
(2000) 07 KL CK 0005
High Court Of Kerala
Case No: O.P. No. 1643 of 1989

Rajalakshmi

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision: July 26, 2000

Citation: (2000) 2 KLJ 445

Hon'ble Judges: M. Ramachandran, J; J.B. Koshy, J

Bench: Division Bench

Advocate: M. Vijayakumar, for the Appellant; K.K.M. Sheriff, Govt. Pleader, for the Respondent

Final Decision: Dismissed

Judgement

Koshy, J.

This original petition was referred by Justice V. Sivaraman Nair by" order of reference, dated 14.3.1989. We are quoting the reference order as facts and question referred are very clear from the order of reference

Petitioner was appointed as an Assistant teacher in Therur Upper Primarily School on 16.7.1979. She had continuous service from 15.7.1980 onwards. She completed Teachers" Certificate Higher (Karnataka) and inservice course in the State Institute of Education from 19.10.1981 to 19.3.1982. In Ext. P1 order, the Assistant Educational - Officer, Mattannur, refused to approve the appointment of the petitioner during the academic years 1979-80 and 1980-81. The reason mentioned, was that the petitioner had not attained the age of 18 years on the date. of initial appointment viz. 16.7. 1989 or any date till 31.3.1980. Petitioner filed O.P. No. 2231 of 1984. That was disposed of in Ext. P3 judgment directing the Govt, to consider her representations in the light of the judgment in O.P. No. 2167 of 1973 (Moosa v. A.E.O. 1975 KLT Short Notes 34 (Case NO.83). Petitioner filed a further representation pursuant to Ext, P3 judgment. Government has now passed Ext. P5 order holding that in view of Rule 1(2) Chapter XIV-A of the Kerala Education Rules service of the petitioner prior to the attainment of 18 years of age cannot be

recognized. In the decision in *Moosa v. A.E.O.* my learned brother Chandrasekhara Menon, J. Proceeded on the assumption that there was no provision in the Kerala Service Rule Providing that only a person who has attained majority can be appointed as a teacher. Obviously, the provisions of Rule 1(2) Chapter XIV-A of the Kerala Education Rules was not brought to the notice of His Lordship.

2. In view of the fact that the decision in *Moosa v. A.E.O.* was rendered without reference to a relevant statutory rule, the question whether that decision is binding or whether the State was right in passing Ext. P5 order in the light of the provision contained in Rule 1(2) chapter XIV-A of the Kerala Education Rules is an important question, which I feel, is better decided by a Division Bench. I therefore, adjourn this case and direct the Registrar to place the matter before the Chief Justice for obtaining orders for posting the matter to be heard by a Division Bench.

Rule 1 (2) of chapter XIV-A of the Kerala Education Rules provides as follows:

The age limit and the relaxation thereof for appointment applicable to teachers of Govt. Schools shall apply mutatis mutandis to teachers of aided schools. The date for determination of age for eligibility for appointment shall be the 1st January of the year in which the appointment is to be made.

In view of the above provision on the basis of the Government Rules, a person who is" below 18 years of age cannot be appointed. Therefore, petitioner"s services prior to the period of attaining 18 years of age was not approved in Ext. P5. We see no reason to set aside Ext. P5 as prior to attaining 18 years of age petitioner is not entitled to get any benefits including payment of salary. The decision in *Moos a v. A.E.O.* is overruled.

The original petition is, therefore, dismissed.