

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

MONDAY, THE 5TH DAY OF OCTOBER 2015/13TH ASWINA, 1937

WP(C).No. 3500 of 2005 (N)

PETITIONER(S):

**NINI JOSEPH, H.S.A. (MATHEMATICS),
MAR KURILOS MEMORIAL HIGHER SECONDARY SCHOOL
PIRAVOM, ERNAKULAM DISTRICT.**

**BY ADVS.SRI.S.RAMESH BABU
SRI.P.M.MANOJ**

RESPONDENT(S):

- 1. THE DIRECTOR OF HIGHER SECONDARY
EDUCATION, HOUSING BOARD BUILDING, THIRUVANANTHAPURAM.**
- 2. THE MANAGER, MAR KURILOSE MEMORIAL,
HIGHER SECONDARY SCHOOL, PIRAVOM, ERNAKULAM DISTRICT.**
- 3. SMT. RIYA JOHN, H.S.S.T. (MATHEMATICS)
MAR KURILOS MEMORIAL HIGHER SECONDARY SCHOOL
PIRAVOM, ERNAKULAM DISTRICT.**
- 4. SMT. RAJI. P.Y, H.S.S.T (MATHEMATICS),
MAR KURILOS MEMORIAL HIGHER SECONDARY, SCHOOL, PIRAVOM
ERNAKULAM DISTRICT.**

**R,R1 BY ADV. GOVERNMENT PLEADER SRI. S. JAMAL
R,R2 BY ADV. SRI.T.A.UNNIKRISHNAN
R,R3 & R4 BY ADV. SRI.N.SUKUMARAN
R,R3 & R4 BY ADV. SRI.S.SHYAM
R,R3 & R4 BY ADV. SRI.N.K.KARNIS
R,R3 & R4 BY ADV. SRI.BOBBYMATHEW KOOHATTUKULAM
R,R3 & R4 BY ADV. SRI.SAJI VARGHESE KAKKATTUMATTATHIL**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 05-10-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

APPENDIX

PETITIONERS EXHIBITS:

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| EXT.P1 | COPY OF THE APPOINTMENT ORDER OF THE PETITIONER WITH THE APPROVAL DATED 3.6.96. |
| EXT.P2 | COPY OF GO(MS) NO162/98/G.EDN.DATED 13.5.98 |
| EXT.P3 | COPY OF THE GO(MS) NO.289/99/G.END. DATED 3.11.99 |
| EXT.P4 | COPY OF THE GO(MS) NO.289/99/G.EDN.DATED 25.11.99 |
| EXT.P5 | COPY OF GO(MS) NO.341/99/G.EDN. DATED 30.12.1999 |
| EXT.P6 | COPY OF THE INTERIM ORDER IN S.L.O © NO.18236-18237/98 DATED 7.12.99 |
| EXT.P7 | COPY OF THE MINUTES OF THE INTERVIEWING COMMITTEE |
| EXT.P8 | COPY OF THE ORDER NO.C6-1421/HSE/ DATED 14.6.99 |
| EXT.P9 | COPY OF THE ORDER ACD/A1/11431/2001/HSE DATED 11.10.2001 |
| EXT.P10 | COPY OF THE JUDGMENT DATED 10.11.03 IN OP NO.34476 OF 2001 |
| EXT.P11 | COPY OF THE REPRESENTATION OF THE PETITIONER TO THE 1ST RESPONDENT DATED 19.11.03 |
| EXT.P12 | COPY OF THE COMMUNICATION OF THE 1ST RESPONDENT TO THE PETITIONER DATED 22.7.04 |
| EXT.P13 | COPY OF THE LETTER OF THE PETITIONER TO THE 1ST RESPONDENT DATED 7.8.04 |
| EXT.P14 | COPY OF THE PROCEEDINGS OF THE 1ST RESPONDENT DATED 18.10.04 |
| EXT.P15 | COPY OF THE PROCEEDINGS OF THE 1ST RESPONDENT DATED 10.5.03 |

RESPONDENTS EXHIBITS:

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| EXT.R3(A) | COPY OF THE APPOINTMENT ORDER OF THE 3RD RESPONDENT. |
| EXT.R3(B) | COPY OF THE JUDGMENT OF THIS HON'BLE COURT IN O.P NO.22274/2001 |

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WP(C).No. 3500 of 2005 (N)

EXT.R3(C) COPY OF THE MINUTES OF THE SELECTION COMMITTEE

// TRUE COPY //

PA TO JUDGE.

SB

K. VINOD CHANDRAN, J.

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W.P.(C) No.3500 of 2005 - N

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Dated this the 5th day of October, 2015

J U D G M E N T

The petitioner is aggrieved by the fact that the petitioner was not appointed as a Higher Secondary School Teacher (H.S.S.T) (Maths) in the 2nd respondent school despite she being the only qualified hand in the high school section, entitled for such appointment. The petitioner contends that as on the date of appointment, the Government Orders regulating the matter being Exts.P2 to P5 as also the interim order of the Hon'ble Supreme Court at Ext.P6, was in her favour.

2. To understand the contention of the petitioner, the Government Orders need not be referred to separately. Suffice it to say that the Government, on de-linking Pre-Degree from Colleges and starting Higher Secondary course in the schools, prescribed a ratio of 75:25 for appointment to the H.S.S.T's from

open merit and the high school section. The petitioner was qualified for the same except for the requirement of having the State Eligibility Test (S.E.T). As for the said stipulation, the teachers who were qualified in the high school section was exempted insofar as the appointment was concerned, and there was only a requirement that they should pass S.E.T within a period of two years from the said appointment. The ratio of 75:25 was challenged before this Court, in a batch of writ petitions, which challenge was negatived and the judgment affirmed by the Hon'ble Supreme Court.

3. When the matter was pending before the Hon'ble Supreme Court, there was an interim order at Ext.P6 dated 07.12.1999, in which the Hon'ble Supreme Court had directed that the ad-hoc appointments could be made, but only from the teachers qualified in the high school section. Eventually none has a dispute that the Hon'ble Supreme Court also upheld the ratio. In any event, whether it be by reason of the ratio or by

reason of the interim order of the Hon'ble Supreme Court, the petitioner was qualified, is the contention.

4. The petitioner along with other open merit candidates, were called for an interview. Going by the list prepared, there were only two aspirants from the high school section as against the alleged 14 vacancies in the post of H.S.S.T. Both the High School Assistants ought to have been hence granted promotion. However, what assumes significance is the manner in which the petitioner proceeded with the challenge to such denial.

5. Admittedly, the 3rd respondent was appointed as H.S.S.T(Maths) on 08.08.2000 in the year 2000-01. The petitioner did not challenge the said appointment. Subsequently, the 4th respondent was appointed on 11.07.2001 as H.S.S.T (Maths). The petitioner then challenged the said appointment by a writ petition, the judgment of which is produced as Ext.R3(b). Even in O.P No.22274 of 2001, there was no challenge to the

appointment of the 3rd respondent. The 3rd respondent had been first impleaded in the above writ petition filed in the year 2005. Hence there can be no valid challenge raised against the appointment of the 3rd respondent at that distance of time.

6. As to the challenge against the 4th respondent's appointment, Ext.R3(b) judgment was passed. The petitioner had filed Ext.P6 representation. The approval of appointment of the 4th respondent (who was the 3rd respondent therein), was directed to be considered along with the representation filed. It is to be noticed that the original petition was disposed of on 30.07.2001. In compliance of Ext.R3(b), Ext.P9 order dated 11.10.001 was passed. Ext.P9 was challenged in a original petition numbered as O.P.No.34476 of 2001. The petitioner when the matter was taken up after three years, contended that the issue has been considered under W.A No.2245 of 2002 on 22.01.2003. The petitioner again prayed for disposal, in terms of the observations contained in paragraphs 17 and 18 of the said

judgment. A Division Bench of this Court by Ext.P10 directed consideration of the same, if the writ petitioner submits a representation within two weeks from that date, giving all the facts and relevant rules.

7. The petitioner contends that the petitioner had preferred Ext.P11 dated 20.11.2003 before the Director in compliance with the judgment. The Director however in Ext.P14 noticed the fact that the judgment was received in his office only on 15.06.2004. Hence the petitioner did not produce the certified copy of Ext.P10 judgment before the Director. In Ext.P14, it was also stated that no representation was filed by the petitioner as directed in Ext.P10. Despite the fact that no representation was filed, in compliance with Ext.P10 judgment, the Director issued a notice on 22.07.2004. The petitioner did not turn up on that date due to a bus strike and in a subsequent letter dated 27.07.2004, she failed to mention any thing about the representation submitted as stipulated in the judgment.

Again hearing notices were sent. The petitioner was directed to produce documentary evidence regarding the submission of the representation dated 20.11.2003. Nothing was produced. Hearing was conducted and the petitioner not being able to prove the factum of a representation having been sent, as directed in Ext.P10 judgment, the Director found that the petitioner has forfeited the privileges granted to her by this Court at Ext.P10.

8. As of now, the petitioner by a writ petition of 2005 seeks to challenge the appointment made in the years 2000-01 and 2001-02. Admittedly any appointee from the high school section would have to complete the S.E.T within two years of the said appointment. The petitioner has not in the meanwhile attempted to qualify in the S.E.T. Though the petitioner had a case, as to the appointment of the 3rd respondent being legitimately due to her, the petitioner did not challenge it at the appropriate time. Even with respect to the challenge against the

4th respondent's appointment, the petitioner did not pursue her remedies and also did not prefer a representation as directed in Ext.P10. Evidently Ext.P10 is passed on 10.11.2003 and a hearing notice was suo motu issued by the Director on 22.07.2004. The petitioner did not attempt to move her representation or seek compliance of Ext.P10 judgment in the meanwhile. The delay stands against the petitioner and as has been noticed by the Director, the privilege offered to the petitioner by ExtP10 is forfeited by her own conduct and default. This Court does not find any sustainable explanation as to why interference be a caused to the appointments made, when the petitioner has failed to pursue her remedies diligently.

The writ petition would stand dismissed. No costs.

**Sd/-
K. VINOD CHANDRAN,
JUDGE**

SB/ 05/10 /2015

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P.A to Judge.