

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE ANTONY DOMINIC
&
THE HONOURABLE MR. JUSTICE P.D.RAJAN

TUESDAY, THE 16TH DAY OF JUNE 2015/26TH JYAISHTA, 1937

W.A.No. 844 of 2015 IN WP(C).25381/2014

AGAINST THE JUDGMENT IN WP(C) 25381/2014 of HIGH COURT OF KERALA, DATED 31-03-2015

APPELLANT/PETITIONER:

A.S.SUNEETHI
ASSISTANT PROFESSOR IN NATURAL SCIENCE
S.N.M.TRAINING COLLEGE, MOOTHAKUNNAM P.O.
ERNAKULAM DISTRICT, PIN 683 516.

BY ADV. SRI.M.R.ANISON

RESPONDENTS:

1. STATE OF KERALA
REPRESENTED BY ITS SECRETARY TO GOVERNMENT
HIGHER EDUCATION DEPARTMENT
SECRETARIAT, THIRUVANANTHAPURAM 695 001.
2. THE DIRECTOR OF COLLEGIATE EDUCATION
VIKAS BHAVAN, THIRUVANANTHAPURAM 695 001.
3. THE DEPUTY DIRECTOR OF COLLEGIATE EDUCATION
ERNAKULAM 682 011
4. THE MAHATMA GANDHI UNIVERSITY
REPRESENTED BY ITS REGISTRAR
PRIYADARSHINI HILLS, ATHIRMPUZHA, KOTTAYAM 686 562
5. THE MANAGER, S.N.M.TRAINING COLLEGE, MOOTHAKUNNAM P.O.
ERNAKULAM DISTRICT 683 516.
6. THE PRINCIPAL, S.N.M.TRAINING COLLEGE, MOOTHAKUNNAM P.O.
ERNAKULAM DISTRICT 683 516.
7. SARITHA V.K., RESIDING AT THARAYIL HOUSE
THARAYIL JUNCTION, MOOTHAKUNNAM P.O.
ERNAKULAM DISTRICT 683 516.

R BY SRI.K.B.GANGESH
R BY GOVERNMENT PLEADER SMT.NISHA.M.G.
R BY SRI.P.C.SASIDHARAN
R BY SRI.VARUGHESE M.EASO, SC, M.G.UNIVERSITY

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 16-06-2015 ALONG WITH
R.P.790/14, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S ANNEXURES:

ANNEXURE A1: TRUE COPY OF THE CHART SHOWING THE NUMBER OF POSTS ALLOTTED IN GOVT. AND AIDED TRAINING COLLEGES IN KERALA.

ANNEXURE A2: TRUE COPY OF THE RELEVANT PAGES OF SYLLABUS SHOWING THE DETAILS OF COURSES OF STUDIES IN B.ED. COLLEGES.

ANNEXURE A3: TRUE COPY OF THE LETTER DATED 1.1.2015 ISSUED BY THE PUBLIC INFORMATION OFFICER, M.G.UNIVERSITY.

// TRUE COPY //

PA. TO JUDGE

ANTONY DOMINIC & P.D.RAJAN, JJ.

**Writ Appeal No.844 of 2015 &
R.P.No.790 of 2014 in W.A.No.375 of 2014**

Dated this the 16th day of June, 2015

JUDGMENT

Antony Dominic, J.

Though the writ appeal and the review petition arises out of the judgments in W.P.(C)25381/14 and W.A.375/14 which were disposed of separately, since the issues raised are connected, the cases were ordered to be heard together and accordingly the parties were heard and both the matters are disposed of by this common judgment. R.P.790/14 is filed seeking review of the judgment in W.A.375/14 and that writ appeal was filed against the judgment in W.P.(C)14927/11 and order in R.P.194/13.

2. In so far as the facts which led to the above proceedings are that the Principal of the S.N.M. Training College, Moothakunnam one Mr.K.P. Anil Kumar, a teacher from the General Education discipline, retired from service on 31.3.2011. On his retirement, Dr.Anitha, working in the Natural Science discipline, was promoted as Principal with effect from 1.4.2011. Subsequently, by order dated 17.5.2011 Government permitted

appointments in the consequential vacancy and on that basis by order dated 24.8.2012, Smt.A.S.Suneethi, the appellant in W.A.844/15, was appointed as Lecturer in Natural Science.

3. Though that appointment was approved by the University by order dated 19.6.2013, the approval granted was ordered to be subject to the result of R.P.194/13, which was filed by the petitioner in R.P.790/14, who was the unsuccessful writ petitioner before this Court. The review petition was dismissed by order dated 24.1.2014 and it was against that order the writ appeal 375/14 was filed. The writ appeal was also dismissed by judgment dated 13.8.14 and it is that judgment which is sought to be reviewed in R.P.790/14 where the petitioner is relying on Annexure A, report dated 20.12.2013 submitted by the Deputy Director of Collegiate Education to the Director.

4. According to the petitioner, Annexure A report, which allegedly came into her possession subsequent to the dismissal of the writ appeal 375/14 disclosed that the appointment of the Natural Science Teacher in the vacancy caused on the retirement of Sri.Anil

Kumar, Principal, is irregular. On this basis, the review petitioner contends that she was eligible to have been considered against that vacancy and that, therefore, the appointment of the appellant in W.A.844/2015 in the discipline of Natural Science consequent on the promotion of Smt.Anitha was illegal.

5. Yet another aspect which is sought to be brought out of Annexure A is regarding the shifting of Smt.Sheela. As far as this issue is concerned, it is stated that on 10.1.2005 Smt.Sheela was appointed in the discipline of Physical Science. Subsequently, on 2.5.2011 she was shifted and posted to General Education Department. Relying on Annexure A, petitioner states that this shifting was also disapproved by the Department.

6. It was based on Annexure A mentioned above, that order dated 23.9.2014, produced as Ext.P18 in W.P.(C)25381/14, from out of which W.A.844/15 arises, was issued whereby the services of the appellant therein was terminated. It was challenging Ext.P18, the writ

petition was filed which came to be disposed of by judgment under appeal in the writ appeal.

7. As we have already stated, relying on Annexure A the petitioner in R.P.790/14 is impugning before us the shifting of Smt.Sheeja and the appointment of the appellant in W.A.844/15 in the discipline of Natural Science. In so far as shifting of Smt.Sheeja which took place on 2.5.2011 is concerned, not only in the previous proceedings but also in the present proceedings Sheeja is not impleaded as a party. Therefore, nothing herein can be of any prejudice to Sheeja either in relation to her appointment or her shifting.

8. However, in so far as the petitioner's claim to the post of Lecturer in Natural Science, which is occupied by the appellant in W.A.844/15 is concerned, that calls for an examination of the case of the appellant projected in the writ appeal.

9. As we have already stated, W.A.844/15 arises from the judgment in W.P.(C)25381/14. In that writ petition, the appellant

challenged Ext.P18 order dated 23.9.2014, issued by the Government terminating her service, relying on Annexure A referred to above. By the impugned judgment, accepting the case of the appellant that Ext.P18 was passed without putting her on notice or affording her an opportunity of hearing, learned Single Judge set aside Ext.P18 and directed that the matter be reconsidered by the Government. The ground on which the learned Senior Counsel for the appellant impugned the view taken by the learned Single Judge is that Ext.P18 has been issued on the premises that there is no separate post of Principal in training college. This conclusion of the Government according to the learned Senior Counsel is contrary to the provisions of the Regulations framed by NCTE, a copy of which has been produced as Ext.P8. Counsel also referred us to Exts.P25 and P26, Government Orders dated 1.11.2008 and 12.3.2002 respectively to substantiate this contention. However, if according to the appellant the very premise on which Ext.P18 was issued by the Government is erroneous, that certainly is an issue which the appellant has to urge before the

Government when the matter is reconsidered in pursuance to the directions of the learned Single Judge. Therefore, at this stage, it is premature and unnecessary for this Court to deal with that contention.

10. However, we do find that in the judgment under appeal an observation has been made by learned Single Judge which may suggest that the appellant could not have been appointed. In our view, having chosen to relegate the matter to the Government, it was unnecessary to make such an observation in paragraph 4 of the judgment. Therefore, the said observation in paragraph 4 of the judgment will stand deleted.

11. As we have already stated, the petitioner in R.P.No.790/14 is also staking a claim to the post held by the appellant in W.A.No.844/14. Since the learned Judge has quashed Ext.P18 in W.A.844/15 and ordered reconsideration of the claims of the appellant, it is only appropriate that the claims of the review petitioner should also be considered by the Government.

In the result, we dispose of the Review Petition 790/14 and W.A.844/15 with the following directions:

1. As directed in the judgment in W.P.(C)25381/14, the Government shall reconsider the matter with notice to the appellant and the petitioner in R.P.790/14.
2. The observation of the learned Single Judge contained in paragraph 4 of the judgment in W.P.(C) 25381/14 suggesting that the appellant in WA.844/15 could not have been posted as Lecturer in Natural Science will stand deleted.
3. The interim order passed by the learned Single Judge will remain in force until the matter is decided by the Government.
4. Consideration of the case of the petitioner in R.P.790/14 shall be untrammelled by any adverse finding in the judgment in W.A.375/14.

Sd/-
**ANTONY DOMINIC
JUDGE**

Sd/-
**P.D.RAJAN
JUDGE**

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