

## Usha Ratnam Vs State of Kerala

**Court:** High Court Of Kerala

**Date of Decision:** Aug. 22, 2001

**Acts Referred:** Kerala Education Rules, 1959 " Rule 1(4), 3(1), 4(1), 49, 51A

**Citation:** (2001) 3 ILR (Ker) 400

**Hon'ble Judges:** Kum. A. Lekshmikutty, J; K.S. Radhakrishnan, J

**Bench:** Division Bench

**Advocate:** V. Giri, for the Appellant; Mathew John, T.H. Abdul Azeez and John Joseph, Government Pleader, for the Respondent

**Final Decision:** Dismissed

### Judgement

K.S. Radhakrishnan, J.

This Writ Appeal is filed against the judgment in O.P. No.30102 of 2000. Writ Petition was preferred by the

Manager of a Lower Primary School. He is aggrieved by the direction given by the educational authorities for appointing respondents 4 and 5 in

the school since they are R.51A claimants.

2. According to the appellant, amendments effected to Rr.3(1) and 4(1) of Chapter XXXI of the Kerala Education Rules, vide G.O.(P) No.

188/2000/G.Edn. dated 8.6.2000, would take away the right of Rs.51A claimants, respondents 4 and 5, since they are not having TTC

qualification on the date of occurrence of vacancies. Learned Single Judge did not accept the contention of the appellant and dismissed the Writ

Petition. Aggrieved by the same this Writ Appeal has been filed.

3. Short facts which are necessary for disposal of the appeal are as follow: Respondents 4 and 5 are admittedly R.51A claimants. They possess

B.Ed. degree qualification. A vacancy of Lower Primary School Assistant arose in the School on 5.6.2000. In that vacancy, sixth respondent, a

fresh hand having TTC qualification, was appointed. Another vacancy of Lower Primary School Assistant arose in the school on 1.8.2000. In that

vacancy, seventh respondent was appointed. He was also a fresh hand having TTC qualification. Respondent 3 and 4 came to know about the

appointments of respondents 6 and 7. Appointments of respondents 6 and 7 were not approved by the Assistant Educational Officer stating that

rights of R.51A claimants were overruled.

4. Respondents 4 and 5 filed Writ Petition, O.P. No. 23811 of 2000, which was disposed of by directing the Deputy Director of Education to

pass appropriate orders. The Deputy Director of Education placed reliance on Government letter No. 26327/J3/2000/G.Edn. dated 26.6.2000

and held that appointment of respondent 6 and 7 were irregular and gave direction to the Manager to appoint respondents 4 and 5 who are R.51A

claimants.

5. Counsel for appellant submitted that on the date of occurrence of vacancies, respondents 4 and 5 were not qualified since they did not possess

T.T.C. qualification on those dates. Counsel submitted that as per Kerala Education (Amendment) Rules, 2000.Rr. 3(1) and 4(1) of Chapter XXXI

were amended. Consequently only persons with TTC qualification can be considered for appointment to the post of Lower Primary School

Assistant. Counsel submitted that since respondents 4 and 5 were not having TTC qualification but only B.Ed. qualification are not qualified to be

appointed to the said post. Counsel further submitted that only those R.51A claimants who possess TTC qualification can be appointed to the post

of Lower Primary School Assistant. It is also his contention that the right of R.51A claimant is only a preferential right for appointment provided he

possesses the requisite qualification on the date of occurrence of vacancies. His further contention is that R.51A of Chapter XIV-A does not give

any absolute or vested right for future appointments.

6. Counsel appearing for contesting respondents 4 and 5, on the other hand, submitted that respondents 4 and 5 have vested right under R.51A to

be appointed in future vacancies. It is also his contention that amendment has not taken away that vested right and consequently appellant is bound

to appoint respondents 4 and 5 in the vacancies arose on 5.6.2000 and 1.8.2000.

7. We may indicate that two vacancies of Lower Primary School Assistant arose in the School; one on 5.6.2000 and the other on 1.8.2000. Ext

P1 notification came into force on 8.6.2000. Since one of the vacancies arose prior to the amendment, i.e. on 5.6.2000 there cannot be any doubt

that the Manager is bound to appoint fourth respondent in that vacancy. The next vacancy arose on 1.8.2000, that is, after the amendment which

was effected on 8.6.2000. The question to be considered is whether the amendment has taken away the right of R.51A claimants. In this

connection we may extract R.51A of Chapter XIV-A for easy reference.

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 or an Educational Agency to which the school may be subsequently transferred

provided they have not been appointed in permanent vacancies in schools under any other Educational Agency.

Note 1. If there are more than one claimant under this Rule the order of preference shall be according to the date of first appointment. If the date of

first appointments is the same then preference shall be decided with reference to age, the older being given first preference. In making such

appointments, due regard should be given to the requirement of subjects and to the instructions issued by the Director under sub-r.(4) of R.(1) as

far as High Schools are concerned.

Note 2. Manager should issue an order of appointment to the teacher by registered post acknowledgment due and give a period of 14 (fourteen)

clear days to the teacher to join duty. If the teacher does not join duty in time the Manager should give a further notice to the teacher stating that

another person would be appointed instead and that the preferential right under this rule would be forfeited if not exercised within another 7 (seven)

clear days. If nothing is heard during that time also, the preferential right under the rule will be regarded as forfeited.

The above-mentioned provision states that qualified teachers who are relieved as per R.49 or 52 on an account of termination of vacancies shall

have preference in appointment in future vacancies. The question is whether on the date of occurrence of vacancy if a fresh qualification is

stipulated, those qualified teachers who are relieved as per R.49 or 52 should acquire that qualification as laid down by the Government, vide

notification dated 8.6.2000 amending Rr. 3(1) and 4(1) of Chapter XIV-A of the KER which stipulates that only persons with TTC qualification

could be considered for appointment to the post of L.P.S.A. and B.Ed. qualification can be considered for the post of U.P.S.A. This question was

posed before the Government and the Government issued the following clarification on 26.6.2000.

I am to invite your attention to the reference cited and to inform you that Government have amended the Rr.3(1) and 4(1) of Chapter XXXI KER

in such a way that only T.T.C. holders are eligible to get appointment as LPSAs and B.Ed. holders can be considered along with T.T.C. holders

for appointment to the post of UPSAs. Hence B.Ed. holders are not eligible to be appointed as L.P. School Assistants.

However the new amendment will not affect the claims under R.51A, Chapter XIV AKER secured before 8.6.2000, the date of notification.

We have gone through the amendment effected to Rr. 3(1) and 4(1) of Chapter XXXI. There is nothing to indicate that the right conferred under

R.51A of Chapter XIV-A has been taken away. Mere fact that a new qualification has been introduced does not mean that it has taken away the

statutory right already conferred on R.51A claimants which is in the nature of a vested right to those qualified teachers who are relieved as per

R.49 or R.52 on the ground of termination of vacancies. Right is said to be vested when the right of enjoyment, present or prospective, has

become the property of some particular person or persons as a present interest, independent of contingency. This is a right which cannot be taken

away without the consent of the owner. Vested right can arise from contracts, from statutes and from operation of law. A right of action preferred

by a particular statutes is said to be a vested right.

8. In Sunil Kumar Sinha Ray Vs. State of West Bengal and Others, the Court held that a person can claim to have a vested right under a statute

when he has complied with all the formalities prescribed thereby for acquiring a status and before that the right is only an inchoate one. In this case

R.51A claimant has to satisfy certain condition. Conditions to be satisfied by them are that they should be qualified teachers and are relieved under

R.49 or R.52 on account of terminations of vacancies. Once these conditions are satisfied they have got a right of preference for appointment to

future vacancies. Once vacancies occur their right crystallises and the Manager cannot overlook that statutory right. Notes 1 and 2 to R.51A

makes it obligatory on the part of the Manager to follow certain procedure when vacancies arise in the school while considering the claims of

R.51A claimants. All these statutory provisions have been laid to safeguard the rights of R.51A claimants. Such right can be taken away only by a

statute. We are of the view that Kerala Education (Amendment) Rules, 2000 do not in any manner take away the rights of R.51A claimants.

9. In this connection we may refer to the decision of this Court in Thania v. D.E.O. ILR 1975 Ker 609 There the question arose was whether

rights of R.51A claimant would be affected with the introduction of the proviso to R.1 of Chapter XXXI of the KER. Court held that though under

Chapter XXXI of R.51A claimant was not qualified, in view of the proviso to R.1 of Chapter XXXI, the new rules cannot affect the right of

appointment. Learned Judge of this Court took the view that qualified teacher who had been relieved as per R.49 or R.52 on account of

termination of vacancy will have performance for appointment to future vacancies under the same educational agency. This vested right cannot be

displayed by a new rule. In this connection we may also refer to the Bench decision of this Court in Anilkumar v. Been 2000 (1) KLT 286 While

dealing with the preferential right the Bench held as follows:

The object and purpose of the rule is to restore to those qualified persons relieved of the appointment, the post they lost for want of vacancies.

Rule was enacted to restore to him the same type of post which he would have occupied but for the termination of vacancy. Qualification obtained

by a teacher to teach a particular subject and the consequent experience gathered by him by holding the post and the approval obtained from the

department would give rise to those persons a preference for holding identical posts in the school on a future occasion. A teacher who obtained

such a preference for appointment under R.51A cannot go on acquiring various other qualifications subsequent to his relief from the school and

stake claim for a post which he never held in the school on previous occasions. If the contention of the petitioner is accepted, that would lead to an

anomalous situation and would defeat the claims of various qualified persons relieved from other posts. Note 1 to R.51A amply make it clear that if

there are more than one qualified persons preference shall be according to the date of first appointment. Rule never emphasises that preference will

be given to those persons who have acquired subsequent qualification. Preferential claim of various thrown out teachers must be in tune with their

qualification on the basis of which they held the post earlier.

We are of the view of the aforementioned facts would positively show that R.51A claimants have got a vested right. They have to be considered

for appointment in future vacancies unless and until their rights are taken away from the statute itself. We are of the view that Kerala Education

(Amendment) Rules, 2000 has not taken away the right conferred on them under R.51A. In such circumstances we find no infirmity in the stand

taken by the Department. Accordingly we dismiss this appeal.