

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE ANTONY DOMINIC
&
THE HONOURABLE SMT. JUSTICE P.VASHA

WEDNESDAY, THE 18TH DAY OF NOVEMBER 2015/27TH KARTHIKA, 1937

WA.No. 2483 of 2015 IN WP(C).20218/2006

AGAINST THE JUDGMENT IN WP(C) 20218/2006 of HIGH COURT OF KERALA DATED 28-09-2015

APPELLANT/2ND RESPONDENT:

AIDED BASIC LOWER PRIMARY SCHOOL
TRIPPALAMUNDA, PALAKKAD, REPRESENTED BY ITS MANAGER.

BY ADV. SRI.T.C.SURESH MENON

RESPONDENTS/PETITIONER/RESPONDENTS 1, 3 AND 4:

-
1. N.V.LAL
S/O. N.V.GOPALAKRISHNAN, RESIDING AT LEELA SADAN
SREEKRISHNAPURAM
PALAKKAD DISTRICT (LOWER PRIMARY SCHOOL ASSISTANT
AIDED BASIC LOWR PRIMARY SCHOOL, THRIPPALAMUNDA
PALAKKAD - 678 612)
 2. THE STATE OF KERALA
REPRESENTED BY ITS SECRETARY, SECRETARIAT
THIRUVANANTHAPURAM - 1.
 3. THE HEADMASTER
ABLP SCHOOL, TRIPPALAMUNDA, PALAKKAD - 678 631.
 4. THE ASSISTANT EDUCATIONAL OFFICER
PARLI, PALAKKAD - 678 612.

R BY SRI.M.PASHOK KUMAR

R BY SR. GOVERNMENT PLEADER SRI.M.A.FAYAZ

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 18-11-2015 ALONG
WITH W.A.2484/15, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ANTONY DOMINIC & P.VASHA, JJ.

Writ Appeal Nos.2483 & 2484 of 2015

Dated this the 18th day of November, 2015

JUDGMENT

Asha, J.

The Manager of the A.B.L.P. School has filed these writ appeals against the direction of the learned Single Judge in the common judgment in W.P.(C) No. 19851 of 2006 and in W.P(C) No. 20218 of 2006, to appoint Sri. Lal, petitioner in W.P(C) No. 20218 of 2006 in his School, while upholding the order passed by Government recognising his claim under Rule 51A of Chapter XIV A of Kerala Education Rules ('KER' for short).

2. W.P(C) No. 19851 of 2006 was filed by the Manager challenging Ext. P7 order of Govt, while W.P.(C) No. 20218 of 2006 was filed by the teacher Sri. Lal, (the 4th respondent in the writ petition filed by the Manager), seeking implementation of the govt order and for direction to the Manager to appoint him in the School as Assistant Teacher.

3. Contention of the Manager is that Sri. Lal was appointed against a vacancy which arose consequent to the suspension of the Headmaster Sri. Kunhunni till his re-entry. Therefore he is not entitled to the benefit of a 51A claim, as he was not relieved on termination of vacancy.

4. We heard learned counsel for the parties and perused the materials available on records.

5. It is seen that Sri. Lal was appointed as Assistant Teacher on 10.1.1996, against the vacancy which arose on promotion of Smt.P.Sathi as Teacher in Charge, consequent to suspension of the Headmaster Sri. Kunhunni. The appointment of Sri. Lal was approved with effect from 10.1.1996. Sri. Kunjunni was thereafter awarded the punishment of compulsory retirement as per order dated 2.7.2003. Later as per order dated 26.2.2005, Govt modified the punishment as reduction to the next lower rank of LPSA. In order to accommodate Sri. Kunhunni, the Manager relieved Sri. Lal on 21.3.2005. Sri. Kunhunni retired from service on 31.3.2005. But the Manager did not appoint Sri. Lal against the retirement vacancy of Sri. Kunhunni, which arose on 1.4. 2005. The It is considering these circumstances Govt issued the order dated 5.6.2006 which is under challenge by the Manager while the teacher seeks implementation.

6. According to the Manager, Sri.Lal did not acquire any preferential claim under Rule 51A for appointment against future vacancies since he was not relieved from the school either under Rule 49 or 52 or on termination of vacancy, since in the order of his appointment (Ext.P1 order dated 10.1.1996 produced in W.P(C) No.19851 of 2006) was for the period upto the re-entry in service of Sri. Kunhunni.

7. But we find that the order of appointment was issued at a time when the Headmaster was under suspension. But the suspension culminated in a punishment of compulsory retirement on 2.7.2003. It was only when the order of compulsory retirement was modified by Govt in March 2005 as reduction to the post of LPSA that Sri.Lal was relieved on 21.3.2005, to accommodate Sri.Kunhunni. Sri.Lal was relieved from the post after rendering approved service for more than 9 years i.e from 10.1.1996 to 21.3..2005. It was incumbent on the Manager to appoint such teacher with approved service for such a long

period against the next vacancy which arose on 1.6.2005 consequent to retirement of Sri. Kunhunni on 31.3.2005.

8. There is no basis for the contention that petitioner was not relieved on termination of vacancy. The punishment of compulsory retirement awarded in 2003 was modified as reduction in rank only in 2005 and the re-instatement/re-entry of Sri. Kunhunni relieving Sri. Lal, was in such circumstances. Just because the Manager, in the order of appointment dated 10.1.1996, restricted the period of appointment of Sri.Lal upto the re-entry of Sri. Kunhunni, at the time when Sri. Kunhunni was placed under suspension, the teacher cannot be deprived of his statutory right for appointment against the future vacancy, when he has worked more than 9 years in the school with approval.

9. Even otherwise Manager cannot be permitted to ignore the claim of a teacher with more than 9 years' approved service in the School and go for a fresh hand of his choice. Therefore, we find that there is no basis for the contention that such termination from service is not one envisaged under Rule 51 A of Chapter XIVA of KER.

10. In these circumstances, we find that the judgment of the learned Single Judge does not require any interference.

Writ appeals are dismissed accordingly.

Sd/-
ANTONY DOMINIC
JUDGE

Sd/-
P.V.ASHA
JUDGE

jes