

Kerala High Court

Maijo Kuruvila vs Manager on 12 June, 2008

IN THE HIGH COURT OF KERALA AT ERNAKULAM

WP(C).No. 16126 of 2008(T)

1. MAIJO KURUVILA, U.P.S.A.,
... Petitioner

Vs

1. MANAGER, ST.RAPHEL'S HIGH SCHOOL,
... Respondent

2. DISTRICT EDUCATIONAL OFFICER,

3. DEPUTY DIRECTOR OF EDUCATION,

4. DIRECTOR OF PUBLIC INSTRUCTIONS,

5. STATE OF KERALA, REP. BY ITS

For Petitioner :SRI.S.MUHAMMED HANEEFF

For Respondent :GOVERNMENT PLEADER

The Hon'ble MR. Justice K.T.SANKARAN

Dated :12/06/2008

O R D E R

K.T. SANKARAN,J..

W.P.(C) No.16126 of 2008 T

Dated this the 12th day of June, 2008.

J U D G M E N T

The petitioner was appointed as U.P.S.A. at St.Raphel's High School, Ezhupunna, an aided school managed by the first respondent, with effect from 1.6.2005. It is stated that she was appointed in the vacancy of Smt. Sheeba Varghese who was promoted as HSA in the vacancy of Smt.Bridgit Thomas

who retired on 31.3.2005. Ext.P1 is the appointment order. Originally the District Educational Officer, Cherthala declined approval of appointment of the petitioner on the ground that there was no sanctioned post. The petitioner filed an appeal before the Deputy Director of Education, Alappuzha. The Deputy Director of Education called for a report from the District District Educational Officer, Cherthala. It is stated that the District Educational Officer submitted Ext.P2 reported dated 26.6.2006 stating that there was a vacancy to accommodate the petitioner. Thereafter, the Deputy Director of Education allowed the appeal filed by the petitioner as per Ext.P3 order dated 29.6.2006 and approved the appointment of the petitioner with effect from 1.6.2005. It was found that there was a vacancy for accommodating the petitioner with effect from 1.6.2005. On the basis of Ext.P3 order dated 29.6.2006, the District Educational Officer approved the appointment of the petitioner with effect from 1.6.2005. WP(C) No.16126/2008

2. The Director of Public Instruction conducted an audit in the Office of the Deputy Director of Education, Alappuzha. An objection was raised that the Manager unauthorisedly shifted approved UPSAs as LPSAs for making fresh appointments without obtaining departmental sanction. The Deputy Director of Education, on the basis of the audit objection, issued Ext.P5 letter dated 15.5.2008 to the District Educational Officer stating that the Director of Public Instruction has directed the Deputy Director of Education to cancel the approval of appointment of the petitioner and till a final decision is taken by the Director of Public Instruction, not to disburse the salary to the petitioner. The petitioner has challenged Ext.P5 letter dated 15.5.2008 in this Writ Petition.

3. In the counter affidavit filed by the Deputy Director of Education, it is stated as follows:-

"2. It is respectfully
submitted that the petitioner Smt.Maijo

Kuruvila and Sri.John Ditto were appointed as Upper Primary School Assistants with effect from 1.6.2005 onwards against the promotion vacancy of Smt.Sheeba Varghese and in the transfer vacancy of Smt. Thankamma respectively. At the time of these appointments there were only 16 UPsAs on the roll, including Smt.Maijo Kuruvila and Sri. John Ditto, against the sanctioned post of 16 UPsAs. However later Government by G.O. (Rt) No.4260/05/Gl.Edn. Dated 1.10.05 have WP(C) No.16126/2008 ordered to approve the appointments of Sri.Dennis George and Smt.Annie. M.J.

(Whose appointments were approved as LPSA with effect from 29.11.04 and continuing as LPSA in the school) as UPsA with effect from 5.6.02. Hence, the District Educational Officer, Cherthala has rejected the appointment of Smt.Maijo Kuruvila and Sri. John Ditto stating that there were no sanctioned post of UPsA to provide the appointees. However appeal filed by the Manager was allowed by this Office as the objection raised by the District Educational Officer, Cherthala was occurred due to the issuance of G.O.(Rt) No.4260/05/Gl.Edn. dated 1.10.05 and the Manager has made necessary arrangements in this regard whcih is detailed as follows:-

3. Smt. Annie. M.J.

and Sri.Dennis George were appointed as UPSA in St.Raphel's H.S.Ezhupunna with effect from 5.6.02 and these appointments were rejected at first by the department on the reason that protected HSA's of the school who were deployed in the Government schools should have been absorbed against these vacancies, in terms of para (3) of G.O(P) No.178/02/Gl.Edn. dated 28.6.2002. Hence after recalling these protected High School WP(C) No.16126/2008 Assistants to the parent school, the Manager re-appointed the above two teachers against the available vacancies of Lower Primary School Assistants w.e.f.29.11.2004 and the District Educational Officer, Cherthala has approved their appointments as LPSA from 29.11.04 and they were continued in the school as such. However, they filed W.P.(c) No.16092/05 before the Hon'ble High Court for their approval of appointment as UPSA from 5.6.02 onwards. Meanwhile Smt.Maijo Kuruvila and Sri.John Ditto were appointed as UPSA w.e.f. 1.6.05 in the vacancies of UPSA during 2005. However, on the basis of the Hon'ble High Court direction in judgment dated 30.5.05 in W.P.(c) 16092/05 the Government vide G.O.(Rt) No.4620/05/Gl.Edn. dated 1.10.05 directed the District Educational Officer, Cherthala to approve the appointment of Smt. Annie M.J. and Sri.Dennis George as UPSA w.e.f. 5.6.02 itself. Hence by the issuance of the Government Order dated 1.10.05 the total number of UPSA's become 18 against the sanctioned post 16, even though Smt.Annie M.J. and Sri.Dennis George worked as LPSA from 29.11.04 with the earlier approval from the District Educational Officer, Cherthala. Hence on immediate receipt of the G.O(Rt) dated 1/10/05 in order to arrange the excess two UPSA's the Manager has issued WP(C) No.16126/2008 proceedings Dated 4.10.05 by adjusting 2 T.T.C. holder UPSA's namely Smt. P.V.Thresia and Sri. N.T.Ralpy to the available vacancies in the L.P.Section. Hence it was clear that there were vacancies for the appointments of Smt.Maijo Kuruvila and Sri.John Ditto with effect from 1.6.05 (there were only 16 UPSA's in the roll as on 1.6.05 against the sanctioned post of 16, including the appointee), the shifting of UPSA's made by the Manager on 4.10.05 was for the compliance of the Government Order Dated 1.10.05. However the Manager had not obtained prior sanction from the District Educational Officer, Cherthala for the shifting of UPSA. Hence this Office has ratified the action of the Manager for the shifting of UPSA's exercising the power of the appellate authority and directed the District Educational Officer, Cherthala to approve the appointment of Smt.Maijo Kuruvila and Sri. John Ditto as UPSA with effect from 1.6.05.

4. However the audit cell of the Director of Public Instruction, Thiruvananthapuram has objected these appointments. Reply furnished by this office was also not accepted by the audit cell pointing that at the time of issuance of the G.O.(Rt) No.4260/05 dated 1.10.05 there WP(C) No.16126/2008 were 18 UPSA's in the roll (including the two unapproved UPSA's (Smt.Maijo Kuruvila and Sri.John Ditto) against the sanctioned post of 16 UPSA's.

5. In the above
circumstances the Deputy Director of
Education as per letter No.B1.3361/08

dt.15.5.08 had requested Director of Public Instruction, Thiruvananthapuram to cancel the appointments of Smt.Maijo Kuruvila and Sri.John Ditto as UPSA's from 1.6.05 and directed District

Educational Officer, Cherthala to stop payments of salary to these teachers, now the matter is pending with the Director of Public Instruction, Thiruvananthapuram. Therefore Writ Petition is devoid of merit."

4. A perusal of the counter affidavit shows that the matter is not finally decided by the Director of Public Instruction. Ext.P5 letter was issued without hearing the petitioner. The Director of Public Instruction has also not heard the petitioner as well as the Manager. At the same time, till a final decision is taken in the matter, the Director of Public Instruction has directed the Deputy Director of Education, Alappuzha to withhold the salary of the petitioner. The Deputy Director has in turn issued Exhibit P5 letter to the District Educational Officer with copy to the Manager, the Headmaster and the petitioner. To my mind, the direction to withhold the salary is illegal. The WP(C) No.16126/2008 appointment of the petitioner from 1.6.2005 was approved by the competent authority. Unless and until it is found after hearing the petitioner as well as the Manager that the approval of appointment of the petitioner was illegal, it is not proper to withhold the salary of the petitioner. At the same time, the matter has to be finalised by the Director of Public Instruction. In these circumstances, the Writ Petition is disposed of in the following manner:-

(1) The Director of Public Instruction shall issue notice to the petitioner as well as the Manager, hear them and finally decide the matter after considering all the contentions put forward by the petitioner as well as the Manager.

(2) Till a final decision is taken by the Director of Public Instruction, Ext.P5 shall be kept in abeyance and the direction to withhold the salary of the petitioner shall not be implemented. Needless to say that this direction will have the effect of taking necessary steps by the respondents to continue to pay the salary of the petitioner.

K.T. SANKARAN, JUDGE.

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