

## State of Kerala Vs Jayan

**Court:** High Court Of Kerala

**Date of Decision:** Jan. 13, 2009

**Citation:** (2009) 3 KLT 857

**Hon'ble Judges:** K. Surendra Mohan, J; K. Balakrishnan Nair, J

**Bench:** Division Bench

**Advocate:** R. Bindu, Government Pleader, for the Appellant; Benoy Thomas and Paulson Thomas, for the Respondent

**Final Decision:** Dismissed

### Judgement

K. Balakrishnan Nair, J.

Aggrieved by the judgment of the learned Single Judge in W.P. (C) No. 23049 of 2007, the appellants who were respondents 1 to 3 in that Writ Petition have preferred this Writ Appeal. The brief facts of the case are the following.

2. Respondents 1 and 2 herein have filed the above Writ Petition. They have approached this Court challenging Exts.P1 and P2 orders of the

District Educational Officer (D.E.O.), Thrissur. A vacancy arose in the school of the 3rd respondent in the post of Peon on 01.10.03 as a result of

the retirement of the existing Peon on 30.09.2003. The 2nd respondent who was working as FTM was clamouring for promotion, but, because of

the dispute regarding management and the orders of the Government restraining the Manager from making appointment, he was not promoted.

Finally, the Manager by order dated 25.10.06, promoted the 1st respondent as Peon. In the resultant vacancy, the manager appointed the 2nd

respondent as FTM on 08.11.2006. The D.E.O. rejected the approval of appointment of the 1st respondent by Ext.P1, on the ground that the

incumbent holding the post of Manager at the relevant time, though he was permitted by the Government to function as Manager, was restrained

from making any appointments. The D.E.O. declined to approve the appointment of 2nd respondent on the same ground mentioned in Ext.P1.

Feeling aggrieved by Exts.P1 and P2 the Writ Petition was filed by respondents 1 and 2. The learned Judge quashed Exts.P1 and P2 and directed

the D.E.O. to approve their appointments, provided, they are otherwise qualified and Eligible. It was observed that the dispute regarding the

management cannot affect the appointments of the staff.

3. The official respondents have preferred this appeal contending that Annexure-II order of the Government dated 22.10.01, provided that, all

posts lying vacant for more than one year should be abolished forthwith. The appellants would submit that relying on Annexure-II order, the

Deputy Director of Education (DDE), Thrissur has issued Annexure-I order dated 28.07.07 abolishing the post of Peon in VVSHS (3rd

respondent's school), which was lying vacant for more than one year. So, there is no post of Peon with effect from 28.07.07, it is submitted. In

view of Annexures I and II, the appellants would submit that the direction of the learned Single Judge given in the judgment under appeal is

unsustainable.

4. We notice that creation of posts, abolition and retrenchment of staff etc. in aided schools are governed by the provisions of Chap. XXIII and

XXIVA KER. Of course, Rule 9 of Chap. XXIVA enables the Government to extend any ban in the creation of posts, retrenchment of staff etc.

concerning government schools to aided schools also. The said Rule reads as follows:

9. Notwithstanding anything contained in these rules, if it is found necessary, Government may by orders extend any ban on the creation of posts,

retrenchment of staff etc. affected by them in Government schools to aided schools.

5. The appellants relied on the said rule and Annexures I & II to support their contentions. A close reading of Annexure II would show that it is a

general order applicable to all Government departments and therefore the same would apply to Government Schools also. Since the creation of

posts, retrenchment of staff etc. in aided schools are governed by statutory rules, if the Government wanted to apply Annexure II to aided schools

also, there should have been a separate order. In this case, there is no such separate order. Therefore, we are of the view that, Annexure II order

does not apply to aided schools. If that be so, Annexure I is ab initio void and unenforceable. Further the said order has been passed on 28.07.07

reviewing the staff strength of the year 2006-2007 long after the said academic year was over. Such an order by the Deputy Director is without

jurisdiction in view of the time limit fixed for review of strength of teaching staff contained in Chapter XXIII, which applies mutatis mutandis to the

fixation of the strength of non-teaching staff also by virtue of Rule 9A of Chapter XXIV A.

6. We notice that whoever be the Manager, the 1st respondent is entitled to get promotion. In the resultant vacancy of FTM, the Manager can

appoint any qualified hand from the open market. Government is not concerned whether "A" is appointed or "B" is appointed and the appointment

is made by the Manager "C" or Manager "D". Regarding the fresh appointment made, the rival claimant to the post of Manager may have

grievance. But, Government have no locus standi to voice that. In view of the above position, we find no reason to interfere with the directions

issued in favour of respondents 1 and 2 by the learned Single Judge, at the instance of the appellants. Therefore, the Writ Appeal fails and it is

dismissed.

Having regard to the facts of the case, the appellants are given one month's time from today to implement the directions of the learned Single

Judge.