

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE THOTTATHIL B.RADHAKRISHNAN
&
THE HONOURABLE MR.JUSTICE K.HARILAL

TUESDAY, THE 31ST DAY OF MARCH 2015/10TH CHAITHRA, 1937

WA.No. 63 of 2015 IN WP(C).37140/2009

AGAINST THE JUDGMENT IN WP(C) 37140/2009 of HIGH COURT OF
KERALA.

APPELLANT(S)/4TH RESPONDENT IN THE WRIT PETITION:

THE GENERAL MANAGER AND INSPECTOR,
N.S.S.SCHOOLS, PERUNNAI P.O.,
CHANGANACHERRY - 686 102.

BY ADV. SRI.P.GOPAL

RESPONDENT(S)/PETITIONER & RESPONDENTS 1 TO 3, 5 & 6 IN
THE WRIT PETITION:

1. ASHA S.,
VIRUTHIPARAMBIL, KOTTAKKAKOM, MAVELIKKARA P.O.,
HSA(HINDI), PART TIME IN DVNSSHS, OTHERA,
(RETRENCHED).

2. STATE OF KERALA,
THE PRINCIPAL SECRETARY TO GOVERNMENT,
GENERAL EDUCATION DEPARTMENT,
THIRUVANANTHAPURAM - 695 001.

3. DIRECTORATE OF PUBLIC INSTRUCTION,
THIRUVANANTHAPURAM - 695 001.

4. THE DISTRICT EDUCATIONAL OFFICER,
MAVELIKKARA.

5. THE DISTRICT EDUCATIONAL OFFICER,
THIRUVALLA.

6. THE DEPUTY DIRECTOR OF EDUCATION,
PATHANAMTHITTA AT THIRUVALLA.

R1 BY ADV. SRI.S.SUBHASH CHAND

R2-6 BY SENIOR GOVERNMENT PLEADER SRI.S. JAMAL

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON
31-03-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

**THOTTATHIL B. RADHAKRISHNAN &
K. HARILAL, JJ.**

W.A.No.63 of 2015

Dated this the 31st day of March, 2015

JUDGMENT

Thottathil B. Radhakrishnan, J.

This appeal is by the educational agency. The writ appeal is against the judgment rendered in relation to the dispute as to the eligibility to continue in a particular vacancy.

2. On 13/1/2015, the Bench had minuted the following order:

“The learned senior Government Pleader will obtain instructions particularly regarding ground-B in the writ appeal. We also record the submissions on behalf of the Teacher (writ petitioner) that she is amenable to the course suggested in Ground-B. The directions contained in the

impugned judgment will not be enforced for the time being. Awaiting submissions on behalf of the Government, post on 28/1/2015.”

Pursuant to that, a counter affidavit has been filed by the 2nd respondent. Paragraph-7 of the counter affidavit reads as follows:

“7. Smt. Asha as stated above was retrenched along with P. Shyam Kumar from 15/7/2008. But she is not entitled for retention as protected teacher from 15/7/2008 onwards as the benefit of protection is available for teachers appointed up to 14/7/1997 and Smt. Asha has approved service only from 6/6/2002 onwards. Moreover, she was retrenched due to the reduction of two posts of has (Hindi), under the Corporate Management Schools. If there is vacancy available in the category of LGHT/LGHT(PT) under the Corporate Management, she can be appointed to that, under the Corporate Management provided that she has lien in that post. Being a Rule 51A claimant she can be considered only for reappointment in the future

vacancy of HSA (Hindi) arising under the Management. She can also be considered for appointment against the HSA (Hindi) Part Time post lying vacant in the NSS HS, Othara, the uneconomic school, if the strength of the school satisfies the minimum requirement. If there is no vacancy available under the management she can be included in the list of retrenched teachers in connection with 'Teachers Package'. But the Hon'ble High Court has quashed the Teachers' Package in W.P.(C) No.30107/2013."

3. In the aforesaid stand of the Department, we give a quietus to the dispute and the stand taken by the Department is acceptable to the educational agency.

4. Under the aforesaid circumstances, this writ appeal is ordered and the impugned judgment is modified directing that the Department and the educational agency will abide by what is quoted from paragraph-7 of the counter affidavit as above and consequential action shall follow to redress the grievances of the teacher concerned. This shall be done without insisting on any adverse impact of the dispute being uneconomic school since the teacher

concerned (Smt. Asha) is a claimant under Rule 51A of Chapter XIVA of the KER. It is so ordered. The said teacher will be eligible for salary from 13/7/2007 to 14/7/2008. The said teacher will be appointed as Part-time HSA (Hindi) with effect from 10/10/2012 in the NSS High School, Othera. Let consequential orders in terms of the judgment be passed within a period of two months from the date of receipt of a copy of this judgment.

Sd/-

(THOTTATHIL B. RADHAKRISHNAN, JUDGE)

Sd/-

(K. HARILAL, JUDGE)

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P.S. to Judge