

Ramachandran Nair Vs. D.E.O.

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Court : Kerala

Decided On : Dec-09-2005

Reported in : 2006(1)KLT348

Judge : Pius C. Kuriakose, J.

Acts : Kerala Education Rules, 1959 - Rules 11, 11(1), 44A, 44(1), 45, 45C, 45C(1), 45C(6) and 45(6)

Appeal No. : W.P.(C) No. 22686 of 2005

Appellant : Ramachandran Nair

Respondent : D.E.O.

Advocate for Def. : V.P. Seemandini and; Mathews J. Nedumpara, Advs. and; M.

Advocate for Pet/Ap. : C.P. Sudhakara Prasad, Sr. Adv.,; Elvin Peter P.J.,; S.

Judgement :

Pius C. Kuriakose, J.

1. The issue involved in this case is whether invocation of sub-rule(6) of Rule 45C of Chapter XIV-A of the Kerala Education Rules for the purpose of appointing the W.R(C)No.22686of2005. Decided on 9th December, 2005. seniormost teacher on the staff of the school as teacher in-charge will be justified in a case where the

Manager has already invoked Rule 11 of Chapter XIV-A for the purpose of making available a teacher qualified to be appointed as regular Head Mistress and there are no valid reasons for the District Educational Officer to decline the Manager's request for approval under R. 11(1)

2. The petitioner, Manager of a Vocational Higher Secondary School, is aggrieved by Ext.PS order passed by the District Educational Officer (D.E.O.) directing him to appoint the second respondent a High School Assistant in his school, who does not admittedly have the requisite qualification to be appointed as Head Mistress, as the teacher in-charge of the school under Sub-rule (6) of Rule 45C of Chapter XIV-A of the Kerala Education Rules. Vacancy arose in the school on 1.4.2005 due to the retirement of the Head Mistress one Smt. S. Anandavalli Kunjamma. None among the teaching staff of the school were qualified in terms of Rules 44A and 45 of Chapter XIV-A of the Kerala Education Rules to be promoted as Head Mistress, as on the date of occurrence of the vacancy. The second respondent Smt. P.T.Isha was the senior most H.S.A. in the school but she having not completed twelve years of graduate service was not qualified to be promoted as Head Mistress, Under the above circumstances, the petitioner advertised in the Malayala Manorama daily inviting applications for filling up the post of Head Mistress, but nobody responded to the advertisement. Under these circumstances, the petitioner sought for the consent of the fourth respondent, who is a Manager of another local high school established by a different educational agency, vide Ext.PI in the matter of transferring the third respondent who was a qualified High School Assistant in the fourth respondent's school over to the petitioner's school. The third respondent who was sought to be transferred from the fourth respondent's school also agreed to the proposal as laid down in Rule 11 of Chapter XIV-A K.E; R. Vide Ext.P2 the fourth respondent expressed his consent in the matter of transferring and appointing the third respondent as Head Mistress of the petitioner's school. Prior approval of the D.E.O was sought for by the petitioner as required by Rule 11 of Chapter XIV-A in the matter. The second respondent on coming to know about the move which was on, filed Ext.P4 representation before the first respondent requesting that she be appointed as teacher in-charge of the school under Rule 45C of Chapter XIV-A. The grievance of the petitioner is that though Ext.P4 was absolutely unsustainable in law, the first respondent, D.E.O.

has passed Ext.P5 order granting the request of the second respondent. Ext. P5 is assailed on the various grounds raised in the Writ Petition and the petitioner seek? the following reliefs:--

a) Issue a writ of certiorari quashing Ext.P5.

b) Issue a writ of mandamus directing the first respondent to grant transfer for the transfer of the third respondent for appointing as Head Mistress in the petitioner's school.

c) Issue a writ of mandamus staying all further proceedings pursuant to Ext.P5.

3. Though all the respondents were served with notice the third respondent alone has filed a counter affidavit. The third respondent supports the claim of the petitioner.

4.1 have heard the submissions Sri. C.P.Sudhakara Prasad, Senior Advocate for the petitioner, Smt. V.P. Seemandini, Advocate for the fourth respondent, Sri. Mathews J. Nedumpara, Advocate for the third respondent and also Sri. M.A. Thomaskutty, learned Government Pleader for the first respondent. The learned Counsel including the learned Government Pleader, confined their submissions to statutory provisions i.e. Rule 11 and Rules 44(1) (a), 45 & 45C of Chapter XIV-A of the K.E.R. and also to the fact situation emerging from the pleadings of the petitioner'and also the documents produced along with the Writ Petition.

5.1 find force in the submission made by the learned senior Counsel that Ext.P5 is bad. A reading of R. 11 (1) of Chapter XIV-A will show that transfer and appointment of a teacher under one educational agency to another educational agency is permitted subject to the condition that the educational agency as well as the teacher agrees in writing and the previous approval of the District Educational Officer is also taken in the matter. In the instant case, Ext.P3 letter dt.5.4.2005 addressed by the petitioner to the DEO clearly shows that the approval of the D.E.O was sought for in the matter of transferring the third respondent, a qualified High School Assistant working in a school under another educational agency to his school for appointment as the Head Mistress of the petitioner's school. Ext.P3 will

further reveal that the Manager was justified in seeking transfer of the third respondent since all his endeavours to have a qualified person recruited as Head Mistress of his school had failed. Ext.P3 also reveals that the third respondent who is the senior most High School Assistant of the fourth respondent school is fully qualified under the Rules for the post of Head Mistress and that both she and the fourth respondent, the Manager of the School where she was working are agreeable for the transfer and appointment sought for. The correctness of the claims of the petitioner in Ext.P3 are vindicated by Exts.P1 and P2. The impugned Ext .P5 order was passed on the basis of Ext.P4 representation submitted by the second respondent. The second respondent has not come forward to resist this Writ Petition. The second respondent's claim in Ext.P4 which is now upheld by the D.E.O as per Ext.P5 was based on Rule 45C of Chapter XIV-A which deals with temporary promotions in aided schools where qualified teachers are not available to be promoted as Head Mistress in accordance with provisions contained in Rr. 44, 44A, 45A and 45B. Admittedly the second respondent and no other High School Assistant in the school had 12 years of continuous graduate service so as to make, her eligible for temporary promotion under Section 45(C) (1) and the applicable provision could only be Rule 45(6) which reads as follows:-

If no teacher with the prescribed service qualification is available on the staff of the school or the schools under the educational agency for temporary promotion as Head Mistress under sub rule (1) and the provision thereunder the senior most teacher on the staff of the school or the schools under the educational agency shall be appointed as teacher in-charge, provided that in the case of a high school, teacher in-charge should be the senior most graduate teacher for the staff of the school or the unit and he/she shall be replaced as soon as a fully qualified teacher as provided in the rules become available.

6. Ext.P5 will show that the direction now passed by the D.E.O is that the second respondent should be placed as teacher in-charge in terms of Rule 45C (6). Rule 45C(6) cannot have applications in a situation like the present one where Rule 11 of Chapter XIV-A has already been invoked by the petitioner - Manager. The insistence of the petitioner Manager that the pivotal post of Head Mistress in his school should be occupied by a fully qualified and experienced person was

justified, more so, in this case where none of the respondents including the second respondent are attributing any malafides to the petitioner in the matter. The averments in the Writ Petition and the documents produced by the petitioner will show that the petitioner was keen only on getting a fully qualified person appointed as the Head Mistress of his school and was not keen on appointing any particular person and opted to have the third respondent transferred over to his school only when the advertisement which he had issued through the columns of Malayala Manorama failed to deliver goods. Ext.P5 passed by the D.E.O. does refer to Ext.P3 request of the petitioner under Rule 11 for the appointments of the third respondent by transfer in his school. But it does not give any reason as to why the Manager's request is not being granted. The D.E.O. should have noticed that R. 11 of Chap.XIV-A did enable the petitioner have the third respondent, fully qualified to be appointed as Head Mistress, brought over to the rolls of his school by transfer and that the third respondent and the fourth respondent have already expressed their agreements to the proposal. Even before this Court, the first respondent has not endeavoured to justify his action in not granting the approvals sought for by the petitioner in the matter of transferring the third respondent to his school. The second respondent also cannot have a legitimate grievance in that, the third respondent is being brought over to the school by transfer since she on her own admission is not qualified presently to be appointed as Head Mistress as per the rules and will acquire qualification only after one and half years. She is not eligible at present even for a temporary promotion under Rule 45C (1). The maximum which could aspire for at the moment is a placement as teacher in-charge and I am of the view that no vested right of her is being taken away by the third respondent being transferred over to the school and appointed as High School Assistant and then as Head Mistress. There is no justification in this case for denying to the petitioner what is legally due to him by the invocation of Rule 11 of Chapter XIV-A.

7. Rule 45C (b) in my view cannot have any application in a case where a qualified teacher is made available in the school by invoking Rule 11 and in cases where the Manager has sought to invoke Rule 11 and the educational officer has no good reasons to deny the approval sought for by the Manager under Rule 11(1).

8. The result of the above discussion is that Ext.P5 will stand quashed. There will be a direction to the first respondent to grant to the petitioner the approval sought for as per Ext.P3 to the transfer of the third respondent to the petitioner's school. The first respondent will pass necessary orders in this regard within two weeks of receipt of a copy of the judgment. Writ Petition is allowed as above but in the circumstances without any order as to costs.

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