

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE ANTONY DOMINIC
&
THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

MONDAY, THE 13TH DAY OF JULY 2015/22ND ASHADHA, 1937

W.A.No. 1805 of 2012 (A) IN WP(C).1951/2008

AGAINST THE JUDGMENT IN W.P.(C) NO.1951/2008 of HIGH COURT OF KERALA DATED 07-08-2012.

APPELLANT/3RD RESPONDENT IN THE WRIT PETITION (C):

THE MANAGR,
AIDED U.P.SCHOOL, PATHAIKKARA,
PATHAIKKARA P.O, PERINTHALMANNA,
MALAPPURAM DISTRICT.

BY ADV. SRI.B.UNNIKRISHNA KAIMAL

RESPONDENT(S)/PETITIONER AND RESPONDENTS 1, 2 AND 4 IN THE W.P(C):

1. SAINABA VELLARAM PARA (V),
W/O MOIDU MUSLIYAR M.P (LATE),
MANGADAM PARAMBATH HOUSE, MANALAYA P.O,
ANAMANGAD VIA, 679357, MALAPPURAM DISTRICT.
2. STATE OF KERALA,
REPRESENTED BY THE SECRETARY TO GOVERNMENT,
GENERAL EDUCATION DEPARTMENT, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM.
3. THE ASSISTANT EDUCATIONAL OFFICER,
PERINTHALMANNA.
4. SHRI. V. RAHIM,
S/O UMMER, UPSA (ARABIC), AIDED U.P. SCHOOL,
PATHAIKKARA, PATHAIKKARA P.O, PERINTHALMANNA,
MALAPPURAM DISTRICT.

R1 BY ADV. SRI.K.JAJU BABU, (SR.)

R2 & R3 BY SENIOR GOVERNMENT PLEADER, SRI. SHYSON P. MANGUZHA

R4 BY ADV. SRI.V.A.MUHAMMED

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 13-07-2015, ALONG WITH WA. 1808/2012, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.T.O.

**ANTONY DOMINIC
&
SHAJI P. CHALY, JJ.**

W.A.Nos.1805 & 1808 of 2012

Dated this the 13th day of July, 2015

JUDGMENT

Antony Dominic, J.

These writ appeals are filed by the Respondents Nos.3 and 4 in W.P.(C) No.1951 of 2008. The said writ petition was filed by the 1st Respondent herein, challenging Exts.P1 and P3 to the extent her claim for appointment as a Junior Arabic Teacher in the L.P. Section of the School of which the appellant in W.A.No.1805 of 2012 is the Manager was negatived. By the judgment under appeal, the learned Single Judge held that being a claimant under Rule 51A of Chapter XIV A of K.E.R., the 1st Respondent should have been appointed in the vacancy of Arabic Teacher in the L.P. Section with effect from 04.06.2007. It is this judgment which is under challenge before us by the Manager and the teacher who was appointed in the U.P. Section.

2. Briefly stated the facts are that the 1st Respondent is a claimant under Rule 51A of Chapter XIV A of K.E.R. and qualified for the post of Arabic Teacher in the L.P. Section. Admittedly, one Ummer, the Arabic Teacher in L.P. Section retired from the School on 31.03.2007, that the School re-opened on 04.06.2007 and the 1st Respondent was the only claimant qualified for appointment in the L.P. Section. But, she was not appointed and instead, the appellant in W.A.No.1808 of 2012 was appointed as Arabic Teacher in the U.P. Section, allegedly in anticipation of sanctioning of a post in the U.P. Section. Subsequently, Ext.R3(a) staff fixation order for the year 2007-2008 was issued on 12.10.2007, sanctioning a post in the U.P. Section and accordingly the appointment made in the U.P. Section was approved.

3. The representation made by the 1st Respondent to the Assistant Educational Officer was rejected and her representation filed before the Government was also rejected. In the Government Order dated 01.01.2008, rejecting the revision, it was held thus:

"4) It is beyond doubt that there was an established vacancy of Junior teacher (Arabic) in the L.P. Section of the concerned school as on 01.04.2007, due

to the retirement of the former teacher and the petitioner was eligible to hold the post. Since the vacancy was permanent and established and the Assistant Educational Officer, concerned admitted that the vacancy was there from 4.6.2007 to 14.7.2007, the petitioner could have been appointed there to in the light of the direction contained in K.Dis/40067/N2/73 dated 12.2.1974 and H2/161322/75 dated 31.12.1975 of the Director of Public Instruction. Further, it was not necessary to deny appointment to the petitioner in anticipation of sanction of a post in another section of the school as appointments are to be made with reference to the conditions existing at the time of occurrence of vacancy. Moreover, a 51A claimant like the petitioner is bound to be appointed even if no claim is raised by him/her vide decision in Lilly v. Secretary to Government, General Education Department and others - 2003(2) KLJ 748. The Manager and Educational Officers should always abide by the statutory provisions in the KER and they should not have denied appointment to a legitimate claimant on the flimsy ground of "anticipation of sanction of a (higher) post for which the claimant is not qualified". Whether the claimant would become ineligible to hold the post on a later date is not at all a factor to be considered for making appointment with reference to conditions existing at the time of occurrence of vacancy in accordance with relevant rules.

5) In the circumstance of the case, it was improper on the part of the Manager and Assistant Educational Officer concerned, in not having recognized the legitimate claim of the petitioner under Rule 51A,

Chapter XIV A, KER and denied her appointment to the post of Junior Arabic teacher in the L.P. Section of the school against the retirement vacancy in question, with effect from 4.6.2007. But, since a post of Junior Arabic Teacher has been sanctioned to the UP Section of school in lieu of the said post in the LP Section and also since the petitioner is not qualified to hold the new post, it is not possible to appoint her in that post at present. Therefore, the request of the petitioner is rejected as infructuous."

4. It was on the above background, the 1st Respondent filed the writ petition, which was disposed of by the learned Single Judge, recognizing her claim to be appointed against the vacancy in the L.P. Section with effect from 04.06.2007.

5. We heard the learned counsel for the appellants, learned counsel for the 1st Respondent and the learned Senior Government Pleader appearing for the official Respondents.

6. According to the appellants, the appointment made was in anticipation of the creation of the post and is protected by Rule 12(B) of Chapter XIV A of K.E.R. Further, the 1st Respondent was not qualified for appointment to the post in the U.P. Section. Therefore, it is contended that the learned Single Judge ought not have recognized her claim for appointment.

7. From the Government Order, the relevant portion of which has been extracted in the earlier part of this judgment, it can be seen that a retirement vacancy arose in the L.P. Section of the School with effect from 04.06.2007. The 1st Respondent was the only claimant to that post and he is qualified for that post also. If that be so, under Rule 51A of Chapter XIV A of K.E.R., the Manager had the duty to appoint the 1st Respondent. It may be true that on the issuance of the staff fixation order and on creation of the UPSC post, the consequences thereof would have followed in the school. In so far as that aspect is concerned, as rightly held by the learned Single Judge, those are matters to the concerned authorities to take care and such subsequent developments could not have resulted in negating the statutory claim of the 1st Respondent as recognized under Rule 51A of Chapter XIV A of K.E.R.

8. In so far as the claim of the appellants that the appointment made is protected under Rule 12(B) of Chapter XXIII is concerned, no material whatsoever is produced before this Court to prove that the appointment was made in anticipation of the creation of any vacancy. On the other hand, the impression that we gather is Rule 12(B) is now relied

on to legitimise an illegitimate appointment made by the Manager. We, therefore, do not see any reason to differ from the conclusions of the learned Single Judge.

Appeals fail and accordingly they are dismissed.

Sd/-

**ANTONY DOMINIC
JUDGE**

Sd/-

**SHAJI P. CHALY
JUDGE**

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P.S. to Judge

St/-