

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE ANTONY DOMINIC

&

THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

WEDNESDAY, THE 20TH DAY OF MAY 2015/30TH VAISAKHA, 1937

WA.No. 208 of 2013 () IN WP(C).15157/2006

JUDGMENT IN WP(C) 15157/2006 of HIGH COURT OF KERALA DATED 01-06-2012

APPELLANT/RESPONDENT:

THE DIRECTOR OF HIGHER SECONDARY EDUCATION,
HOUSING BOARD BUILDINGS, SANTHI NAGAR
THIRUVANANTHAPURAM-1.

BY SENIOR GOVERNMENT PLEADER SRI. LIJU STEPHEN

RESPONDENT/PETITIONER AND 2ND RESPONDENT:

1. P SREEKALA
HIGHER SECONDARY SCHOOL TEACHER, MIHSS PONNANI
MALAPPURAM.

2. MANAGER
MIHSS, PONNANI, MALAPPURAM.

R1 BY ADVS. SRI.ELVIN PETER P.J.
SRI.T.G.SUNIL (PRANAVAM)
SRI.K.R.GANESH
BY SRI.K.M.FIROZ

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 20-05-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**ANTONY DOMINIC
&
SHAJI P. CHALY, JJ.**

Writ Appeal No.208 of 2013

Dated this the 20th of May, 2015

JUDGMENT

Antony Dominic,J.

Respondents in the Writ Petition No.15157 of 2006 are the appellants. In this appeal, they are challenging the judgment of the learned Single Judge directing approval of the appointment of the first respondent as HSST (Jr) Chemistry w.e.f. 19.11.2001 when she was appointed by Ext.P5 order. According to the appellants, Special Rules, prescribing pass in State Eligibility Test as a mandatory qualification, came into force w.e.f. 12.11.2001 and that since the first respondent had not acquired that qualification when she was appointed by Ext.P5, the learned Single Judge could not have directed that their appointment be approved with effect from the date of her appointment.

2. We heard the learned Government Pleader for the appellants and the learned counsel appearing for the first respondent.

3. Brief facts of the case are that on conclusion of selection

process to the post of HSST (Jr) Chemistry, Ext.P4 rank list was published on 16.9.2001. On that basis first respondent was offered appointment by Ext.P5 order dated 19.11.2001. In the meanwhile, on 12.11.2001 Special Rules came into force and these Rules prescribed pass in State Eligibility Test as one of the qualifications for appointment. Subsequently by Ext.P6 proposal was made by the Manager seeking approval of appointment of the first respondent and by Ext.P7 the Director granted approval w.e.f. 30.01.2003, the date when the first respondent acquired pass in State Eligibility Test. It was challenging Ext.P7 and seeking approval of her appointment w.e.f. 19.11.2001 that the first respondent filed the writ petition. In the judgment under appeal placing reliance on Exts.P8, P9 and P12 Government Order, the learned Single Judge upheld the claim of the first respondent and ordered that her appointment be approved w.e.f. 19.11.2001. It is this judgment which is under challenge.

4. Contention raised by the learned Government Pleader is that the appointment was made after the Special Rules were introduced w.e.f. 12.11.2001 and that at that time the first

respondent had not acquired pass in State Eligibility Test. He also contended that Ext.P12 order applied only in respect of appointments made during the academic years 1999-2000 and 2000-2001 and that since the appointment in question was made during the academic year 2001-2002, the said Government Order had no relevance to the case of the first respondent. Therefore, according to the learned Government Pleader, the judgment of the learned Single Judge is erroneous. However, counsel for the first respondent contended that since the eligibility for appointment is to be reckoned with reference to the qualifications prescribed in the notification, appointment of the first respondent was perfectly valid and therefore, the respondents were liable to approve the appointment with effect from the date of appointment itself.

5. We have considered the submission made. Admittedly, the selection process was initiated by incorporating the qualifications then prescribed. It is also admitted that the first respondent who satisfied the eligibility prescribed for the post in question, responded to the advertisement and that it was on that

basis she was included in Ext.P4 rank list published on 16.09.2001. It was thereafter that the Special Rules were introduced with effect from 12.11.2001. However, taking note of her eligibility and inclusion in the rank list which was already published and as the vacancy in question arose long prior to the introduction of the Special Rules, she was offered appointment by Ext.P5 w.e.f. 19.11.2001. This, therefore, means that at the time when the first respondent was appointed she was fully eligible for the post in question and if that be so the fact that Special Rules were introduced in the meanwhile could not have affected her entitlement to have her appointment approved with effect from the date of appointment itself. If that be so, the stand taken in Ext.P7 approving appointment only w.e.f. 30.01.2003 could not have been upheld.

6. For these reasons, we do not want to interfere with the conclusion of the learned Single Judge upholding the entitlement of the first respondent for approval of her appointment w.e.f. 19.11.2001. Along with the appeal, the appellants have produced Annexure -1 order dated 01.09.2012 issued by the Director,

purportedly in compliance of the judgment of the learned Single Judge. By this order, the Director has once again rejected the approval of the appointment as prayed for by the first respondent on relying on the Special Rules introduced w.e.f. 12.11.2001. For the reasons that we have already stated, this view taken by the Director also cannot be sustained.

We, therefore, dismiss this appeal, vacating Ext.P7 and order that the directions of the learned Single Judge shall be complied with, at any rate, within eight weeks from the date of receipt of a copy of this judgment.

Sd/-

**ANTONY DOMINIC
JUDGE**

Sd/-

**SHAJI P. CHALY
JUDGE**

//true copy//

P.A. to Judge

smv