

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

WEDNESDAY, THE 3RD DAY OF JUNE 2015/13TH JYAISHTA, 1937

WA.No. 1465 of 2013 () IN WP(C).15602/2010

AGAINST THE ORDER/JUDGMENT IN WP(C) 15602/2010 of HIGH COURT OF KERALA
DATED 4.2.2013

APPELLANT(S)/RESPONDENTS 1 TO 3:

1. STATE OF KERALA
REPRESENTED BY THE SECRETARY TO GOVERNMENT
GENERAL EDUCATION DEPARTMENT, GOVERNMENT SECRETARIAT
THIRUVANANTHAPURAM.
2. THE DIRECTOR OF HIGHER SECONDARY EDUCATION
HOUSING BOARD BUILDING, THIRUVANANTHAPURAM.
3. THE REGIONAL DEPUTY DIRECTOR OF HIGHER SECONDARY EDUCATION
CORPORATION BUILDING, THIRUVANANTHAPURAM.

BY SR GOVERNMENT PLEADER SMT. ROSE MICHAEL

RESPONDENT(S)/PETITIONER & 4TH RESPONDENT :

1. THE MANAGER
SMHSS, PATHARAM, SOORANAD SOUTH
KOLLAM.
2. BINDU THANKACHAN
S/O. THANKACHAN, RESIDING AT BINU BHAVAN
ERAVICHIRA NADUVIL, PATHARAM P.O., SOORANADU
KOLLAM.

R BY SRI. JOHN JOSEPH VETTIKAD

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 03-06-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ANTONY DOMINIC & SHAJI P. CHALY, JJ.

W.A.No.1465 of 2013

Dated this the 3rd day of June, 2015

JUDGMENT

Antony Dominic, J.

1. This writ appeal is filed by respondents 1 to 3 in W.P(C).15602/10 filed by the first respondent herein. In the writ petition, the first respondent challenged Ext.P2 order passed by the third appellant, rejecting approval of the appointment of the second respondent as Lower Division Clerk in the Higher Secondary Section of the School. He also challenged Ext.P7 order passed by the second appellant rejecting the representation filed by the Manager seeking review of Ext.P2. By the judgment under appeal, learned single Judge held Ext.P7 untenable and directed the second appellant to re-consider the matter in accordance with the Division Bench judgment of this Court in State of Kerala v. Saji [2009 (3) KLT 766] and the order passed by the Apex Court in SLP.No.6959/10. It is this judgment which is under challenge before us.

2. We heard learned Government Pleader appearing for the appellants and the learned counsel appearing for the first respondent.

3. According to the learned Government Pleader, G.O.(MS). 18/91 dated 1.2.1991 shows that there is no post of L.D. Clerk in the Higher Secondary Section. Therefore, according to him, in the absence of a sanctioned post in the Higher Secondary Section, Learned single Judge could not have directed the Director to consider the issue relating to approval of appointment made by the Management. This contention of the learned Government Pleader was sought to be resisted by the counsel for the first respondent by referring to the provisions of Chapter XXXII of Kerala Education Rules, Ext.P3 judgment of this Court and Ext.P5 order passed by the Apex Court in the SLP mentioned above.

4. We have considered the submissions made. It is true that the provisions of G.O.(MS).18/91 dated 1.2.1991 does not show that there is any post of L.D. Clerk in the Higher Secondary Section. However, Chapter XXXII of KER was introduced to the Statute by G.O.(P). 331/01 dated 9.11.2001 and Rule 3 thereof shows that the post of L.D. Clerk occurs at category No.7. Rule 4 shows that the method of appointment is also

prescribed in the Rules. This, therefore, shows that while introducing Chapter XXXII to the KER, the Government have provided for the post of L.D. Clerk in the Higher Secondary Section of the school which is a departure from the provisions contained in the G.O(MS) 18/91 dated 1.2.1991 relied on by the learned Government Pleader.

5. Reading of Ext.P7, the order impugned in the writ petition, shows that the Director declined the approval sought for by the first respondent for the reason that in the absence of the Government creating the post of L.D. Clerk, approval cannot be granted. This reasoning, we are afraid, is untenable because sanctioning of a post of L.D. Clerk is a statutory function of the Director as is enjoined by Rule 3 of Chapter XXXII. Therefore, if the circumstances indicated by this Court in Ext.P3 judgment and in Ext.P5 order passed by the Apex Court are satisfied, it is for the Director to sanction the post and for that matter, he cannot await or obey the dictates of the Government. In that view of the matter, we do not find any reason to interfere with the order

passed by the learned single Judge quashing Ext.P7 and directing the second appellant Director to reconsider the matter in the light of the Division Bench judgment in State of Kerala v. Saji [2009 (3) KLT 766] and the order passed by the Apex Court in SLP.No.6959/10.

Appeal fails. It is accordingly dismissed.

Sd/-
ANTONY DOMINIC, Judge.

Sd/-
SHAJI P. CHALY, Judge.

kkb.

/True copy/

PS to Judge