

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.SURENDRA MOHAN

TUESDAY, THE 10TH DAY OF FEBRUARY 2015/21ST MAGHA, 1936

WP(C).No. 9426 of 2008 (V)

PETITIONER(S) :

1. M.P. DINESH, S/O.M.BALAN, AGED 44 YEARS
UPPPER PRIMARY SCHOOL ASSISTANT, PANOOR U.P. SCHOOL
PANOOR, KANNUR DISTRICT.

2. V. ARAVINDAKSHAN, ASSISTANT TEACHER
THILANNOOR U.P. SCHOOL, THAZHE CHOVVA, KANNUR.

3. T. KRISHNA KUMAR, ASSISTANT TEACHER
E.K.M. U.P.SCHOOL, VANIAMPARA, THRISSUR DISTRICT.

BY ADVS.SRI.V.A.MUHAMMED
SRI.K.E.HAMZA

RESPONDENT(S) :

1. THE STATE OF KERALA REPRESENTED BY
ITS SECRETARY TO GOVERNMENT
GENERAL EDUCATION DEPARTMENT, SECRETARIAT, TRIVANDRUM.

2. SRI. K.HAREENDRAN, TEACHER
PANOOR U.P.SCHOOL, PANOOR, KANNUR DISTRICT.

3. SMT. M.CHANDRAMATHI, TEACHER
THILANNOOR U.P. SCHOOL, THAZHE CHOVVA
KANNUR DISTRICT.

4. SMT. R.OMANA, TEACHER
E.K.M. U.P.SCHOOL, VANIAMPARA, THRISSUR DISTRICT.

R,R4 BY ADV. SMT.LATHA PRABHAKARAN
R,R4 BY ADV. SRI.K.M.JAMALUDHEEN
R, BY ADV. SRI.P.R.NAMBIAR
R, BY ADV. SRI.T.V.VINU
R2 BY ADV. SRI.N.NAGARESH
R BY GOVERNMENT PLEADER SHRI.ABHIJITT LESIL

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
10-02-2015, ALONG WITH WPC. 12135/2008, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

APPENDIX IN WPC 9426/2008

PETITIONER'S EXTS:

EXT.P1: TRUE COPY OF THE G.O.(P)NO:22/2008/G.EDN. OF THE GOVERNMENT

JJ

/TRUE COPY/

P.S.TO JUDGE

'CR'

K. SURENDRA MOHAN,J.

W.P(C) NOS.9426 & 12135 OF 2008

Dated this the 10th February, 2015.

JUDGMENT

The question raised in both these writ petitions is whether the amendment to Rule 45 of Chapter XIVA of the Kerala Education Rules, 1959 (hereinafter referred to as the 'KER' for short) brought in by the Kerala Education (Amendment) Rules , 2008 is valid or not. As per the amendment, the preference given to graduate teachers with five years experience in the matter of appointment as Headmasters/Headmistresses of aided Upper Primary Schools has been taken away. As a consequence, the Headmaster or Headmistress of an aided Upper Primary School has to be appointed purely on the basis of seniority. WPC 9426/2008 is filed by four graduate aided school teachers. WPC 12135/2008 is filed by the parent of a student studying in an

Aided Upper Primary School.

2. Ext.P1 is the amendment that is under challenge. Prior to Ext.P1 Rule 45 Chapter XIVA Kerala Education Rules, 1958 ('KER' for short) provided that in the case of aided U.P Schools, if there was a graduate teacher with B.Ed or other equivalent qualification, with five years experience in teaching after acquisition of his B.Ed degree, he could be appointed as Headmaster of the U.P. School provided he had service equal to half the period of service of the seniormost undergraduate teacher. The rule used to be as under:

“Subject to R.44, when the post of Headmaster of complete U.P.School is vacant or when an incomplete U.P.School becomes a complete U.P.School, the post shall be filled up from among the qualified teachers on the staff of the School or Schools under the Educational Agency. If there is a Graduate teacher with B.Ed or other equivalent qualification and who has got at least five years experience in teaching (after acquisition of B.Ed degree) he may be appointed as Headmaster provided he has got a service equal to half of the

period of service of the seniormost under-graduate teacher. If graduate teachers with the aforesaid qualification and service are not available in the School or Schools under the same Educational Agency, the senior most Primary School Teacher with SSLC or equivalent and (TTC issued by the Board of Public Examination, Kerala or T.C.H issued by the Karnataka Secondary Education Examination Board, Bangalore or a pass in Pre-degree Examination with Pedagogy as an elective subject conducted by the University of Kerala or any other equivalent training qualification prescribed for appointment as Primary School Assistant) may be appointed.”

Therefore, an Upper Primary School Teacher who had a B.Ed Degree with five years teaching experience was to be preferred in the matter of appointment as Headmaster of a U.P.School, over non-graduate teachers. The said position has now been changed by Ext.P1. The new rule as per Ext.P1 reads as follows:

“45.----Subject to rule 44, when the post of Headmaster of a complete Upper Primary School is vacant or when an incomplete Upper Primary

School become a complete Upper Primary School, the post shall be filled up from among the qualified teachers on the staff of the school or schools under the Educational Agency. The person appointed as Headmaster shall have passed the SSLC or equivalent Examination with TTC issued by the Board of Public Examination, Kerala or TCH issued by the Karnataka Secondary Education Examination Board, Bangalore or a pass in Pre-degree Examination with Pedagogy as an elective subject conducted by the University of Kerala or a degree in any subject and B.Ed/BT/LT conferred by or recognized by the Universities in Kerala or any other equivalent training qualification prescribed for appointment as Lower Primary School Assistrant or Upper Primary School Assistant.”

2. According to Adv.V.A.Muhammed who appears for the petitioners, the earlier Rule 45 Chapter XIVA had been the subject matter of challenge before this Court in Hameed v. State of Kerala [1992(1)KLT 565]. The Rule had been challenged alleging that, the preference given to graduate

teachers was an unreasonable classification under Art.14 of the Constitution. After considering the classification that was made as per the earlier Rule 45 Chapter XIVA KER this Court held that the classification was reasonable and valid. The concluding words of the Court in paragraph 2 of the said judgment reads as follows:-

“The purpose sought to be achieved here is educational excellence. If that be so, giving preference to graduate teachers to head the institution cannot be considered discriminatory or violative of Article 14 of the Constitution. In view of the above, I find no merit in the challenge against Rule 45 Chapter XIVA of the Rules.”

On the basis of the above finding, it is contended by the learned counsel for the petitioner that since the earlier classification was justified by this Court on the ground of educational excellence, as per the present amendment, the said educational excellence is the casualty. It is contended that, graduate teachers have better efficiency in administrative matters and it was therefore that they were given preference in

the matter of appointment as Headmasters. There is no justification for diluting the considerations of educational excellence by permitting such appointments on the basis of seniority alone.

3. Adv.A.M.Babu who appears for the petitioner in WPC 12135/2008 contends that, the parents of the students are also equally concerned at the prospect of deterioration in educational standards that would follow from the provision that permits even non-graduates to become Headmasters of aided U.P.Schools.

4. The Govt. Pleader on the other hand points out that, though the Government had initially granted preference to graduate teachers, the present amendment has been brought in, on the basis of a re-thinking prompted by experience gained in the working of the rule. My attention is drawn to the explanatory note to Ext.P1 to point out that, in the High School Sections as well as in the Lower Primary Section, Headmasters are appointed solely on the basis of seniority.

Rule 44(1) of Chapter XIVA KER is also referred to.

5. According to Smt. Latha Prabhakaran who appears for the fourth respondent, a non-graduate teacher, the preference originally given to graduate teachers entitled even youngsters to occupy the post of Headmasters/Headmistresses of aided U.P.Schools thereby effectively shutting out the chances of non-graduate teachers to occupy such post. There is no presumption that a graduate teacher would be more efficient in administrative matters as contended on behalf of the petitioners. According to the learned counsel, the present amendment has been brought in taking note of the above anomalies and is a policy decision that is not amenable to judicial intervention.

6. Heard. It is true that the earlier provision, Rule 45, provided for the grant of preference to graduate teachers in the matter of appointment as Headmasters/Headmistresses of aided U.P.Schools. The Rule provided that, where a teacher having B.Ed degree with five years experience also

satisfied the criterion of possessing 50% of the total teaching experience of the seniormost non-graduate teacher the said person had to be preferred in the matter of appointment as a Headmaster/Headmistress of an aided U.P.School. The said provision had been the subject matter of challenge before this Court in Hameed v. State of Kerala (supra). The provision was challenged on the ground that, the classification was unreasonable under Art.14 of the Constitution. This Court found that, the classification was reasonable since a classification on the basis of educational qualification was permissible under Art.14. As already noticed above, it has also been held that, the Rule was introduced with the object of providing educational excellence. The present situation is exactly the opposite. As per the present amendment, the preference given to graduate teachers has been taken away. The explanatory note to Ext.P1 states that, the Rule has been amended with the object of introducing a uniform pattern for promotion to the post of Headmasters in all Schools.

Consequently, the classification that was made by the original Rule 45 Chapter XIVA KER has been done away with. Therefore this is a case where there is no classification at all. All the teachers are to be treated equally and promotions as Headmasters are to be granted purely on the basis of seniority. The action of the State in deciding to treat everyone equally cannot be found fault with. It is only when a classification is made that a question of the reasonableness thereof would arise for consideration. In the present case the challenge is that educational excellence would be the casualty. The same is an aspect on which a decision would have to be taken on the basis of many considerations that would include matters that are not legal. Such aspects would have to be considered by the Government while formulating its policy. The fact that this Court had held in Hameed v. State of Kerala (supra) that the earlier classification was valid does not fetter the rights of the Government to withdraw the preference by doing away with the classification on the basis of experience

gained in the working of the rule. I find no infirmity in the amendment that has been introduced by Ext.P1, the effect of which is to treat all teachers equally and to promote them to the post of Headmaster only on the basis of seniority.

For the above reasons these writ petitions fail. They are accordingly dismissed.

Sd/–
K. SURENDRA MOHAN
Judge

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