

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

TUESDAY, THE 8TH DAY OF SEPTEMBER 2015/17TH BHADRA, 1937

OP.No. 10285 of 2001 (Y)

PETITIONER(S):

INDU K.S, W/O. MR. PRAKASH
HIGH SCHOOL ASSISTANT, HIGH SCHOOL,
KALLISSERY, CHENGANNUR
(PRESENTLY RESIDING AT SREEKRISHNAVILASAM
MUNDANKAVU, P.O. CHENGANNUR)

BY ADVS.SRI. V.PHILIP MATHEWS
SRI.V.MANOJ KUMAR

RESPONDENTS:

1. STATE OF KERALA REPRESENTED BY SECRETARY TO
GOVERNMENT, GENERAL EDUCATION (A) DEPARTMENT
KERALA GOVERNMENT SECRETARIAT, THIRUANANTHAPURAM
2. DIRECTOR OF PUBLIC INSTRUCTIONS
JAGATHY, THIRUANANTHAPURAM
3. DEPUTY DIRECTOR OF EDUCATION, ALAPPUZHA
4. DISTRICT EDUCATIONAL OFFICER, MAVELIKKARA
5. MANAGER, HIGH SCHOOL, KALLISSERY, CHENGANNUR

R, BY ADV. GOVERNMENT PLEADER SRI. T R RAJESH

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 08-09-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONERS EXHIBITS:

EXT.P1: COPY OF APPOINTMENT ORDER DT 2.6.99 APPROVED BY THE 4TH RESPONDENT

EXT.P2: COPY OF ORDER NO.D.DIS.B6 6719/99 DT 9.9.99 OF THE 4TH RESPONDENT

EXT.P3: COPY OF THE ORDER DT 28.1.2000 OF 3RD RESPONDENT

EXT.P4 COPY OF APPEAL FILED BY 5TH RESPONDENT BEFORE THE 2ND RESPONDENT DT 18.2.2000

EXT.P5 COPY OF COMMUNICATION SENT BY THE 4TH RESPONDENT TO THE 2ND RESPONDENT DT 29.2.2000

EXT.P6: COPY OF ORDER REJECTING EXT.P5 ISSUED BY THE SECOND RESPONDENT DT 4.8.2000

EXT.P7 COPY OF ORDER ISSUED BY THE 4TH RESPONDENT DT 29.8.2000

EXT.P8: COPY OF REVISION PETITION FILED BY THE PETITIONER BEFORE THE FIRST RESPONDENT AGAINST EXT.P6 DT 24.8.2000

EXT.P9: COPY OF THE ORDER DT 16.1.2001 ISSUED BY THE 1ST RESPONDENT REJECTING EXT.P8

EXT.P10: COPY OF ORDER DT 25.1.2001 ISSUED BY THE 2ND RESPONDENT

EXT.P11: COPY OF AFFIDAVIT SWORN BY THE PETITIONER'S FATHER

EXT.P12: COPY OF THE REPRESENTATION DT 29.5.2001 SUBMITTED BY THE PETITIONER BEFORE THE 4TH RESPONDENT

RESPONDENTS ANNEXURES:

ANNEXURE R2(A)1 TRUE COPY OF THE GOVERNMENT LETTER
No.43743/i2/98/g.edn.dt 18.3.1990

ANNEXURE R2(b): TRUE COPY OF THE GOVERNMENT LETTER NO.54885/J1/90/G.EDN
DT 30.3.1990

TRUE COPY

P.A TO JUDGE'

jma

K. VINOD CHANDRAN, J

O.P No.10285 of 2001

Dated this the 08th day of September, 2015

J U D G M E N T

The petitioner is aggrieved with Ext.P3 order which was confirmed in Exts.P6, P9 and P10. The brief facts to be noticed are that the petitioner was appointed in the vacancy of regularisation of one Thara K who was continuing as an HSA(Social Science). The petitioner had been appointed on 02.06.1999 and the petitioner's appointment was also approved on 30.09.1999. The said approval was based on the staff fixation ordered by the AEO as per Ext.P2.

2. The sanctioned posts in the category of HSAs (core subjects) were shown as 9; two in Physical Science, one in Natural Science and 3 each in Mathematics and Social Science. In fact, Smt. K Thara HSA(Social Science) was continued as an excess hand only by reason of the protection granted as per G.O(P) No286/1998 dated 21.07.1998 which directed reckoning of 1:40 ratio; permitting

existing excess hands as on 01.06.1989 to continue. The Deputy Director by Ext.P3 however, revised the staff fixation under Rule 12 C (2) of Chapter XXIII. A reading of Ext.P3 would indicate that the Headmistress Graceyamma Koshy retired from service on 30.04.1999 and Smt. Subhja Bai HSA(Maths) was promoted as Headmistress with effect from 01.05.1999. In the consequent vacancy Smt. K Thara HSA who was working in the 9th post of HSA, by virtue of the protection granted by the aforesaid Government Order was accommodated. Hence there was no need to fill up the vacancy created by such accommodation since the continuance of Smt.K Thara was only on the basis of protection and not by reason of any staff fixation.

3. In fact, in Ext.P2, the sanctioned post should have been shown as 8+1; 8 being the sanctioned posts and 1 being the additional hand retained merely by virtue of the protection granted. For an additional post sanction higher level verification was mandatory, which obviously was not carried out.

4. The petitioner relies on a decision of this Court in Beena Mariam George v State of Kerala (1998 (1) KLT 658)

which found that the power under Rule 8A to revise an order of approval of appointment must be exercised within a reasonable time. In the above case, it is to be noticed that the power exercised by the Deputy Director was under rule 12 C (2) and the Division Bench decision of this Court in State of Kerala v. Jayasree (2004 (2) KLT 98) found that the time limit fixed under the rule is only directory and not mandatory. On the facts of the above case, it is noticed that mistake occurred in the staff fixation order, which mistake cannot enure to the benefit of the petitioner.

In such circumstance, the writ petition is dismissed upholding the orders of the authorities under the KER.

Sd/-
(K. VINOD CHANDRAN, JUDGE)

jma // true copy//

P.A to Judge

K. VINOD CHANDRAN, J

O.P No.10285 of 2001

J U D G M E N T

08th day of September, 2015