

E.A. Sreesan Vs. the Manager, P.M.S.A. High School, Elamkur, Malappuram District and Others

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Court : Kerala

Decided On : Jul-19-2012

Judge : The Honourable Mr.Justice C.N. Ramachandran Nair & C.K. Abdul Rehim

Appeal No. : WA.NO. 296, 299 & 304 OF 2012

Appellant : E.A. Sreesan

Respondent : The Manager, P.M.S.A. High School, Elamkur, Malappuram District and Others

Judgement :

Abdul Rehim, J.

1. All these three appeals arise out of a common judgment of the Single Judge. Appellant in these three cases is the party respondent in all three writ petitions. For the sake of convenience, parties are described as in the order in Writ Appeal No.304/2012. Question arising for consideration is as to whether relinquishment of a claim for promotion made by the first respondent will operate as a permanent bar for promotion in the future arising vacancies.

2. The 1st respondent was appointed as Peon in the 5th respondent's school during the year 1986. When vacancy of a Clerk arose in the year 1993, he

submitted relinquishment of promotion, to the Manager. In the year 2006 when another vacancy of Clerk arose due to retirement of one Smt.Radha, Ext.P1 letter withdrawing the relinquishment was submitted by the 1st respondent and he claimed promotion. The Manager accepted the withdrawal of relinquishment and promoted the 1st respondent. The appellant herein, who is admittedly junior to the 1st respondent appointed in the post of Full-Time Menial, objected the promotion. The educational authorities have not approved appointment of the 1st respondent. The Director of Public Instructions had issued orders to promote the appellant, which was challenged by the 1st respondent in a writ petition. This court relegated the matter for decision of the Government. The decision of the Government was initially quashed by this court in Ext.P6 on the ground of procedural violations and directed the Government to take a fresh decision. Ext.P14 is the fresh decision taken after conducting personal hearing of all concerned. The Government observed that the relinquishment made by the 1st respondent in the year 1993 and it was accepted by the Manager and approved by the educational authorities. Necessary endorsements were made in the service book of the 1st respondent. Hence the withdrawal of relinquishment was not acceptable and therefore the promotion given is beyond the power vested on the Manager. Observing that there is no provision permitting withdrawal of relinquishment, it is found that the promotion given cannot be sustained. Ext.P14 was challenged by the 1st respondent as well as by the Manager in WP (C).Nos.12941/2010 and WP(C).16255/2010, respectively.

3. The petitioner in WP(C).28745/2010, from which WA.No.299/2012 arises, was filed by the Manager of the school. Consequent to promotion given to the 1st respondent the appellant was promoted as Peon. But the said appointment was not approved by the department in the light of the non approval of appointment of the 1st respondent. The refusal of approval of promotion given to the appellant is the subject matter of challenge in that writ petition.

4. Heard; Smt.V.P.Seemanthini, senior counsel appearing for the appellant, Sri.V.A.Mohammed, counsel appearing for the 1st respondent and Sri.Liju Stephen, Government Pleader. The legal question does not remain res integra. A Full Bench of this court in Usha Thayyil vs. State of Kerala 2009 (4) KLT 1 (FB)

had upheld the view taken by this court in the decisions in *George vs. State of Kerala* (1998 (2) KLT 637) and in *Rajasree vs. Secretary to Government* (2000 (2) KLT 248). In *George's* case (cited *supra*) while interpreting provisions contained in Rule 44(1) of Chapter XIV A of KER, it was held that a relinquishment submitted on an earlier occasion cannot be used for denying appointment in the subsequently arising vacancy and that there cannot be any permanent relinquishment to the post of Headmaster. In the said case this court deprecated the practice of obtaining relinquishment letter at the time of one's entry in the service. It is held that obtaining of such letter is unjust, illegal and arbitrary which will demoralise an employee. While affirming the view, the Full Bench observed that, the relinquishment given by a teacher while promoting a junior cannot be treated as relinquishment relating to all future appointments of juniors to him. Interpreting the word "whenever" used in Rule 44(1), the Full Bench observed that the meaning as per Oxford English Dictionary is, "at whatever time, on whatever occasion, every time that", which will implicate that on every occasion when the Manager appoints a junior overlooking the senior claimant consent of the latter has to be obtained. That means the consent once obtained will only apply to that particular appointment made at the relevant time. As far as that appointment is concerned the relinquishment is permanent and that the senior cannot retract from the relinquishment and stake claim for appointment in the very same vacancy. But when a subsequent vacancy arises, the Manager has to get consent of the senior claimant, if he is intending to overlook the seniority.

5. In the impugned judgment the learned Single Judge has taken the view that, even though Rule 44(1) of Chapter XIV A KER governs only promotion to the post of Headmaster, a parallel can be drawn in the present case to the extent that the relinquishment, as understood by the legal position, will apply only to the vacancy to which the relinquishment letter was submitted and it cannot debar future claims of the senior hand. In the absence of any statutory provision the Manager may not be justified in relying on such a relinquishment letter to debar all future claims of an employee, is the finding. Further it was noticed that, with respect to another appointment in the same school, the rejection of a claim for promotion with respect to another post on the basis of a letter of relinquishment was quashed by this court in *Ext.P8* judgment, and it was affirmed by the Division Bench in *Ext.P9* and

further a Special Leave Petition filed against the said judgment was dismissed by the Hon'ble apex court. The learned Single Judge clearly observed that the principle adopted by this court in Ext.P8 will squarely apply in the present case also.

6. Learned senior counsel appearing for the appellant had placed much reliance in the decisions of this court in Balakrishnan Nair vs. State of Kerala (2008 (1) KLT 923), Francis vs. Director of Panchayats (2008 (2) KLT 88) and Krishnakumar vs. Kunhiraman (2011 (2) KLT 457) in order to canvass the position that Usha Thayyil's case (cited supra) is not directly applicable on the facts and circumstances. On facts it is contended that the relinquishment made by the 1st respondent was entered in the service book and that the 1st respondent had not raised any claim with respect to another vacancy which arose in between. But referring to Rajasree's case (cited supra) the learned Single Judge observed that there is no provision either in the Kerala Education Act or in the Rules framed thereunder permitting a teacher to relinquish the promotion to any post, or enabling the Manager to accept any such relinquishment. It is further observed that the relinquishment can only be with respect to an existing right of promotion. A mere chance of promotion is not a right and it is not a crystallised right which can be relinquished.

7. In the order of the Government which was impugned in the writ petition the stand taken was that the relinquishment once approved by the department cannot be withdrawn and no permission can be granted to withdraw the relinquishment. Since relinquishment or its approval is not a statutory proceedings, it will not debar claim in respect of future vacancies. There is no provision for acceptance of relinquishment nor for approval of relinquishment by the department. There is also no procedure contemplated with respect to approval of the withdrawal of relinquishment. Hence it is clear that the promotion effected in favour of the 1st respondent was legally right and justified, especially in view of the dictum in Usha Thayyil's case (cited supra)

8. On an elaborate consideration of the various aspects, we do not find any justifiable ground to distinguish the legal dictum laid by the Full Bench in Usha

Thayyil's case, nor we find any reason to hold that the legal principles therein, which are enunciated in relation to Rule 44(1) of Chapter XIVA KER, is not applicable to the post of a non teaching staff. This is especially in view of the provisions contained in Rule 7 of Chapter XXIV B of KER, which says that the Rules regarding appointment, probation, increment, transfer, discipline, promotion, seniority etc. contained in Chapter XIVA of KER is mutatis mutandis applied to the non teaching staff as well. We also take note of the provisions contained in Chapter XXIV A which prescribes qualification and method of appointment of the non teaching staff. The explanation to Rule (1) of the said Chapter clearly prescribes that; for filling up of the post of Lower Division Clerk by promotion from the feeder category the order of preference should be in accordance with the date of first appointment of the candidate in service as a non teaching staff.

9. In the result, we do not find any justifiable grounds warranting interference with the impugned judgment. Therefore these writ appeals deserve no merit and are accordingly dismissed.

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