

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

MONDAY, THE 28TH DAY OF SEPTEMBER 2015/6TH ASWINA, 1937

W.P.(C).No.19851 of 2006 (L)

PETITIONER(S):-

THE MANAGER,
A.B.L.P. SCHOOL, TRIPPALAMUNDA, PALAKKAD.

BY ADVS. SRI.T.C.SURESH MENON
SRI.SREEKANTH.K.R
SRI.JIBU P THOMAS
SRI.SUNIL J.CHAKKALACKAL.

RESPONDENT(S):-

1. THE STATE OF KERALA, REPRESENTED BY
THE SECRETARY TO GENERAL EDUCATION (B) DEPARTMENT,
SECRETARIAT, THIRUVANANTHAPURAM.
2. THE DEPUTY DIRECTOR OF EDUCATION,
PALAKKAD.
3. THE ASSISTANT EDUCATIONAL OFFICER,
PARLI, PALAKKAD.
4. N.V.LAL,
RESIDING AT LEELA SADAN, SREEKRISHNAPURAM P.O.
PALAKKAD.

R1 to R3 BY GOVERNMENT PLEADER SMT.A.LOWSY.
R4 BY ADV. SRI.M.P.ASHOK KUMAR.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
28-09-2015, ALONG WITH WP(C).20218/2006-F, THE COURT ON THE SAME
DAY DELIVERED THE FOLLOWING:-

WP(C).No.19851 of 2006-L

APPENDIX

PETITIONER(S)' EXHIBITS:-

EXT.P1: TRUE COPY OF THE CONDITIONAL ORDER OF APPOINTMENT
DATED 10.1.1996.

EXT.P2 TRUE COPY OF THE ORDER DATED 26.2.2005.

EXT.P3 TRUE COPY OF THE JUDGMENT IN W.P.(C).NO.10328/2005
DATED 15.10.2005.

EXT.P4 TRUE COPY OF THE NOTES OF ARGUMENT DATED 8.3.2006.

EXT.P5 TRUE COPY OF THE ORDER OF APPOINTMENT DATED 24.8.94.

EXT.P6 TRUE COPY OF THE APPLICATION DATED 26.10.95.

EXT.P7 TRUE COPY OF THE ORDER DATED 5.6.2006.

RESPONDENT(S)' EXHIBITS:-

NIL.

Vku/-

[true copy]

K. Vinod Chandran, J

W.P.(C).Nos.19851 of 2006-L & 20218 of 2006-F

Dated this the 28th day of September, 2015

JUDGMENT

The petitioners in the above writ petitions are the Manager and a Rule 51A claimant under the Kerala Education Rules, 1959 [for brevity "KER"]. The Manager challenges the Government order produced at Exhibit P7 in W.P.(C).19851 of 2006, wherein the claim under Rule 51A was upheld. The teacher who has raised the claim, seeks implementation of the Government Order, by W.P.(C).No.20218 of 2006. Admittedly the matter was agitated before this Court on many occasions, as is seen from the records. The entire controversy seems to have arisen since there was a purchase of the school effected; after the initial appointment of the teacher and a consequent change in management.

2. The brief facts to be noticed herein to decide the claim under Rule 51A are that, the Headmaster of the school, one C.P.Kunhunni, was given compulsory retirement pursuant to an enquiry conducted on charges of misconduct. The Headmaster having been compulsorily retired, a vacancy

arose, to which one P.Sathi was promoted and appointed as Headmistress. In the resultant vacancy, the teacher Sri.N.V.Lal was appointed, as is evidenced by Exhibit P1 in W.P.(C). No.19851 of 2006. The teacher's appointment was approved only with effect from 26.11.1996, which is said to be the date on which Sathi's promotion was approved. However, on a revision filed, eventually the Government granted approval to the teacher from 10.01.1996 itself, by order dated 19.12.2002 [Exhibit P2 in W.P.(C).No.20218 of 2006].

3. Later on, by G.O.(Rt.)No.840/2005/G.Edn. dated 26.02.2005 [Exhibit P2 in W.P.(C) No.19851 of 2006], the Government reduced the penalty of compulsory retirement awarded to C.P.Kunhunni to a penalty of reduction to the next lower rank, of Lower Primary School Assistant [for brevity "LPSA"]. C.P.Kunhunni was directed to be reinstated with immediate effect. It is an admitted fact that the reinstatement was made and the teacher joined duty on 21.03.2005 and retired on 31.03.2005. The dispute is with respect to the resultant vacancy that arose on the retirement of the said teacher.

4. Rule 51A provides that, qualified teachers who are relieved as per Rule 49 or 52 or on account of termination of vacancies shall have preference for appointment to future vacancies. The Manager contends that the petitioner had, in the meanwhile, obtained an appointment, which is evident at Exhibit P5. However, a reading of Exhibit P5 would indicate that, it was an appointment long prior to the appointment in the Manager's school on 10.01.1996.

5. The fact remains that the teacher was appointed to a vacancy which arose on account of the termination of a Headmaster and the resultant promotion of a teacher of the same school. On the reinstatement of the compulsorily retired teacher, definitely there is a termination of the vacancy as is contemplated under Rule 51A and the teacher appointed to such vacancy would have to be thrown out; however, with a claim under Rule 51A. N.V.Lal hence stood thrown out when Kunhunni was reinstated; but with a valid claim under Rule 51A. He would be entitled to claim a future vacancy.

In the above circumstances, the finding of the Government that the petitioner in W.P.(C).No.20218 of 2006 has a valid claim under Rule 51A for future vacancies is not liable to be interfered with. W.P.(C).No.19851 of 2006 is, hence, dismissed. W.P.(C).No.20218 of 2006 is allowed, directing that the petitioner be appointed within a period of one month from the date of receipt of a certified copy of this judgment. It is made clear that the petitioner shall not be paid any salary or wages for the period during which he was kept out of service and it is for the Government to consider how the said period and the earlier service is to be treated. Parties are directed to suffer their respective costs.

Sd/-
K.Vinod Chandran
Judge.

vkul/-

[true copy]