

SUPREME COURT OF INDIA

Jenany J.R.

Vs.

S.Rajeevan

C.A.No...of 2010

(D.K.Jain and Deepak Verma JJ.)

03.05.2010

JUDGEMENT

Deepak Verma, J.

1. Leave granted.

2. Short but important question of law, having great impact is required to be considered by us in this appeal. The question is with regard to interpretation of Note 2 appended to Rule 43 in Chapter XIV A of Kerala Education Rules, 1959 (hereinafter shall be referred to as 'the Rules') framed under Kerala Education Act, 1953. The relevant Note (2), is reproduced herein below:

“Note:(2) Promotion under this rule shall be made from persons possessing the prescribed qualifications at the time of occurrence of vacancy.”

(Emphasis supplied by us)

3. The question to be considered by us is, which would be the relevant date for possessing prescribed qualification whether at the time of occurrence of vacancy or at the time the appointment is to be made.

4. To decide the aforesaid controversy, factual matrix required to be mentioned is as under:

5. A vacancy to the post of High School Assistant, (in short, H.S.A.) (Hindi) arose on 1.7.2003, in the Guhanandapuram School run by Devaswom Committee. On 10.8.2003, an advertisement for selection of a teacher for the said post was issued by the management. On coming to know about the vacancy, the appellant herein applied for the said post, since according to her, she possessed all the requisite qualifications on the relevant date. She was called for interview. She was appointed H.S.A (Hindi) vide appointment order dated 11.9.2003, issued by the Manager of the School. The appointment order indicated that she

was to join duty within 15 days. Since appellant was under medical rest, on account of her recent delivery, she requested the management for grant of further time to join duty, which was acceded to by the management.

6. Respondent No.1, S. Rajeevan was already working as Lower Grade Hindi Teacher in the said school but had not passed the test which would have enabled him to possess requisite qualification and had applied for re- evaluation. However, he was declared 'pass' on 23.9.2003, which would enable him also to stake his claim for appointment to the said post of H.S.A on which appellant was given appointment. The aforesaid date would clearly reveal that on the date vacancy had arisen i.e. 1.7.2003, respondent No.1 was not a duly qualified candidate.

7. Appellant, ultimately after grant of extension for joining duties, reported for duty on 23.10.2003. It is stated that after joining duty, she was obstructed by respondent No.1 herein and other anti-social elements hired by him. She and her husband both were physically assaulted and their entry in the school was obstructed. She had also sustained injuries in the assault and was required to be admitted in Government Hospital. Police registered a criminal case against many and respondent No.1 was arrayed as accused No.7 in the said case.

8. Aggrieved by the appointment of the appellant, respondent No.1 filed W.P(C)No. 33575 of 2003 before the High Court of Kerala. Vide order dated 27.10.2003, High Court disposed of the Writ Petition filed by respondent No.1 on the admission made by Government Counsel that his representation would be considered on merits in accordance with law. This was first round of litigation. Pursuant to the order passed by the High Court, his representation was decided.

9. The District Education Officer passed an order on 5.1.2004 rejecting the contention of respondent No.1.

“The District Education Officer held as under:

"From the circumstantial evidences, the Manager made maximum attempt to appoint Sri S. Rajeevan who is working as LG-Hindi Teacher of the School and he who had appeared for the LTT examination while the vacancy was originated as on 1.7.2003. As per Note 2 to Rule 43 Chapter XIV A KER, promotion under the Rule shall be made from persons possessing the prescribed qualifications at the time of occurrence of vacancy.”

10. Feeling aggrieved by the said order passed by District Education Officer, respondent No.1 filed Revision Petition before the Government but it also met the fate of dismissal. The relevant part of the order dated 04.02.2005 is reproduced hereinbelow:

“To claim promotion under Rule 43 one should have a valid claim, and to have a valid claim one should be duly qualified at the time of occurrence of the vacancy.”

11. Thereafter, respondent No.1 filed second W.P(C) No. 4948 of 2005 (L) before learned Single Judge of High Court of Kerala at Ernakulam challenging the order of appointment of appellant as well as the orders passed by District Education Officer and the State Government.

“Learned Single Judge, after perusal of records and after hearing parties at length, came to the conclusion that no case was made out for interference against the order of appointment of the appellant, mainly on the following grounds:

(i) Cut-off date has to be taken as 1.7.2003, the date on which vacancy had arisen.

(ii) On the date vacancy had arisen, respondent No.1 was not having requisite qualification, for being appointed on the post of H.S.A (Hindi).

(iii) Reference to Note No.2 reproduced herein above was made and opined that on the given date admittedly respondent No. 1 was not duly qualified.

(iv) He also found that District Education Officer had already considered the case of respondent No.1 and found that he was not eligible to be promoted, on the contrary, the appointment of appellant was approved.

(v) The said order passed by District Education Officer was further confirmed by State Government in revision preferred by respondent No.1.”

12. For the aforesaid reasons, writ petition filed by respondent No.1 came to be dismissed by learned Single Judge.

13. Feeling aggrieved thereof, respondent No.1 filed a writ appeal before Division Bench of the said Court.

“Vide judgment and order dated 6.8.2008 in W.A. No.2425 of 2005, the order passed by learned Single Judge has been set aside and quashed and direction has been issued to appoint respondent No.1 as H.S.A (Hindi) w.e.f. 16.9.2003, the date on which he became qualified to hold the post. Necessary directions were issued that within 30 days from the date of receipt of the order, his appointment order be issued. Further direction was given for disbursement of salary and allowances payable to him within further period of 30 days thereafter. Thus, the writ appeal filed by respondent No.1 was allowed, order of learned Single Judge, dismissing his writ petition was set aside and quashed and all the reliefs claimed in his writ petition were granted to him.”

14. Feeling aggrieved by the said order, this appeal has been preferred by the appellant, challenging the same on variety of grounds.

15. As has been mentioned hereinabove, the only question which is required to be considered by us in this appeal is whether on the date, vacancy had occurred i.e. on 1.7.2003, respondent No.1 was having requisite qualification or not to be appointed on the post of H.S.A. (Hindi).

16. It is not disputed that respondent No.1 was not qualified to be promoted as H.S.A on the date when the vacancy arose. It was conceded before learned Single Judge that in July, 2003, when the results of the examination were published, he had failed. However, he had applied for re-evaluation. Only after re- evaluation was done, he was declared pass in September, 2003 as per the communication sent to him by Secretary, Board of Public Examinations. Thus, there was no dispute that on 1.7.2003, when the vacancy arose, admittedly, respondent No.1 was not duly qualified to be appointed as H.S.A (Hindi) as contemplated under Note 2 appended to Rule 43 of the Rules. This aspect of the matter has been dealt with by learned Single Judge in detail in para 5 of the judgment.

17. We have accordingly heard learned counsel for parties. Perused the record.

18. Vide the impugned order passed by Division Bench, it was unduly impressed by the fact that the appellant herein was appointed only on 23.10.2003 (the date when she actually joined service) and before that date respondent No.1 had already acquired basic requisite qualification for being appointed as H.S.A (Hindi). According to the Division Bench, 1.7.2003 would only signify with regard to vacancy of the post of H.S.A but relevant date would be the date when appellant had actually joined. This appears to be misconception of the Division Bench of the High Court.

“Note No. 2 is clear, unambiguous and leaves no amount of doubt that relevant date would be when the vacancy occurs. Division Bench of the High Court has completely misread the said Note No.2.”

19. In our considered opinion, giving a true and literal meaning to Note No. 2, the relevant date would be the date when the vacancy had arisen i.e., 1.7.2003 and not the date when the appellant actually joined the service.

20. We may profitably quote a passage from Craies on Statute Law:- " '.....It is the duty of courts of justice to try to get at the real intention of the legislature by carefully attending to the whole scope of the statute to be construed'... that in each case you must look to the subject-matter, consider the importance of the provision and the relation of that provision to the general object intended to be secured by the Act, and upon a review of the case in that aspect decide whether the enactment is what is called imperative or only directory."

21. At this point of time we may further usefully quote the words of Oliver Wendell Holme:

“It is sometimes more important to emphasize the obvious than to elucidate the obscure”

To reiterate, we may once again emphasise that after careful scanning of Note (2), the obvious is the date when the vacancy occurs and not subsequent events that might have taken place after the date vacancy had occurred.”

22. In fact, this aspect of the matter was duly considered by District Education Officer as also by State Government, who held against respondent No.1.

“Learned Single Judge had also correctly considered this aspect of the matter and thus, dismissed the writ petition filed by respondent No. 1.”

23. Thus, looking to the matter from all angles, we are of the considered view that the impugned order passed by Division Bench cannot be sustained. The same is hereby set aside and quashed, instead the order passed by learned Single Judge is restored meaning thereby that the writ petition preferred by respondent No.1 stands dismissed.

24. The appeal therefore, is allowed. Parties to bear their respective costs.