

(1989) 06 KL CK 0054

High Court Of Kerala

Case No: O.P. No. 8031 of 1985 R

Venktramana Bhat

APPELLANT

Vs

The State of Kerala and Others

RESPONDENT

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**Date of Decision:** June 8, 1989**Acts Referred:**

- Kerala Education Rules, 1959 - Rule 1, 49

**Citation:** (1990) KLJ 92**Hon'ble Judges:** G. Viswanatha Iyer, J**Bench:** Single Bench**Advocate:** N. Nandakumara Menon, for the Appellant; Vanaja Madhavan, Govt. Pleader, for the Respondent**Final Decision:** Allowed

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### Judgement

Viswanatha Iyer, J.

The Petitioner was appointed as a High School Assistant in Mathematics in the 4th Respondent's school on 2nd August 1983. He had continuous service till 5th April 1984, the date on which the school closed for summer holidays. The Director of Public Instruction had issued a circular on 21st March 1984 extending the closing date of schools for summer vacation for 1983-84 to 5th April 1984. Such extension is warranted by the provisions of Rule 1 of Chapter VII of the Kerala Education Rules (Rules) which reads:

All schools shall be closed for the summer vacation every year on the last working day in March and re-opened on the first working day of June unless otherwise notified by the Director.

2. The Petitioner had thus more than eight months of service as teacher in the school on 5th April 1984, the date of closure. Rule 49 of Chapter XIV-A of the Rules entitles a qualified teacher appointed to a vacancy, which is not permanent, to salary during the summer vacation, if his continuous service as on the closing day

was not less than eight months. The rule reads :

Qualified teachers except Headmasters appointed in vacancies which are not permanent which extend over the summer vacation and who continue in such vacancies till the closing date shall be retained in the vacancies during the vacation, if their continuous service as on the closing day is not less than eight months. The teachers so retained shall be entitled to the vacation salary. These teachers shall be relieved on the closing day if their continuous service as on that day is less than the aforesaid period. This rule shall not apply to teachers appointed in training vacancies.

Though the Petitioner had eight months of continuous service up to 5th April 1984, the Deputy Director of Education denied him the vacation salary in 1983-84 by his proceedings Ext. P-3 dated 12th June 1985. The Deputy Director stated:

I am to inform you that for determining the eligibility for vacation salary in this case, 31st March 1984 is to be taken as the closing date of School, even though the school had worked till 5th April 1984 for some other reasons. Hence the teacher is not eligible for vacation salary.

Petitioner challenges these proceedings as also a consequential direction by the District Educational Officer to the 4th Respondent Manager, to issue a fresh appointment order to the Petitioner in the subsequent year.

3. Petitioner's contention is two fold, firstly that he is a qualified teacher appointed to a permanent vacancy, and therefore irrespective of the length of service, he has to be retained during the vacation; secondly that even if the vacancy was not permanent, and Rule 49 applied, he had put in over eight months of service on 5th April 1984, which has to be reckoned as the closing date by virtue of the circular dated 21st March 1984 of the Director of Public Instruction.

4. I shall take up the latter point for consideration first. There is no definition of closing date in the rules. But it has to be understood in the light of the provisions of Rule 1 of Chapter VII which require all schools to be closed for summer vacation on the last working day in March, unless otherwise notified by the Director. Ordinarily therefore, the last working day in March is the closing date for schools. But, if any other date is notified by the Director, that shall be the closing date for schools. In other words, if there is a notification by the Director, that governs, and the date notified by him prevails over the general date, namely the last working day in March. The day so notified by the Director may be earlier or later than the last working day in March. When such a date is notified that will be the closing date for schools for purposes of Rule 49. There is nothing in the rule to indicate that the closing date shall be the last working day in March despite the notification of a different date by the Director. Rule 49 does not admit of the interpretation placed upon it by the Deputy Director in Ext. P-3. Therefore when the Director notified 5th April 1984 as the closing date for the summer vacation for the year 1983-84, that

was the closing date for all purposes, and that was the date to be reckoned for computing the period of continuous service of a teacher for purposes of Rule 49.

5. In the circumstances the premise adopted by the Deputy Director in Ext. P-3 that 31st March, 1984 has to be taken as the closing date is contrary to the provisions of Rule 1 of Chapter VII in the light of the circular Ext. P-2.

6. If this be the position, the Petitioner had over eight months of continuous service on 5th April 1984, as he entered service on 2nd August 1983. So irrespective of the question whether the appointment was to a permanent vacancy or otherwise, the Petitioner became entitled to retention in service during the vacation and for the leave salary under Rule 49. Ext. P-3 order cannot therefore stand and is liable to be quashed.

7. Representations had been made by the 4th Respondent Manager as well as by the Petitioner against the proceedings Ext. P-3. It was while these representations were pending that the District Educational Officer issued the direction Ext. P-8 to the Manager to issue fresh appointment order to the Petitioner. Apparently the direction was issued on the premise that the Petitioner could not have been retained in service during the summer vacation of 1983-84. The Government Pleader could not point out any provision which enables the District Educational Officer to issue this direction. But it is unnecessary to decide this point, as I have already held that the Petitioner was entitled to be retained in service during the summer vacation. It was therefore unnecessary to issue any fresh order of appointment to the Petitioner in 1984-85. Ext. P-8 is therefore unsustainable.

8. Petitioner has a complaint that he has not been paid the salary from 2nd August 1983, the date of his entry into service, till 31st December 1984, nor the festival allowance for the year 1983 or the bonus for the year 1984. The Respondents are directed to make expeditious disbursement of the salary due to the Petitioner, if it has not already been paid. Regarding the other claims, it will be for the Petitioner to approach the third Respondent, who is the authority competent to deal with the matter, for relief.

9. The Original Petition is therefore allowed by quashing Exts. P-3 and P-8. Petitioner is declared entitled to be retained during the summer vacation for 1983-84 and for the vacation salary. Third Respondent shall grant the Petitioner the reliefs due to him consequent on this declaration.

Issue photo copy of the judgment on usual terms.

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