

(2005) 10 KL CK 0023

High Court Of Kerala

Case No: O.P. No. 9531/97

Gopalakrishnan

APPELLANT

Vs

Director of Public Instruction

RESPONDENT

Date of Decision: Oct. 27, 2005

Acts Referred:

- Kerala Education Rules, 1959 - Rule 3(1), 3A, 4, 4(1), 44

Citation: (2005) 4 KLT 774

Hon'ble Judges: K.T. Sankaran, J; K.S. Radhakrishnan, J

Bench: Division Bench

Advocate: K.P. Dandapani, Sumathi Dandapani, K. Jaju Babu and V. Rajendran, for the Appellant; V.K. Raveendran and P.V. Lonachan, Government Pleader, for the Respondent

Judgement

K.S. Radhakrishnan, J.

Question that is posed for consideration in these cases is whether B.Ed, is an equivalent training qualification for appointment for the post of Headmaster of an L.P. School under Rule 45-A of Chapter XIV-A of the Kerala Education Rules.

2. A Division Bench of this Court in Thulasibhai Amma v. Asst. Educational Officer 1993 (2) KLT 245 held as follows:

"A reading of the second part of Rule 45 A would show that not only a TTC issued by the Board of Public Examination is a requirement, but also "any other equivalent training qualification prescribed for appointment as Primary School Assistant".

The Bench we may say with due respect had failed to consider what was the equivalent training qualification for appointment to the post of Primary School Assistant. The Bench proceeded as if B.Ed, is an equivalent qualification for the post of Primary School Assistant. The Bench in fact quoted with approval the decision of a learned single Judge in Mathew v. State of Kerala 1992(2) KLT 116.

3. The Asst. Educational Officer in the instant case had however rejected the request of the 4th respondent who was having only B.Ed, qualification vide order dated 26-9-1990 stating as follows:

"I am to inform you that as per Rule 45 A of Chap.XIV-A of the KER, the person appointed as Headmaster of the L.P. School shall have passed SSLC with TTC. Hence your request for giving direction to the manager to appoint you as the Headmaster of the School cannot be considered".

The view expressed by the Manager of the school was therefore endorsed by the A.E.O. Resultantly the 2nd petitioner was the only qualified person to be appointed as Headmaster of the L.P. School.

4. The 4th respondent questioned the order of the AEO before the DEO who took a contrary view and threatened the Manager that disciplinary proceedings would be initiated against him if the 4th respondent is not appointed as Headmaster. It is unnecessary to deal with those issues now since we are informed that subsequently the proceeding against the manager has not been seriously pursued. Further we also notice that the second petitioner has also retired from service and the 4th respondent is still working as Headmaster of the school.

5. We need only to examine the legal question as to whether the appointment of second petitioner as Headmaster of the L.P. School by the Manager was legal or not, for which it is necessary to examine the question posed by us. If we hold that the second petitioner was the only qualified person available when the vacancy of the post of Head Master arose then he would get all service benefits though he has retired from service. Rule 45A of Chap.XIV-A of KER is the provision dealing with the appointment of Head Master in L.P. School. Provision is extracted below for easy reference.

"45 A. Subject to Rule 44, when the post of Headmaster of a complete L.P. School is vacant or when an incomplete L.P. School becomes complete, the post shall be filled up from among the qualified teacher on the staff of the school or schools under the Educational Agency. The person appointed as Headmaster shall have passed SSLC or equivalent Examination with TTC issued by the Board of Public Examination, Kerala or TCH issued by the Karnataka Secondary Educational Examination Board, Bangalore or pass in pre-Degree Examination with Pedagogy as an elective subject conducted by the University of Kerala or anyother equivalent training qualification prescribed for appointment as Primary School Assistant. In the case of those who are continuing as teachers with Standard VII or its equivalent with H.E.T.T.C. or its equivalent training qualification, they shall have 12 years of continuous qualified service as Assistant for appointment as Headmasters of Lower Primary Schools."

(emphasis added)

Rule 45A specifically states that the person appointed as Headmaster shall have passed SSLC or equivalent Examination with TTC issued by the Board of Public Examination, Kerala or TCH issued by the Karnataka Secondary Educational Examination Board, Bangalore or pass in Pre-Degree Examination with Pedagogy as an elective subject conducted by the University of Kerala or any other equivalent training qualification prescribed for appointment as Primary School Assistant. Second petitioner was fully qualified for appointment to the post of Headmaster when the vacancy of Headmaster arose since he was having SSLC as well as TTC. Fourth respondent however, was the senior most teacher. He was having B.Ed., but not TTC. Fourth respondent tried to contend that even though he was not having TTC he was having B.Ed, which is a superior training qualification compared to TTC.

6. We find it difficult to accept the above contention of the 4th respondent. Statute refers to "any other equivalent training qualification prescribed for appointment as Primary School Assistant." We have therefore necessarily to examine what are the qualifications prescribed for appointment to the post of Lower Primary School Assistant. Rule 4 of Chapter XXXI of KER deals with the qualification for the post of Lower Primary School Assistant which reads as follows:

4. Lower Primary School

1. Lower Primary School Assistant.

A pass in S .S .L.C. Examination conducted by the Commissioner for Government Examinations, Kerala or its equivalent or a pass in Pre-degree examination conducted by any of the Universities in Kerala or any examination recognised by any such Universities as equivalent to Pre-degree examination or a pass in a Higher Secondary Examination conducted by the Board of Higher Secondary Examination, Kerala or any other examination recognised by Government as equivalent thereto and a pass in T.T.C, Examination conducted by the Commissioner for Government Examinations, Kerala.

or A pass in the Pre-Degree Examination with Pedagogy as an elective subject conducted by the University of Kerala;

or A pass in Basic TTC Examination (Malayalam) conducted by the Madras Government."

The above mentioned provision would clearly show that a pass in TTC Examination conducted by the Commissioner for Government Examinations is an essential qualification for the post of Lower Primary School Assistant. We have already pointed out that Rule 45 A of Chapter XIVA of the KER refers to "any other equivalent training qualification prescribed for appointment as Primary School Assistant". The qualification prescribed for the post of Primary School Assistant is TTC and not B.Ed. B.Ed, has never been recognised as an equivalent qualification for the post of Lower Primary School Assistant or for the post of Headmaster of a Lower Primary School

The Supreme Court in P.M. Latha and Another Vs. State of Kerala and Others, has occasion to consider the question as to whether B.Ed. is a higher training qualification than T.T.C. and held as follows:

"There is no force in the argument that B.Ed. qualification is a higher qualification than TTC and therefore the B.Ed. candidates should be held to be eligible to compete for the post. On behalf of the appellants it is pointed out that Trained Teacher's Certificate is given to teachers specially trained to teach small children in primary classes whereas for B.Ed. degree the training imparted is to teach students of classes above primary. B.Ed. degree holders, therefore, cannot necessarily be held to be holding qualification suitable for appointment as teachers in primary schools. Whether for a particular post, the source of recruitment should be from the candidates with TTC qualification or B.Ed qualification is a matter of recruitment policy. There is sufficient logic and justification in the State prescribing qualification for post of primary teachers as only TTC and not B.Ed."

The Apex Court therefore held that there is sufficient justification in the State prescribing qualification for the post of Primary Teachers as only TTC and not B.Ed.

7. We are of the view that unless it is specifically incorporated in Rule 45A of Chap.XIVA or in Rule 4 of Chap. XXXI of the KER, B.Ed, cannot be treated as equivalent training qualification to that of TTC. If that be the legal position we are of the view that second petitioner was the only person qualified for being appointed as Headmaster on the date of occurrence of the vacancy and the 4th respondent was unqualified to hold the post of Headmaster of L.P. School.

8. In view of the principle laid down by the apex court in P.M.Latha's case the judgment of the Division Bench in Thulasibai Amma's case would no more hold the field since it was not correctly decided. Mathew's case (supra) can also be easily distinguished on facts and with due respect we may add Mathew's case has no connection with the facts in Thulasibhai Amma's case. In Mathew's case, learned single Judge was deciding the question as to whether a person with B.Ed. degree can be appointed as LPSA or UPSA in an aided school. Learned single Judge in that case has pointed out that the Government in its order has stated that persons possessing the basic qualifications in teaching namely T.T.C. will alone be considered for appointment as Lower Primary School Assistants and Upper Primary School Assistants in aided schools. Learned single Judge also noticed that as per Rule 3(1) and 4(1) of Chap. XXXI K.E.R., T.T.C. is one of the basic qualifications for one to get appointment as L.P.S.A. or U.P.S.A. Rules 3 A and 4A allows the Educational Officers to approve appointments of candidates possessing higher qualifications provided they have any of the training qualifications approved by Government of Kerala. Learned single Judge assumed that the training qualification approved by Government of Kerala contemplated by Rule 3A and 4A can only be training qualifications other than T.T.C. Learned single Judge also noticed that Government have nowhere stated that B.Ed, is not a higher training qualification than T.T.C. nor

have they got a case that B.Ed, is not a training qualification. Question is whether statute prescribes the same as an equivalent qualification and not whether the statute has not stated that it is not a prescribed qualification. We therefore find it difficult to accept that reasoning of the learned single Judge in Mathew's case, especially, in view of the decision of the Apex Court in Latha's case (supra) wherein the Apex Court rejected the contention that B.Ed, qualification is higher qualification than T.T.C. and held that there is sufficient justification in prescribing TTC qualification for appointment of Primary School Teachers and not B.Ed. The emphasis in Rule 45A is on "any other equivalent training qualification" and not higher qualification. Training qualification prescribed for Primary School Assistant is not B.Ed., but T.T.C. We therefore find it difficult to subscribe the views expressed in Mathew's case which was affirmed by the Division Bench in Thulasibhai Amma's case, especially in view of the reasoning of the Supreme Court in Latha's case.

9. Under such circumstance we are inclined to allow OP. 9531 of 1997 and hold that second petitioner was the duly qualified person to hold the post of Headmaster of the L.P. School and not the 4th respondent on the date of occurrence of vacancy of Headmaster. Original Petition is therefore disposed of directing the respondents 1 to 3 to treat the second petitioner as duly qualified for appointment for the post of Headmaster on the date of occurrence of vacancy and work out the retirement benefits including pension accordingly. Since he had not worked in that post evidently he would not get salary. Retirement benefits and pension would be revised accordingly and the amount would be paid within a period of three months from the date of receipt of a copy of this judgment. Since second petitioner has already retired from service we find no reason to disturb the continuance of 4th respondent in the post of Headmaster. Proceedings initiated against the manager on a wrong interpretation of law cannot be sustained and he is therefore relieved of all the charges levelled against him. In view of our judgment in OP. 9531 of 1997 no further orders are necessary in other Original Petitions. They are dismissed as in fructuous.