

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

TUESDAY, THE 23RD DAY OF JUNE 2015/2ND ASHADHA, 1937

WA.No. 1153 of 2015 () IN WP(C).16529/2013

AGAINST THE JUDGMENT IN WP(C) 16529/2013 of HIGH COURT OF KERALA
DATED 21.5.2015

APPELLANT(S)/3RD RESPONDENT:

THE MANAGER
NANMINDA HIGHER SECONDARY SCHOOL, NANMINDA
NANMINDA P.O., KOZHIKODE -673613.

BY ADVS. SRI. S. RAMESH BABU (SR.)
SRI. P. RAVINDRA NATH
SRI. K. P. KAMALAKARA BABU
SRI. N. KRISHNA PRASAD
SRI. IMAM GRIGORIOS KARAT

RESPONDENT(S)/RESPONDENTS 1, 2, 4 & 5 AND PETITIONERS:

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1. THE DIRECTOR OF HIGHER SECONDARY EDUCATION
HOUSING BOARD BUILDING, SANTHI NAGAR
THIRUVANANTHAPURAM-695001.
 2. THE REGIONAL DIRECTOR, HIGHER SECONDARY EDUCATION,
REGIONAL OFFICE, KOZHIKODE-673001.
 3. P. BINDU, PRINCIPAL, NANMINDA HIGHER SECONDARY SCHOOL,
NANMINDA, NANMINDA P.O., KOZHIKODE -673613.
 4. STATE OF KERALA REPRESENTED BY THE SECRETARY TO
GOVERNMENT, DEPARTMENT OF GENERAL EDUCATION
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM-695001.
 5. K. K. USHA
HSST (SENIOR), NANMINDA HIGHER SECONDARY SCHOOL
NANMINDA, NANMINDA P.O., KOZHIKODE-673613.
 6. K. K. SHAJI
HSST (SENIOR), NANMINDA HIGHER SECONDARY SCHOOL
NANMINDA, NANMINDA P.O., KOZHIKODE -673613.
 7. K. P. DAMODARAN
HSST (SENIOR), NANMINDA HIGHER SECONDARY SCHOOL
NANMINDA, NANMINDA P.O., KOZHIKODE 673613.
 8. A. V. HARISH
HSST (SENIOR), NANMINDA HIGHER SECONDARY SCHOOL
NANMINDA, NANMINDA P.O., KOZHIKODE -673613.

R5 TO R8 BY SRI. GEORGE POONTHOTTAM
R1, R2, R4 BY SR GOVT PLEADER SRI. M. A. FAYAZ

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 23-06-2015,
ALONG WITH W.A.1188/15 AND CONNECTED CASES, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

“C.R.”

ANTONY DOMINIC & SHAJI P. CHALY, JJ.

W.A.Nos.1153, 1188, 1222 & 1233 of 2015

Dated this the 23rd day of June, 2015

JUDGMENT

Antony Dominic, J.

1.W.A.Nos.1153/15 and 1188/15 are filed by the 3rd and 4th respondents in W.P(C).16529/13 and W.A.Nos.1222/15 and 1233/15 are filed by additional respondents 4 to 8 and additional 9th respondent in W.P(C).28827/13. W.P(C).16529/13 was filed by respondents 5 to 8 in W.A.1153/15, who are also respondents 1 to 4 in W.A.1188/15. W.P(C).28827/13 was filed by the first respondent in W.A.Nos.1222/15 and 1233/15.

2.The issues raised in the writ petitions being connected, those cases were heard together and were disposed of by a common judgment rendered by the learned single Judge. For the same reason, these writ appeals were heard together and are being disposed of by this common judgment.

3.The fate of these appeals would depend upon our decision on the sole question whether, for the purpose of promotion to the post of Principal of a

Higher Secondary School, when seniority of teachers in the feeder category of Higher Secondary School Teacher (HSST) is reckoned, a teacher is entitled to reckon his service as HSST (Junior) also. In the judgment under appeal, referring to the provisions of the rules in Chapter XXXII of the Kerala Education Rules, ('KER', for short) and the judgment of this Court in W.P(C).30005/05, learned single Judge held that while reckoning seniority in the category of HSST, the service rendered as HSST (Junior) also is liable to be reckoned. On that basis, learned single Judge interfered with the promotion ordered to the post of Principal and quashed Ext.P3 Government Order challenged in W.P(C).28827/13. It is this judgment which is challenged before us by the Managers of two aided schools and the affected teachers.

4. We heard learned counsel for the parties as also learned Government Pleader.

5. Though, in W.P(C).28827/13, one Mr.P.M.Thomas, Additional Secretary to Government, who passed Ext.P3 order challenged therein, was impleaded in his

personal capacity, he was deleted from the party array by virtue of the order passed in I.A.779/15 in W.A.1222/15. Similarly, I.A.789/15 filed in W.A.1233/15 has also been allowed, deleting the 4th respondent from the party array.

6. Having considered the submissions made, we are of the view that the question that is raised should be answered in the light of the relevant provisions contained in Chapter XXXII of the KER. Rule 2 of Chapter XXXII provides that notwithstanding anything contained in the KER, the method of appointment and qualifications of teaching and non-teaching staff in the aided Higher Secondary Schools in the State shall be as prescribed in that Chapter. Rule 3 states that the service of every aided Higher Secondary School shall consist of all or any of the categories of posts mentioned therein, as the Director may sanction. Category 1 is the post of Principal, category 2 is the post of Higher Secondary School Teacher and category 3 is the post of Higher Secondary School Teacher (Junior).

7. Rule 4 of Chapter XXXII KER prescribes the method of appointment to the posts in the 8 categories of posts specified in Rule 3. In so far as the post of Principal is concerned, prior to its amendment by G.O (P).93/09/G.Edn dated 27.3.2009 with effect from 6.1.2006, the method of appointment prescribed for the post read as follows:

"(1) By Promotion from Category 2 under the respective educational agency.

OR

(2) By transfer from qualified Headmasters of Aided High Schools under the respective educational agency.

Note:-(i) The post of principal will be a selection post and appointment to the post shall be made on the basis of the recommendation of a selection committee consisting of the Manager or his nominee as Chairman, a Selection Grade Lecturer or Reader or principal of a college nominated by the Manager and Government representative as members. The Government representative shall be nominated by the Manager from among the Officers of Higher Secondary Education Department not below the rank

- of a Deputy Director or Officers of the Government not below the rank of a Deputy Collector.
- (ii) Preference shall be given to Aided Higher Secondary School Teachers having teaching experience at the Higher Secondary School level.
 - (iii) The post shall be filled up by the methods specified in item (i) and (ii) above in the ratio 2:1. If qualified candidates are not available for appointment to a vacancy by any one of the methods specified above, such vacancies shall be filled up by the other method."

8. Rule 6 prescribes the qualifications to the various posts enumerated in Rule 3. In so far as the post of Principal is concerned, the unamended rule, to the extent it is relevant, read as follows:

Method of Appointment	Qualification
By Promotion	(1) Master's Degree with not less than 50% marks from any Universities in Kerala or a qualification recognised as equivalent thereto by any University in Kerala
	(2) B.Ed Degree from any

Universities in Kerala or a qualification recognised as equivalent thereto by any university in Kerala

(3) Minimum approved teaching experience of 12 years.

Note:- Preference shall be given based on the teaching experience at Higher Secondary level.

9. Rule 4 of Chapter XXXII, KER, in so far as the post of Principal is concerned, provided for appointment by promotion from category 2, viz., HSST, under the respective educational agency or by transfer from qualified Headmasters of Aided High Schools under the respective educational agency. As per note (i), the post of Principal shall be a selection post and appointment to the post shall be made on the basis of the recommendation of a selection committee, the constitution of which was also mentioned in the note itself. Note (ii) provided for preference to Aided Higher Secondary Teachers having teaching experience at the Higher Secondary School level. Note (iii) provided for a ratio of 2:1 between promotion and by transfer appointment. In Rule 6, after prescribing the educational qualifications of Master's Degree and

B.Ed, a minimum approved teaching experience of 12 years was also prescribed. As per the note incorporated in this rule, those having teaching experience at Higher Secondary level are entitled to preference.

10. By G.O(P).93/09/GE dated 27.3.2009, when the rule was amended with effect from 6.1.2006, notes (i) and (ii) in rule 4 providing that the post of Principal shall be a selection post and giving preference to Aided Higher Secondary teachers having experience in the Higher Secondary School were omitted. The amended Rule 4, prescribing the method of appointment to the post of Principal, is as follows:

"(1) By Promotion from Category 2 under the respective educational agency.

OR

(2) By transfer from qualified Headmasters of Aided High Schools under the respective educational agency.

Note:-(i) x x x x
(ii) x x x x

(iii) The post shall be filled up by the methods specified in item (i) and (ii) above in the ration 2:1. If qualified candidates are not available for appointment to a vacancy by any one of the methods specified above, such vacancies shall be filled up by the other method."

11. Reading of the rule as amended shows that among the two methods of appointment that are prescribed, first one is promotion from category 2, viz., Higher Secondary School Teacher under the respective educational agency and the second method is by transfer from qualified Headmasters of Aided High Schools under the respective educational agency. Category 2 in the special rules, as already noticed, is HSST and therefore, feeder category is HSST alone. The method of appointment to the post of HSST shows that HSST (Junior) is a post in the feeder category for the post of HSST and is included in category 3.

12. When we turn to Rule 6 prescribing qualifications for the various posts, the qualifications prescribed for the post of principal reads thus:

Method of Appointment	Qualification
By Promotion	(1) Master's Degree with not less than 50% marks from any Universities in Kerala or a qualification recognised as equivalent thereto by any University in Kerala (2) B.Ed Degree from any of the Universities in Kerala or a qualification recognised as equivalent thereto by any university in Kerala (3) Minimum approved teaching experience of 12 years at Higher Secondary Level under the same Educational Agency.

- Note - 1. In the absence of persons having qualification as specified above, approved teaching experience at High School/Upper Primary/ Lower Primary School's under the same Educational Agency shall be considered.
2. Such experience shall be reckoned only for qualifying Service and shall not be reckoned for Seniority.
 3. Such persons must possess a minimum Service of Six years as Higher Secondary School Teacher (Senior/ Junior).

13. Reading of rule 6 shows that among the qualifications prescribed for the post of Principal, in addition to Master's Degree and B.Ed, minimum approved teaching experience of 12 years at Higher

Secondary level in the concerned educational agency is also prescribed as one of the qualifications for promotion. In the context of the controversy raised before us, it is also necessary to note that as per note (i) to Rule 6, in the absence of persons having the specified qualification, approved teaching experience at High School/Upper Primary/ Lower Primary Schools under the same Educational Agency shall also be considered. Note 2 further provides that such experience as mentioned in note 1 shall be reckoned only for reckoning the qualifying service and shall not be reckoned for seniority. Note 3 also states that such persons who are entitled to the benefit of notes 1 and 2 must possess a minimum service of 6 years as HSST (senior/junior).

14. The above being the rules which govern the appointment to the post of Principal in an Aided Higher Secondary School, the question that requires to be answered is whether an HSST, which is the sole feeder category post in category 2, is entitled to count the period of his service as HSST (Junior) for reckoning his seniority for the purpose of promotion

to the post of Principal. Rule 4 specifies the method of appointment. The first method of appointment is by promotion from category 2 in the respective educational agency. This, therefore, means that when the post of Principal in the school is filled up by promotion, such promotion can be effected only from among HSST. Note 1 which provided that the post shall be a selection post and which also provided the constitution of the selection committee, has since been deleted with effect from 6.1.2006 and there is no indication whatsoever in the rules that the basis for promotion shall be anything other than seniority. This, therefore, means that while promotion is to be effected to the post of Principal, the same should be on the basis of seniority of those in the feeder category post of HSST.

15. The contention of the writ petitioners that they are entitled to reckon the period of service rendered by them in the post of HSST (Junior) also for the purpose of seniority as HSST, was raised primarily relying on the provisions of rule 6 and in particular, clause 3, which provided that there shall

be a minimum approved teaching experience of 12 years at “Higher Secondary level” under the same educational agency. According to them, the expression “Higher Secondary Level” used in the Rule makes it clear that the rule making authority did not intend to make a distinction between experience gained in the posts of HSST and HSST (Junior). They also placed considerable reliance on notes 1 and 2 and according to them, note 2, which provides that the experience reckoned as per note 1 shall be only for the purpose of qualifying service and shall not be reckoned for seniority, applies only for high school/upper primary/lower primary school teachers. In other words, the contention urged is that since the excluded categories are specifically enumerated in the note, such exclusion does not extend to HSST (Junior) and therefore, the services rendered by HSST (Junior) is liable to be reckoned for the purpose of seniority for promotion to the post of Principal.

16. In our view, this contention raised by the writ petitioners and which has been accepted by the learned single Judge is untenable.

17. As we have already stated, rule is specific that promotion is to be effected from category 2, HSST. The basis on which such promotion is to be effected is seniority in the feeder category. Therefore, going by the provisions of the rules, promotion is to be effected based on the seniority in the category of HSST. If the contention canvassed by the writ petitioners is accepted, this very basis will be upset. This can be demonstrated with reference to the case of the writ petitioners themselves. Admittedly, the writ petitioners joined service as HSST (Junior), a post included as a separate category in the special rules and is carrying a lower scale of pay. They were promoted to the higher post of HSST long after the appellants herein were directly appointed to that post. On their promotion, the writ petitioners were on probation for the prescribed period in the higher post of HSST. If the contention raised is accepted and the service as HSST (Junior) is also reckoned for seniority, these promotees will get credit in the service rendered by them in the lower post of HSST (Junior) and on that basis, will steal a march over their seniors in the category of

HSST and based on seniority so reckoned, will also earn promotion to the post of Principal. That cannot be the purport of the rule as that will destroy the very basis of the seniority position.

18. In so far as the provisions contained in rule 6 are concerned, a minimum approved teaching experience of 12 years at Higher Secondary level prescribed in clause 3 is only one of the qualifications prescribed for the post of Principal. Therefore, though the term used is "12 years experience at Higher Secondary level", it is not intended to confer seniority to promotees in the category of HSST, giving credit to their service as HSST (Junior) as well. This provision of the Rule cannot also read to mean that for the purpose of seniority, the rule making authority was not making any distinction between HSST and HSST (Junior). If it were so, there would have been such an indication in Rule 4, where the feeder category is confined to HSST and seniority in the feeder category is made the criteria for promotion. Therefore, the prescriptions in Rules 4 and 6 can be

harmonised only by such an interpretation of Rules 4 and 6 of the special Rules.

19. It is true that as per note 1, in the absence of persons having qualification of 12 years at Higher Secondary level, approved teaching experience at high school/upper primary/ lower primary schools in the same educational agency will also be considered. It is also true that by note 2, it is provided that such experience shall be reckoned only for qualifying service and shall not be reckoned for seniority. A reading of these provisions of rule shows that by note 2, the experience of high school/upper primary/lower primary teachers is excluded from seniority. That, in our view, does not mean that the experience of HSST (Junior) is intended to be included while seniority of HSST is reckoned for the purpose of promotion to the post of Principal in Aided Higher Secondary schools and thus to upset the acquired and settled seniority of teachers in category 2. Therefore, the contentions relying on the notes to rule 6 now urged by the counsel for the writ petitioners cannot be accepted. This,

therefore, means that the provisions of Chapter XXXII, KER do not permit an interpretation that a HSST (Junior) who gets promoted as HSST is entitled to reckon the experience again as HSST (Junior) for the purpose of seniority for promotion to the post of Principal.

20. In so far as the judgment of the learned single Judge in W.P(C).Nos.30005/05 and 21153/06 relied on by the learned counsel for the writ petitioners is concerned, it is true that in paragraph 14, an observation has been made that the teaching experience of 12 years at higher secondary level prescribed in rule 6 is intended to treat the teaching experience of HSST and HSST (Junior) at par for promotion to the post of principal. This judgment was rendered in the context of the provisions of the rules prior to its amendment by G.O(P).93/09/GE dated 27.3.2009 and therefore, the observation contained in paragraph 14 is not the ratio of the judgment, to be followed as a precedent while understanding the rule as amended.

21. For the aforesaid reasons, we are unable to agree with the conclusion of the learned single Judge. The judgment under appeal is set aside.

Appeals are allowed and the writ petitions will stand dismissed.

Sd/-
ANTONY DOMINIC, Judge.

Sd/-
SHAJI P. CHALY, Judge.

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PS to Judge