

IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT
THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR
&
THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V
&
THE HONOURABLE MR.JUSTICE MOHAMMED NIAS C.P.

Thursday, the 2nd day of June 2022 / 12th Jyaishta, 1944
WA NO. 1558 OF 2016

AGAINST JUDGMENT DATED 08/03/2016 IN WPC 11177/2013 OF THIS COURT

APPELLANT/4TH RESPONDENT:

K. SUMANGALA DEVI ,W/O.SATHISBOSS,KOTTAYIL,THURUTHI.P.O, KOTTAYAM
DIST.

BY ADVS.M/S. M.P.ASHOK KUMAR,BINDU SREEDHAR, & ASIF N.

RESPONDENT/PETITIONER/RESPONDENTS 1 TO 3 AND 5:

1. BINU P.N.,W/O,.P.P.RAJENDRAN,PLAVINAKUZHIYIL,VETTOOR P.O.
2. STATE OF KERALA, REPRESENTED BY THE SECRETARY,GENERAL
EDUCATION,GOVT. SECRETARIAT,THIRUVANANTHAPURAM-1.
3. THE DIRECTOR OF PUBLIC INSTRUCTIONS, DIRECTORATE OF PUBLIC
INSTRUCTIONS,THIRUVANANTHAPURAM-1.
4. THE CORPORATE MANAGER, TRAVANCORE DEVASWOM BOARD SCHOOLS,TRAVANCORE
DEVASWOM BOARD BUILDING,NANDANKODE,THIRUVANANTHAPURAM.
5. THE DISTRICT EDUCATION OFFICER, ATTINGAL.

BY ADVS.M/S.S.P.ARAVINDAKSHAN PILLAY,N.SANTHA, V.VARGHESE,
PETER JOSE CHRISTO,S.A.ANAND, K.N.REMYA,L.ANNAPOORNA, K.SHAJ
VISHNU V.K & ABHIRAMI K. UDAY FOR R1
GOVERNMENT PLEADER FOR R2 TO R5

This Writ Appeal coming on for orders on 02/06/2022 upon perusing the appeal memorandum and this court's order dated 12/11/2019, the court on the same day passed the following:

P.T.O.

A.K.JAYASANKARAN NAMBIAR, J.

RAJA VIJAYARAGHAVAN V., J.

&

MOHAMMED NIAS C.P., J.

W.A.NO.1558 OF 2016

Dated this the 2nd day of June, 2022

O R D E R

This appeal is before us pursuant to the reference order dated 12.11.2019 of a Division Bench of this Court that doubted the correctness of the view expressed by another Division Bench in ***Sandhya T.N v. Jalaja Kumari & Ors - [2008 (3) KLT 655]*** while deciding the *inter se* claim between holders of rights under Rule 43 and Rule 51A of Chapter XIV-A of the Kerala Education Rules [hereinafter referred to as the “KER” for brevity] in the matter of preferential appointment to vacancies arising in teaching posts in the school concerned. The doubt entertained by the referring Bench was essentially as regards the continued entitlement of a Rule 51A claimant to the right under the said provision, despite being accommodated to a vacancy in a teaching post in a different category, in effectuation of that right. The brief facts necessary for an appreciation of the issue that has been referred is as follows:

The appellant, Smt. K.Sumangala Devi was the 4th respondent in W.P.(C).No.11177 of 2016. She had worked variously as HSA

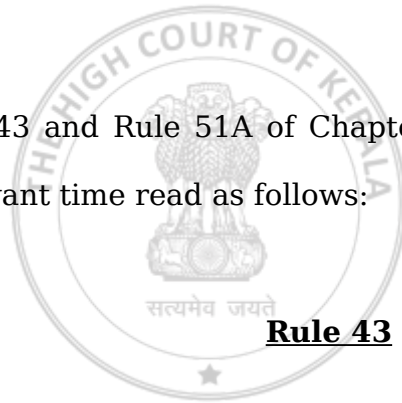
(Hindi) and Lower Grade Hindi Teacher during various spells in schools under the management of the Travancore Devaswom Board between 1994 and 2005. It was while she was working as Lower Grade Hindi Teacher (Part Time) in the school with effect from 02.06.2003 that she was retrenched from the post with effect from 15.07.2005. She thus obtained a right under Rule 51A of Chapter XIV-A KER for preferential appointment to future vacancies in the same, lower or higher categories of teaching posts in the school for which she was qualified.

2. The writ petitioner Smt.Binu P.N too had worked variously as HSA (Hindi) and Lower Grade Hindi Teacher during various spells in schools under the management of the Travancore Devaswom Board between 1992 and 2011. It was while she was working as an HSA with effect from 05.06.2002 that she was reverted as Lower Grade Hindi Teacher with effect from 15.07.2003 and continued in the said post till 31.05.2011. Her reversion to the post of LG Hindi teacher was in accordance with the 2nd proviso to Rule 43 of Chapter XIV-A KER and hence she was never retrenched from the school for the purposes of claiming any right under Rule 51A of Chapter XIV-A KER.

3. To a vacancy that arose in the post of HSA (Hindi) with effect from 01.06.2011, in a school under the educational agency, the manager promoted Smt.Binu P.N recognizing her claim under Rule 43. This was done ignoring the Rule 51A claim of Smt.Sumangala Devi which was the superior claim as per the statutory provisions then in vogue. In a Revision Petition filed by Smt.Sumangala Devi challenging the action of the manager, the Government found in her favour and directed her appointment to the post. This order of the Government was impugned by Smt.Binu P.N in a writ petition where she contended that she was both a Rule 43 claimant as well as a Rule 51A claimant. While the writ petition was disposed by directing the Government to look into the rival claims, the Government went on to find that Smt.Binu P.N was only a Rule 43 claimant and her claim had to yield to the superior right of Smt.Sumangala Devi under Rule 51A. It was this order of the Government that was impugned by Smt.Binu P.N in W.P. (C).No.11177/2013 where the learned Single Judge found that she continued to be a Rule 51A claimant notwithstanding her appointment as Lower Grade Hindi Teacher with effect from 15.07.2003 and hence, taking note of her seniority over Smt.Sumangala Devi, she was held entitled to the vacancy of HSA (Hindi) that arose with effect from 01.06.2011. While holding so, the

learned Single Judge took note of the judgment of the Division Bench of this Court in **Sandhya T.N (supra)**. As already noted, in the appeal preferred by Smt.Sumangala Devi against the judgment of the learned Single Judge, the referring Bench doubted the correctness of the view in **Sandhya T.N (supra)** to the extent it suggested that a Rule 51A claimant continued to hold the right under that provision notwithstanding the accommodation to a vacancy in a teaching post in a different category, in effectuation of that right.

4. Rule 43 and Rule 51A of Chapter XIV-A KER, as it stood during the relevant time read as follows:



Rule 43

43. Subject to rules 44 and 45 and considerations of efficiency and any general order that may be issued by the Government, vacancies in any higher grade of pay shall be filled up by promotion of qualified hands in the lower grade according to seniority, if such hands are available:

Provided that in the case of promotion to the post of High School Assistant (Subject), the minimum subject requirements alone need to be satisfied, to safeguard the interests of trained graduates who are awaiting promotions as High School Assistants.

Provided further that where a Headmaster or a teacher who has been promoted under this rule faces

retrenchment for want of vacancy, he shall be reverted to the category of post from which he has been promoted provided he is not eligible for protection in the retrenched post as per the orders issued by the Government from time to time.

Note :- (1) A teacher in a lower grade of pay in one category of post is eligible for promotion to a higher grade of pay in another category of post provided.

- (i) he has the prescribed qualifications; and
- (ii) there is no teacher with the prescribed qualifications in the lower grade of pay of the category of post to which promotions are to be made.

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

Rule 51A

"51A. 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 in the same or higher or lower category of teaching posts, for which he is qualified that may arise if there is no claimant under rule 43 in the lower category in schools under the same Educational Agency or an Educational Agency to which the school may be subsequently transferred provided they have not been appointed in permanent vacancies in schools under any other Educational Agency.

"Provided that a teacher who was relieved under rule 49 or rule 52 shall not be entitled to preference for appointment under this rule unless such teacher has a minimum continuous service of one academic year as on the date of relief:

Provided further that the first preference under this rule shall be given to protected teachers belonging to the same Educational Agency.

Provided further that preference shall be given to teachers from Teachers Bank for appointment in vacancies as specified in Rule 7 of Chapter XXI.

Note 1. If there are more than one claimant under this rule the order of preference shall be according to the date of first appointment. If the date of first appointments is the same then preference shall be decided with reference to age, the older being given first preference. In making such appointments due regard should be given to the requirement of subjects and to the instructions issued by the Director under sub-rule (4) of rule 1 as far as High Schools are concerned].

Note 1A:- Fresh appointments to vacancies arising in the same or higher or lower category of teaching posts under the Educational Agency shall be made only after providing re-appointment to such teachers thrownout from service and protected teachers available under the Educational Agency.

Explanation:- For the purpose of this clause, "Protected teacher" means, a teacher who has been retrenched for want of vacancy after putting such length of regular service that may be specified by the Government or who is eligible for such Protection as per G.O(MS)No.104/69/Edn. dated 6-3-1969 or G.O(MS)No.231/84/G.Edn. dated 27-10-1984 or any other orders issued by Government from time to time.

Note 2. Manager should issue an order of appointment to the teacher by Registered post acknowledgment due and give a period of 14 (fourteen) clear days to the teacher to join duty. If the teacher does not join duty in time the Manager should give a further notice to the teacher stating that another person would be appointed instead and that the preferential right under this rule would be forfeited if not exercised within another 7 (seven) clear days. If nothing is heard during that time also, the preferential right under the rule will be regarded as forfeited."

On a plain reading of the provisions, it is clear and unambiguous that during the period aforementioned, the right under Rule 43 was subject to the right obtained under Rule 51A and that, in the event of an *inter se* claim between the different right holders, the holder of the right under Rule 43 had to yield to the superior right held by

the other under Rule 51A. The question that arises in the instant case, however, is whether Smt.Binu P.N continued to hold a right under Rule 51A, under circumstances where, consequent to her being found surplus in the post of HSA (Hindi) on 15.07.2003, she was not retrenched from the school, but reverted and retained therein as Lower Grade Hindi Teacher with effect from 15.07.2003 and in which post she continued till 31.05.2011.

5. When we read the provisions of Rule 51A, we find it to be unambiguously indicated that the right to preferential appointment envisaged therein accrues only to a teacher who has been "relieved" in any of the circumstances mentioned in the Rule. Smt.Binu P.N was never relieved from the school but accommodated in a teaching post in a lower category consequent to her right under the 2nd proviso to Rule 43. In that view of the matter, she never really obtained a right under Rule 51A at the time of her reversion from the post of HSA (Hindi) on 15.07.2003. Consequently, the only right that she had while staking a claim for the vacancy to the post of HSA (Hindi) that arose with effect from 01.06.2011 was her right under Rule 43. The said right being subject to any existing right under Rule 51A, we have to find that between Smt.Binu P.N and Smt.Sumangala Devi, it was the latter that had to be given the

appointment to the post of HSA (Hindi) in the vacancy that arose with effect from 01.06.2011.

6. We may point out that the peculiar factual circumstances that existed in the case of **Elizabeth Oommen v. Beena Mariam George - [2000 (2) KLT SN 47 (C.No.55)]**, the Division Bench judgment of this Court that was relied upon by the Division Bench that decided **Sandhya T.N (supra)**, to hold that a teacher who is a Rule 43 claimant can also have and seek to enforce a claim under Rule 51A as well, do not exist in the instant case. In **Elizabeth Oommen (supra)**, the Division Bench was considering the rival claims of teachers who had rendered various spells as HSA and UPSA in the school in question. The earlier spell of service rendered by the victorious teacher in the post of HSA, prior to the amendment of Rule 51A with effect from 17.06.2005, conferred on her a right under the unamended Rule 51A, which she could effectuate only through an appointment in a future vacancy in the same category of post viz. HSA. Her subsequent appointment as UPSA in the school was not seen as one effectuating her Rule 51A claim and, under those circumstances, when she was working as UPSA at the time when the vacancy to the post of HSA arose in the school, she had to

be seen as a person who held both, the right under Rule 43 as the senior most UPSA in the school as well as a non-effectuated right under Rule 51A, for preferential appointment to the post. Her right under Rule 51A was held subsisting and not relinquished.

7. In the instant case, as already noted, Smt.Binu P.N never obtained a right under Rule 51A since she was never “relieved” from the school but accommodated in a teaching post in a lower category where she continued till 2011. Even if it is assumed that she did obtain a right under Rule 51A at the time of her being rendered surplus in 2003, her subsequent accommodation in the lower category teaching post had to be seen as an effectuation of that right since after the amendment to Rule 51A with effect from 17.06.2005, an effectuation of the Rule 51A right could also be through appointment in a lower category teaching post.

8. Thus we answer the reference by holding that the right to preferential appointment obtained by a Rule 51A claimant does not continue to enure in that person once the said right has been effectuated through an appointment in future vacancies that arise in the same, lower or higher category of teaching posts in schools under the same educational agency. The decision to the contrary in

Sandhya T.N (supra) has to be seen as rendered based on the peculiar factual circumstances that obtained in **Elizabeth Oommen (supra)** that it followed and cannot be seen as a general proposition of law governing the issue during the period between 17.06.2005 and 05.07.2012.

The Writ Appeal is now remanded back to the Division Bench for disposal on merits in the light of our answer to the reference as above.



Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

Sd/-
RAJA VIJAYARAGHAVAN V.
JUDGE

Sd/-
MOHAMMED NIAS C.P.
JUDGE

prp/