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(1997) 07 KL CK 0044

High Court Of Kerala

Case No: W.A. No. 575/96

Rahelamma,	APPELLANT
Vs	
Vs State of Kerala and Others	RESPONDENT

Date of Decision: July 29, 1997

Acts Referred:

- Kerala Education Rules, 1959 - Rule 11, 37, 37(1), 44, 45

Citation: (1997) 2 KLJ 279

Hon'ble Judges: K.G. Balakrishnan, J; B.N. Patnaik, J

Bench: Division Bench

Advocate: V.N. Achutha Kurup, for the Appellant; C.T. Ravikumar, Government Pleader for Respondents 1 and 2 and S. Ramesh Babu, for the Respondent

Final Decision: Dismissed

Judgement

K.G. Balakrishnan, J.
This is an appeal preferred by the third Respondent in O.P. 504 of 1996. Third Respondent herein who is a Manager of an aided school, filed Original Petition challenging the validity of Ext. P-2 order passed by the Deputy Director of Education, Kollam. He contended that the Appellant herein was not entitled to get appointment to the post of Headmistress of the school under Rules 44 and 45 of Chapter XIV-A K.E.R.

2. The facts in short are as follows: Upper Primary School, Inchivila was formerly an Lower Primary School. When it became an Upper Primary School the then senior most undergraduate teacher one P.D. Mariamma was promoted as the Headmistress of the School. The said appointment was sent up for approval to the A.E.O., Kollam. The A.E.O. declined approval on the ground that the Appellant herein was having more than one half of the service of the senior most undergraduate teacher and she being a graduate, was entitled to get appointment to the post of Headmistress of the school. On the date of occurrence of the vacancy of

Headmaster, Smt. P.D. Mariamma had 23 years and 4 months of service in the school and the Appellant Rahelamma had only 10 years and 2 months service in the same school. Of course, she had 9 years of graduate service in other school as a protected teacher. According to A.E.O., the total service of the Appellant is to be taken inclusive of 9 years graduate service in other school. Against the order of A.E.O., the Manager went in appeal before the Deputy Director of Education. The Deputy Director concurred with the finding arrived at by the A.E.O. The Manager challenged the same in the Original Petition.

3. Learned Single Judge held that the Appellant herein is not entitled to count her entire service as graduate teacher for the purpose of Rule 45 and only such service that could be counted for seniority under Rule 37 alone can be considered relevant under Rule 45 and the Manager was allowed to appoint P.D. Mariamma, the senior most undergraduate teacher in accordance with Rules 44 and 45 of Chapter XIV-A K.E.R. This finding is challenged before us.

4. We heard Appellant''s counsel and counsel for the Respondents. Appellant is a graduate with B. Ed. degree. She joined in Inchivila Upper Primary School as a teacher on 17th July 1975. In the year 1979, the Appellant was found to be an excess hand and she was retrenched and deployed to work in a Government School as protected teacher. From 13th February 1979 till 8th September 1988 the Appellant worked as a protected teacher in the Government school. Thereafter, she joined the Inchivila Upper Primary School and the post of Headmistress fell vacant on 27th September 1995 when the regular Headmaster went on long leave. The Manager appointed P.D. Mariamma, the senior most undergraduate teacher having 23 years and 4 months service as Headmistress. The Appellant herein contended that as per Rule 45 of Chapter XIV-A K.E.R. a graduate teacher with B.Ed., qualification shall be given preference in appointment as Headmaster and she had service equal to half of the period of the service of the senior most undergraduate teacher. The appointment of P.D. Mariamma as Headmistress was not approved either by the A.E.O. or the Deputy Director. The Appellant herein has admittedly got only 10 years and 2 months service in Inchivila Upper Primary School which does not amount to half of the period of service senior most undergraduate teacher. The Appellant would be entitled to get preference only if the service rendered by her in the Government school on deployment as la protected teacher is also counted as service for the purpose of Rule 45 of Chapter XIV-A K.E.R.

5. The Appellant was retrenched from service for want of vacancy in the Inchivila Upper Primary School. The teachers who are retrenched from service are given protection by the Government by giving employment to them in Government school. It is not on the basis of any provisions contained in the Education Act or Rules but it is by way of a separate scheme initiated by the Government. The teachers who are thrown out of service for want of vacancy have no such statutory right to get employment as protected teacher. The Government, as a welfare

measure, give employment to such teachers to avoid hardship to them. Such service of a protected teacher cannot be treated as service for the purpose of Rule 45 of Chapter XIV-A K.E.R. The seniority of a teacher in any grade is to be determined on the basis of Rule 37(1) of Chapter XIV(A). Rule 37(1) of Chapter XIV-A K.E.R. reads as follows:

Seniority of a teacher in any grade in any unit shall be decided with reference to the length of continuous service in that grade in that unit provided he is duly qualified for the post.

From the above rule it is clear that for the purpose of seniority service of a teacher in that unit would alone be taken into consideration. If the teacher had worked in any other school on deployment that will not be counted for seniority.

6. Counsel for the Appellant contended that the service rendered as a protected teacher on deployment is taken into consideration for the purpose of increment, pension and other service benefits and, therefore, the same shall be treated as a service under Rule 45 of Chapter XIV-A K.E.R. We are unable to accept the above contention. From the wording given under Rule 45 also it is evident that the service rendered by the teacher on deployment in any other school shall not be taken into consideration. Rule 45 of Chapter XIV-A K.E.R. is to the following effect:

45. Subject to Rule 44, when the post of Headmaster of complete U.P. School is vacant or when an incomplete U.P. School becomes a complete U.P. School, the post shall be filled up from among the qualified teachers on the staff of the School or Schools under the Educational Agency. If there is a graduate teacher with B.Ed. or other equivalent qualification and who has got at least Five years experience in teaching after acquisition of B. Ed. Degree he may be appointed as Headmaster provided he has got a service equal to half of the period of service of the senior most undergraduate teacher. If graduate teachers with the aforesaid qualification and service are not available in the School or Schools under the same Educational Agency, the senior most Primary School Teacher with S.S.L.C. or equivalent and T.T.C. issued by the Board of Public Examination, Kerala or T.C.H. issued by the Karnataka Secondary Education Examination Board, Bangalore or a 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 may be appointed.
(Emphasis supplied)

From the above Rule it is evident that one half of the teaching experience is not the qualification that is required but the graduate teacher with B.Ed. qualification should have one half of the period of service of the senior most undergraduate teacher. Therefore, the period of service mentioned in Rule 45 of Chapter XIV-A K.E.R. should be the service in that grade in that unit and not the service rendered by the teacher on deployment as a protected teacher.

7. Though the exact question was not considered by this Court on previous occasion, a question of similar nature came in Manager, Mar Sleeba U.P. School v. State of Kerala 1990 (1) KLT 626. That was a case in which a protected teacher claimed right to be appointed as a Headmaster though at the relevant time he was not a teacher in that school but was continuing on deployment in another school. The teacher therein had contended that he had a lien to hold the post. It was held by a learned Single Judge (Sreedharan, J. as he then was):

''Lien'' made mention of in G.O. (Ms) 104/69/Edn., dated 6th March 1969 cannot be understood in the sense that word is defined in the Kerala Service Rules. A protected teacher cannot have a right to claim the post in the parent school. As and when a vacancy arises he can put forward a preferential claim under Rule 51A of Chapter XIV-A K.E.R. If no such vacancy arises till the protected teacher attains the age of superannuation he will have to keep out. In his volition he cannot ask for a posting in the school. If such a right is recognised on admitting the protected teacher in the parent school another teacher will have to be sent out because the staff strength depends on the number of students. In these circumstances, the word ''lien'' used in G.O. (Ms) 104/69/Edn., dated 5th March 1969 cannot be understood as it is defined in the K.S.R. It can only be given the meaning of a preferential claim for appointment to the future vacancies'' as provided in Rule 51A, Chapter XIV-A K.E.R. Appointment of Headmasters in Upper Primary Schools is governed by Rules 45 and 45A of Chapter XIV-A K.E.R. It states that the post of Headmaster should be filled up from among qualified teachers on the staff of the school, is not entitled to be considered for the post. Being a protected teacher deployed to a Government school, 5th Respondent cannot put forward any claim to the post of Headmaster in his parent school.

8. In another case reported in Manager, A.U.P. School v. State of Kerala 1988 (1) KLT 402 a question of similar nature came up for consideration. That was a case where a graduate teacher working in a different school got a transfer to another school under different management under Rule 11 of Chapter XIV-A of the K.E.R. Two days after the transfer, the post of Headmaster fell vacant. The newly appointed graduate teacher contended that he was eligible to be appointed as Headmaster of the school under Rule 45 of Chapter XIV-A of the K.E.R. as he had more than one half of the period of service than the senior most undergraduate teacher of that school. His claim was not approved by the educational authorities and he filed an Original Petition and the same was dismissed and the decision of the learned Single Judge was affirmed in the Writ Appeal. The Division Bench held that:

A teacher on transfer under Rule 11 of Chapter XIV-A of the Rules cannot count service rendered by him before his transfer for the purpose of earning eligibility for being appointed as Headmaster under Rule 45 in the transferred School.

9. On an analysis of various provisions contained in the K.E.R. it is clear that a teacher who has been retrenched from service for want of vacancy is to be treated

as not in service of that school even if he is deployed to work in another school under the scheme of protection given to the retrenched teachers. The protected teacher is allowed to work in another school, but his service cannot be counted for the purpose of seniority vis-a-vis the teachers working in the parent school. A teacher working on deployment as a protected teacher may be entitled to get increment and other service benefits for the period he had worked as a protected teacher. Under Rule 37 of Chapter XIV-A of the K.E.R., he cannot reckon his service for the purpose of seniority in any grade in any unit he had worked previously, namely, in his parent school. The service he has rendered as a protected teacher cannot be taken into consideration as service for the purpose of Rule 45 of Chapter XIV (A) of the K.E.R. For a qualified graduate teacher to claim preference over the seniormost qualified undergraduate teacher, he should have got service equal to half of the period of service in the school under the same management.

10. In the instant case, the Appellant was working as a protected teacher in a different school. The service rendered by her in the Government school as a protected teacher cannot be reckoned as service for the purpose of Rule 45 of Chapter XIV-A of the K.E.R. The learned Single Judge was fully justified in allowing the writ petition.

This Writ Appeal is without any merit and it is dismissed.