

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).24777/2010

(From the judgement and order dated 29/07/2009 in WA No.1410/2008 of The HIGH COURT OF KERALA AT ERNAKULAM)

P.T.BEENA ROY

Petitioner(s)

VERSUS

STATE OF KERALA & ORS.

Respondent(s)

(With appln(s) for c/delay in filing SLP and office report)
(for final disposal)

Date: 25/07/2013 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE G.S. SINGHVI
HON'BLE MR. JUSTICE V. GOPALA GOWDA

For Petitioner(s) Mr. P.A. Noor Mohammed, Adv.

For Respondent(s) Mr. C.S. Rajan, Sr. Adv.
No.5

For RR Nos. 1 to 3 Ms. Praseen E. Joseph, Adv.

UPON hearing counsel the Court made the following
O R D E R

Delay condoned.

Although the petitioner has retired from service, learned counsel appearing on her behalf insisted that his client's challenge to the promotion of respondent No.5 - Smt. Anitha Vasanth as Headmistress should be decided on merits.

The petitioner joined service on 28.7.1980 as High School Assistant (Sanskrit) in Vocational Higher Secondary School, Kuzhikkalidavaka, Pangode, Kottarakara (hereinafter referred to as the 'parent school'). From 24.2.1985 to 6.11.1996 she worked as Protected Teacher in Government High Schools at Nettayam and Puthur. On 7.11.1996, she was posted back in her parent school.

Respondent No.5 was appointed as High School Assistant on 7.6.1993 in the same school where the petitioner had been appointed in 1980. She was promoted as Headmistress on 7.6.2005. The representations made by the petitioner against the promotion of respondent No.5 were rejected by the State Government and the writ petition filed by her was dismissed by the learned Single Judge vide order dated 9.1.1996, the relevant portion of which is extracted below:

"It is now settled law that a protected teacher cannot be regarded as a teacher on the rolls of the parent school. {See Prasad v. Philipose Mar Dilshus U.P.School [2003 (3) KLT 488] & Alevamma v. Kuniamma Jacob [2007 (1) KLT 1049]} The position cannot any be different simply because the petitioner has been permitted as per the relevant Government orders to continue as protected teacher in the parent school itself. In such circumstances, in the parent

school also the teacher continues to be a protected teacher and not as a teacher in the rolls of the school. The law being that, notwithstanding the fact that the petitioner was qualified on the date of occurrence of vacancy and was continuing in the very same school as protected teacher, the petitioner cannot aspire for promotion as headmistress in the school."

The Division Bench of the High Court dismissed the writ appeal by relying upon the decision of the Full Bench order in Writ Petition (C) No.12707/2005 Abraham v. State of Kerala.

Learned counsel for the petitioner relied upon Rules 37, 44 and 44A of Chapter XIV-A of the Kerala Education Rules, 1959 (for short, 'the Rules') and argued that the decision of the management to overlook the candidature of the petitioner was ex facie illegal and the State Government and the High Court committed serious error by negating her challenge to the promotion of respondent No.5. In support of his argument, the learned counsel relied upon the judgment of the Full Bench of the High Court in Sasidharan Nair v. State of Kerala 2003 (1) KLT 998.

Learned counsel for the respondents argued that the petitioner has no right to be considered for promotion to the post of Headmistress because she was junior to respondent No.5 and did not have the requisite service experience in the parent school. They pointed out that the petitioner has been retrenched from the parent school from 24.2.1985 and she was adjusted as a Protected Teacher upto 6.11.1996. Learned counsel emphasized that the petitioner's seniority for the purpose of promotion to the post of Headmistress can be counted in the parent school only from 7.11.1996 and she cannot be said to have completed 12 years service as on the date of occurrence of vacancy, i.e., 1.6.2006.

We have considered the respective submissions and scanned the relevant rules. In our opinion, the determination of the petitioner's seniority in the cadre of High School Assistant was rightly determined by counting her service from 7.11.1996 because she had been declared surplus from the parent school and was categorized as Protected Teacher for avoiding termination of her service. As on the date of vacancy she had not completed the requisite period of service in her parent school. Therefore, the competent authority did not commit any illegality by promoting respondent No.5 in preference to the petitioner.

The special leave petition is, accordingly, dismissed.

|(Parveen Kr.Chawla)

|Court Master

|(Phoolan Wati Arora)

||Court Master