

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

MONDAY, THE 02ND DAY OF NOVEMBER 2015/11TH KARTHIKA, 1937

W.P.(C).No.1526 of 2005 (F)

PETITIONER(S):-

**SHEELATHA. P.,
UPPER PRIMARY SCHOOL ASSISTANT,
VICTORY VOCATIONAL HIGHER SECONDARY SCHOOL,
OLATHANNI, NEYYATTINKARA-695 121.**

BY ADV. SRI.B.RAGUNATHAN.

RESPONDENT(S):-

- 1. STATE OF KERALA,
REPRESENTED BY SECRETARY TO GOVERNMENT,
GENERAL EDUCATION DEPARTMENT,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM-695 001.**
- 2. DIRECTOR OF PUBLIC INSTRUCTION,
THIRUVANANTHAPURAM-695 014.**
- 3. DISTRICT EDUCATIONAL OFFICER,
NEYYATTINKARA-695 121.**
- 4. MANAGER, VICTORY VOCATIONAL HIGHER SECONDARY SCHOOL,
OLATHANNI, NEYYATTINKARA-695 121.**
- 5. SMT.T. MARY, UPSA, VICTORY VOCATIONAL HIGHER SECONDARY SCHOOL,
OLATHANNI, NEYYATTINKARA-695 121.**
- 6. SMT. S.R. SINDHU, UPSA,
VICTORY VOCATIONAL HIGHER SECONDARY SCHOOL,
OLATHANNI, NEYYATTINKARA-695 121.**
- * [7. SMT.S.PADMAKUMARI AMMA, UPSA,
(C/O. THE MANAGER, VVHSS),
VICTORY VOCATIONAL HIGHER SECONDARY SCHOOL,
OLATHANI, NEYYATTINKARA - 695 121.]**

*** THE 7TH RESPONDENT IS DELETED FROM THE PARTY ARRAY IN THE
W.P.(C) AS PER ORDER DATED 30.03.2012 IN I.A.NO.4189/12.**

**R1, R2 & R3 BY GOVERNMENT PLEADER SRI.T.R.RAJESH.
R5 BY ADV. SRI.B.MOHANLAL**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 02-11-2015,
ALONG WITH W.P.(C).NO.17361 OF 2006-P, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:-**

APPENDIX

PETITIONER'S EXHIBITS:-

- EXT. P1: TRUE COPY OF THE ORDER OF APPOINTMENT DATED 9.6.99 ISSUED BY THE 4TH RESPONDENT.
- EXT. P2: TRUE COPY OF THE ORDER DATED 19.11.01 OF THE 3RD RESPONDENT.
- EXT. P3: TRUE COPY OF THE ORDER OF APPOINTMENT DATED 06.06.01 ENDORSING THE ORDER OF THE 3RD RESPONDENT DATED 07.05.02.
- EXT. P4: TRUE COPY OF THE LETTER DATED 21.03.2002 OF THE 3RD RESPONDENT.
- EXT. P5: TRUE COPY OF THE APPEAL PETITION NO 55/2004 DATED 05.05.04 OF THE 4TH RESPONDENT TO THE 2ND RESPONDENT.
- EXT. P6: TRUE COPY OF THE REPRESENTATION DATED 19.04.2004 ADDRESSED TO THE 3RD RESPONDENT.
- EXT. P7: TRUE COPY OF THE LETTER NO B4-2137/03 DATED 25.04.04 OF THE 3RD RESPONDENT TO THE 4TH RESPONDENT.
- EXT. P8: TRUE COPY OF THE LETTER DATED 29.04.04 OF THE 4TH RESPONDENT, IN REPLY TO EXT. P7, TO THE 3RD RESPONDENT.
- EXT. P9: TRUE COPY OF THE LETTER NO B4/2137/04/L DIS DATED 26.05.04 OF THE 3RD RESPONDENT TO THE 4TH RESPONDENT.
- EXT. P10: TRUE COPY OF THE REPRESENTATION DATED 10.06.04 TO THE 1ST RESPONDENT (HON'BLE MINISTER FOR EDUCATION).
- EXT. P11: TRUE COPY OF THE ORDER DATED 07.10.2004 OF THE 2ND RESPONDENT.
- EXT. P12: TRUE COPY OF THE REVISION PETITION DATED 11.10.2004 TO THE 1ST RESPONDENT.
- EXT. P13: TRUE COPY OF THE REPRESENTATION DATED 20.10.2004 ADDRESSED TO THE 3RD RESPONDENT.
- EXT. P14: TRUE COPY OF JUDGEMENT IN WP(C) NO 36532/04 DATED 16.12.04.
- EXT. P15: TRUE COPY OF THE LETTER DATED 09.12.04.

RESPONDENT'S EXHIBITS:-

EXT.R5(a) TRUE COPY OF THE ORDER NO.B4-5486/00/D.DIS. DT.20.11.01.

EXT.R5(b) TRUE COPY OF THE ORDER NO.B4/5596/01/D.DIS. DATED 23.12.01.

EXT.R5(c) TRUE COPY OF THE COMPLAINT DATED 7.6.2006 FILED BY
THE PETITIOENR BEFORE THE 3RD RESPONDENT.

vku/-

/ TRUE COPY /

K. Vinod Chandran, J

W.P.(C).Nos.1526 of 2005-F & 17361 of 2006-P

Dated this the 2nd day of November, 2015

JUDGMENT

Both the petitioners are before this Court claiming appointment in the leave vacancy of Upper Primary School Assistant [for brevity “UPSA”]. The petitioners are referred to by their names and the documents from the respective writ petitions.

2. Sheelatha,P., the petitioner in W.P.(C).No.1526 of 2005, is said to have been appointed by Exhibit P1 in the promotion vacancy of one J.Alphonsa between 09.06.1999 and 11.08.1999. However, the approval was rejected by order dated 19.11.2001, produced at Exhibit P2. Sheelatha is said to have been again appointed as per Exhibit P3, which is not the subject matter of the above writ petition and the same is said to have been approved also. The controversy arose since Exhibit P4 was issued by the District Educational Officer [for brevity “DEO”], which, in fact, overturned the seniority of the petitioner. The fact

remains that the petitioner though served with the order of rejection at Exhibit P2 and though quite aware of the same, did not file an appeal against the order as provided under Rule 8 of Chapter XIV-A of Kerala Education Rules, 1959 [for brevity "KER"]. Much later, in the year 2004, the Manager is said to have filed an appeal, Exhibit P5, at the petitioner's instance, which was rejected by Exhibit P11 order, dated 07.10.2004. A revision petition is said to have been filed on 11.10.2004, as is seen at Exhibit P12. The revision also was dismissed by Exhibit P15.

3. The learned Government Pleader submits that there was considerable delay in filing the appeal, since the order at Exhibit P2 dated 19.11.2001 was appealed against only in the year 2004. However, there is provision for condonation of delay. In any event, the Appellate Authority has not looked into the delay at all and considered the appeal on merits. In such circumstance, the question of delay raised at this point, is inconsequential. The petitioner has been diligent insofar as filing a revision immediately after the appeal was dismissed. The Government also rejected the revision by Exhibit P15. The reason projected for rejection of the

approval of appointment of Sheelatha between 09.06.1999 and 11.08.1999 was that the UPSA who is said to have been promoted as HSA has not been approved in the promoted vacancy. The denial of approval is said to be for reason of another Rule 43A claimant, being available in the school. Hence, obviously there is a vacancy which would arise on promotion of either of the rival claimants.

4. In this context, it is also pertinent that T.Mary, who is the petitioner in W.P.(C).No.17361 of 2006, was appointed subsequently to the petitioner in another leave vacancy between 14.06.1999 and 17.08.1999. The said appointment has been approved. In fact, it is to be noticed that Sheelatha was appointed on 09.06.1999 till 11.08.1999 and T.Mary was appointed on 14.05.1999, just five days after the appointment of the petitioner and she continued till 17.08.1999. The appointment of Mary has been approved

5. With respect to the contention of the petitioner in W.P.(C).No.17361 of 2006, it is pertinent that the Government has passed an order, No.B4/5365/06 dated 25.10.2006 rejecting the

petitioner's claim. The proceedings sheet in the writ petition would indicate that on 07.07.2006 this Court had passed an order directing T.Mary to provisionally mark attendance, subject to further orders. This Court had also by a detailed interim order dated 29.09.2006 directed consideration of Exhibit P9 without any further delay, after hearing all affected parties. It is pursuant to that direction, the order, now produced by the learned Government Pleader across the Bar, has been passed on 25.10.2006. On 02.11.2006, the learned Government Pleader submitted before this court that the said order has been passed in compliance with the interim direction dated 29.09.2006. This court on 02.11.2006 recorded the said submission and also recorded the submission of the learned counsel for the petitioner therein that the order would be produced and challenged. However, no challenge has been made till date. In such circumstance, W.P.(C).No.17361 of 2006 would stand dismissed.

6. Sheelatha who has filed W.P.(C) No.1526/2005 is aggrieved with the denial of approval to her appointment at Ext.P1 between 9.6.1999 and 11.8.1999. The said appointment is said to

be based on the promotion of one Smt.J.Alphonsa, UPSA. Though there is delay in challenging the rejection of approval, the same has been held to be inconsequential by this Court since the aspect of delay was never raised before the educational authorities or the Government. In Exts.P2, P11 and P15 the reasons stated for rejection of approval is that the approval of Smt. J.Alphonsa has been rejected. However, a reading of Ext.P15 would indicate that the rejection of the said promotion was by reason of there being another Rule 43 claim. If that be so the vacancy in the post of UPSA definitely arises and it has to be considered whether it is the petitioner or any other person who has to be approved in such vacancy.

7. In such circumstance, W.P.(C) No.1526/2005 would stand allowed. Exhibits P2, P11 and P15 as also Exhibit P9 shall stand set aside. The D.E.O. shall re-consider the issue in accordance with the vacancy position at that point of time and looking at whether there really existed a promotion vacancy at that point of time. The petitioner shall produce a certified copy of the judgment and after hearing the Manager and any other rival

claimants, the issue shall be decided within a period of three months from the date of production of the certified copy of the judgment.

Ordered accordingly. Parties are left to suffer their respective costs.

Sd/-
K.Vinod Chandran
Judge.

vku/-

[true copy]