

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

TUESDAY, THE 27TH DAY OF OCTOBER 2015/5TH KARTHIKA, 1937

WP(C) .NO. 4672 OF 2012 (H)

PETITIONERS:

1. THE MANGER, DEVERKOVIL WEST LPS,
P.O, THALIYIL, KOZHIKODE
2. K.K REMYA,
LOWER PRIMARY SCHOOL ASSISTANT,
DEVERKOVIL WEST LPS P.O. THALIYIL, KOZHIKODE.

BY ADV. SRI.R.K.MURALEEDHARAN

RESPONDENTS:

1. THE STATE OF KERALA
SECRETARY TO GENERAL EDUCATION DEPARTMENT,
TRIVANDRUM- 695001
2. THE ASSISTANT EDUCATIONAL OFFICER,
KUNNUMMEL, KOZHIKODE- 673508
3. K.P SHIMJURAJ,
KULAMULLAPARAMBATH HOUSE, AKKAL P.O, KAVILUMPARA VIA,
KOZHIKODE- 673513

R3 BY ADV. SRI.V.A.MUHAMMED

R3 BY ADV. SRI.K.E.HAMZA

R1-R2 BY ADV. GOVERNMENT PLEADER, SRI. T.J. MICHEL

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
27-10-2015, ALONG WITH W.P.(C) NO. 6249/2012, THE COURT ON THE SAME
DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONERS' EXHIBITS :

- EXT. P1 A COPY OF THE REPRESENTATION DATED 30/12/2004 ALONG WITH HALL TICKET AND RESULT OF THE TTC EXAMINATION
- EXT. P2 A COPY OF THE APPOINTMENT ORDER IN FORM 27 DATED 27-01-2005
- EXT. P3 A COPY OF THE ORDER DATED 23-04-2005 BY THE 2ND RESPONDENT
- EXT. P4 A COPY OF THE RELEVANT PAGES OF THE NOTIFICATION ISSUED BY THE 1ST RESPONDENT OBTAINED UNDER THE RIGHT TO INFORMATION ACT.
- EXT. P5 A COPY OF THE LETTER DATED 26-04-2010 BY THE 3RD RESPONDENT
- EXT. P6 A COPY OF THE APPOINTMENT ORDER OF 2ND PETITIONER.
- EXT. P7 A COPY OF THE COMMUNICATION OF THE 2ND RESPONDENT DATED 10-03-2011.
- EXT. P8 A COPY OF THE ARGUMENT NOTE SUBMITTED BEFORE THE 1ST RESPONDENT.
- EXT. P9 A COPY OF THE GO (RT) NO. 387/2012/ G.EDN DATED 23-01-2012
- EXT. P10 A COPY OF THE GO (RT) NO. 3881/2009/G.EDN DATED 17-09-2009 ISSUED BY THE 1ST RESPONDENT

RESPONDENTS' EXHIBITS :

- EXT.R3(A) COPY OF THE ORDER NO. B.1136/10 OF THE ASSISTANT EDUCATIONAL OFFICER DATED 9.4.2010.
- EXT.R3(B) COPY OF THE COVERING LETTER OF THE PETITIONER ALONG WITH THE APPLICATION DATED 26.4.2010.
- EXT.R3(C) COPY OF THE DEATH CERTIFICATE OF THE FATHER OF THIS RESPONDENT DATED 1.11.1997.
- EXT.R3(D) COPY OF THE LEGAL HEIRSHIP CERTIFICATE ISSUED BY THE TAHASILDAR DATED 16.10.1997.
- EXT.R3(E) COPY OF THE CONSENT LETTER OF M/S. K.P. JANAKI AND K.P.SHIJURAJ DATED 7.3.2010.
- EXT.R3(F) COPY OF THE INCOME CERTIFICATE ISSUED BY THE VILLAGE OFFICER DATED 24.4.2010.

(P.T.O.)

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WP(C).NO. 4672 OF 2012 (H)

EXT.R3(G) COPY OF THE JUDGMENT IN THIS HON'BLE COURT IN W.P.(C) NO.
21384/2009-P DATED 12.11.2009.

EXT.R3(H) COPY OF THE REQUEST OF THIS RESPONDENT DATED 9.2.2012.

EXT.R3(I) COPY OF THE DECISION REPORTED IN 2004 (2) K.L.T. SHORT
NOTES PAGE 53 CASE NO. 60 DATED 7.8.2002.

//TRUE COPY//

P.A. TO JUDGE

DST

K. HARILAL, J.

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W.P. (C) Nos. 4672 & 6249 of 2012

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Dated this the 27th day of October, 2015

J U D G M E N T

The parties and the matter, in issues, involved in these writ petitions are common. Therefore, these writ petitions are heard together and disposed of accordingly. For convenience, the parties are referred to as shown in W.P(C) No.4672/12.

2. The petitioners in W.P(C) No.4672/12 are the respondents 4 and 5 in W.P(C) No.6249/12. The 1st petitioner is the Manager of an aided school and the 2nd petitioner was appointed as Lower Primary School Assistant (LPSA) by the 1st petitioner with effect from 01.06.2011 onwards. The 3rd respondent, who is the petitioner in W.P. (C) No. 6249/2012 is a claimant under Rule 51(B) of Chapter XIV A of the Kerala Education Rules (KER). The petitioners in W.P(C) No.4672/12 are aggrieved by the order passed by the

1st respondent in revision under Rule 92 declaring the entitlement of the 3rd respondent for appointment under Rule 51(B) of Chapter XIV A of the KER; whereas, the 3rd respondent is aggrieved by the non-implementation of the direction in the same order directing the first petitioner to appoint him as 'LPSA' in the vacancy in which the second petitioner is working from 2011 onwards.

3. The 3rd respondent's father Sri. K.P. Sankaran, while working as a Teacher in the school, died on 16.10.1997 and thereafter, in 2005, the 3rd respondent was appointed on a regular vacancy, which arose on the resignation of one Mr.K.K.Manoj, with effect from 14.6.2004 onwards, on the basis of Ext.P1 representation submitted by the 3rd respondent before the 2nd petitioner with a copy to the 1st petitioner, claiming compassionate appointment under Rule 51(B) of Chapter XIV A of the KER and that he has already passed TTC Examination. It was also stated in the representation that due to some technical reasons his certificate was withheld; but he approached the court and

the court passed an order in his favour and the same could be produced on releasing the same. Considering the claim of the 3rd respondent under Rule 51(B) of the KER, he was appointed with effect from 27.1.2005 onwards and he continued in the school by marking his attendance till 31.3.2005 and thereafter, he abstained from attending school, without informing the Head Master or the first petitioner. In the meanwhile, according to the petitioner, the 2nd respondent rejected the proposal for approval of the 3rd respondent for not producing the required certificate, by Ext.P3 order. Thus, the 3rd respondent had abandoned the appointment, which was given by the first petitioner and accepted by him as per Ext.P2 for the reason that he failed to produce the required certificate to regularise his appointment in accordance with the relevant Rules.

4. Now, the 3rd respondent, after five years of his initial appointment, without disclosing his earlier appointment, submitted Ext.P5 application in the prescribed format, claiming compassionate appointment under Rule

51(B) of Chapter XIV A of the KER. According to the first petitioner, he is not entitled to get the appointment, which arose against a leave vacancy on 25.10.2010 onwards, as he had already exercised his right under Rule 51(B) and he himself abandoned the same for his own fault. Secondly, he has attained majority in the year 2000 and after ten years, he has no right to seek appointment under Rule 51(B) of Chapter XIV A the KER against a vacancy which arose on 25.10.2010 onwards, in view of Rule 51(B) and the relevant Government Order dated 24.5.1999 thereunder.

5. Therefore, the 1st petitioner appointed the 2nd petitioner in the leave vacancy arose in the school with effect from 25/10/2010 onwards by Ext.P6 order of appointment. The 3rd respondent submitted objection to the 2nd respondent against the appointment of the 2nd petitioner stating that the appointment is against his claim under Rule 51(B) of the KER. After hearing both parties, the 2nd respondent rejected the objection raised by the 3rd respondent, by Ext.P7 order, stating that the 1st petitioner

had appointed him in the year 2005 and he has given up the appointment; and the 3rd respondent cannot claim the right again. Challenging Ext.P7 order of the 2nd respondent, the 3rd respondent preferred a revision before the 1st respondent and at the same time, approached this Court by filing W.P. (c) No.20358/11 and this Court, without issuing notice to the petitioners, disposed of the writ petition by directing the 1st respondent to take a decision in the revision, after hearing the concerned parties. Pursuantly, the 1st respondent heard all the parties and passed Ext.P9 order reversing the findings in Ext.P7 order and directing the 1st petitioner to appoint the 3rd respondent in the first vacancy that arose after filing a valid application by the 3rd respondent. The legality and propriety of the said order is subjected to judicial review under Article 226 of the Constitution of India, in this Writ Petition.

6. The sequence of events narrated by the 3rd respondent in W.P.(C) No.6249/12 are also the same and almost identical; but the disputed facts centers around the

earlier appointment of the 3rd respondent in the year 2005 only. The 3rd respondent admitted that the 1st petitioner appointed him as Lower Primary School Assistant from 27/1/2005 onwards and he continued in that post till 31/3/2005. According to him, after re-opening of the school, when the petitioner came to the school, the Head Master did not permit him to join duty stating that he has not acquired the requisite qualification i.e., Teachers' Training Course. Then, the petitioner approached the 1st petitioner and he also informed the 3rd respondent that he will be appointed in the school after acquiring the requisite qualification considering the claim under Rule 51(B) of Chapter XIV A of the KER.

7. The grievance projected in W.P.(C) No: 6249/2012 is that, though, he was appointed as the Lower Primary School Assistant from 27/1/2005 onwards, he was not allowed to continue in that post by the 1st petitioner for his own reasons. At the same time, he admitted that he obtained necessary qualification in the year 2009 only; that too, by

Ext.P10 special order dated 17.09.2009 issued by the Government. According to him, the present vacancy, against which the 2nd petitioner is appointed, is the first vacancy that arose after the death of his father. Therefore, he is entitled to be appointed in that post instead of the 2nd petitioner. But, the 1st petitioner appointed the 2nd petitioner discarding his claim. Though, the 2nd respondent rejected his claim, the 1st respondent after hearing both sides, allowed the revision directing the 1st petitioner to appoint the 3rd respondent to the vacancy which arose after the receipt of the valid application. Therefore, the 1st petitioner is liable to comply the direction in Ext.P9 order, without fail, and the same is liable to be implemented forthwith.

8. Heard the learned counsel for the petitioners and the learned counsel appearing for the respondents in extenso, in support of their rival claims raised under Rule 51(B) of Chapter XIV A of the KER.

9. The learned counsel for the petitioner mainly canvassed two points. Firstly, according to him, the 3rd

respondent has already exercised his right under Rule 51(B) of Chapter XIV A of the KER and he could not continue in the post for his own fault only. If that be so, he is not entitled to exercise the same right again. Secondly, it is contended that the father of the 3rd respondent was died on 16/10/1997 and the right to exercise the benefit under Rule 51(B) of the KER is available to the dependent for two years only. In view of Rule 51(B) of the KER, G.O.(P) No.12/99/P&ARD dated 24/5/1999 issued thereunder. According to him, the time limit for preferring the application under Rule 51(B) will be two years from the date of death of the father of the 3rd respondent and when he was a minor, the period would have been three years after attaining majority. He has attained majority in the year 2000. So, after 2003, he has no right to claim protection under Rule 51(B), if an application has not been filed within that period. The learned counsel further cited the decision of the Apex Court in ***Shreejith v. Deputy Director (Education) Kerala*** [2012 (3) KLT 214 (SC)] and drew my attention to paragraphs-13 to 15 and 28 of the said

decision. The sum and substance of the arguments is that if once right under Rule 51(B) is exercised and lost, the same cannot be exercised again. So also, the claim under Rule 51 (B) of the KER raised after three years from attaining majority is barred by limitation, prescribed under the G.O.(P) No.12/99/P&ARD dated 24/5/1999.

10. Per contra, the learned counsel for the 3rd respondent advanced arguments to justify the findings of the 1st respondent in Ext.P9 order. The sum and substance of the arguments advanced by the learned counsel is that the 3rd respondent has not exercised his right under Rule 51(B) of the KER before the present application and it is his first opportunity after the death of his father. It is further contended that though he was appointed as Lower Primary School Assistant in the year 2005, he could not continue the same as the 1st petitioner did not allow him to continue the post after re-opening of the school. Therefore, his earlier employment under Ext.P2 cannot be treated as one exercised under Rule 51(B) of the KER. Even though, two

vacancies were arose earlier before the appointment of the 2nd petitioner, he could not apply for the same, as his result was withheld disputing his eligibility for admission, though, he passed the TTC Examination. In short, the present vacancy is the first vacancy to which he can apply and arose after the death of his father. It is also contended that the right conferred under Rule 51(B) of the KER cannot be lost by the lapse of three years, as contended by the learned counsel for the petitioner. In short, at all points, Ext.P9 order, directing the 1st petitioner to appoint the 3rd respondent in the vacancy, which arose after the receipt of a valid application is sustainable under law and the 1st petitioner is liable to comply with the same forthwith.

11. In view of the rival submissions made at the Bar, the question to be considered is, whether there is any illegality in the decision in Ext.P9 that the 3rd respondent is entitled to get appointment in the vacancy, which arose on 01.06.2011 and now occupied by the 2nd respondent in exercise of his protection under Rule 51(B) of Chapter XIV of

the KER.

12. The first point to be decided is, whether the 3rd respondent has exercised his right under Rule 51(B) of the KER against the vacancy which arose on 14.06.2004. In Ext.P1 application dated 30.12.2004, filed by the 3rd respondent he claimed that he has passed the required qualifying examination i.e., TTC to the post of Lower Primary Assistant, his qualifying certificate is being withheld in connection with the dispute relating to his admission to the course, he approached the court for getting the result declared, the court passed an order and the same will be produced without delay. Thus, it could be seen that he himself submitted a valid application claiming that he is a qualified candidate to be appointed to the vacancy. Ext.P2 appointment order issued to the 3rd respondent shows that he was appointed as Lower Primary Assistant with effect from 27.01.2005 and he himself accepted the appointment order by endorsing his signature at the bottom of the order. Ext.P3 shows that the 1st petitioner has forwarded a proposal

for approval of the appointment of the 3rd respondent which he had made with effect from 27.01.2005 and the same was rejected by the 2nd respondent on the reason that the qualifying certificate, in original, with self attested copies of each certificate was not produced along with the proposal. It is discernible from Exts.P1 to P3 that there was a claim from the part of the 3rd respondent and the 1st petitioner accepted the same. But, later, he could not continue, due to the non-production of the required qualifying certificate by the 3rd respondent. But, it is the case of the 3rd respondent that he worked as Lower Primary Assistant from 27.01.05 to 31.05.05 and after re-opening, he was not allowed to work in the school by the Headmaster under the instruction of the 1st petitioner.

13. In view of Exts.P1 to P3, I am unable to accept the said version and further I find that even though, an appointment in exercise of Rule 51(B) of the KER had been given to him and accepted by him, he could not continue the same for his own fault only.

14. The next point to be considered is, whether the petitioner has a right to exercise the protection under 51(B) of the KER in the year 2010 in view of Clause 19 of G.O.(P) No. 12/99/P&ARD dated 24.05.1999. According to Rule 51 (B) of the KER, Government Orders relating to employment assistance to the dependents of Government servants dying-in-harness, which shall mutatis and mutandis, apply in the matter of such appointments. By virtue of the above provision, compassionate employment scheme formulated by Government Order dated 24.05.1999 is made applicable to the claimants under Rule 51(B) of the KER. According to Clause 19, the time limit for preferring the application under the scheme would be two years from the date of death of the Government servants. In the case of minor, the period will be within three years after attaining majority. When applying the above proposition, in the instant case, the father of the 3rd respondent died on 16.10.1997 and the 3rd respondent attained majority in the year 2000. So the 3rd respondent should have availed the benefit before 2004.

Even though, the claim was lost by the lapse of two years much earlier, the 1st petitioner has granted the benefit to the 3rd respondent, in the year 2005; but he could not enjoy the benefit, for his own fault only. Moreover, in Ext.P1, in suppression of the actual facts, he made an assurance that he passed the qualifying examination and the certificate will be produced without delay. But, he failed to produce the same and the 1st petitioner is justified in making further appointments on an adverse inference against the petitioner that he has abandoned the job.

15. At this juncture, the decision laid down by the Supreme Court in ***Shreejith L. v. Deputy Director (Education), Kerala and Others*** [2012(3) KLT 214 (SC)] comes into application. This decision was laid down in supersession of the view taken by this Court in ***Baiju Kumar Vs. D.E.O., Trivandrum*** [2003(3) KLT 240]. The proposition that can be culled out from the above decision, held by the Apex Court can be summarised as follows. If an employee of a School died in harness and his legal

representatives required any assistance in the form of compassionate appointment, it is for them to approach the School Manager claiming their rights under Rule 51(B) of the KER by making applications in the manner prescribed therein within the prescribed time. If the legal heirs did not do so, the Manager of the school could reasonably assume that they were not in need of any assistance or otherwise they would have asked for the same, when there is no obligation on the part of the Manager to go in search of the legal heirs of the deceased employee with the offer of benefit under dying in harness scheme. In case, an application is made by the legal heirs of a deceased employee, claiming benefit of the dying in harness scheme for compassionate appointment, the deficiencies and defects are to be pointed out to the concerned applicant. But, if the defects are not removed within the time, an adverse inference could be drawn against the person in default. It is needless to say, in the year 2010, after long lapse of more than 13 years after the death of his father, and 10 years

after attaining majority, he has no right to claim the post which arose on 01.06.2007, particularly, when he had already exercised that right, but left abandoned for his own fault.

16. The claim of appointment under dying-in-harness provided under Rule 51(B) of Chapter XIV-A of the KER is a protection granted to the dependents of deceased Aided School Teacher/non-teaching staff, as a solace to the bereaved family, to meet the unexpected casualty and loss of income. But, if once that right was exercised and left abandoned or lost, for their own fault, it cannot be exercised again, as the said right is not a persisting right for ever.

17. In the above analysis, I find that the manner in which, the 1st respondent arrived at the decision in Ext.P9 order is vitiated by non application of the relevant factors, which are required to be considered under Rule 51(B) of the KER and G.O.(P) No. 12/99/P&ARD dated 24.05.1999 and failed to correctly understand the law that regulates compassionate appointment under the said Rule.

Consequently, Ext.P9 order passed by the 1st respondent will stand quashed.

18. Learned counsel for the 3rd respondent submits that the challenge against Ext.P10 order granting concession to the 3rd respondent in qualifying examination, was raised as an alternative ground only and in view of the granting of main relief, the challenge against Ext.P10 is not pressed. I am also of the opinion that the challenge against Ext.P10 is not required to be considered in this Writ Petition, in view of the findings arrived at by this Court on the main relief.

19. The 2nd respondent is directed to approve the appointment of the 2nd petitioner if the appointment is valid otherwise, within a period of three months.

Accordingly, W.P.(C) No. 4672/2012 is allowed in part and W.P.(C) No. 6249/2012 will stand dismissed.

DST

Sd/-
K. HARILAL,
JUDGE

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P.A. To Judge