

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE SMT. JUSTICE P.V.ASHA

THURSDAY, THE 21ST DAY OF MAY 2015/31ST VAISAKHA, 1937

WP(C).No. 2576 of 2012 (V)

PETITIONER:

SMT. REKHA N.R. AGED 29 YEARS
L.P.S.A, A.U.P.S, AMBALAPAD
KUNDUKKAD (PO), THRISSUR DISTRICT.

BY ADVS.SRI.ELVIN PETER P.J.
SRI.T.G.SUNIL (PRANAVAM)
SRI.K.R.GANESH

RESPONDENTS:

1. STATE OF KERALA
REPRESENTED BY THE SECRETARY TO GOVERNMENT
GENERAL EDUCATION DEPARTMENT, GOVERNMENT SECRETARIAT
THIRUVANANTHAPURAM, PIN-695 001.

2. THE DIRECTOR OF PUBLIC INSTRUCTIONS
THIRUVANANTHAPURAM, PIN-695 001.

3. THE DEPUTY DIRECTOR OF EDUCATION
AYYANTHOLE, THRISSUR, PIN-680 003.

4. THE ASSISTANT EDUCATIONAL OFFICER
WADAKKANCHERRY, THRISSUR DISTRICT, PIN-680 582.

5. THE MANAGER
A.U.P.S., AMBALAPAD, KUNDUKKAD (PO)
THRISSUR DISTRICT, PIN-680 631.

SRI.V.K.RAFEEL, GOVERNMENT PLEADER
R5 BY ADV. SRI.PRADEEP KRISHNA

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 21-05-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

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APPENDIX

PETITIONER'S EXHIBITS

EXHIBIT P1- TRUE COPY OF THE APPOINTMENT ORDER DATED 1.6.2007 ISSUED BY THE 5TH RESPONDENT TO THE PETITIONER.

EXHIBIT P2- TRUE COPY OF ORDER DATED 4.12.2007 ISSUED BY THE 4TH RESPONDENT.

EXHIBIT P3- TRUE COPY OF G.O.DATED 12.1.2010.

EXHIBIT P4- TRUE COPY OF THE COMMUNICATION DATED 25.8.2011 ISSUED BY THE 5TH RESPONDENT TO THE 4TH RESPONDENT.

EXHIBIT P5- TRUE COPY OF THE DECLARATION EXECUTED BY THE 5TH RESPONDENT.

EXHIBIT P6- TRUE COPY OF G.O.DATED 1.10.2011.

EXHIBIT P7- TRUE COPY OF ORDER DATED 25.10.2011 ISSUED BY THE 1ST RESPONDENT.

EXHIBIT P8- TRUE COPY OF ORDER DATED 6.12.2011 ISSUED BY THE 4TH RESPONDENT.

EXHIBIT P9- TRUE COPY OF G.O.DATED 22.8.2009 ISSUED BY THE GOVERNMENT.

EXHIBIT P10- TRUE COPY OF THE APPEAL DATED 12.1.2012 FILED BY THE PETITIONER BEFORE THE 3RD RESPONDENT.

RESPONDENTS' EXHIBITS : NIL

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TRUE COPY

PA TO JUDGE

P.V.ASHA, J.,

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Dated this the 21st day of May, 2015

JUDGMENT

The petitioner has filed this writ petition, challenging Exts.P7 and P8 orders, for a direction to approve her appointment as LPSA in A.U.P.S., Ambalapad, an aided school, with effect from 1.6.2007. The petitioner was appointed as LPSA in the school of the 5th respondent as per Ext.P1 appointment order with effect from 1.6.2007. The appointment was against a newly created vacancy. The proposal for approval of her appointment was rejected as per Ext.P2 order dated 4.12.2007 of the Assistant Educational Officer, Wadakkancherry, on the ground that the additional post was not sanctioned in view of G.O. (P) No.317/2005.G.Ednl. dated 17.8.2005 and hence there was no established vacancy. It is the case of the petitioner that the approval was not granted only because of the ban which existed at the relevant time, and that as per the staff fixation order, there was requirement for an additional post, in which she could have been appointed. Subsequently, on 12.1.2010, the Government by issuing G.O.(P) No.10/10/G.Edn. dated 12.1.2010 (Ext.P3) lifted the ban and permitted approval of appointments made against the admissible additional divisions in the academic year 2006-07 onwards on

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condition that the Manager shall execute a bond agreeing to appoint equal number of protected teachers against the vacancies arising in future. According to the petitioner, the Manager of the school-5th respondent executed a bond, which is produced as Ext.P5, on 25.8.2011 and furnished the same to the Assistant Educational Officer, Wadakkanchery requesting for approval of the appointment of the petitioner as LPSA with effect from 1.6.2007. But by Ext.P8 order dated 6.12.2011, the Assistant Educational Officer, Wadakkanchery directed the Headmistress of the school to remove the name of the petitioner from the attendance register and the pay roll saying that the additional post is not available as per the orders of staff fixation for the academic year 2009-10 onwards. Ext.P8 order shows that additional post was available during 2007-2008 and 2008-09.

2. The petitioner submitted an appeal against the order Ext.P8 before the Deputy Director of Education, Thrissur, which is produced as Ext.P10 in the writ petition, pointing out that she could have been accommodated in the school in case 1:40 ratio was applied as ordered in G.O.(P) No.171/09/G.Edn. dated 22.8.2009 (Ext.P9). Government had issued orders directing that that the teacher student ratio would be revised from 1:45 to 1:40 in the schools affected by specific

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problem of division fall for the limited purpose of accommodating the teachers rendered surplus for the year 1997-98. The benefit of that order was being extended from time to time. It was extended for the year 2009-10 also as per Ext.P9 order. As per Ext.P6 Government Order issued on 1.10.2011 the Government introduced a new scheme known as teachers bank. This was followed by a clarification (Ext.P7) issued on 25.10.2011 by Secretary to Govt, according to which approval could be given against the appointments made consequent to the orders mentioned therein including Ext P3 with effect from 1.6.2011 only. In these circumstances, the petitioner apprehended that the Deputy Director of Education will not be able to take a decision in his favour on his claim for approval from 1.06.2007; against the direction issued by the Government. Therefore without waiting for orders in Ext.P10 appeal, the petitioner approached this Court.

3. I heard learned counsel on either side.

4. A counter affidavit is filed on behalf of the 4th respondent Assistant Educational Officer. It is admitted therein that the school was having sufficient number students justifying sanction of an additional division as on 1.06.2007 and for appointment of the petitioner against

the additional post during the academic year 2007-08. The additional post was not actually sanctioned in 2007-08 and 2008-09 on account of the ban imposed by the Government as per the Government order issued on 17.8.2005. In the counter affidavit, it is further stated that the said ban was lifted conditionally as per order issued on 12.1.2010 by the Government. But the Manager did not execute the bond within the stipulated time. Hence appointment of petitioner was not approved.

5. As per the counter affidavit, the reason for not approving the appointment of the petitioner was non-execution of a bond by the Manager. At the same time, it is admitted that the Manager had executed a bond; but it was received at the office of the Assistant Educational Officer only on 30.12.2011. It is further stated that as per the Government letter dated 25.10.2011, ie. Ext.P7, the bond has relevance only up to 1.10.2011. It is stated therein that the petitioner's name cannot be included in the Teachers Package also because she was not working in an established post without salary as on 31.5.2010.

6. In view of the fact that the 5th respondent has already executed a bond on 25.8.2011, as can be seen from Ext.P5, and the

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same has been admittedly received in the office of the Assistant Educational Officer, there is no justification in denying approval to the appointment of the petitioner. The fact remains that there was justification for additional post in the school during the academic years 2007-08 and 2008-09. Going by the contentions of the 4th respondent, the petitioner's appointment could have been approved in case the bond was made available before 1.10.2011. The petitioner disputes the contention of the 4th respondent that the bond was received only on 30.12.2011, since the same was executed as early as on 25.8.2011. In case the bond was received before 1.10.2011, there would not have been any impediment for approving her appointment. Post was available to accommodate the petitioner for the academic years 2007-08 and 2008-09. Once there was approval, there would not have been any difficulty to apply the 1:40 ratio in order to retain the petitioner in the School.

In the above circumstances, I set aside Ext.P8 letter of the Assistant Educational Officer and direct the 3rd respondent to act upon the bond executed by the Manager as per Ext.P5 and to consider the case of the petitioner for approval of her appointment as LPSA with effect from 1.6.2007. Depending on outcome of the decision, the

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respondents shall further consider her case for retention in the school applying the ratio of 1:40. The 4th respondent shall issue orders in this regard within a period of 3 months from the date of receipt of a copy of this judgment. The petitioner shall be given all consequential benefits within a further period of 2 months.

The writ petition is disposed of accordingly.

Sd/-
P.V.ASHA,
JUDGE.

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