

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.SURENDRA MOHAN

WEDNESDAY, THE 18TH DAY OF MARCH 2015/27TH PHALGUNA, 1936

WP(C).No. 7858 of 2006 (I)

PETITIONER :

T.D. BABY, L.P.S.A., RESIDING AT
THURUTHEL HOUSE, MACHIPLAVU P.O., CHATTUPARA
ADIMALI, IDUKKI DISTRICT.

BY ADVS.SRI.N.SUGATHAN
SMT.VARSHA BHASKAR

RESPONDENTS :

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1. THE STATE OF KERALA, REPRESENTED
BY THE SECRETARY TO GOVERNMENT, GENERAL
EDUCATION DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM.
 2. THE DEPUTY DIRECTOR OF EDUCATION
IDUKKI, THODUPUZHA.
 3. THE ASSISTANT EDUCATIONAL OFFICER,
ADIMALI, IDUKKI DISTRICT.
 4. THE MANAGER, P.M.S.L.P.SCHOOL,
SOUTH SELLIAMPARA, VELLATHOOVAL
IDUKKI DISTRICT-685 563.
 5. THE HEAD MASTER, P.M.S.L.P.SCHOOL,
SOUTH SELLIAMPARA, VELLATHOOVAL
IDUKKI DISTRICT-685 563.
 6. THE MANAGER, SREE DEVI L.P. SCHOOL,
MANKADAVU, KOOMPANPARA P.O., ADIMALAI
IDUKKI DISTRICT-685 561.
 7. THE MANAGER, S.N.U.P. SCHOOL,
NANGI CITY, KANJIKKUZHI P.O., IDUKKI DISTRICT.

R1 & R3 BY GOVERNMENT PLEADER SRI.ABHIJETT LESSIL
R4 BY ADV. SRI.JOSEPH SEBASTIAN PURAYIDAM
R5 BY ADV. SRI.JOY C PAUL
R6 BY ADV. SMT.MINI.R.MENON
R7 BY ADV. SRI.T.I.ABDUL SALAM

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 18-03-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS :

EXT.P1 : TRUE COPY OF THE ORDER NO.A2/12836/97 DT.6.10.97 OF 2ND RESPONDENT

EXT.P2 : COPY OF ORDER O.B5/9433/04 DT.22.9.04 OF 2ND RESPONDENT

EXT.P3 : COPY OF RELIEVING ORDER DATED 30.9.2004

EXT.P4 : COPY OF LETTER DATED 4.10.2004 OF THE 5TH RESPONDENT

EXT.P5 : COPY OF LETTER NO.B5/9433/04 DT.7.10.04 OF 2ND RESPONDENT

EXT.P6 : COPY OF REPRESENTATION DT.8.11.04 TO THE 2ND RESPONDENT

EXT.P7 : COPY OF LETTER NO.B5/9433/04 DT.16.11.04 OF 2ND RESPONDENT TO THE 3RD RESPONDENT

EXT.P8 : COPY OF REPRESENTATION DT.13.12.04 TO THE 2ND RESPONDENT

EXT.P9 : COPY OF REPRESENTATION DT.7.6.05 TO THE 2ND RESPONDENT

EXT.P10 : COPY OF REPRESENTATION DT.14.10.2005 TO THE 2ND RESPONDENT

EXT.P11 : COPY OF DUTY CERTIFICATE DATED 24.5.2005

EXT.P11(a) : COPY OF DUTY CERTIFICATE DATED 19.10.2005

EXT.P11(b) : COPY OF DUTY CERTIFICATE DATED 24.10.2005

RESPONDENTS' EXHIBITS :

EXT.R5(a) : COPY OF THE LETTER ISSUED BY THE TEACHER IN CHARGE OF SREE DEVI LP SCHOOL MANKADAVU DATED 1.10.04

EXT.R5(b) : COPY OF THE LETTER ISSUED TO THE 4TH RESPONDENT THE 5TH RESPONDENT DATED 8.10.2004

EXT.R5(c) : COPY OF THE APPOINTMENT ORDER ISSUED BY THE 4TH RESPONDENT DATED 17.8.2005

EXT.R5(d) : COPY OF THE APPOINTMENT ORDER ISSUED BY THE 4TH RESPONDENT DATED 29.3.2006.

EXT.R4(a) : COPY OF THE REPRESENTATION FILED BY THE 4TH RESPONDENT TO THE 2ND RESPONDENT DATED 28.10.2004

EXT.R4(b1) : COPY OF THE COMPLAINT DATED NIL BEFORE THE 2ND RESPONDENT BY THE 4TH RESPONDENT

EXT.R4(b2) : COPY OF THE COMPLAINT FILED BEFORE THE 2ND RESPONDENT DATED 9.1.2005

EXT.R4(c) : COPY OF THE APPEAL FILED BY THE 4TH RESPONDENT BEFORE GOVERNMENT DATED 30.10.2004

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EXTR4(d) : COPY OF THE ORDER DATED 21.12.2005

EXTR4(e) : COPY OF THE LETTER DATED 20.1.2006 BY THE 4TH RESPONDENT TO THE
2ND RESPONDENT

EXTR4(f) : COPY OF THE APPOINTMENT ORDER ISSUED BY THE 4TH RESPONDENT
DATED 29.3.2006

EXTR4(g) : COPY OF THE APPOINTMENT ORDER ISSUED BY THE 4TH RESPONDENT
DATED 17.8.2005

/TRUE COPY/

P.A TO JUDGE

AV

K.SURENDRA MOHAN, J.

W.P.(C) No.7858 of 2006

Dated this the 18th day of March, 2015

J U D G M E N T

The petitioner, a Lower Primary School Assistant ('LPSA' for short), became an excess during 1997-98 and was posted in a Government U.P.School as per Ext.P1 order dated 06.10.1997. In August 1999, he was transferred to another Lower Primary School. Thereafter, by Ext.P2 order dated 22.09.2004 of the 2nd respondent, the petitioner was transferred and posted to the P.M.S.L.P.School, Selliampara. Though he reported for duty to the new school on 01.10.2004 and again on 04.10.2004, he was not admitted to duty. The petitioner thereupon submitted representations Exts.P8, P9 and P10 to the 2nd respondent requesting to take necessary action and to admit him to duty. However, nothing was done. Since he did not join duty, the petitioner was also denied the salary. Finally, the petitioner filed this writ petition seeking appropriate reliefs.

2. Pursuant to an interim order dated 17.07.2006, the petitioner was admitted to duty. Thereafter, this Court by order dated 28.07.2006 directed the 3rd respondent to conduct an enquiry and to file an affidavit in Court. The petitioner was also directed to be paid his salary in the meantime. The interim order passed by this Court was the subject matter of Writ Appeal No.1314 of 2006 at the instance of the 4th respondent herein. The said Writ Appeal was dismissed by judgment dated 20.07.2006. Thus, the petitioner continued in the said

school. Though the Division Bench of this Court had granted liberty to the 4th respondent to take disciplinary action against the petitioner, if the circumstances necessitated such action, no disciplinary action was admittedly initiated against him. Consequently, the present situation is that, the petitioner has been continuing in service, uninterruptedly. It is also stated that the petitioner has subsequently been transferred back to his parent school and is working there.

3. What remains to be set right is only regularisation of the period during which the petitioner had been kept out of service by the refusal on the part of the 4th respondent to admit him to duty. According to the counter affidavit filed on behalf of the 2nd respondent, the 4th respondent had reported that the petitioner had been continuing on unauthorised absence. Separate counter affidavits have been filed by respondents 4 and 5. The case of the 4th respondent is that, there were allegations against the petitioner and that was the reason why he had not been admitted to duty. According to the 4th respondent, he had submitted a list of teachers whom he was willing to accommodate in his school. But the departmental authorities had not considered the said list. It is also stated that, subsequently another teacher was appointed. The 5th respondent has also filed a counter affidavit supporting the 4th respondent.

4. Heard. It is not in dispute that, no disciplinary action was taken against the petitioner at any time by the 4th respondent or the 5th

respondent, though it is alleged that there were allegations against him. A similar contention had been raised before this Court at the time of issue of the interim order and also before the Division Bench in the Writ Appeal that was filed by the 4th respondent. The fact that no disciplinary proceedings were initiated against the petitioner at any time is proof positive that the allegations against the petitioner are without any basis. I do not find any justification for the action of the 4th respondent in not permitting the petitioner to join duty. The petitioner had approached the 4th respondent to join duty pursuant to an order passed by the 2nd respondent. Therefore, it is only appropriate that the period that the petitioner was actually kept out of service by the action of the 4th respondent is regularised, without further delay. The petitioner shall also be entitled to all consequential benefits pursuant to such regularisation.

This writ petition is, therefore, allowed directing respondents 2 and 3 to issue necessary orders regularising the period during which the petitioner was kept out of service by the 4th respondent, treating the said period as regular service, with all consequential benefits.

Sd/-
K.SURENDRA MOHAN, JUDGE.

AV