

(2012) 02 KL CK 0153

High Court Of Kerala

Case No: Writ Petition (C) No. 29260 OF 2008

Gigi Pappachan

APPELLANT

Vs

State of Kerala and The
Manager, Church U.P. School

RESPONDENT

Date of Decision: Feb. 28, 2012

Acts Referred:

- Kerala Education Rules, 1959 - Rule 6

Hon'ble Judges: T.R. Ramachandran Nair, J

Bench: Single Bench

Advocate: V.A. Muhammed and Sri. K.E. Hamza, for the Appellant; Kurian George Kannanthanam, (SR.) for R4, Sri. Tony George Kannanthanam for R4 and Sri. Biju Meenattoor, Sr. Government Pleader for R1 To R3, for the Respondent

Final Decision: Allowed

Judgement

T.R. Ramachandran Nair, J.

The challenge is against cancellation of approval granted as per Ext. P1, by the Director of Public Instruction as per Ext. P2 which stands confirmed by the Government in Ext.P3. The appointment of the petitioner is effective from 02.06.2004. The Director of Public Instruction by Ext. P2 cancelled the approval granted stating that the school is a newly opened one and therefore the Manager will have to appoint a protected teacher. This is confirmed by the Government in Ext. P3. It is pointed out in the counter affidavit of the Manager that he had appointed a protected hand namely, Smt. K.T. Kathrina on 09.12.1980 and she retired from service in the year 2000. It is, therefore, submitted that the obligation to appoint a protected hand has been complied with by the Manager. Apart from the same, it is pointed out that in the year 2008, another protected hand has been appointed by the Manager. Now after the said appointment, the approval of appointment of the petitioner has been granted from 22.02.2008 by Ext. P15 and the petitioner is getting salary. Therefore, the claim for approval for the anterior period based on

Ext.P1 is the issue to be considered by this Court.

2. In the counter affidavit filed by the 3rd respondent, it is pointed out that after the approval was granted, it was noticed that the appointment is against G.O.(P) No. 178/2002/G.Edn. dated 28.06.2002 and the said fact was reported to the Director of Public Instruction who cancelled the appointment. The petitioner was paid pay and allowances upto 31.05.2005. It is also stated that 22.02.2008 is the date on which a protected teacher was appointed in the school and from that date, the petitioner has been given pay and allowances.

3. As far as G.O.(P) No. 178/2002/G.Edn. dated 28.06.2002 is concerned, it can be seen that the stipulation therein that all the vacancies should be filled up by protected hands stands varied by the Government itself by G.O.(P)No. 46/2006/G.Edn dated 01.02.2006 wherein it is mentioned that the obligation is only to appoint one protected hand and that it can be effected in the next arising vacancy. Therefore, the objection that G.O.(P)No. 178/2002/G.Edn. dated 28.06.2002 will affect the appointment of the petitioner cannot be sustained.

4. The crucial question is whether the non appointment of a protected teacher will stand in the way of approval of appointment of a qualified hand like the petitioner. Herein, as already noticed, it can be seen that the Manager had appointed a protected hand in the year 1980 which satisfies the provisions of Rule 6(viii) of Chapter V of Kerala Education Rules. Regarding this aspect, the legal position is covered in favour of the petitioner in the light of the decision of this Court in [Moosakutty Vs. D.E.O.](#), wherein it was held that the obligation of the Manager is under Rule 6(viii) of Chapter 5 K.E.R.

5. Regarding the other issue, whether the approval has to be postponed till a protected hand is available, the same is covered in favour of the petitioner in the light of the decision of this Court in Nadeera vs. State of Kerala (2011 (3) KLT 790). Therein, this Court considered various aspects including the question whether in the absence of communication of a list of protected teachers, the Manager could be found fault with for not appointing a protected hand and whether the approval could be postponed till a protected hand is appointed. It was held that the obligation of the Manager could be enforced only if a proper list of protected teachers was communicated. It was further held that the postponement of approval till a protected hand is appointed also cannot be justified. The legal position has been explained in paragraph 20 which reads as follows:

20. It is in that context that the procedure for communicating the list of protected teachers forwarded under Exhibit P10 Government Order and later orders comes into play and going by the decisions of this Court in Exhibits P12 to P15 judgments, if it is also absent, there cannot be any bar for approval of appointment. There is no contention by respondents that at the time of filling up the vacancies such a list was forwarded to the Manager. Apart from that the appointment of a teacher in a school

only recognises the obligation of the Manager to conduct the school in terms of the Statute, requirements of the students and the staff fixation. Primary concern is the welfare of the students and therefore unless a qualified hand is appointed, the Manager will not be able to conduct the school in a proper manner also. This does not mean that he can wriggle out the obligation regarding appointment of a protected hand; but the system should not be stretched to the extent of denying approval of appointment of a qualified teacher, that too in vacancies like those herein, which arose due to retirement of qualified teachers. Apart from that, as rightly pointed out by the learned counsel for the petitioner, herein there is no additional financial burden to the Government since no other teachers were paid salary also. In that view of the matter the petitioners are entitled to succeed in the Writ Petition.

6. In the light of the above, it can be seen that as far as this case is concerned, the Manager has already appointed a protected hand subsequently in terms of G.O.(P)No. 46/2006/ G.Edn dated 01.02.2006 after the appointment of the petitioner, on 22.02.2008. Therefore, the said obligation has already been fulfilled by the Manager and in the light of the above, the petitioner is entitled for approval from the date of appointment as per Ext.P1. For all these reasons, I allow this writ petition. It is declared that the approval granted as per Ext. P1 is valid and the cancellation of the same as per Ext.P2 which is upheld in Exts. P3 and P15 cannot be justified.

Therefore, Exts. P2, P3 and P15 are quashed. The appointment of the petitioner and approval granted as per Ext. P1 will be treated as valid and the same will be regularized accordingly and the 3rd respondent will pass appropriate orders in terms of the directions above by granting eligible monetary benefits to the petitioner within a period of two months from the date of receipt of a copy of this judgment. No costs.