

Bhaskar Vs. State of Kerala

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Court : Kerala

Decided On : Jan-30-2010

Reported in : 2010(1)KLT631

Judge : Antony Dominic, J.

Acts : Kerala Education Rules, 1959 - Rules 3, 49, 51A and 52

Appeal No. : W.P.(C) No. 9067 of 2007

Appellant : Bhaskar

Respondent : State of Kerala

Advocate for Def. : K.P. Sudheer,; S. Karthika,; M.S. Unnikrishnan,;

Advocate for Pet/Ap. : P.K. Suresh Kumar and; Priya Vijayam, Advs.

Disposition : Petition allowed

Judgement :

Antony Dominic, J.

1. Petitioner is the Manager of M.G.L.P. School, M. Puthur, Govindapuram P.O., Palakkad District. By Exts.PI and P2, the petitioner appointed the 3rd respondent as LPSA for two spells of period during the year 1994-1995. As she was a thrown out teacher, she was eligible for preferential claim under Rule 51A of Chap. XIVA

K.E.R. While so, in 1998, the 3rd respondent was appointed in a regular vacancy in C.V.M. High School, Vandazhy, Palakkad District. Ext.P3 is the order of appointment. From that school, she was retrenched in the year 2003.

2. Subsequently, w.e.f. 1.4.2006, a vacancy of LPSA arose in the petitioner's school. Thereupon, the 3rd respondent claimed appointment based on the preferential right under Rule 51A Chap. XIVA K.E.R. That claim was not recognized by the Manager and the 4th respondent was appointed in the vacancy. 3rd respondent complained to the 2nd respondent, which was rejected by Ext.P4 order. Thereupon, though she challenged Ext.P4 before this Court by filing W.P.(C) No. 14069/06 and that Writ Petition was dismissed as withdrawn by Ext.P5 Judgment. Thereafter, she moved the Government by filing a revision. The revision was disposed of by the Government by Ext.P6 order, the relevant portion of which reads as under:

The Government have examined the matter in detail, The Manager, MGLPS, M. Puthur is hereby directed to appoint Smt. R. Kanakalatha as a special case, invoking Rule 3, Chapter I, Kerala Education Rules as she being appointed in his school as a 51A claimant and was out of employment at the time of occurrence of a vacancy in his school.

It is challenging this order, the Writ Petition is filed.

3. Two contentions are raised by the petitioner. First one is that, by the appointment that the 3rd respondent secured by Ext.P3 order, she has ceased to be eligible for the preferential right under Rule 51A Chap. XIVA K.E.R. Learned Counsel, in support of this contention relied on the judgment of this Court in State of Kerala v. Unnikrishnan Nair 1993 (2) KLT 688, the judgment in K. Sudhakala v. State of Kerala and Ors. O.P. No. 22328/98 and Vasantha A.K. v. State of Kerala and Ors. 2009 (1) KLT 1008. It was also argued that invocation of the power under Chap. 1 Rule 3 is illegal. On the other hand, counsel for the 3rd respondent placed considerable reliance on the judgment in Vasantha 's case (supra). According to him, what is relevant to be examined is whether the candidate in question is unemployed at the time when the subsequent vacancy arose irrespective of whether the candidate was appointed or retrenched in the interregnum. It is also

his case that, on facts, she was able to satisfy the Government that she had become overaged and that there was no chance for future employment in the school in which she was appointed by Ext.P3 order. It is stated that in the aforesaid factual situation, Government invoked its power under Chap. IR.3 and exempted the 3rd respondent from the operation of the latter part of Rule 51A. It is on this basis, the 3rd respondent wants to sustain this order.

4. I have considered the submissions made.

5. Although both sides argued relying on Rule 51A of Chap.XIV K.E.R., in this case, the said Rule is not of much relevance. This is for the reason that Ext.P6 order has been issued invoking the power of the 1st respondent under Chap. I Rule 3. This means that the Government has also accepted ineligibility of the 3rd respondent for the benefit of Rule 51A or else the power under Chap. I Rule 3, need not have been invoked. Still having regard to the submissions made at the Bar, I shall deal with Rule 51A also.

6. Rule 51A provides as under:

51A. Qualified teachers who are relieved as per Rule 49 or 52 or on account of termination of vacancies shall have preference for appointment to future vacancies [in the same or higher or lower category of teaching posts, for which he is qualified that may arise] in schools under the same Educational Agency [or an Educational Agency to which the school may be subsequently transferred] provided they have not been appointed in permanent vacancies in schools under any other Educational Agency.

(emphasis supplied)

A reading of this Rule show that a qualified teacher relieved in the manner as provided therein is entitled to have preference for appointment to future vacancies provided they have not been appointed in permanent vacancies in schools under any other educational agency. From this, it is therefore evident that a teacher who is thrown out, will loose that benefit of preferential right if the teacher is appointed in a permanent vacancy under any other educational agency. In this case, it is

obvious that subsequent to her discharge in 1995, the 3rd respondent was appointed under another educational agency by Ext.P3. With the appointment thus secured, the 3rd respondent has ceased to be eligible for the benefit of the Rule.

7. The scope of Rule 51A, in circumstances similar to what is available in this case, was considered by a Division Bench of this Court in *State of Kerala v. Unnikrishnan Nair* 1993 (2) KLT 688. It has been held in that judgment that a teacher who was retrenched and thrown out of service from the parent school can have only the right under Rule 51A of Chap. XIVA of the Rules and that the moment he is absorbed in a permanent vacancy in another school, the right under Rule 51A of Chap. XIVA is also lost to the teacher. Proceeding further, it has been held that it is trite law that a person cannot have lien in two posts and that by absorption in the new school, he gets a lien in the post to which he is absorbed and that thereafter under no provision of law can that teacher retain the so-called lien to the post in the parent school. This judgment was followed by a learned Single Judge of this Court in the judgment in O.P. No. 22328/98. Therefore, the position seems to be settled, as is clear from the Rule itself, that once a thrown out teacher secures appointment in a regular vacancy under another educational agency, with the appointment so secured, right under Rule 51A is irretrievably lost.

8. Both sides heavily relied on the judgment in *Vasanth's case* (supra). That was a case where a thrown put teacher, entitled to the benefit of Rule 51A, was appointed as HSST despite the fact that she did not possess SET qualification. Her appointment was not approved and finally she was terminated. Thereafter she claimed preferential right under Rule 51A against the parent school. It was in that context, the judgment was rendered by this Court. A reading of this judgment shows that after explaining the scope of Rule 51A, taking into account the fact that since her second appointment was never approved, this Court held she had no claim for reappointment in the Higher Secondary School. On this basis, it was held that since the appointment in the Higher Secondary School as HSST did not fructify into a valid appointment, a claim for reappointment under Rule 51A in the parent school has to be recognised. Therefore, unlike in this case, in the case dealt with by the Division Bench, appointment as HSST secured by the candidate was an invalid appointment, and it was therefore that, this Court accepted that the

petitioner therein was entitled to claim under Rule 51A.

9. A part from all this, what is to be noticed is that, in Ext.P6, the Government have invoked its power under Chap. I Rule 3 of K.E.R., Chap. I Rule 3 K.E.R. provides as follows:

3. Where the Government are satisfied that the operation of any rule under these Rules causes undue hardship in any particular case, the Government may dispense with or relax the requirements of that 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.

Examining the scope of this Rule, a Division Bench of this Court in *Esther v. State of Kerala* 1989 (1) KLT 621 held that it is clear from this provision that the Government has been conferred the power to dispense with or relax the requirements of the provisions of the Kerala Education Rules and that such power can be exercised only when the Government is satisfied that the operation of the particular Rule causes undue hardship. It was held that it is the hardship that is caused by the operation of a particular provision of the K.E.R., that is the condition precedent for exercise of the power of dispensation or relaxation of the Rules. Satisfaction of this condition precedent for exercising the power under the aforesaid rule has to be reflected in the order itself. A reading of the impugned order shows that apart from stating that the 3rd respondent will be appointed treating hers as a special case, there is nothing to show that the Government has applied its mind in the context of the limitations imposed in the statute under Rule 3 Chap. I K.E.R. Therefore, the order is bad for that reason as well.

For the aforesaid reasons, I am satisfied that Ext.P6 order cannot be sustained, Ext.P6 therefore will stand set aside and the Writ Petition is allowed.

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