

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

WEDNESDAY, THE 10TH DAY OF JUNE 2015/20TH JYAISHTA, 1937

WP(C).NO. 1168 OF 2012 (U)

PETITIONER(S):

T.S.JYOTHI AGED 34 YEARS
W/O. T.S.RAJAN, UPPER PRIMARY SCHOOL ASSISTANT
AIDED UPPER PRIMARY SCHOOL THESSERY, KANAKAMALA
THRISSUR DISTRICT 680 689.

BY ADVS.SRI.V.A.MUHAMMED
SRI.K.E.HAMZA

RESPONDENT(S):

1. THE STATE OF KERALA
REPRESENTED BY ITS SECRETARY TO GOVERNMENT
GENERAL EDUCATION DEPARTMENT, SECRETARIAT
THIRUVANANTHAPURAM 695 001.

2. THE DIRECTOR OF PUBLIC INSTRUCTIONS,
JAGATHY, THIRUVANANTHAPURAM 695 014.

3. THE DEPUTY DIRECTOR OF EDUCATION
THRISSUR AT AYYANTHOLE 680 003.

4. THE DISTRICT EDUCATIONAL OFFICER
IRNJALAKUDA THRISSUR DISTRICT 680` 121.

5. THE ASSISTANT EDUCATIONAL OFFICER
CHALAKKUDY, THRISSUR DISTRICT 680 307.

6. THE MANAGER
AIDED UPPER PRIMARY SCHOOL, THESSERY, KANAKAMALA
THRISSUR DISTRICT 680 689.

7. SMT. K.A.SHYLA
LOWER PRIMARY SCHOOL ASSISTANT {NOW WORKING AS UPPER PRIMARY
SCHOOL ASSISTANT,
AIDED UPPER PRIMARY SCHOOL THESSERY, KANAKAMALA
THRISSUR DISTRICT 680 689.

R7 BY ADV. SRI.P.K. JOSE
R7 BY ADV. SMT. TESSY JOSE
R6 BY ADV. SRI.N.P.SAMUEL
R6 BY ADV. SRI.PLEASANT.T.SAMUEL

ADDL--R8 BY ADV. SRI.DILIP J. AKKARA
BY GOVERNMENT PLEADER SMT.SUNITHA VINOD

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
10-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER(S) EXHIBITS:

EXT.P1 TRUE COPY OF THE JUDGMENT OF THIS HON'BLE COURT IN WPC. 21646/2010-E DT.20.08.2011.

EXT.P2 TRUE COPY OF THE APPOINTMENT ORDER DT.11.9.2002 AND THE APPROVAL THEREOF DT.14.12.2011.

EXT.P3 TRUE COPY OF THE APPOINTMENT ORDER DT.15.1.2003 AND THE APPROVAL THEREOF DT.14.12.2011.

EXT.P4 TRUE COPY OF THE APPOINTMENT ORDER DT.14.3.2011 AND THE APPROVAL THEREOF DT.14.12.2011.

EXT.P5 TRUE COPY OF THE APPOINTMENT ORDER DT.18.7.2005 AND THE APPROVAL THEREOF DT.14.12.2011.

EXT.P6 TRUE COPY OF THE STAFF FIXATION ORDER NO.C/1848/2010/D.DIS.DT.28.8.2010 OF THE ASSISTANT EDUCATIONAL OFFICER DT.28.8.2010.

EXT.P7 TRUE COPY OF THE APPEAL FILED BEFORE THE 2ND RESPONDENT DT.20.10.2010.

EXT.P8 TRUE COPY OF THE ORDER NO.C-2164/2010/K.DIS OF THE ASSISTANT EDUCATIONAL OFFICER DT.28.12.2011.

EXT.P9 TRUE COPY OF THE GO MS NO.42/2011/ G.EDN OF THE GOVERNMENT DT.16.12.2011.

EXT.P10 TRUE COPY OF THE LETTER NO.35528/J3/04/G.EDN.DT.11.10.2004 OF THE GOVERNMENT.

EXT.P11 TRUE COPY OF THE DECISION REPORTED IN 2011 (1) ILR KER, 895 DT.22.12.2010.

EXT.P12 TRUE COPY OF THE DECISION REPORTED IN 2011 (2) KHC 550 DT/29.3.2011.

EXT.P13 TRUE COPY OF THE INTERIM ORDER IN WPC. 8284/2011-1 OF THIS HON'BLE COURT.

EXT.P14: TRUE COPY OF THE JUDGMENT IN W.A.NO.1903 OF 2011 DATED 2.1.2012

EXT.P15: TRUE COPY OF THE JUDGMENT IN W.A.NO.119 OF 2012 DATED 23.1.2012

EXT.P16: TRUE COPY OF THE G.O.(P) NO.85/2011/G.EDN.DATED 7.3.2011

EXT.P17.TRUE COPY OF THE REQUEST OF THE PETITIONER DATED 17.2.2012

RESPONDENTS' EXHIBITS :

EXT.R6(A):PHOTO COPY OF LETTER NO.NVA/AUPS/13/2011 DTD.21.12.2011 SENT BY MANAGER TO ASST.EDL.OFFICER, CHALAKUDY

EXT.R6(B):PHOTO COPY OF APPEAL SUBMITTED BY MANAGER TO DIST.EDL.OFFICER ON 16.1.2012

//TRUE COPY//

P.A TO JUDGE

A.K.JAYASANKARAN NAMBIAR, J.

.....
W.P.(C).No.1168 of 2012

.....
Dated this the 10th day of June, 2015

J U D G M E N T

The petitioner was appointed as UPSA in the School under the management of the 6th respondent during various spells namely, from 11.09.2002 to 14.01.2003, 15.01.2003 to 13.03.2003, 14.03.2003 to 28.03.2003, and thereafter, from 18.07.2005 onwards. The appointments for all the aforesaid spells were approved by the education authority. During the academic year 2010-2011, pursuant to the staff fixation orders that were passed for the said year, two posts of LPSAs were reduced. During the said period, there were five posts of UPSAs and four posts of LPSAs in the School. Pursuant to the staff fixation order, an LPSA was adjusted against the post of UPSA held by the petitioner and the services of the petitioner was terminated with effect from 15.07.2010. This was on the basis that the LPSA in question was senior to the petitioner in the common seniority list of LPSAs and UPSAs that was maintained in the School. It is not in dispute that despite Ext.P8 order dated 28.12.2011 of the Assistant Educational Officer terminating the services of the petitioner, the petitioner continued in the School. In the writ petition, Ext.P8 order of the Assistant Educational Officer is impugned along with Ext.P9

Government Order to the extent it contemplates the inter se transfer between the post of LPSA and UPSA while identifying the teacher that was to be retrenched pursuant to a division fall that was noticed in the staff fixation.

2. I have heard Sri.V.A.Muhammed, the learned counsel for the petitioner, Sri.N.P.Samuel, the learned counsel for the 6th respondent Manager and the learned Government Pleader for respondents 1 to 5.

3. On a consideration of the facts and circumstances of the case as also the submissions made across the bar, I find that the issue involved in the writ petition is no longer res integra. By the decision of a Full Bench of this Court in **Thresia v. Preethy [2014 (4) KLT 837]**, it has been clarified that LPSAs and UPSAs are separate categories for the purposes of seniority and retrenchment and that, a common seniority of LPSAs and UPSAs is contemplated only for the purposes of promotion to the post of Headmaster. It follows, therefore, that UPSAs cannot be retrenched to accommodate LPSAs when reduction of posts of LPSAs has occurred in the School consequent to a division fall noticed in the staff fixation order for any particular academic year. As a matter of fact, the Full Bench judgment of this Court specifically upholds the

earlier decision of this Court in **Praveena V.Kamath v. State of Kerala [2011 (2) KLT S.N.93]**. In the light of the Full Bench judgment of this Court, the present writ petition is allowed by quashing Exts.P8 and P9 to the extent impugned in the writ petition and declaring that the staff fixation for the academic year 2010-2011 would now stand governed by the principles laid down by the decision of the Full Bench of this Court referred to above. The 5th respondent is directed to pass consequential orders in the matter, based on this judgment, within a period of two months from the date of receipt of a copy of this judgment. While passing consequential orders, the 5th respondent shall also deal with the entitlement of the petitioner to continue in the School during the academic years subsequent to 2010-2011. Based on the consequential orders to be passed by the 5th respondent, the petitioner shall be paid the salary and other allowances that are due to her, immediately, and at any rate, within a period of three months from the date of passing of the consequential orders.

A.K.JAYASANKARAN NAMBIAR
JUDGE

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