

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

MONDAY, THE 30TH DAY OF NOVEMBER 2015/9TH AGRAHAYANA, 1937Q

W.P.(C).No.1835 of 2012 (D)

PETITIONER(S):-

P.BIJO DAVIES, AGED 37 YEARS, SON OF P.A. DAVIES,
HIGH SCHOOL ASSISTANT (MATHS),
ST. ANONY'S HIGHER SECONDARY SCHOL, PUTHUKKAD,
THRISSUR DISTRICT.

BY ADVS.SRI.V.A.MUHAMMED.

RESPONDENT(S):-

1. THE STATE OF KERALA,
REPRESENTED BY ITS SECRETARY TO GOVERNMENT,
GENERAL EDUCATION DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM-695001.
2. THE DIRECTOR OF PUBLIC INSTRUCTIONS,
JAGATHY, ATHIRUVANANTHAPURM-695014.
3. THE DEPUTYDIRECTOR OF EDUCATION,
THRISSUR AT AYYANTHOLE-680003.
4. THE DISTRICT EDUCATIONAL OFFICER,
THRISSUR-680001.
5. THE ASSISTANT EDUCATIONA OFFICER
WADAKKANCHERRY, THRISSUR DISTRICT-680582..
6. THE ASSISTANT EDUCATIONAL OFFICER
THRISSUR EAST-680005.
7. THE CORPORATE MANAGER,
CORPORATE EDUCATIONAL AGENCY,
ARCH-DIOCESE OF THRISSUR, THRISSUR-680001.

8. THE DISTRICT EDUCATIONAL OFFICER,
CHAVAKKAD, THRISSUR DISTRICT-680506.

R1 TO R6 & R8 BY GOVERNMENT PLEADER SRI.T.R.RAJESH.
R7 BY ADV. SRI.TONY GEORGE KANNANTHANAM

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
30-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:-

APPENDIX

PETITIONER(S) EXHIBITS:-

- EXT.P1 TRUE COPY OF THE APPOINTMENT ORDER DATED 11-6-2009 AND THE APPROVAL THEREOF DATED 12-1-2010.
- EXT.P2 TRUE COPY OF THE APPOINTMENT ORDER DATED 5-6-2010 AND THE APPROVAL THEREOF DATED 16-11-2010.
- EXT.P3 TRUE COPY OF THE G.O. (P) NO.31/2006/GE DATED 19-1-2006 OF THE GOVERNMENT.
- EXT.P4 TRUE COPY OF THE PETITION SUBMITTED BEFORE THE HON'BLE CHIEF MINISTER DATED NIL.
- EXT.P5 TRUE COPY OF THE ORDER NO. B4-12434/2011 OF THE DISTRICT EDUCATIONAL OFFICER, CHAVAKKAD DT. 1-12-2011.
- EXT.P6 TRUE COPY OF THE ORDER NO.F2/86127/11/DPI/K.DIS. DATED 22.5.2012.
- EXT.P7 TRUE COPY OF JUDGMENT IN W.P.(C).NO.4643/2012-E DATED 18.02.2015.

RESPONDENTS' EXHIBITS:-

- EXT.R7(a) TRUE COPY OF THE APPOINTMENT ORDER DT.25.7.2007 ISSUED BY 7TH RESPONDENT.
- EXT.R7(b) TRUE COPY OF THE APPOINTMENT ORDER DT.17.6.2008 ISSUED BY 7TH RESPONDENT.
- EXT.R7(c) TRUE COPY OF ORDER DATED 26.2.11 ISSUED BY THE GOVERNMENT.
- EXT.R7(d) TRUE COPY OF THE ORDER SHOWING THAT A TEACHERS APPOINTMENTG WAS APPROVED FRPOM 1.6.2010.
- EXT.R7(e) TRUE COPY OF THE ATTENDANCE REGISTER OF THE SCHOOL.
- EXT.R7(f) TRUE COPY OF THE ATTENDANCE REGISTER OF THE SCHOOL.
- EXT.R7(g) TRUE COPY OF THE ATTENDANCE REGISTER OF THE SCHOOL.

Vku/-

[true copy]

K. Vinod Chandran, J

W.P.(C).No.1835 of 2012-D

Dated this the 30th day of November, 2015

JUDGMENT

The petitioner initially was aggrieved with the fact that the petitioner's appointment as per Exhibits P1 and P2 were not approved on the regular scales of pay. Subsequently, the petitioner challenged Exhibit P6 order, which withdrew the sanction, accorded to two earlier stints of appointment, on regular scale of pay.

2. All the four spells of appointment of the petitioner as Upper Primary School Assistant [for brevity "UPSA"] were in different aided schools of the 7th respondent-management. The appointment were also made to different leave vacancies. The four spells of appointment were 25.07.2007 to 31.03.2008, 17.06.2008 to 31.03.2009, 11.06.2009 to 31.03.2010 [Exhibit P1] and 05.06.2010 to 31.03.2011 [Exhibit P2].

3. The earlier two spells indicated herein were granted regular scales of pay; but the same was withdrawn as per Exhibit P6. The petitioner seeks setting aside of Exhibit P6 on the strength of the decision of the Hon'ble Supreme Court in ***State of Punjab v. Rafiq Masih (White Washer) [2015 (1) KLT 429 (SC)]***. With respect to Exhibits P1 and P2, the petitioner's contention is that since the appointments are beyond 8 months, the petitioner should be approved in the regular scale of pay and not on daily wages. In any event, at least for the last spell of appointment, the petitioner is entitled to regular scale of pay as per G.O.(P) No.56/11/G.Edn. Dated 26.02.2011, argues learned counsel.

4. The learned counsel for the respondent-management and the learned Government Pleader, in tandem, submits that the petitioner cannot be granted either of the reliefs. The challenge against Exhibit P6 is resisted on the ground that the petitioner had never approached the Educational authorities when such reversal was made. A plain reading of the order itself would indicate that the petitioner was heard before such an order was passed. As to the sustainability of the claim for regular scale of pay, specific reference

is made to Rule 7A and 51A of Chapter XIV-A of the Kerala Education Rules, 1959 [for brevity “KER”].

5. Sub-rule (3) of Rule 7A specifically commands that the vacancies, the duration of which is less than one academic year, shall not be filled up. The 1st proviso to Rule 5A also speaks of a preferential claim under the said rule only if the teacher has a minimum continuous service of one academic year as on the date of relief. Obviously, the records produced by the management would not show a duration of service of one academic year on the date of relief of the petitioner during the four spells of appointment now placed before this Court for consideration. The statutory rule being very clear, the executive authority cannot take away the rigour of the rule and grant a relaxation and to that extent G.O.(P) No.56/11/G.Edn. would be of no consequence.

6. Further, even on a reading of the G.O., it is indicated that what was permitted was regular appointments in regular scales of pay in the event of retirement, resignation, death and long leave, which again would indicate a continuous service of one academic year entitling a person for vacation salary also as per Rule 49 of

Chapter XIV-A KER. In such circumstance, the petitioner's claim cannot be upheld.

7. Further useful reference can be made to direction No. (iv) in the decision in ***State of Kerala v. Sneha Cheriyan [2013 (1) KLT 755 (SC)]***, which also mandates that only on a vacancy extending beyond one academic year would there be an entitlement to claim a regular scale of pay, which is extracted hereunder:-

“(iv) The Manager can make appointments in school even if the duration of which is less than one academic year but on daily wages basis and if the duration of vacancy exceeds one academic year that can be filled up on scale of pay basis”.

8. Further, as specifically pointed out by the learned counsel for the management, a declaration as to the regular scale of pay in the case of the petitioner would entitle and revive a Rule 51A claim, which cannot be granted unless the petitioner approaches the statutory authorities and in any event, not without making the affected teachers in the party array.

9. The claim for interdiction of recovery is based on the decision in ***Rafiq Masih*** (*supra*). The Hon'ble Supreme Court specifically took note of five instances where recovery could be interdicted; none of which appears relevant here.

The writ petition, hence, would stand dismissed. No costs.

Sd/-

K.Vinod Chandran
Judge.

vkul/-

[true copy]