

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE SMT. JUSTICE P.V.ASHA

MONDAY, THE 29TH DAY OF JUNE 2015/8TH ASHADHA, 1937

WP(C).No. 1279 of 2013 (H)

PETITIONER:

SUMINI U
W/O BIJU, KARUMANPARAMBIL HOUSE, PORANGATTUKARA
THRISSUR DISTRICT.

BY ADVS.SRI.RENJITH THAMPAN (SR.)
SMT.P.R.REENA

RESPONDENT(S) :

1. GURUVAYUR DEVASOM BOARD
REPRESENTED BY ITS ADMINISTRATOR, GURUVAYUR
THRISSUR DIST. PIN:680 101.

2. ADMINISTRATOR,
GURUVAYUR DEVASWAM BOARD, GURUVAYUR , THRISSUR DISTRICT
PIN:680 101.

3. COMMISSIONER,
GURUVAYUR DEVASWAM BOARD, GURUVAYUR , THRISSUR DISTRICT
PIN:680 101.

4. GURUVAYUR DEVASWAM ENGLISH MEDIUM SCHOOL,
REPRESENTED BY ITS PRINCIPAL, GURUVAYUR
THRISSUR DIST. PIN:680 101.

R1,R2, R4 BY ADV. SRI.P.GOPAL
R3 GOVERNMENT PLEADER SRI NOUSHAD THOTTATHIL

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 29-06-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

A P P E N D I X

PETITIONER'S EXHIBITS

EXT.P1: TRUE COPY OF THE IDENTITY CARD ISSUED BY GURUVAYUR DEVASWOM ENGLISH MEDIUM SCHOOL TO THE PETITIONER.

EXT.P2: TRUE COPY OF THE "ULSAVA PAKARCHA" CARD ISSUED TO THE PETITIONER BY GURUVAYUR DEVASWOM.

EXT.P3: TRUE COPY OF THE INITIAL APPOINTMENT ORDER OF THE PETITIONER DT.29.05.2003 ISSUED BY THE GURUVAYUR DEVASWOM ADMINISTRATOR.

EXT.P4: TRUE COPY OF THE JUDGMENT IN WPC.NO.1824/2011 DT.28.5.12.

EXT.P5: TRUE COPY OF THE REPRESENTATION FILED BY THE PETITIONER DT.3.7.12 TO THE CHAIRMAN, GURUVAYUR DEVASWOM BOARD.

RESPONDENTS' EXHIBITS

EXT.R1(a): TRUE COPY OF THE LIST OF APPLICANTS ATTENDED FOR THE INTERVIEW ON 25.5.07 TO THE POST OF TEACHER (MALAYALAM) BEFORE THE SELECTION COMMITTEE.

EXT.R1(b): TRUE COPY OF THE RESOLUTION OF THE DEVASWOM DT.20.5.12.

EXT.R1(c): TRUE COPY OF THE RESOLUTION OF THE DEVASWOM.

/TRUE COPY/

P.S TO JUDGE

P.V.ASHA, J.

W.P(c) No.1279 of 2013-H

Dated this the 29th day of June, 2015

JUDGMENT

The petitioner, who was working under the 4th respondent in Guruvayur Devaswom English Medium School, from the academic year 2003-2004 onwards till the end of the academic year 2006-07, has approached this Court aggrieved by the denial of regular appointment, while teachers who were appointed along with her and denied employment since the academic year 2007-08 were given regular appointment in the year 2012.

2. According to the petitioner, she is a Post Graduate in Malayalam and she was appointed in the 4th respondent school initially in June, 2003 for that academic year. The 4th respondent English Medium School is affiliated to the Central Board of Secondary Education and is under the management of the Guruvayur Devaswom Board. According to the petitioner, M/s.Usha.K.K, Vinaya.C, Malathy.B.J and Nisha M. were also working in the school along with her on the basis of similar engagement. Several other teachers were also engaged in the

school along with her in the year 2003. The practice adopted in the school was that teachers would be relieved at the end of the academic year and they will be reengaged in the next academic year. When such re-engagement was denied in June, 2007, some of the teachers who were denied engagement approached this Court in W.P© No.18052 of 2008, which was dismissed, however , with direction to respondents 1 to 3 to take prompt steps for registration of the bye-laws and preparation of the rules/regulations for making regular appointment. . Against that judgemnt, Writ Appeal No.2159 of 2009 was filed. The Writ Appeal was disposed of with the following observation in paragraph 2 of the judgment:

“2. We have no doubt in our minds that respondents 1 to 3 will take into consideration the long experience gained by the appellants/petitioners as and when they make selection, pursuant to any notification to which the appellants would respond.”

3. It is stated that the Devaswom Board continued with the process of fresh selection and engaged teachers afresh. In the year 2010, when the teachers working in the previous academic year were retained, some of the teachers again approached this Court in W.P© No.19675 of 2010 aggrieved by

the refusal to consider their cases. This Court by judgment dated 08.10.2010, without interfering with the impugned order Ext.P12 therein, observed that the respondents are duty bound to frame the rules and regulations and register the bye-laws for the purpose of regulating the selection and appointment of teachers in the school, before the next academic year, namely 2011-12 and to make appointments on the basis of such rules, regulations and bye-laws.

4. Thereafter, when the Devaswom Board invited application afresh, some of the petitioners who approached this Court submitted their applications, based on which they were engaged. Thereafter the Devaswom Board passed a resolution on 20.05.2012, which is produced as Ext.R1(b), by which it was decided to reappoint the teachers who were already disengaged. The reappointment was to be on fulfillment of the conditions stipulated in the resolution itself. The Board in its meeting held on 07.05.2012 had considered the question regarding disengagement of teachers like the petitioner in the light of the decisions of this Court in W.A Nos.2252 of 2009 and 2159 of 2009. It was found that 8 teachers who had service above 2 years were disengaged and those 8 persons were found to be

eligible for continuance in service and therefore it was decided to reappoint them and to grant the benefits w.e.f the date on which they commenced service. It was decided to give them regular appointment with effect from 20.05.2012, treating them as continuing in service with effect from the date of their initial entry in the school. When the list of teachers having 2 years service was prepared on 25.11.2010, 22 of the existing teachers were found included, out of which, 4 were given regular appointment in 2 stages. As the remaining 18 were also found eligible for confirmation, as per the bye-laws of the Central Board of Secondary Education, it was decided to give them also regular appointment with effect from 20.05.2012. Since the vacancies available were not sufficient to accommodate all the 26 teachers, ie. including the 8 persons who were appointed, it was decided that 4 of them would be given regular appointment against future vacancies giving them preferential claim. The 8 teachers who were disengaged were thus re-admitted on the basis of the decision of the Managing Committee taken on 20.12.2012 and considering the judgment in W.P© NO.1824 of 2011 of this Court. They were granted regular appointment w.e.f 20.05.2012, treating them as continuing in service w.e.f the

date of their initial entry. It was therefore decided that the first 26 persons will be given preference against the vacancies in the concerned subjects on the basis of their date of entry in service; in the event of those who entered service on the same day, reappointment will be given on the basis of the date of appointment; as it is unable to give appointment to 4 teachers against the available vacancies, they will be considered against future vacancies giving them preferential claim.

5. Thus the list of teachers eligible for confirmation/regular appointment in each subject and the list of 4 teachers eligible for re-appointment on the basis of their claim against future vacancies were also given in that order Ext.R1(c).

6. The petitioner is seeking reappointment as in the case of those included in Ext.R1(c) list. According to her, there is discrimination by denying re-appointment to her, since she had also completed two years service before her disengagement. All teachers who got employment in the 4th respondent School along with her and denied re-appointment in the year 2007-08 were re-appointed with benefit of service from the date of their initial entry in service.

7. The Administrator, Guruvayur Devaswom-the 1st

respondent, has filed a counter affidavit dated 21.02.2013 stating that the petitioner is not entitled to any relief as in the case of those who were given regular appointment. It is stated that the practice followed under the management of Guruvayur Devaswom was to make appointments every year before commencement of the Academic Year, after inviting applications from eligible hands by way of notification published in various dailies and subjecting the applicants to a process of selection including an interview. The appointments were made in various subjects on temporary basis for each academic year, ie. from June to March. The appointments were on consolidated pay of Rs.3,500/- per mensem. It is stated that the petitioner's appointment was on the basis of a similar selection conducted in the academic year 2003-04. Thereafter she applied for selection in the year 2004-05 also. It is stated that those who were appointed in the academic year 2004-05 are permitted to work on temporary basis for the academic year 2005-06. In the year 2006-07 applications were invited for selection of teachers against which the petitioner submitted application and she was again appointed in the year 2006-07.

8. It is stated that when notification was issued inviting

application for selection of teachers for the academic year 2007-08, the petitioner did not apply for the post of teacher. It is stated that candidates who applied for selection, attended the interview on 25.05.2007. The respondent has produced Ext.R1 (a) list containing the marks awarded to the candidates who attended in the interview. In paragraph 9 of the counter affidavit, the name of teachers who had attended the interview which was conducted for the year 2007-08 are given and it is stated that the management did not select them . They appointed another set of teachers on temporary basis and this was challenged by the teachers in W.P(c) No.18721 of 2007 seeking reappointment, in the place of the newly appointed teachers. Yet another set of teachers who worked upto 31.03.2008 were not appointed in the academic year 2008-09 filed W.P(c) No.18052 of 2008 seeking reappointment. Both these Writ Petitions were disposed of by a common judgment. In W.A.2159 of 2009 filed against the judgment in W.P(c) No.18052 of 2008, the Division Bench of this Court observed that the Devaswom will take into consideration the long experience gained by the appellants at the time of selection pursuant to any notification to which the teachers would respond. The judgment

was rendered on 06.11.2009. The Managing Committee did not make any selection for the next academic year, but retained the teachers of the previous year in the schools. Thereupon the petitioners in the earlier Writ Petitions approached this Court again in W.P© No.19765/2010 which was disposed of by judgment dated 8.10.2010 observing the duty of the Devaswom to frame rules and regulations and to register bye-laws for the purpose of regulating the selection and appointment of teachers in the school. It was further observed that the retention of the teachers appointed in 2009-2010 for the next academic year will not confer them any right for preference in the school.

9. It was while so the managing committee considered the issue again when it was decided by resolution dated 25.11.2010 to regularize the teachers who worked in the school on temporary basis for two years or as on 25.11.2010 and continuing as such w.e.f that date. The teachers who had approached this Court earlier again filed W.P© No.18721/2007 for direction to reappoint them in the place of those who were given regular appointment. Under these circumstances, the management considered the matter again and decided to grant regular appointment to 8 teachers who were disengaged and

who were similar to the 22 teachers mentioned in resolution dated 25.11.2010.

10. According to the respondents, the petitioner cannot seek regular appointment as in the case of the petitioners in the earlier Writ Petitions, because she never responded to the notification inviting application for appointment since the academic year 2007-08 and moreover, in the place of the petitioner another teacher was selected and appointed. According to them, the petitioner was employed in Don Bosco School, Mannuthi, Trichur and she did not choose to apply for the selection. She did not approach this Court also along with other teachers. The other teachers who were given regular appointment had approached this Court after appearing in the interview for the year 2007-08 and challenged the resolution dated 25.11.2010 overlooking their claim.

11. The petitioner had filed a reply affidavit stating that the teachers, who were given regular appointment after disengagement as in her case, were not engaged for the period from 2007-08 to 2012-13. According to the petitioner, the reappointment for the next academic year is not on the basis of any notification or application. According to her she had given

application for engagement in the academic year 2007-08 even before the closing date of the academic year 2006-07 as per the usual practice. According to her, there is no reason to treat the case separately, and her employment in the Don Bosco High School, Mannuthi cannot be an embargo for her regular appointment under the Devaswom.

12. In answer to the reply affidavit, the 1st respondent filed an additional counter affidavit producing the resolution No.41 dated 20.05.2012 and the proceedings dated 29.05.2012 issued by the Administrator based on that. In the additional counter affidavit also, the stand of respondents 1 and 2 is that, the petitioner cannot be considered on par with those given regular appointment. According to the respondents the petitioner left the school on her own after the academic year 2006-07. According to them the petitioner is not similarly situated like the petitioners in W.P© 1824/2011 or like teachers who worked prior to 2007-08 or thereafter. According to the respondents, the petitioners in W.P© No.18721/07 are the teachers who applied for the selection for appointment in the academic year 2007-08. It is stated that the claim of the teachers who challenged their non appointment in time in various Writ Petitions alone were

ordered to be given permanent appointment and the petitioner cannot be treated as one similar to them.

13. The learned counsel appearing for the Devaswom also submitted that as at present there are no vacancies and the school is facing division fall.

14. Having considered the rival contentions on either side, it is seen that the petitioner had worked in the school as in the case of those who were given regular appointment based on their engagement in the School for the academic years 2002-03 onwards till the end of the academic year 2006-07. The case of the respondents is that the petitioner did not submit any application when the same was called for, for the selection and appointment in 2007-08; while the other teachers, who were re-appointed had submitted application. The next disqualification pointed out is that the petitioner did never challenge the disengagement or appointment granted to other teachers or the resolution of the year 2010 reappointing the teachers of the previous year without conducting fresh selection.

15. From the pleadings on either side it is clear that the petitioner was sleeping over her rights while others were agitating their claims. Therefore it cannot be said that the

decision taken by the Devaswom in not considering her case is incorrect. The petitioner cannot claim parity with other teachers who continued agitating their rights ever since 2007-08.

16. However, since the respondents have in their resolution Ext.R1(b) and order Ext.R1(c) admitted that the School, which is affiliated to CBSE, is bound to follow the affiliation byelaw, which prohibits adhoc appointments of teachers, as per Subsection III below Chapter II (3)(B) of the Byelaw; as per Subsection IV, the appointment of teachers shall be on scale of pay only and not on consolidated pay; they shall be on probation for one year, which can be extended upto 2 years; those who completed 2 years shall be confirmed; disengagement and replacement of teachers is contrary to the provisions of the byelaw, which can invite withdrawal of affiliation and. It was after referring to the provisions of the Byelaw to be observed, that the 1st respondent found that 11 teachers who commenced working in the School in different years from 1995 onwards were disengaged in 2007-08. Out of the said 11 teachers, 8 were found to have more than 2 years service. Apparently the case of the petitioner is not seen considered, as she did not respond to the disengagement. In the circumstances of the case, I am of the

view that it is only appropriate that the respondents consider the case of the petitioner for regular appointment against future vacancies in the School in accordance with her qualification with due preference to her, based on her experience. Ordered accordingly.

With the above directions, the Writ Petition is disposed of.

Sd/-
(P.V.ASHA, JUDGE)

rtr/