

(1973) 01 KL CK 0032

High Court Of Kerala

Case No: W.A. No. 45 of 1972

Mary Oomman

APPELLANT

Vs

The Manager, M.G. M. High
School and Others

RESPONDENT

Date of Decision: Jan. 18, 1973

Acts Referred:

- Kerala Education Rules, 1959 - Rule 51A

Citation: (1973) KLJ 290

Hon'ble Judges: P. Govindan Nair, J; K. Sadasivan, J

Bench: Division Bench

Advocate: K. Velayudhan Nair and K.J. Joseph, for the Appellant;

Final Decision: Dismissed

Judgement

Govindan Nair, J.

Poti, J., in dismissing Original Petition No. 5064 of 1971 understood R. 51A in Chapter XIV A of the Kerala Education R. 1959 as not providing for preference in the matter of appointment to a teacher who had been appointed earlier in a temporary vacancy as against another who had also been appointed to a temporary vacancy but subsequently. The question is whether this interpretation of the rule is correct. We shall read the rule:

51A. Qualified teachers who are relieved as per R. 49 or 52 or on account of termination of vacancies shall have preference for appointment to future vacancies in schools under the same Educational Agency provided they have not been appointed in permanent vacancies in schools under any other Educational Agency.

From the wording of the rule, it is clear that in terms it does not provide for any preference between two or more persons who may be entitled to the benefit of this rule as against what may be termed new applicants. It would not be proper to read more into this rule by looking at the note to R. 5 in the same chapter. Nor can we

determine the question with reference to what we consider fair or proper. It Would be proper no doubt to give an earlier appointee preference. But seeing the rule as we ought to see every rule and every section in the Kerala Education Rules and the Kerala Education Act as restrictions or regulations in the matter of the free right of the manager to choose and appoint, it is Impossible to read more into the rule. Chief Justice Raman Nayar in his judgment in writ appeal No. 175 of 1970 made the following observations in relation to this rule:

5. Very recently, in Writ Appeal No. 44 of 1973, we had occasion to construe R. 51A. And we then observed that despite its unhappy wording, in particular, the use of the words, "preference for appointment" to mean "right to appointment", we had little doubt that what the rule meant was that a person discharged for want of vacancy had a right to be appointed in future vacancies, provided, of course, he had not by word or deed given up that right or. we might now add, disqualified himself meanwhile. And we added that the present tense of the words, "are relieved" appearing in the rule was the present tense of logic, not of time, so that, in full effect, the rule should be read as if it said "qualified teachers who stand relieved" shall have preference. In that view, it is, no doubt, true that the petitioner's appointments between 1957 and 1961 furnished her with a title to reappointment notwithstanding that they were made before the rule came into force, and it is at least arguable that where no priority in preference is prescribed by the rule, priority should be determined by priority of title. The question, then, is whether the plea of abandonment taken by the 3rd respondent is well founded.

and this has been very strongly relied on by counsel on behalf of the appellant.

We also thought that it is very arguable that the earlier appointee must have preference. But looking at from another angle, the rule as providing a restriction in the matter of choice of the manager, in the absence of express words in the rules or necessary implication arising from the words thereof, we are not able to read more into it. The observations in the judgment in writ appeal No. 175 of 1970 are obiter and are certainly not intended to be conclusive observations in the matter. If so, we would have referred this case to a Full Bench. Looking at the rule from all relevant aspects, we are constrained to hold that it does not provide for any priority to an earlier appointee.

2. We are not dealing with this case from the point of view as to whether the vacancy was one that should go to a teacher qualified in mathematics or not. But at the same time, it cannot be said that the stand taken by the manager that it is proper to appoint a mathematics main hand is wrong. We dismiss this writ appeal. There will be no order as to costs.