

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE ANTONY DOMINIC
&
THE HONOURABLE SMT. JUSTICE P.V.ASHA

TUESDAY, THE 3RD DAY OF NOVEMBER 2015/12TH KARTHIKA, 1937

WA.No. 1467 of 2014 () IN WP(C).30865/2011

AGAINST THE JUDGMENT IN WP(C) 30865/2011 of HIGH COURT OF KERALA
DATED 22-07-2014

APPELLANT/PETITIONER:

THE AIDED UPPER PRIMARY SCHOOL,
PALLATHADKA, KASARAGOD, REP BY ITS MANAGER
HARIKUMAR P, AGED 30 YEARS, S/O.SHANKARANARAYANAN BHAT
PALLATHADKA POST, BADIADKA VILLAGE
KASARAGOD TALUK AND DIST

BY ADVS.SMT.SUMATHY DANDAPANI (SR.)
SRI.MILLU DANDAPANI
SRI.M.RAMACHANDRAN (KALOOR)

RESPONDENTS/RESPONDENTS:

1. THE STATE OF KERALA
REP BY ITS SECRETARY TO GOVERNMENT
EDUCATION DEPARTMENT, GOVERNMENT SECRETARIAT
THIRUVANANTHAPURAM-695001

2. ASSISTANT EDUCATIONAL OFFICER
KUMBLA, BADIADKA , BADIADKA POST
BADIADKA VILLAGE, KASARAGOD-671551

3. SENIOR SUPERINTENDENT OF THE OFFICE OF
THE ASSISTANT EDUCATIONAL OFFICER, KUMBLA,
BADIADKA , BADIADKA POST, BADIADKA VILLAGE
KASARAGOD-671551

4. SMT ROJA
W/O.SRI D JAYANARAYANA, THAYANNUR HOUSE
R D NAGAR POST, KASARAGOD DISTRICT-671124

SRI.P.FAZIL, GOVERNMENT PLEADER
BY ADV. SRI.T.K.VIPINDAS
R4 BY ADV. SRI.K.V.SREE VINAYAKAN
R4 BY ADV. SRI.K.M.MUHAMMED HUSSAIN
R4 BY ADV. SRI.K.JAJU BABU (SR.)

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 03-11-2015,
ALONG WITH WA. 2368/2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

RKC

ANTONY DOMINIC & P.V ASHA, JJ.

W.A No.1467 of 2014

and

W.A No.2368 of 2015

Dated this the 3rd day of November, 2015

JUDGMENT

Antony Dominic, J.

The petitioner in W.P(c) No.30865/2011 has filed W.A No.1467 of 2014; whereas a third party has filed W.A No.2368 of 2015, challenging the very same judgment, after obtaining leave from this Court.

2. W.P(c) No.30865/2011 was filed by the appellant in W.A No.1467/2014 challenging Ext.P4 order passed by the Government recognising the claim of the 4th respondent in the Writ Appeal, under Rule 51A of Chapter XIVA KER and directing that she be appointed as UPSA (Kannada) in the school of the appellant. The Writ petition having been dismissed, the appeal is filed.

3. The appellant in W.A No.2368/2015, who was appointed to the vacancy claimed by the 4th respondent mentioned above, has filed this appeal contending that if Ext.P4 order is implemented and the 4th respondent is appointed, he will

face termination from service.

4. The facts which led to the filing of the Writ Petition are that, on 12.07.2000, the 4th respondent mentioned above was appointed in the school of the appellant in W.A No.1467 of 2014 as UPSA (Malayalam). Here it is to be mentioned that, parallel divisions in Malayalam and Kannada languages are functioning in the school and therefore Malayalam or Kannada only signifies the stream in which the teacher is appointed and not the language taught. Due to division fall, the 4th respondent was relieved from service on 15.07.09. Subsequently, a vacancy of UPSA (Kannada) arose in the school on the retirement of one Smt.Santhakumari w.e.f 31.03.2011. It was in that vacancy, the appellant in W.A No.2368/2015, who possesses the qualification of B.A (History) and B.Ed. (Social Science), was appointed w.e.f 1.6.2011.

5. On coming to know of this, the 4th respondent in W.A No.1467/2014 submitted Ext.P5 representation dated 30.10.2010, claiming appointment to the vacancy that arose on 31.3.2011. It was on this request that the Government ultimately issued Ext.P4 order dated 28.09.2011. In that order,

the Government ordered thus:

“I am to invite your attention to the reference cited. As per the existing provision TTC (Kannada) is not an essential qualification for appointing UPSA in Kannada Medium School. It is very clear that there is no bar on appointing UPSA (Malayalam) in Kannada Medium School and the TTC holders in Kannada cannot be denied appointment as UPSA in Kannada Medium School. Both TTC (Malayalam) and TTC (Kannada) are approved qualification for the post. Moreover Smt.Roja, the petitioner passed the Minority Language Test in Kannada and her mother tongue is Kannada and hence she is qualified for teaching in Kannada. Hence the Manager cannot appoint a new hand ignoring the claim of the petitioner as she is a rule 51(A) claimant. In the circumstances, I am to request you to direct the Manager to appoint Smt.K.Roja, as UPSA (Kannada) in the `retirement' vacancy of Smt.Shanthakumari.”

6. It was challenging the above order-Ext.P4 of the Government, W.P(c) No.30865 of 2011 was filed. The contentions raised before the learned Single Judge was that the vacancy being that of a UPSA (Kannada) and the 4th respondent being qualified in T.T.C (Malayalam) and relieved from the post of UPSA (Malayalam), she was not qualified or entitled to appointment to the post and therefore the Government could not have ordered her appointment in the vacancy of UPSA (Kannada), which arose on 31.03.2011. Having regard to the provisions contained in Rule 3 of Chapter XXXI KER, prescribing the qualification of UPSAs, the learned Single Judge negated

the contentions and dismissed the Original Petition. It is this judgment, which is called in question in these appeals.

7. We heard the learned Senior Counsel for the appellant in W.A No.1467 of 2014 and the learned counsel appearing for the appellant in W.A No.2368 of 2015. On behalf of the respondents, the learned Government Pleader and the learned Senior Counsel appearing for the 4th respondent were also heard.

8. The contention raised by the learned Senior Counsel is that the post of UPSA (Kannada) could not have been ordered to be filled up by a person who had been relieved from the post of UPSA (Malayalam). This, according to Counsel, is not permissible in recognition of the rights under Rule 51A of Chapter XIVA KER. In support of this plea, the learned Senior Counsel placed reliance on the judgment of this Court in **Anilkumar v. Beena** [2000 (1) KLT 286] and also **Kalavathy v. State of Kerala** [2014(3) KLT 302]. However, referring to the provisions of Rule 3 of Chapter XXXI KER and the fact that appointment is to the post of UPSA in an Aided School, where Kannada classes are also parallelly taught, the learned Senior

Counsel for the 4th respondent contended that the principles laid down in the aforesaid judgments do not have any relevance in this case and that the 4th respondent is a candidate who is eligible for appointment to the vacancy that arose on 31.03.2011.

9. Having considered the submissions made, we are of the view that these appeals are only to be dismissed. Admittedly, the school is a bilingual school, where students are also taught in Kannada stream. The vacancy that arose on 31.03.2011 was to the post of UPSA in the Kannada stream and the subject to be taught was not Kannada language. Rule 51A of Chapter XIVA KER was inserted with the object and purpose to restore to those qualified persons relieved of the appointment the post they lost for want of vacancies. This Rule was subsequently amended by SRO 635/05 and as a result, they can also claim future vacancies in the same or higher or lower category of teaching post, for which the teacher is qualified. It was interpreting the Rule as it stood prior to its amendment, that the judgment was rendered in **Anilkumar v. Beena** (supra), where this Court held that the preferential claim of thrown out teachers must be in tune with the qualification on the basis of which they held the post earlier.

Though it was in the context of the Rules as amended, in the judgment in **Kalavathy's** case (supra), this Court was considering the claim of a lower grade Hindi Teacher for appointment as UPSA. It was in that context, this Court in paragraph 11 of the judgment held thus:

“11. Further, the extended benefit to such a teacher is to claim preference for reappointment to the same, lower or higher category of teaching posts. The words lower and higher occurring in the rule should be understood in the context of the word `same'. This therefore means that the lower and the higher posts should be in the same discipline in which the teacher has rendered service as a qualified teacher. In other words, one cannot work in one discipline and claim the benefit of preference under R.51A to a post in a different discipline, be it to a lower or higher post.”

10. In so far as this case is concerned, the 4th respondent was thrown out on 15.09.2009, at a time when she was working as UPSA. The vacancy which arose on 31.03.2011 is also that of a UPSA. In such a situation, neither of the principles laid down in the judgments relied on by the learned Senior Counsel have any relevance, and relying on those judgments, the claim of the 4th respondent cannot be negated. As is evident from Rule 3 of Chapter XXXI KER, the qualification prescribed for the post of UPSA, is SSLC with TTC. If the provisions of the second explanation to the said Rule are considered, it can also be seen

that the TTC in Kannada shall also be treated as a sufficient qualification for appointment in a school with parallel divisions. The provisions of the second explanation do not, to our mind, mean that a teacher who is possessing TTC (Malayalam) is ineligible to be appointed in a parallel school as UPSA. So viewed, we have to accept the contention of the 4th respondent, which has been fully recognised by the Government in Ext.P4, that she is eligible and qualified to be appointed to the post of UPSA that arose on 31.03.2011. Therefore, we fully concur with the view taken by the learned Single Judge, upholding Ext.P4 order.

Hence the Writ Appeals fail and are accordingly dismissed.

Sd/-
ANTONY DOMINIC
Judge

Sd/-
P.VASHA
Judge

rtr/