

(1998) 10 KL CK 0054

High Court Of Kerala

Case No: O.P. No's. 7504, 9049 and 8535 of 1993

Manager, MUUPS and Others

APPELLANT

Vs

A.E.O. and Others

RESPONDENT

Date of Decision: Oct. 14, 1998**Acts Referred:**

- Kerala Education Act, 1958 - Section 10, 11

Citation: (1998) 2 KLJ 871**Hon'ble Judges:** P.V. Narayanan Nambiar, J**Bench:** Single Bench

Advocate: V.N. Achutha Kurup and T.R. Harikumar, for the Appellant; T.D. Rajalakshmy, E.R. Venkiteswaran, P.N. Mohanan, K.A. Abraham and Govt. Pleader (C.K. Pavithran), for the Respondent

Judgement

P.V. Narayanan Nambiar, J.

As the issues involved in the Original Petitions are inter-linked, they are being disposed of by a common judgment. The parties and exhibits referred to in the judgment are in the order in which they are referred to in O.P. No. 7504 of 1993 unless otherwise stated. The petitioner is the Manager of an aided school, M.U.P.P. School, Arattupuzha. The 5th respondent was appointed as Lower Grade Hindi teacher in the school with effect from 25-7-1977 for a period of three months. She passed S.S.L.C. Examination and Vidwan Examination in Hindi from the Hindi Pradhara Sabha, Hyderabad. The Vidwan Examination in Hindi from the Hindi Pradhara Sabha was not treated as an equivalent qualification under Chap. XXXI of the Kerala Education Rules, 1959 (hereinafter referred to as "the Rules") for appointment as Lower Grade Hindi Teacher in Upper Primary Schools and hence her appointment was not approved by the first respondent-Assistant Educational Officer, Ambalapuzha. She also absented herself from school from 7-10-1977 and proceedings were initiated against her by the Manager for her unauthorised absence. The 5th respondent as per Ext.P1 letter dated 27-10-1977 requested the

petitioner to drop the proceedings against her. It is also stated in Ext.P1 that she has relinquished all her claims to the said post.

2. Later, the first respondent as per Ext.P2 approved the appointment of the 5th respondent from 25-7-1977 to 7-10-1977 as an under-qualified full time Hindi teacher in the light of the Government Order G.O. No. 5361/78/G.Edn. dated 24-11-1978, copy of which is produced as Ext.P2 in O.P. No. 9049 of 1993.

3. The Manager thereafter appointed one Vilasini Amma as Lower Grade Hindi Teacher with effect from 25-10-1977 till 31-3-1978 which was approved by the first respondent. Later, she left the service and joined another school.

4. Another vacancy of Lower Grade Hindi Teacher arose in the school from 25-10-1985 in which one J. Saraswathi who is the petitioner in O.P. No. 8535 of 1993 was appointed. Her appointment for the period from 25-10-1985 to 31-3-1986 was approved as per Ext.P6 Government order, G.O.Rt. 580/89/G.Edn. dated 22-2-1989 (Ext.P3 in O.P. No. 8535 of 1993) and she was paid the minimum salary payable to a Lower Grade Hindi Teacher pursuant to the order of this court in C.M.P. No. 15198 of 1993 in O.P. No. 8535 of 1993. The 5th respondent staked her claim for the post taking shelter under R. 51A of Chap. XIVA of the Rules when J. Saraswathi was appointed to the vacancy on 25-10-1985. But the Manager rejected her claim as she did not possess the requisite qualification to be appointed as Lower Grade Hindi Teacher and also on the ground that she had relinquished her claim as per Ext.P1. In the light of the claim raised by the 5th respondent, the first respondent did not approve the appointment, of Saraswathi, petitioner in O.P. No. 8535 of 1993. Against the order of refusal of approval, the petitioner filed an appeal before the District Educational Officer/2nd respondent, but in vain. Thereafter he filed revision before the Director of Public Instructions/third respondent who also declined the request for approval of the appointment of J. Saraswathi and directed the petitioner to appoint the 5th respondent in the light of Ext.P4 communication of the Government addressed to the 5th respondent. Ext.P4 though challenged by the petitioner before the Government under Rule 92 of Chapter XIV A of the Rules, the same was dismissed as per Ext.P7. The petitioner then preferred an application for review of Ext.P7 which was dismissed as per Ext.P10. Hence, the petitioner prays for quashing Exts.P7 and P10 orders. He also prays for a declaration that the 5th respondent is not qualified to hold the post of Lower Grade Hindi Teacher and hence not eligible to get preference in appointment under R.51-A of Chapter XIV A of the Rules for appointment to the post of Lower Grade Hindi Teacher in the school. There is a further prayer to compel respondents 1 to 4 to take necessary steps to approve the appointment of Smt, J. Saraswathi as Lower Grade Hindi Teacher.

5. O.P. No. 9049 of 1993 is filed by the 5th respondent in O.P. No. 7504 of 1993. She stakes her claim under R. 51A of Chap. XIV A of the Rules. According to her, though she was not qualified on the date of her previous appointment, she was considered as fully qualified by the Government and her appointment was ordered to be

approved as per Ext.P2 produced by her in the Original Petition. She also relies on Ext.P4 proceedings of the District Educational Officer, Alleppey, dated 16-1-1988 in which it is stated that she is eligible to the benefit under G.O. MS. 69/80 G.Edn. dated 30-5-1980 (copy of the Government Order is produced as Ext.P3 in O.P. No. 7504 of 1993). It is also stated in Ext.P4 that the 5th respondent is declared qualified and her appointment was approved from 25-7-1977 to 7-10-1977.

6. O.P. No. 8535 of 1993 is filed by J. Sraswathi, the teacher who was appointed by the Manager with effect from 25-10-1985. Her prayer is to quash Exts.P3, P4 and P5 to the extent it declines approval of her appointment from 1-4-1986 onwards and also Exts.P7 and P8. There is a further prayer for issuance of a writ of mandamus or other direction to respondents 1 and 2 to approve her appointment from 25-10-1985 and pay her salary with arrears. She supports the case of the petitioner in O.P. No. 7504 of 1993. According to her, the petitioner in O.P. No. 9049 of 1993 has no claim under R. 51A of Chapter XIV A of the Rules.

7. In the light of the dispute which is highlighted in the Original Petition, the only point to be considered is whether the 5th respondent in O.P. No. 7504 of 1993 who is the petitioner in O.P. No. 9049 of 1993 is entitled to the benefit of R. 51A of Chap. XIV A of the Rules. Rule 51A reads as follows:

Qualified teachers who are relieved as per Rule 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, provided they have not been appointed in permanent vacancies in schools under any other Educational Agency.

On an interpretation of the Rule, it is seen that a qualified teacher who was relieved as per Rule 49 or 52 of Chap. XIV A of the Rules or on account of termination of vacancies only shall have preference for appointment to future vacancies in the school. Rule 49 reads as follows:

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 in their continuous service as on that day is less than the aforesaid period. This rule shall not apply to teachers appointed in training vacancies.

It is clear that Rule 49 will not apply to the 5th respondent as the same applies only to qualified teachers appointed in vacancies which extend over the summer vacation and who continue in such vacancies till the closing date, provided their continuous service on the closing date is not less than eight months. Rule 52 of Chap. XIV A of the Rules is extracted hereunder:

52.(1) Teachers who are relieved on account of any reduction in the number of posts under orders of the department shall on reappointment in the same school or in another school under the same management or a different management start on the same pay as they were getting at the time of relief, whether the new appointment is permitted or not.

(2) Teachers thrown out from service due to the withdrawal of recognition of schools by the Department shall also be eligible to draw the pay which they were getting at the time of withdrawal of recognition of the school on re-appointment in another school.

It is clear that this rule will apply only to teachers who have been relieved on account of any reduction in the number of posts under orders of the Government. The 5th respondent is not covered by Rule 52. Then the other question is whether the 5th respondent can be described as a teacher who has been relieved on account of termination of vacancy. It is nobody's case that she was relieved on account of termination of vacancy. On the other hand, she was not relieved by anybody, but she absented herself from 7-10-1977 onwards. Though she could have continued upto 24-10-1977, she abandoned the post in the meanwhile. So, she cannot be described as a person who has been relieved on account of termination of vacancy. Hence, Rule 51A of Chap. XIV A of the Rules will not apply to the 5th respondent who is the petitioner in O.P. No. 9049 of 1993.

8. That apart, Rule 51A will apply to qualified teachers. Admittedly, the 5th respondent was not qualified to be appointed as Lower Grade Hindi Teacher in an aided Upper Primary School. Though she has got general educational qualification, she does not possess the academic qualification or training qualifications prescribed under Chapter XXXI of the Rules. But she claims the benefit of G.O.MS. 69/90/G.Edn. dated 30-5-1980, copy of which is produced as Ext.P3 in O.P. No. 7504 of 1993. As per Ext.P3, the Government considered the case of teachers who were under-qualified and working in aided schools and passed a general order. It is stated in Ext.P3 that the Government is "pleased to direct that the appointments of all aided school teachers not possessing qualifications prescribed in Chap. XXXI KER but possessing qualifications for appointment to corresponding posts in departmental schools be approved as under-qualified till 31-3-1980 and as fully qualified from the date of their appointment in 1980-81. Fresh appointments in 1980-81 will be strictly from persons possessing the qualifications laid down in Chap. XXXI KER." Again in para. 5 of Ext.P3 it is stated that "there are a few cases of teachers of aided schools whose appointments have been approved as under qualified till 31-3-1980 on compassionate or other ground although they are not qualified for appointment in aided schools or departmental schools. These teachers are also permitted to be continued as under qualified on the definite understanding that they will not be appointed in 1981-82 unless they acquire the requisite qualification by that time."

9. As already stated, the 5th respondent does not possess the requisite qualification to be appointed as Lower Grade Hindi Teacher. Though at the time of her appointment, she was under-qualified, her appointment was approved basing on Ext.P3. But, it is specifically stated in Ext.P3 that only those teachers who are in service till the date of the Government order will get the benefit of relaxation of qualification. Section 10 of the Kerala Education Act empowers the Government to prescribe the qualification to be possessed by persons for appointment as teachers in Government and Private schools. Sec. 11 of the Kerala Education Act specifically states that subject to the rules and conditions laid down by the Government, teachers of aided schools shall be appointed by the managers of such schools from among persons who possess the qualifications prescribed under Sec. 10. The qualification prescribed under Sec. 10 is as seen in Chap. XXXI of the Rules. When the petitioner does not possess the requisite qualification mentioned in Chap. XXXI of the Rules, she can only take shelter under Ext.P3 Government Order which is not helpful to her. Rule 5 of Chap. XXXI of the Rules reads thus:

Notwithstanding anything contained in the above rules (1) appointment of all Private School Teachers not possessing the qualifications prescribed in Chap. XXXI of KER but possessing qualifications for appointment to corresponding posts in Departmental schools shall be approved as under qualified till 31-3-1980 and as fully qualified from the date of their appointment in 1980-81.

This rule in the present form was incorporated in the Rules after Ext.P3 Government order in 1987. So, going by Rule 5 also the 5th respondent is not entitled to be appointed after 1980-81 as Lower Grade Hindi Teacher as she does not possess the requisite qualification.

10. It was argued basing on Ext.P6, a copy of which is produced in O.P. No. 7504 of 1993., that as the Government has already given exemption to the petitioner from possessing the requisite qualification, she is exempted forever. But a combined reading of Exts.P6 and P3 makes it clear that exemption from possessing the requisite qualification is only for a limited period and not valid for all time to come. In the light of the specific prohibition under Sec. 11 of the Kerala Education Act, it cannot be said that the 5th respondent was qualified to be appointed in the vacancy which arose on 25-10-1985. Hence, the prayer of the 5th respondent/petitioner in O.P. No. 9049 of 1993 cannot be allowed. She is not entitled to be appointed basing on her claim under R. 51A of Chapter XIV A of the Rules. It is also to be noted in this context that she had no claim when R. Vilasini Amma was appointed on 25-10-1977 in the post which was abandoned by her. She staked her claim only in 1985 when J. Saraswathi, the petitioner in O.P. No. 8535 of 1993 was appointed in the post on 25-10-1985. When the 5th respondent cannot claim as of right, to be appointed in the vacancy which arose on 25-10-1985, the petitioner in O.P. No. 7504 of 1993 who is the competent authority to appoint teachers in the aided school can appoint anybody of his choice who is qualified to be appointed and hence, he appointed the

petitioner in O.P. No. 8535 of 1993 to the post. There is no reason why her appointment should not be approved. The stand taken by the educational authorities as ratified by the Government does not appear to be correct. Her appointment was not approved as preference was given to the 5th respondent under Rule 51A of Chap. XIV A of the Rules. As already stated, such orders were passed by the authorities giving a wrong interpretation to Rule 51 A and Ext.P3 Government Order.

11. In the light of what is stated above, the stand taken by respondents 1 to 4 in O.P. No. 7504 of 1993 that the 5th respondent therein should have been appointed in the place of the petitioner in O.P. No. 8535 of 1993 cannot be countenanced by this court.

12. In this circumstances, O.P. No. 7504 of 1993 is allowed. Exts.P7 and P 10 orders are quashed. As the 5th respondent is not qualified to hold the post of Lower Grade Hindi Teacher and she is not eligible to get preference under R. 51A of chap. XIV A of the Rules, the first respondent will approve the appointment of the petitioner in O.P. No. 8535 of 1993 as Lower Grade Hindi Teacher in the school managed by the petitioner with effect from 25-10-1985 and pay her all service benefits including arrears of salary and continue to pay the benefits attached to the post. O.P. No. 9049 of 1993 is dismissed.

In view of the fact that O.P. No. 7504 of 1993 is allowed, O.P. No. 8535 of 1993 also is to be allowed and I do so. Exts.P3, P4, P5, P7 and P8 produced in O.P. No. 8535 of 1993 are quashed.