

Reena Vs. Geena

Reena Vs. Geena

SooperKanoon Citation : sooperkanoon.com/903250

Court : Kerala

Decided On : Mar-04-2010

Reported in : 2010(2)KLT155

Judge : K. Balakrishnan Nair,; P.N. Ravindran and; S.S. Satheesachandran, JJ.

Acts : Kerala Education Rules - Rules 2(4), 43, 51A and 92; ;Kerala Education (Amendment) Rules, 2005; ;[Constitution of India](#) - Article 226

Appeal No. : W.A. No. 2248 of 2010

Appellant : Reena

Respondent : Geena

Advocate for Def. : Pirappancode V. Sreedharan Nair,; Pirappancode V.S. Sudheer and;

Advocate for Pet/Ap. : Millu Dandapani, Adv.

Disposition : Appeal allowed

Judgement :

K. Balakrishnan Nair, J.

1. The third respondent in the Writ Petition is the appellant. The first respondent herein was the Writ Petitioner. A vacancy of High School Assistant (HSA) (Hindi)

arose in the 5th respondent's school on 5.6.2002, on the re-opening day of the school in the academic year 2002-2003. The appellant was a claimant for the post under Rule 43 of Chap. XIV-A of the Kerala Education Rules (for short 'KER') whereas the first respondent/Writ Petitioner was a claimant under Rule 51-A. The first respondent had worked as HSA (Hindi) from 14.7.2000 to 29.9.2000. The said appointment was approved also. The appellant has approved service as Upper Primary School Assistant (UPSA) since 1.8.2000.

2. The Manager of the School from among the two rivals, preferred the first respondent and appointed her as HSA (Hindi) with effect from 5.6.2002. The said appointment was approved by the District Educational Officer. The appellant challenged that appointment and its approval before the Director of Public Instruction, by filing Ext.P3 revision. The Director of Public Instruction, after hearing both sides, allowed the revision by Ext.P7 order dated 10.2.2004. The appointment of the first respondent was set aside and there was a further direction to promote the appellant to the post of HSA (Hindi). The first respondent preferred Ext.P8 re vision against that order before the Government under Rule 92 of Chapter XIV-A of the KER. Thereafter the Writ Petition was filed before this Court challenging Ext.P7 and also seeking a direction to the Government to consider Ext.8. This Court entertained the Writ Petition and after hearing both sides, allowed the same.

3. It is common ground that if the appellant is qualified for the post of HSA (Hindi), she is entitled to be preferred over the first respondent the former being a claimant under Rule 43. We notice that the above legal position has changed after the amendment of Rule 51-A, in 2005.

4. The first respondent's qualifications were Sahityacharya and M.A. in Hindi. She was also having diploma in Hindi Teachers' Training. The appellant was having Sahityacharya, which is equivalent to B.A. (Hindi). She has also passed Acharya Examination in 1998. As per Rule 2(4) of Chap. XXXI of the K.E.R., if the Acharya Examination is cleared in the year 1969-70 or before that it shall be treated as sufficient training qualification for appointment as HSA (Hindi). But the Government issued Ext.R3(d) order dated 3.10.1988, removing the above time

limit concerning passing of Acharya Examination. The said order also provided that corresponding amendments will be brought to K.E.R. also.

5. It is common ground that so far, no amendments were carried out. In view of the absence of amendment, the first respondent took up the contention that the appellant does not have the training qualification as per the Rules for appointment to the post of HSA (Hindi). Though the training qualification possessed by the appellant is treated as an equivalent qualification by an executive order, the same cannot have any efficacy in the face of the statutory provision, it is submitted. It is also pointed out that Acharya qualification obtained up to 1969-70 alone will be treated as sufficient qualification. The learned single Judge accepted the contentions of the first respondent/Writ Petitioner and allowed the Writ Petition. Hence this appeal by the appellant. We heard learned Counsel on both sides. We considered the material on record.

6. When the first respondent has invoked the statutory remedy by filing Ext.P8 revision under Rule 92, we think the Writ Petition should not have been entertained by this Court (see the decision of the Division Bench of this Court in *Mc Dowell & Co. Ltd. v. Assistant Commissioner* 1985 KLT 428. It was stated therein as follows:

We heard counsel at length. Bearing in mind the principles laid down by the Supreme Court referred to above, and the other decisions mentioned hereinafter, we are of opinion that the preliminary objection taken by the Advocate General is entitled to acceptance. Delivering the judgment of the Bench, in *Kunjahammed Haji and Ors. v. State of Kerala and Ors.* 1960 KLT 930 Ansari, C.J. held:

But the party complaining must not invoke the extraordinary jurisdiction of the Court, and at the same time exercise his statutory right of appeal; for, where such a right of appeal has been availed of, the appellate authority becomes vested with the legal jurisdiction of adjudicating on the complaint, and the authority should not, by our issuing certiorari, be divested of its jurisdiction of adjudication on the order, which becomes the subject-matter of appeal before it. Nor there is, in such case, overriding equity in favour of the petitioner.

The Supreme Court in *Jai Singh v. Union of India* : AIR 1977 SC 898 observed as follows:

It has also been brought to our notice that after the dismissal of the Writ Petition by the High Court, the applicant has filed a suit, in which he has agitated the same question which is the subject-matter of the Writ Petition. In our opinion, the appellant cannot pursue two parallel remedies in respect of the same matter at the same time.'

These decisions certainly support the arguments of the learned Advocate General, that at this stage when the appeals filed by the petitioner are pending before the 2nd respondent, we should not exercise the discretionary jurisdiction of this Court under Article 226 of the [Constitution of India](#).

xxx xxx xxx

For these reasons, we are not inclined to exercise our discretionary jurisdiction under Article 226 of the [Constitution of India](#) and to examine the validity or legality of the various assessment orders impugned, Exts.P13 to P21, which are pending in the appeals. We hold that, in so far as the appeals assailing the above assessment orders (Exts.P13 to P21) are pending before the 2nd respondent, it is not open to the petitioner to invoke the extraordinary jurisdiction of this Court under Article 226 of the [Constitution of India](#) at this stage. We decline jurisdiction on this sole ground.

7. In view of the above decision, the Writ Petition was not maintainable. We notice that the Revision Petition was filed on 21.2.2004 and the Writ Petition praying, inter alia, for disposal of that revision and also to quash the order impugned in the revision which was filed on 18.3.2004. The learned single Judge entertained the Writ Petition and allowed it. This Writ Appeal happened to be referred, to the Full Bench because of the controversy regarding the training qualification of the appellant. Since we take the view that the Writ Petition itself was not maintainable; we think, it is unnecessary to decide the said point. Further, the Government, which is the author of the Rules and the aforementioned Government Order dated 3.10.1988, will get an occasion to consider this matter.

8. In view of the above position, the Writ Appeal is liable to be allowed. The judgment under appeal is set aside and the 2nd respondent is directed to consider and pass orders on Ext.P8 in accordance with law, within four months from the date of production/receipt, of a copy of this judgment. The Government shall not be influenced by the judgment, under appeal, which we have already set aside. Status quo as on today, concerning the employment of the first respondent shall be maintained till the Government take a decision, as directed above. Needless to say, the Government, while taking the decision, shall afford an opportunity of being heard to the appellant, the first respondent and the 5th respondent. Both sides will be free to file additional pleadings and materials before the Government.

Writ Appeal is disposed of as above.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com