

CASE NO.:
Appeal (civil) 4480 of 2007

PETITIONER:
Valsala Kumari Devi M

RESPONDENT:
Director, Higher Secondary Education & Ors

DATE OF JUDGMENT: 25/09/2007

BENCH:
Tarun Chatterjee & P. Sathasivam

JUDGMENT:
JUDGMENT

CIVIL APPEAL NO. 4480 OF 2007
(Arising out of SLP (C) No. 19296 OF 2004)

P. Sathasivam, J.

1) Leave granted.
2) Valsala Kumari Devi M., High School Assistant, B.A.R. High School, Bovikanan, Muliya Post, Kasargode District, Kerala, who lost her case before the High Court of Kerala has filed the above appeal.

3) The brief facts, in nutshell, are as follows:
According to the appellant, she was originally working as High School Assistant (hereinafter referred to as 'HSA') (Social Studies) in the B.A.R. Higher Secondary School, Bovikanan. She was appointed as HSA (Social Studies) with effect from 13.07.1990 which was duly approved by the Manager, B.A.R. High School, Bovikanan (respondent No.4 herein). Respondent No.5 herein, namely, M.K. Aravindakshan Nambiar, entered into service as HSA (Social Studies) (Kannada Medium) with effect from 20.06.1991. He is junior to the appellant in the category of HSA.

The appellant passed M.A. (History) in second class from the University of Mysore. M.A. (History) degree of the Mysore University has been recognized as equivalent to the M.A. (History) degree of University of Calicut. A certificate to that effect has also been issued by the Registrar, University of Calicut certifying that M.A. (History) Degree of the Mysore University is recognized as equivalent to M.A. (History) Degree of the University of Calicut. She has been awarded B.A. degree by the University of Calicut having been duly certified to have passed in Economics main and Political Science, Indian History as subsidiaries in the year 1980. She has also been awarded the degree of Bachelor of Education (B.Ed) in English and History subjects by the Karnataka University in recognition of the fulfillment of the requirements for the said degree and according to her, she passed the examination in April, 1981 in First Class. B.Ed. degree of the University of Karnataka has been recognized as equivalent to the B.Ed. degree of the University of Calicut and a certificate to that effect has been issued to the appellant by the Registrar of the University of Calicut. She has also passed the Master of Arts (English) degree examination held in December, 2002 from the Annamalai University and she was placed in Second Class. She has also passed the State Eligibility Test (SET) in History

subject in June, 2000 and the Commissioner of Entrance Examinations has certified that the appellant has passed the SET prescribed as one of the qualifications for appointment as Higher Secondary School Teacher, in short HSST.

4) The Government issued Notification prescribing the method of appointment for the post of Higher Secondary School Teachers. The minimum qualification prescribed in the Government Order for HSSTs is Second Class Master's Degree in the concerned subject, with B.Ed., for the time being till Rules are framed for regular appointment. The selection will be subject to seniority and suitability. The appellant having secured second class Master's degree in History and B.Ed. degree in English and History is eligible and qualified for appointment as HSST (History) in Humanities Group-History, Geography, Economics, Hindi/Malayalam as per the G.O. dated 27.06.1990.

5) A vacancy of HSST (History) arose in the B.A.R. Higher Secondary School, Bovikanan during the academic year 2000-01. The appellant and the 5th respondent applied for appointment by promotion to the above said post. As per G.O. dated 13.05.1998, 25% of vacancies in the post of HSST in the Government Higher Secondary Schools and Aided Higher Secondary Schools will be reserved for appointment from qualified High School Assistants and Primary School Teachers. It provides that the teachers appointed from General Education Subordinate Service will be treated as appointment by promotion and they will be full-time teachers irrespective of the periods to be taught. However, the remaining 75% vacancies earmarked for direct recruitment in the Aided Higher Secondary Schools will be done by the Management by a Staff Selection Committee. According to the appellant, in the case of appointment by promotion of the teachers from the General Education Subordinate Service as HSST, the Staff Selection Committee does not have any role and the same shall be made based on seniority of HSAs who possess the prescribed qualification for appointment as HSST.

6) It is the grievance of the appellant that the 4th respondent \026 the Manager, overlooking the seniority and eligibility of the appellant, appointed 5th respondent as HSST (Humanities). Challenging the same, the appellant filed O.P. No. 22902 of 2000 before the High Court of Kerala which was disposed of by order dated 10.8.2000 directing the Director, Higher Secondary Education, Thiruvanthapuram, Kerala (respondent No.1 herein), to consider and pass order on the representation made by the appellant within a period of two months. Pursuant to the said direction, she was called upon to appear for an interview fixed for 30.03.2001. The appellant appeared for the interview and produced all the original certificates to prove her qualifications and eligibility. However, she was informed by letter dated 05.04.2001 of the Manager, B.A.R. High School, Bovikanan (respondent No.4) that she was not selected for the post of HSST (History). Aggrieved by her non-selection for promotion as HSST, the appellant filed O.P. No. 13710 of 2001 which was disposed of by order dated 26.02.2003 directing the Director, B.A.R. High School, Bovikanan, to consider the grievance of the appellant after affording her an opportunity of being heard. Pursuant to the said direction, the appellant submitted a fresh representation and finally the earlier order was once again reiterated upholding the appointment of the 5th respondent. The said order was challenged by the appellant by filing W.P. (C) No. 21069 of 2003. The said writ petition

was finally heard along with W.P. (C) No. 15674 of 2004 filed by the 5th respondent seeking for approval of his appointment and payment of salary. The above said writ petitions were jointly heard and W.P. (C) No. 21069 of 2003 was dismissed by judgment dated 22.6.2004 and Writ Petition (C) No. 15674 of 2004 was disposed of by directing the concerned respondents to approve the appointment of 5th respondent and to disburse his salary within two months from the date of production of a copy of the judgment. Being aggrieved by the above judgment, the appellant preferred an appeal before the Division Bench of the High Court of Kerala in W.A. No. 1265 of 2004 on various grounds. By the impugned order dated 12.07.2004, the Division Bench after finding that the selection shall be made based on seniority and suitability upheld the decision of the Selection Committee selecting the 5th respondent confirmed the order of the learned single Judge and dismissed the writ appeal filed by the appellant. Questioning these orders, the present appeal has been preferred before this Court.

7) We heard Mr. Romy Chacko, learned counsel, appearing for the appellant and Mr. A. Raghunath, Mr. G. Prakash and Mr. M.P. Vinod, learned counsel appearing for the respondents.

8) The following questions arise for consideration in this appeal:

(i) Whether the selection of 5th respondent for the post of Higher Secondary School Teacher was made ignoring the criteria of seniority and suitability envisaged under G.O. (MS) No. 138/90/G.Edn. dated 27.06.1990?

(ii) Whether proficiency in Kannada a criteria for appointment by promotion for the post of Higher Secondary School Teacher in the absence of any such stipulation in the Government Order dated 27.6.1990 more so when the medium of instruction in Higher Secondary Schools is English?

(iii) Whether the Staff Selection Committee was competent to make selection for appointment by promotion to General Education Subordinate Service when the power conferred on Staff Selection Committee is restricted to selection by direct recruitment alone?

(iv) Whether the expression "suitability" envisaged under G.O. dated 27.06.1990 means suitability in relation to qualification and requisite experience or comparative assessment of suitability?

(v) Whether the Staff Selection Committee was justified in acting on the dictates of the Parent Teacher Association of the School rather than the criteria provided under the G.O. dated 27.6.1990?

(vi) Whether the High Court was justified in upholding the selection of 5th respondent in view of the admitted fact that the appellant was senior to him as High School Assistant?

In view of the fact that all the issues referred to above are interconnected, they are being considered and disposed of by the following judgment:

8) The subject relates to the appointment/selection for the post of Higher Secondary School Teacher in History. Before considering the merits of the claim made by the appellant as well as by the 5th respondent, it is desirable to refer to the relevant Government Orders issued by the Government of Kerala. In G.O. (MS) No. 138/90/G.Edn. dated 27.06.1990, the General Education (HSE) Department issued a Notification prescribing certain

conditions for appointment of teachers for Plus Two Higher Secondary Course. The relevant clauses of the Government Order are as follows:

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4. The issues relating to the implementation of the Plus Two Higher Secondary Course were examined in detail and discussions were held with representatives of all concerned. After careful consideration of all aspects of the matter Government have decided to introduce the Plus Two Course in selected schools in 1990-91. Government are pleased to issue the following further instructions in the matter:-

(i)\005\005\005\005\005\005\005\005\005\005\005\005\005\005\005\005\005\005

(ii) \005\005\005\005\005\005\005\005\005\005\005\005\005\005\005\005\005..

(iii)\005\005\005\005\005\005\005\005\005\005\005\005\005\005\005\005\005.

(iv) \005\005\005\005\005\005\005\005\005\005\005\005\005\005\005\005.

(v) The medium of instruction will be English.

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(vii) \005\005\005\005\005\005\005\005\005\005\005\005\005\005\005\005\005\005.

(viii)\005\005\005\005\005\005\005\005\005\005\005\005\005\005\005\005\005\005\005

(ix)\005\005\005\005\005\005\005\005\005\005\005\005\005\005\005\005\005\005

(x)\005\005\005\005\005\005\005\005\005\005\005\005\005\005\005\005\005\005

[illegible]

(xii)\005\005\005\005\005\005\005\005\005\005\005\005\005\005\005\005\005\005\005.

Teachers:- The minimum qualifications for the higher secondary schools teachers will be a second class Master's Degree in the concerned subject, with B.Ed. for the time being till Rules are framed for regular appointment. The teachers will be initially appointed on the basis of these qualifications. The selection will be subject to seniority and suitability. If sufficient number of qualified hands are not available for appointment as teachers, candidates may be recruited through the Employment Exchange.

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The relevant clauses of G.O.(Ms) No. 162/98/G.Edn. dated 13.5.1998 issued by the General Education (T) Department read as under:

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2. The posts of Higher Secondary School teachers in Government Higher Secondary Schools and Aided Higher Secondary Schools will be filled up as follows:

i. 25% vacancies will be reserved for appointment from qualified High School Assistants and Primary School Teachers.

ii. The remaining 75% of posts in Government Schools will be filled up by direct recruitment through the Public Service

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iii. Appointments to the 75% vacancies earmarked for direct recruitment in the Aided Higher Secondary Schools will be done by the management. If qualified teachers are not available for appointment as mentioned in item (i) above, the management will fill up such vacancies also by direct recruitment. Selection of candidates for direct recruitment in Aided Higher Secondary Schools will be done by a Staff Selection Committee consisting of the Manager or his representative, the Principal of the School and a

Government nominee from the panel of officers consisting of Deputy Director, Education, D.E.O. of the area and DIET Principal of the District. The management can select a nominee from among the above officers. The above officers are permitted to attend the Staff Selection Committee meeting without further sanction.

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9) In view of the above Government Orders, let us consider the claim of the appellant, the 5th respondent as well as the decision taken by the Selection Committee and the orders passed by the High Court. As stated earlier, since the appellant was appointed as HSA w.e.f. 13.07.1990 and the 5th respondent only from 20.6.1991, he is junior to the appellant in the category of HSA. The particulars furnished clearly show that the appellant possesses the requisite qualification for being considered for the post of HSST. G.O. dated 27.6.1990 prescribes the minimum qualification for the Higher Secondary School Teachers as second class Master's Degree in the concerned subject with B.Ed. We have already extracted relevant clauses from the G.O. which make it clear that medium of instruction will be English. As rightly pointed out by learned counsel appearing for the appellant, the appellant having secured second class Master's degree in History and B.Ed. Degree in English and History is fully qualified and eligible for appointment as HSST (History) in Humanities Group.

9) The Government Order dated 13.5.1998 makes it clear that 25% of vacancies in the post of HSST in the Government Higher Secondary Schools and Aided Higher Secondary Schools will be reserved for appointment from qualified High School Assistants and Primary School Teachers. It also prescribes that the remaining 75% vacancies earmarked for direct recruitment in the Aided Higher Secondary Schools will be done by the Management and the selection of candidates for direct recruitment in Aided Higher Secondary Schools will be done by a Staff Selection Committee.

10) Government Order dated 27.6.1990 makes it clear that the selection of teachers will be subject to seniority and suitability and G.O. dated 13.5.1998 specifically prescribes that the teachers appointed from General Education Subordinate Service will be treated as appointment by promotion. As stated earlier, the selection will be subject to seniority and suitability and there is no dispute that the appellant is senior to 5th respondent. She is eligible and qualified for appointment by promotion to HSST. It is not the case of the Management that she is unsuitable for promotion.

11) The expression "subject to seniority and suitability" occurring in G.O. dated 27.6.1990 does not mean the comparative assessment of suitability and it only means the suitability for the particular post and the suitability is related to the prescribed qualification and requisite experience. In view of the distinction between the appointment by promotion from General Education Subordinate Service and an appointment to the 75% vacancies ear-marked for direct recruitment, we are of the view that the finding arrived at by the Director, Higher Secondary School, Thiruvananthapuram, Kerala that seniority is not the criterion for 'appointment by promotion to HSST' is erroneous and is not in terms of the Government Orders referred to above. Though in the order, it is stated that the 5th respondent is more suitable than the appellant, as rightly pointed out by learned counsel appearing for the appellant, it has not been shown or indicated the reasons or grounds for arriving such decision that the 5th respondent was found more suitable than the appellant for the post. We are also in agreement with the contention that the

Director has mechanically accepted the decision of the Selection Committee that the 5th respondent is more suitable than the appellant without reference to selection for appointment by promotion to HSST against 25% quota earmarked for qualified High School Assistants. We are of the view that the Director has committed an illegality in upholding the selection of the 5th respondent for appointment to the post of HSST. Further the 5th respondent has been preferred to the appellant for the reason that his main subject in B.A. is History which is totally irrelevant for promotion to HSST from among HSAs. In G.O. dated 27.6.1990 the qualification prescribed is a second class Master's Degree in the concerned subject with B.Ed. It is relevant to point out that the appellant and the 5th respondent have obtained M.A. Degree from Mysore University and the 5th respondent took B.Ed with Social Studies. The other reason given by the Selection Committee for preferring 5th respondent is that he has proficiency in English, Kannada and Malayalam whereas the appellant has proficiency in English and Malayalam. As rightly pointed out by learned counsel appearing for the appellant, once the requirement of the prescribed qualification is satisfied, the selection must be made on the basis of the seniority and suitability and there is no scope for making comparison of qualifications or comparative assessment of suitability. The expression 'suitability' means that a person to be appointed shall be legally eligible and 'eligible' should be taken to mean 'fit to be chosen'.

12) In such circumstances, we are of the view that it was improper on the part of the Selection Committee to make selection taking into account the qualifications which are not prescribed in the G.Os and by giving weightage to such qualifications. The Selection Committee has also taken note of the suggestion of the Parents Teachers Association that persons having proficiency in Kannada should be preferred when there is no such condition in the Government Order. In other words, preference is to be given for proficiency in Kannada which is not a requisite qualification. In our view, ignoring the appellant who has been working as HSA in the very same school and selecting the 5th respondent by giving weightage for proficiency in Kannada which is not a condition prescribed in the relevant Govt. orders by the Selection Committee can not be sustained. It is based on extraneous/irrelevant considerations.

13) In our view, the learned single Judge as well as the Division Bench of the High Court on the mis-construction of two G.Os. dated 27.06.1990 and 13.05.1998 prescribing qualifications and mode of selection, committed an error in upholding the selection of 5th respondent when the appellant being fully qualified as well as senior to 5th respondent as HSA.

14) Under these circumstances, we allow the appeal and set aside the order dated 22.6.2004 passed by the learned single Judge of the High Court in W.P.(C) Nos. 21069/2003 and 15674 of 2004 as well as the order dated 12.7.2004 passed by the Division Bench of the High Court in W.A. No. 1265 of 2004 confirming the selection of the 5th respondent as HSST. As a result of the above conclusion, we direct the authorities to issue appropriate order in favour of the appellant within a period of four weeks from the date of receipt of this judgment. No order as to costs.