

M.Sreeja Vs. The State of Kerala

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Court : Kerala

Decided On : Nov-21-2014

Judge : Honourable Mr. Justice Dama Seshadri Naidu

Appellant : M.Sreeja

Respondent : The State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU FRIDAY, THE 21ST DAY OF NOVEMBER 2014 30TH KARTHIKA, 1936 WP(C).No. 27176 of 2014 (V)
----- PETITIONER(S): ----- M.SREEJA, AGED 41 YEARS, W/O.B.P.SETHUMADHAVAN, HIGH SCHOOL ASSISTANT (MATHS), SARVAJANA HIGHER SECONDARY SCHOOL, PUTHUKODE, PALAKKAD DISTRICT. BY ADVS.SRI.V.A.MUHAMMED SRI.M.SAJJAD
RESPONDENT(S): ----- 1. THE STATE OF KERALA, REPRESENTED BY ITS SECRETARY TO GOVERNMENT, GENERAL EDUCATION DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM-695 001.

2. THE DIRECTOR OF HIGHER SECONDARY EDUCATION, HOUSING BOARD BUILDINGS, SANTHI NAGAR, THIRUVANANTHAPURAM-695 001.

3. THE REGIONAL DEPUTY DIRECTOR OF HIGHER SECONDARY EDUCATION, DOWN HILL, MALAPPURAM-676 519.

4. THE DEPUTY DIRECTOR OF EDUCATION, PALAKKAD DISTRICT-678 001 (EX-OFFICIO MANAGER OF SARVAJANA HIGHER SECONDARY SCHOOL).

5. SMT.A.KRISHNA KUMARI, HIGHER SECONDARY SCHOOL TEACHER (MATHS), SARVAJANA HIGHER SECONDARY SCHOOL, PUTHUKODE, PALAKKAD DISTRICT-678 687. R1 TO R4 BY SENIOR GOVERNMENT PLEADER SRI.V.VIJULAL R5 BY SRI.K.JAJU BABU, SENIOR ADVOCATE ADV. SMT.M.U.VIJAYALAKSHMI THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 21-11-2014 ALONG WITH WP(C) NO.27624/2014, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: msv/ WP(C).No. 27176 of 2014 (V) ----- APPENDIX PETITIONER(S)' EXHIBITS ----- EXHIBIT P1 : TRUE COPY OF THE

JUDGMENT

IN WPC232692013 G DTD. 9-10-2013. EXHIBIT P2 : TRUE COPY OF THE

ORDER

OF THE DEPUTY DIRECTOR OF HIGHER SECONDARY EDUCATION DTD. 6-3-2014. EXHIBIT P3 : TRUE COPY OF THE REVISION PETITION FILED BEFORE THE GOVERNMENT DTD. 7-3-2014. EXHIBIT P4 : TRUE COPY OF THE

JUDGMENT

IN WPC69152014 DTD. 11-3-2014. EXHIBIT P5 : TRUE COPY OF THE G.O. (RT) NO.3950/2014/G.EDN DTD. 1-10-2014 OF THE GOVERNMENT. RESPONDENT(S)' EXHIBITS: ----- EXT.R5(a): COPY OF THE AFFIDAVIT DATED 6-11-2014 SWORN BY THE STAFF SECRETARY OF THE SCHOOL AT THE RELEVANT TIME. EXT.R5(b): THE COPY OF THE ATTENDANCE LIST OF THE STAFF MEETING HELD ON 4-6-2013. EXT.R5(c): COPY OF THE APPLICATION DATED 4-6-2013 SUBMITTED BY THE 5TH RESPONDENT TO THE 4TH RESPONDENT. EXT.R5(d): COPY OF THE REPRESENTATION DATED 1-9-2013 SUBMITTED BY THE PETITIONER

BEFORE THE 4TH RESPONDENT. //TRUE COPY// P.S.TO JUDGE. Msv/ DAMA
SESHADRI NAIDU, J.

----- W.P. (C) Nos.27624 & 27176 of 2014
----- Dated this the 21st day of November, 2014

JUDGMENT

The petitioner in W.P. (C) No.27624 of 2014 assailed Ext.P12 Government Order, passed at the behest of the 4th respondent, setting aside her appointment by transfer to the post of HSST; the 4th respondent, in turn, filed WP (C) No.27176 of 2014 seeking expeditious implementation of Ext.P12, whereby the Government, apart from declaring the appointment of the petitioner in W.P. (C) No.27624 of 2014 as unsustainable, ordered fresh steps to be initiated by the management to fill up the post in question. In other words, first writ petition is filed questioning Ext.P12; the second one, seeking its implementation. Accordingly, this Court proposes to dispose of both the writ petitions through a common judgment, referring to facts as pleaded, and the parties as arrayed, in W.P. (C) No.27624 of 2014.

2. The petitioner was initially working as a High School Assistant in a school under the management of the 3rd respondent. Presently in view of the management dispute, the school, a Higher W.P.(C) Nos. 27176 & 27624 of 2014 -2- Secondary School, is under the management of the 3rd respondent in terms of an interim direction given by this Court in some other judicial proceedings involving the management dispute.

3. In course of time, since three clear vacancies were earmarked in the cadre of HSST to be filled up with in-service candidates from the rank of HSA, the Principal of the school addressed Ext.P1 proposal on 20.05.2013 to the 3rd respondent stressing the need for filling up those posts. In Ext.P1, the Principal has also listed out the number of vacancies and the qualified in-service candidates available to occupy those posts. At any rate, when there was initial delay in taking further steps in response to Ext.P1 proposal, certain teachers filed writ petitions leading to Ext.P2 judgment. In compliance with the directions given in Ext.P2 judgment, through Ext.P3, the Government appointed its nominee in the three-member

Selection Committee constituted for the purpose of selecting suitable in service candidates to fill up those three vacancies.

4. A perusal of the record reveals that on 12.09.2013, the Selection Committee, having met, selected three in-service HSAs and thereafter issued Ext.P5 appointment letter dated 13.09.2013 to the W.P.(C) Nos. 27176 & 27624 of 2014 - 3- petitioner, one of the three selectees, as HSST (Maths). Aggrieved thereby, on 19.09.2013, the 4th respondent, claiming to be the senior most teacher eligible to be appointed, submitted Ext.P6 objection to the 3rd respondent. Questioning the delay in its disposal, the 4th respondent filed a writ petition and invited Ext.P7 judgment. Eventually, once Ext.P6 was forwarded, the 2nd respondent passed Ext.P8 order on 06.03.2014 rejecting the claim of the 4th respondent.

5. Aggrieved, the 4th respondent filed Ext.P9 revision on 07.03.2014 before the 1st respondent. Once again, complaining of the delay in the disposal of the revision petition, the 4th respondent approached this Court and invited Ext.P10 judgment. Under those circumstances, eventually the first respondent passed Ext.P12 order reversing Ext.P8 order, thereby accepting the contention of the 4th respondent. The Government quashed Ext.P5 appointment order of the petitioner, apart from declaring as null and void the proceedings dated 12.09.2014, insofar as they relate to the selection and appointment of the petitioner as HSST (Maths). In Ext.P12 order a consequential direction was also given by the Government to notify the post among the teachers of HS/LP/UP Sections of the school W.P.(C) Nos. 27176 & 27624 of 2014 -4- following the procedure as prescribed in Chapter XXII of KER. Under those circumstances, the petitioner filed the present writ petition, arraying the teacher at whose instance Ext.P12 was passed as respondent No.

4. In turn, the 4th respondent questioning the non- implementation of Ext.P12 filed W.P.(C) No. 27176 of 2014. It can be seen that the survival of W.P.(C) No. 27176 of 2014 filed by the 4th respondent depends on the outcome of W.P.(C) No. 27624 of 2014, wherein the order sought to be enforced by 4th respondent is impugned.

6. Before adverting to the rival submissions of the respective counsel for the petitioner and the respondents, it is apposite to put in perspective the claim of the

4th respondent. It is averred in W.P.(C) No. 27176 of 2014 that the 4th respondent is the senior most teacher fully qualified to be considered for the promotional vacancy of HSST (Maths) under 25% quota. The 4th respondent is said to have initially appeared for MSC (Maths) (non-semester examinations) of Madurai Kamaraj University during November, 2012. But in the results published subsequently, her name was shown among the failed candidates. Later, the 4th respondent applied for revaluation of one W.P.(C) Nos. 27176 & 27624 of 2014 -5- paper. On such revaluation, the University issued Ext.R4(c) memorandum of marks dated 12.08.2013 declaring that the 4th respondent passed the examination. Later, the University also issued Ext.R4(d) certificate dated 10.02.2014 declaring that the result so published through Ext.R4(c) relates back to the date of publication of results on 19.03.2013. At any rate, the 4th respondent received his provisional certificate on 17.09.2013.

7. In the above factual background, the learned Senior Counsel for the petitioner has contended that the proposal from the Principal of the School emanated through Ext.P1 on 20.05.2013 much earlier in point of time, when admittedly the 4th respondent had not been qualified. Drawing my attention to Ext.P6, the learned Senior Counsel would contend that the 4th respondent herself has placed on record the fact that she was qualified only from 17.09.2013. By the time the 4th respondent received the provisional certificate and found eligible to be considered for the promotional post, the entire selection process was over. Further referring to paragraph 15 of Ext.P12, the impugned order issued by the first respondent, the learned Senior Counsel would contend that contrary to the claim of the 4th W.P.(C) Nos. 27176 & 27624 of 2014 -6- respondent in Ext.P6, the letter of objection, for the first time in the revisional application she has falsely urged that the revaluation results were published on 12.08.2013 and that the revaluation results were received by post on 10.09.2013 i.e., prior to the date when the selection committee met for considering the claims of the candidates for filling up the promotional posts. According to the learned Senior Counsel, the claim on the part of the 4th respondent that she had the result communicated to her prior to the date of petitioner's appointment is only an afterthought, more particularly when it is viewed in the backdrop of Ext.P6 which is the earliest document emanating from the 4th respondent.

8. The learned Senior Counsel has further submitted that Ext.P12 was issued setting aside the appointment of the petitioner on the ground that the initial selection took place without proper notification and calling for applications. In that context, the learned Senior Counsel has drawn my attention to Chapter XXXII of KER and has contended that Rule 4 prescribes method of appointment. According to him, sub-Rule 2 thereof only specifies that the appointment shall be in the ratio of 1:3 between the in-service W.P.(C) Nos. 27176 & 27624 of 2014 -7- candidates and direct recruitees. He has further referred to note 2 appended to Rule 4 and contended that the appointment shall be made from the select list of qualified persons prepared on the basis of seniority and merit.

9. Expatiating on his submissions, the learned Senior Counsel would contend that by the time Ext.P1 proposal was made, or even by the time the selection committee met, going by the averments made by the 4th respondent herself in Ext.P6, the petitioner alone was qualified, but not the 4th respondent. The learned Senior Counsel has further pointed out that had it been the case of infraction of mandatory selection procedure, the entire selection under Ext.P4 ought to have been set aside, but instead, the first respondent has chosen to nullify only the appointment of the petitioner. He has hastened to add that this submission is made only in the alternative, but not to the effect that there is any admission on the part of the petitioner that the entire selection process is vitiated. Summing up his submissions, the learned Senior Counsel has urged this Court to set aside Ext.P12 and consequently, restore the appointment of the petitioner. W.P.(C) Nos. 27176 & 27624 of 2014 -8- 10. Per contra, the learned counsel for the 4th respondent, who is also petitioner in W.P.(C) No. 27176 of 2014, has strenuously opposed the claims and contentions of the petitioner. According to the learned counsel, before submitting Ext.P1 proposal to the authorities, the Principal of the school never notified the vacancies, nor did he call for applications from the eligible candidates. In this regard, the learned Counsel has drawn my attention to Ext.R4(a), which is an application filed by the 4th respondent under the provisions of the Right to Information Act seeking information concerning whether any notification was published in the school notice board regarding the interview held on 12.09.2013. He has further sought information regarding the time of interview. The learned counsel has drawn my attention to the reply provided by the

Headmistress in the same exhibit. It was agreed that there was no notification displayed in the notice board concerning the date of interview; no applications were called for either. The learned counsel for the 4th respondent has taken me through the record and has contended that though by the time Ext.P1 emanated the 4th respondent was not qualified, definitely by the time the interview W.P.(C) Nos. 27176 & 27624 of 2014 -9- committee met, she was qualified. According to him, had there been any proper notification about the intention of the authorities to fill up the vacancies, the 4th respondent could have even expedited the process of obtaining the provisional certificate from the University so that she could have offered herself as a candidate for selection. Thus, the learned counsel has singularly contended that the selection process undertaken by the authorities on 12.09.2013 was not preceded by any proper notification and calling for applications on the part of the Headmistress of the school.

11. In the alternative, the learned counsel for the 4th respondent has further submitted that even for the sake of submissions, if it were to be expected that the 4th respondent may not have been qualified by the date of interview, it should not in any event result in condoning the lapses in the selection process; ipso facto, once the selection is in violation of the mandatory provisions, it ought to be set aside in its entirety, lest it should result in condoning illegal appointments. Accordingly, the learned counsel has urged this Court to dismiss the writ petition and consequently allow W.P.(C) No. 27176 of 2014 so that there can be a fresh round of selection in which the petitioner as W.P.(C) Nos. 27176 & 27624 of 2014 -10- well as the 4th respondent could as well participate.

12. Heard the learned Senior Counsel for the petitioner and the learned Government Pleader for the respondents 1 to 3, as well as the learned counsel for the fourth respondent, apart from perusing the record.

13. The issue required to be determined in this present writ petition is whether before filling up a promotional post it is mandatory to notify the posts causing sufficient publicity and to call for applications from the eligible in-service candidates.

14. Any elaborate adjudication of the issue has, however, been obviated, for a learned Single Judge of this Court has dealt with an identical issue in K.R.Jeeji v. State of Kerala and others (W.P.(C) No. 16786 of 2004) and rendered a judgment dated 31st October, 2008, supplying sufficient reasons in support of the decision arrived at therein.

15. A perusal of the judgment makes it manifestly clear that the Principal or the Manager cannot merely on the basis of the service of the teachers assume or decide that they were qualified teachers in school to be considered for appointment by transfer to the post of W.P.(C) Nos. 27176 & 27624 of 2014 -11- Higher Secondary School Teachers in the 25% quota set apart for appointment by transfer. It has been further held that as and when a vacancy in the 25% quota reserved for appointment by transfer from among the qualified teachers of the school or schools under the educational institution arises, the Principal and the Manager have a duty to notify such vacancy for the information of the teachers. Concerning the mode of notifying, it is held that it is at least by way of publishing a notice of the vacancy in the notice board of the school and inviting applications appropriately by circulating such notice among the teachers, with proof of such steps having been taken preserved therefor.

16. Now in the present instance in response to the queries made by the petitioner under the provisions of Right to Information Act, the Headmaster of the school issued Ext.R4(a) information confirming that no notification was issued and no applications were called for from the teachers working in their school.

17. At this juncture, the learned Senior Counsel for the petitioner has submitted that though there was no notification in strict terms, there was at least wide publicity, inasmuch as the Principal W.P.(C) Nos. 27176 & 27624 of 2014 -12- declared in a staff meeting prior to sending Ext.P1 that there would be recruitment to the post of HSST by transfer from among the qualified hands working in the school. Be that as it may, in the light of the definitive pronouncement of this Court in the judgment referred to above, I am afraid, a mere declaration in a staff meeting, which in any event cannot be substantiated, may not be an answer for the procedural lapse, which is evident.

18. In the facts and circumstances, going by the ratio of K.R.Jeeji v. State of Kerala and others (supra), this Court dismisses W.P.(C) No. 27624 of 2014, thereby upholding Ext.P12 order of the Government. As a consequence, WP (C) No.27176 of 2014 is allowed, directing the respondent authorities to take steps in furtherance of Ext.P12 as expeditiously as possible. No order as to costs. sd/-
DAMA SESHADRI NAIDU, JUDGE. rv/jes W.P.(C) Nos. 27176 & 27624 of 2014 -
13-

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