

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT:**

**THE HONOURABLE MR.JUSTICE ANTONY DOMINIC  
&  
THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS**

**THURSDAY, THE 9TH DAY OF APRIL 2015/19TH CHAITHRA, 1937**

**WA.No. 272 of 2014 ( ) IN WP(C).20127/2009**  
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**AGAINST THE ORDER/JUDGMENT IN WP(C) 20127/2009 of HIGH COURT OF KERALA  
DATED 20/01/2014**

**APPELLANT(S)/3RD RESPONDENT:**  
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**THE MANAGER  
JUMA-ATH HIGH SCHOOL, THANDEKAD  
MUDICKAL P.O, PERUMBAVOOR, PIN - 683 547**

**BY ADV. SRI.M.A.ABDUL HAKHIM**

**RESPONDENT(S)/PETITIONER & RESPONDENTS 1 & 2:**  
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- 1. Y. SARAMMA  
MALIKUDY HOUSE, VALAYANCHIRANGARA P.O., PERUMBAVOOR  
PIN - 683 547**
- 2. STATE OF KERALA  
REPRESENTED BY SECRETARY TO GOVERNMENT  
GENERAL EDUCATION DEPARTMENT, GOVERNMENT SECRETARIAT  
THIRUVANANTHAPURAM PIN - 695 001.**
- 3. THE DISTRICT EDUCATIONAL OFFICER  
KOTHAMANGALAM, PIN - 686 691.**  
  
**R1 BY ADV. SRI.K.JAJU BABU (SR.)  
R1 BY ADV. SMT.M.U.VIJAYALAKSHMI  
R1 BY ADV. SRI.BRIJESH MOHAN  
R1 BY ADV. SRI.T.S.SHYAM PRASANTH  
BY SPL.GOVERNMENT PLEADER SRI.RINNIE STEPHEN CHAMAPARAMBIL**

**THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 09-04-2015, THE  
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

**ANTONY DOMINIC & ALEXANDER THOMAS, JJ.**  
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**Writ Appeal No. 272 of 2014**  
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**Dated this the 9<sup>th</sup> day of April, 2015**

**J U D G M E N T**

Antony Dominic, J.

The 3<sup>rd</sup> respondent in WP(C) No.20127/2009 is the appellant. The 1<sup>st</sup> respondent herein filed the writ petition seeking to challenge Exts.P2, P5, P6 and P7 to the extent it denied salary to her during the period of appointment. She also sought for a direction to the respondents therein to sanction and disburse salary due to her. By the judgment under appeal, the learned single Judge allowed the claim and also ordered that the State shall be at liberty to recover the salary paid to the 1<sup>st</sup> respondent from the appellant. It is this judgment, which is under challenge.

2. We heard the learned counsel for the appellant, learned counsel for the 1<sup>st</sup> respondent and the learned Government Pleader.

3. Briefly stated, the facts of the case are that the 1<sup>st</sup> respondent has worked as HSA (Hindi) in the school of the appellant during the periods 9/1/1984 to 5/4/1984 and 2/1/1986 to 31/3/1986. As such, she had a claim for future appointment as provided under Rule 51A of Chapter XIVA KER. However, when a vacancy arose in

the school for the period from 27/7/98 to 29/9/98, denying the appointment to her on the ground that she had suffered disqualification under Rule 4 of Chapter XIVB KER, Manager appointed another person by name Smt.Vaheetha Rahman. The 3<sup>rd</sup> respondent rejected approval to the appointment by his order dated 23/10/98.

4. Meanwhile, the 1<sup>st</sup> respondent raised a claim for appointment before the 3<sup>rd</sup> respondent and that claim was also rejected by the 3<sup>rd</sup> respondent by his order dated 28/5/98. However, the Deputy Director by his order dated 23/4/99 approved the appointment of Smt.Vaheetha Rahman and in a revision filed by the 1<sup>st</sup> respondent, Government passed order dated 29/5/99 upholding the entitlement of the 1<sup>st</sup> respondent for appointment to the vacancy during 27/7/98 to 29/9/98. OP No.14696/99 was filed by the appellant challenging the order of the Government in favour of the 1<sup>st</sup> respondent and the 1<sup>st</sup> respondent filed OP No.19844/99 challenging the order of the Deputy Director approving the appointment of Smt.Vaheetha Rahman.

5. When those OPs were pending, another vacancy arose in the school w.e.f. 01/6/04 to which yet another person by name Smt.V.A.Shareena Beevi raised a claim being a Rule 43 claimant. She also filed WP(C) No.7780/06 claiming appointment. The above three cases were heard together and were disposed of by Ext.P1 judgment dated 17/1/07 where this Court directed the 3<sup>rd</sup> respondent to pass orders on the claim of the 1<sup>st</sup> respondent herein for appointment and also to consider the claim of Smt.Shareena Beevi for appointment to the vacancy that arose w.e.f. 01/6/04.

6. Accordingly, 3<sup>rd</sup> respondent issued order dated 25/5/07 and in compliance thereof, appellant issued Ext.P6 order dated 25/7/07 appointing Smt.Shareena Beevi as HSA (Hindi) promoting her from the post of L.G. Hindi teacher and appointing the 1<sup>st</sup> respondent in the resultant vacancy of L.G.Hindi teacher. Manager also issued Ext.P7 order dated 4/9/07 appointing the 1<sup>st</sup> respondent to the vacancy between 27/7/98 to 29/9/98. This appointment of the 1<sup>st</sup> respondent was notionally approved by Ext.P2 order. However, in the meantime, 1<sup>st</sup> respondent attained

the age of superannuation on 30/4/07 and therefore could not discharge her duties as teacher.

7. Be that as it may, she claimed salary for the period of appointment covered by Exts.P6 and P7 and that claim was finally rejected by the Government as per Ext.P5 order on the basis that since she did not discharge duties, she is not eligible for salary. This is the background in which she filed the writ petition claiming monetary benefits as stated above.

8. The contention raised by the learned counsel for the appellant, the Manager, is that the appointment of Smt.Vaheeda Rahman having been approved by the Deputy Director and which was set aside only by Ext.P1 judgment, and he having complied with the orders of the 3<sup>rd</sup> respondent by appointing the 1<sup>st</sup> respondent, at any rate, the Manager cannot be faulted of any irregularity fastening him with the liability to reimburse salary paid to the teacher. Further, relying on the judgments of this Court in **State of Kerala v. B.C.Elsy and Ors.** (1987 (2) KLT 882) and **Burn Standard Co. Ltd v. Tarun Kumar Chakraborty & Ors.** [(2002) 10 SCC 585], learned counsel

contended that the 1<sup>st</sup> respondent was not entitled to salary for the period in question.

9. On the other hand, learned counsel for the 1<sup>st</sup> respondent contended that being a 51A claimant, she should have been appointed in the vacancy which arose in 1998. It is her case that the Manager having not done so, she was wrongfully kept out of service and that when her claim was recognised, she is entitled to salary that was legitimately due to her. Counsel placed reliance on the judgments of this Court in ***Hymavathy v. Additional Secretary*** (1988 (2) KLT 741) and ***State of Kerala v. Joseph Ceasar*** (1998 (2) KLT 194). Learned Government Pleader also contended that the Manager ought to have appointed the 1<sup>st</sup> respondent in compliance with the revisional order passed by the Government recognising the claim of the 1<sup>st</sup> respondent and that, having not done so, the Manager is liable to reimburse the salary.

10. We have considered the submissions made.

11. Admittedly, the 1<sup>st</sup> respondent was a 51A claimant, she having worked in the post of HSA (Hindi) in two spells of time

during 1984 and 1986. In such a situation, she ought to have been appointed in the short term vacancies that arose in 1998. However, her claim was overlooked by the Manager relying on Rule 4 of Chapter XIVB KER and that contention of the Manager has been rejected by this Court in Ext.P1 judgment, which has become final. If the Manager had appointed the 1<sup>st</sup> respondent in 1998 vacancy, none of these controversies would have arisen. This, therefore, means that this is a case where, by the deliberate acts of the Manager, the 1<sup>st</sup> respondent was kept out of service and Exts.P6 and P7 orders of appointment were passed long after 30/4/2007, when she attained the age of superannuation. When a teacher is kept out of service on account of the irregular actions of the Manager, while recognising the entitlement of the teacher for salary, this Court has consistently also held that the Government cannot be saddled with the financial liability but the Manager is liable to make good that loss.

12. The judgments cited by the learned counsel for the appellant only says that if a person has not worked, he will not be entitled to salary, but at the same time, the judgment cited by the

counsel for the 1<sup>st</sup> respondent recognises the principle that when a person is irregularly kept out of service, he is entitled to be compensated by salary and that the same will be the liability of the Manager. This precisely is what has been ordered by the learned single Judge.

Resultantly, we do not find any merit in the appeal. Appeal fails and is dismissed.

Sd/-  
**ANTONY DOMINIC  
JUDGE**

Sd/-  
**ALEXANDER THOMAS  
JUDGE**

Rp

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PA to Judge