

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE ANTONY DOMINIC
&
THE HONOURABLE SMT. JUSTICE P.V.ASHA

WEDNESDAY, THE 9TH DAY OF DECEMBER 2015/18TH AGRAHAYANA, 1937

WA.No. 2933 of 2009 ()

AGAINST THE JUDGMENT IN WP(C) 17764/2009 of HIGH COURT OF KERALA
DATED 10-12-2009

APPELLANT/PETITIONER:

A.C.REKHA, H.S.A (MAL) , KODALI HIGH SCHOOL,
P.O.KODALI, KANNUR DISTRICT.

BY ADVS.SRI.M.RAMESH CHANDER
SMT.K.A.SANJEETHA
SRI.ANEESH JOSEPH

RESPONDENTS/RESPONDENTS:

1. STATE OF KERALA, REPRESENTED BY THE
PRINCIPAL SECRETARY TO GOVERNMENT
GENERAL EDUCATION DEPARTMENT, TRIVANDRUM.

2. THE DIRECTOR OF PUBLIC INSTRUCTIONS,
TRIVANDRUM.

3. THE DISTRICT EDUCATIONAL OFFICER,
THALASSERY, KANNUR.

4. THE MANAGER, KODALI HIGH SCHOOL,
P.O.KODALI, KANNUR.

5. K.REEJA, H.S.A (MAL) ,
KODALI HIGH SCHOOL, P.O.KODALI, KANNUR DISTRICT.

6. P.K.SAJITHA, U.P.S.A.,
KODALI HIGH SCHOOL, P.O.KODALI, KANNUR DISTRICT.

SRI.VIJU THOMAS, GOVERNMENT PLEADER
R,R5 BY ADV. SRI.R.PARTHASARATHY
R,R5 BY ADV. SRI.C.JAYACHANDRAN
R4 & 6 BY ADV. SRI.R.RAJASEKHARAN PILLAI
R4 & 6 BY ADV. SMT.SABINA JAYAN
R BY SRI.R.PARTHASARATHY

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 09-12-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

RKC

**ANTONY DOMINIC &
P.V.ASHA, JJ.**

W.A.No.2933 of 2009

Dated this the 9th day of December, 2015

JUDGMENT

Asha, J.

The petitioner in the writ petition is the appellant. The writ petition was filed challenging Ext.P4 order passed by the Government, in her revision petition, in which she sought a direction to appoint her in a regular vacancy, which arose in the fourth respondent's school with effect from 1.9.2005 or at least in the next vacancy, which arose on 5.6.2006.

2. The petitioner was appointed as UPSA (Upper Primary School Assistant) in the aided School under the 4th respondent on 22.9.2004, as per Ext.P1. Her appointment was against the vacancy of one Smt.Mridula, who availed leave without allowance for the period from 1.4.2002 to 30.3.2007. The petitioner's appointment was for the period from 22.9.2004 to 13.1.2005. The District Educational Officer declined approval to her appointment, on the ground that there were two claimants as against the said vacancy. Thereupon, she approached the

Director of Public Instruction and by Ext.P2 order, the Director of Public Instruction allowed the revision petition, observing that the two senior claimants had already been appointed against regular vacancies and their appointments were approved. The District Educational Officer was directed to consider the claim for approval, since the vacancy, in which she was appointed, was for more than one academic year. Thereafter her appointment was approved on 18.8.2007. In the meanwhile regular vacancies arose in the school on 1.9.2005 and 5.6.2006. As against those vacancies, the Manager had already made appointments. The petitioner therefore approached the Government filing revision petition on 3.11.2007 claiming regular appointment against one of those vacancies. Ext.P4 order was passed in that revision petition, in which the Government found that the initial appointment as well as its approval for the period from 22.9.2004 to 13.1.2005 was illegal, as appointment was made overlooking the claim of the 5th respondent who was a 51A claimant.

3. The 5th respondent's mother was working as HSA in the school and she died while in service on 28.3.2004. The 5th

respondent thereupon had submitted an application for appointment under the compassionate scheme on 18.4.2004. She had also submitted complaints before the District Educational Officer, as against the appointment of the petitioner, made against the leave vacancy, which arose after she submitted application. On her complaint, the District Educational Officer heard the petitioner and the Manager and after hearing the parties, the 5th respondent was found as the eligible claimant. In this context, it is relevant to note that the Manager as well as the petitioner had raised objections against the appointment of the 5th respondent, on the ground that she had not produced legal heirship certificate as on the date of occurrence of vacancy, though she had submitted application for the said appointment on 18.4.2004. However, after hearing all the parties, the District Educational Officer had upheld the statutory claim of 5th respondent under Rule 51B. The 5th respondent was thereupon appointed in that leave vacancy from 13.6.2005 to 31.8.2005 and in a regular vacancy from 1.9.2005, as per Ext.R5(g), which arose when Smt.Manjula, a UPSA, was relieved on appointment as HSST in Government School. Her appointment was also

approved with effect from 1.9.2005 onwards. It was thereafter that the petitioner had approached the Government and the Government had passed Ext.P4 order.

4. Learned single Judge considered the details of the appointments made in the school from 22.9.2004 onwards and found that the initial appointment of the petitioner was made overlooking the claim of the 5th respondent, under Rule 51B of Chapter XIVA KER and upheld the Government order. The petitioner had in fact challenged the Government order, saying that nobody had challenged the approval granted to her appointment and it was in her revision petition that an order adverse to her was passed, when she sought regular appointment with effect from 1.9.2005. But the learned single Judge found that the power under rule 92 of Chapter XIVA KER confers power on the Government to pass appropriate orders in a revision petition either confirming or modifying, or setting aside the order passed by the subordinate authorities and in that matter illegality of the order of approval was open for consideration by the Government when the petitioner wanted to to establish her rule 51A claim. Finally, the learned single Judge

remitted the matter to the Director of Public Instruction, as directed in Ext.P4 order passed by the Government, giving liberty to the Government as well as respondents 5 and 6 to raise their contentions.

5. By the time the writ petition was heard, respondents 5 and 6 had already been promoted as HSAs and the petitioner's appointment also was approved. As at present, it is pointed out that the petitioner also has since been promoted as HSA. Hence the only grievance which the petitioner can have will be regarding seniority in the post of HSA.

6. Going by the sequence of appointments made in the School, as discernible from the records, it is seen that the petitioner's appointment was made at a time, when the application of the 5th respondent for appointment under dying in harness scheme was pending, overlooking the rule 51B claimant. In these circumstances, it cannot be said that the order passed by the Government, though in the revision petition filed by the petitioner herself, suffers from any illegality as contended by the petitioner. Petitioner claimed appointment from an earlier date asserting that she was a 51 A claimant, for which there should be

a valid appointment with approval. There is nothing illegal in Ext.P4 in finding that the initial appointment was illegal. When the validity of this Government order was being examined under Article 226 of the Constitution of India, the learned single Judge has rightly upheld the order passed by the Government in its revisional jurisdiction. Therefore, even though there was no challenge as against the approval granted to the appointment of the petitioner, we do not find anything illegal in Ext.P4 order and there is no circumstance warranting interference in the judgment of the learned single Judge. In the above circumstances, we dismiss the writ appeal.

Sd/-
ANTONY DOMINIC,
JUDGE.

Sd/-
P.V.ASHA,
JUDGE.

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PA TO JUDGE