the manager in the case of aided schools will be sanctioned in each Upper Primary School or Upper Primary section of a High School having an effective strength of 500 pupils and above in the complete Upper Primary sections on the 6th working day of each academic year.'

2. The learned single Judge, in the judgment impugned in W.A.No.798/99, took the view that 500 pupils required for sanctioning such a post in relation to an upper Primary School shall be the number of students in all the standards put together including that of Lower Primary Section. It is contended by the State, impugning the said judgment that, what is relevant for sanctioning of specialist Teacher in Upper Primary School, is only the number of pupils found on the 6th working day of each academic year in 'the complete upper primary section' of upper primary school or upper primary section of High School. To re-enforce the contention, Government Pleader invites our attention to Sub-rule 3 of Rule 2 of Chapter XXIII KER., which provides that 'no post of Specialist Teacher shall be created in any Lower Primary School or Lower Primary Sections of Upper Primary Schools'. When no such posts can be created in lower primary section of an upper primary school, the number of students made mention of in Clause (a) of Rule 5 B(2) shall be the number of students available in the upper primary section alone of the concerned Upper Primary School. It cannot be the total number of students including the standards of lower primary sections in that U.P. School. It is further submitted by the Government Pleader that the words 'Upper Primary Sections' used in the last portion of Clause (a) of Sub-rule 2 of Rule 6 B makes it further clear that 500 pupil and above mentioned in that rule is in relation to the Upper Primary sections of Upper Primary School and High School. So the view taken by the learned single Judge is not justified.

3. Relying on the judgment impugned in the Writ Appeal No.798/99, another writ petitioner approached this court with Writ Petition No.2569/04 contending that his

appointment as a Physical Education Teacher in the Upper Primary School having Lower Primary section shall have to be approved taking into account the total strength of students in all the standards from standard I to VII. That Writ Petition was also allowed. Therefore W.A.No.2269/04 by the State.

4. A reading of the relevant rule, namely, Clause (a) to Rule 6 B(2) makes it clear that one post of Specialist Teacher shall be sanctioned to the Upper Primary School or Upper Primary Section of a High School and that it is subject to a condition that there shall have 'an effective strength of 500 pupils and above in the complete upper primary sections on the 6th working day of the academic year.' This makes it clear that the sanctioning of the post of Specialist Teacher shall be dependent upon the number of pupils. It shall be 500 and above. Such number of pupils shall be always 'in the complete upper primary sections'. In other words the rule does not envisage reckoning of the students available in standards 1 to 4 which is admittedly in lower primary section of an Upper Primary School, for the purpose of sanctioning the post of Specialist Teacher like Music teacher, Physical Education teacher, Drawing teacher or Sewing teacher. Viewed in this angle necessarily the judgments impugned in the Writ Appeals have to be set aside. As admitted by the writ petitioners/respondents, the number of students in the Upper Primary Sections of their respective schools had been less than 500 in the relevant year.

5. It is brought to our notice that, in the case of the teacher concerned in Writ Appeal No.798/99 a post of Physical Education Teacher had been specially sanctioned by the Government as a special case along with other 56 schools and his appointment had been duly approved with effect from 15.7.2000.

6. The first respondent in Writ Appeal No. 2259/04 was appointed on 15.7.1999 and this appointment was approved. While so, as seen from Ext.P2, the post was not sanctioned during the year 2003-04 on the ground that there was no sufficient strength of pupils in the upper primary section as envisaged in Clause.(a) of Rule 6B(2). Her revision petition before the Director of Public Instruction relying on his contention that 500 pupils shall be reckoned including those in the classes of lower primary section did not succeed as seen from Ext.P6. This was impugned in

O.P.No.2598/04. It was allowed relying on the judgment (Ext.P3) impugned in W.A.No.798/99. We have already set aside the said judgment in the earlier part of this judgment. Therefore, the basis for the contention raised in W.P.(C).No.2598/04 has lost its significance. Consequently, the writ petitioner in the W.P(C).No.2598/04 cannot get a direction to sanction a post of Physical Education Teacher for the year 2003-04 as prayed for in the Writ Petition.

Any how, based on an interim order passed on 16.12.2004 in the Writ Appeal, a Division Bench directed to approve her appointment during the said year and the said writ petitioner had continued in the said year with an approved appointment and had obtained salary. Necessarily the prayer has thus become infructuous. In case the post is not sanctioned in the subsequent years it is up to her to point out that aspect before the authority concerned, who shall decide the matter based on the pupils strength as provided in Rule 6B(2)(a) Chapter XXIII KER as applicable to the schools concerned.

Appeals are disposed of.

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