

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

**PRESENT:**

**THE HONOURABLE MR.JUSTICE C.K.ABDUL REHIM**

**TUESDAY, THE 3RD DAY OF MARCH 2015/12TH PHALGUNA, 1936**

**WP(C).No. 3106 of 2010 (K)**  
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**PETITIONER(S):**  
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**T.P.SYAMALA, ASSISTANT TEACHER,  
THIRUVALLUR EAST UP SCHOOL, CHALIYANKADAVU P.O.,  
VATAKARA.**

**BY ADV. SRI.R.K.MURALEEDHARAN**

**RESPONDENT(S):**  
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- 1. THE STATE OF KERALA, REPRESENTED BY  
SECRETARY TO GENERAL EDUCATION DEPARTMENT,  
TRIVANDRUM.**
- 2. THE DIRECTOR OF PUBLIC INSTRUCTION,  
TRIVANDRUM.**
- 3. THE DISTRICT EDUCATIONAL OFFICER,  
VATAKARA.**
- 4. THE ASSISTANT EDUCATIONAL OFFICER,  
THODANNUR.**
- 5. THE KERALA PUBLIC SERVICE COMMISSION,  
REP BY SECRETARY, KERALA PUBLIC SERVICE COMMISSION,  
TRIVANDRUM.**
- 6. T.RAJESWARI,  
ASSISTANT TEACHER IN CHARGE,  
THIRUVALLUR EAST UP SCHOOL, CHALIYANKADAVU P.O.,  
VATAKARA.**
- 7. THE MANAGER,  
THIRUVALLUR EAST UP SCHOOL, CHALIYANKADAVU P.O.,  
VATAKARA.**

**R1-R4 BY SENIOR GOVERNMENT PLEADER SRI.SOJAN JAMES  
R5 BY ADV. SRI.P.C.SASIDHARAN, SC  
R6 & R7 BY ADVS. SRI.V.V.SURENDRAN  
SRI.P.A.HARISH**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON  
03-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

**msv/**

**WP(C).No. 3106 of 2010 (K)**  
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**APPENDIX**

**PETITIONER(S)' EXHIBITS:**  
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**EXT.P1: A TRUE COPY OF THE RELEVANT PAGE OF SERVICE BOOK OF THE PETITIONER.**

**EXT.P2: A TRUE COPY OF THE APPOINTMENT ORDER AND APPROVAL.**

**EXT.P3: A TRUE COPY OF THE COMMUNICATION OF THE 4TH RESPONDENT DTD.12.1.2009.**

**EXT.P4: A TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER TO THE 1ST RESPONDENT.**

**EXT.P5: A TRUE COPY OF THE ORDER DTD.2.1.2010.**

**EXT.P6: A TRUE COPY OF THE REPLY RECEIVED UNDER RTI ACT DTD.9.1.2009.**

**EXT.P7: A TRUE COPY OF THE ORDER DTD.17.9.2009.**

**RESPONDENT(S)' EXHIBITS:**  
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**NIL**

**//TRUE COPY//**

**P.S.TO JUDGE**

**Msv/**

**C.K. ABDUL REHIM, J.**

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**W.P.(C)No.3106 of 2010**  
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**Dated this the 3<sup>rd</sup> day of March, 2015**

**JUDGMENT**

The petitioner was appointed as an Assistant Teacher in the 7<sup>th</sup> respondent's school, with effect from 5/06/2000. There arose a vacancy in post of Headmaster of the school on 01/04/2008. Since no qualified teachers were available for promotion, the 7<sup>th</sup> respondent promoted the senior most Assistant, Sri.P.Sajeevan, on a temporary basis to the post of Headmaster. Sri.Sajeevan had relinquished the promotion, with effect from 31/07/2008. Consequently there arose a vacancy of the Headmaster with effect from 01/08/2008. Since two other senior teachers had also relinquished their claim for appointment as Headmaster, the 7<sup>th</sup> respondent had appointed the 6<sup>th</sup> respondent as Headmistress by virtue of Ext.P2 order. But the appointment was approved by the 4<sup>th</sup> respondent only as a temporary Headmistress, with effect from 01/08/2008. The petitioner qualified the 'Account Test'

conducted by the PSC, on 01/07/2008. The said fact is evident from Ext.P1 extract of her Service Book. It is evident that the PSC had issued the Certificate with respect to the Account Test, on 17/11/2008. The petitioner raised a claim that, since she had acquired the test qualification, the 6<sup>th</sup> respondent, who was temporarily promoted under Rule 45C of Chapter XIV-A KER, need to be replaced with her, as a permanent Headmistress. The petitioner submitted a request in this regard before the 4<sup>th</sup> respondent. But in Ext.P3 the 4<sup>th</sup> respondent had rejected the claim stating that, the petitioner has not completed 12 years of service, as required under Rule 45C(2) of Chapter XIV-A KER and that there exist no vacancy of Headmistress since the 6<sup>th</sup> respondent is continuing in the said post.

2. Aggrieved by Ext.P3 decision of the 4<sup>th</sup> respondent, the petitioner preferred an appeal before the 3<sup>rd</sup> respondent. The said appeal was dismissed by the 3<sup>rd</sup> respondent through Ext.P5 proceedings. The 3<sup>rd</sup> respondent had noticed that the 6<sup>th</sup> respondent had raised

a claim that she had acquired the requisite test qualification, as early as in the year 1992 and that she had already preferred a revision before the 2<sup>nd</sup> respondent against Ext.P2 order through which her appointment as Headmistress was approved by the 4<sup>th</sup> respondent only on temporary basis. A copy of the Gazette Notification with respect to her acquisition of the test qualification was also produced before the 3<sup>rd</sup> respondent. The 3<sup>rd</sup> respondent found that, the 6<sup>th</sup> respondent had produced an attested copy of the Duplicate Certificate issued by the PSC, from which it is evident that she had appeared for the Account Test (lower) with Registration No.42293 during 6/1992 and it is evidenced from the Gazette Notification that she had passed the Account Test. Therefore it is observed that there is no impediment in promoting the 6<sup>th</sup> respondent as Headmistress. It was further noticed that the 2<sup>nd</sup> respondent had already issued an order to that effect. Consequent to the above findings, the appeal submitted by the petitioner was dismissed.

3. Ext.P7 is the order through which the 2<sup>nd</sup>

respondent had allowed the appeal preferred by the 6<sup>th</sup> respondent. It is evident that the 2<sup>nd</sup> respondent, after considering the Gazette Notification as well as the duplicate copy of the Certificate issued by PSC, had observed that, the 6<sup>th</sup> respondent stood qualified for promotion as Headmistress, with effect from 01/08/2008. Accordingly the 4<sup>th</sup> respondent was directed to approve appointment of the 6<sup>th</sup> respondent on a permanent basis, with effect from 01/08/2008. The petitioner is challenging Exts.P3, P5 and P7 in this writ petition.

4. Contention of the petitioner is that, on the date of occurrence of the vacancy of Headmistress, the 6<sup>th</sup> respondent could not produce any proof regarding the acquisition of test qualification. Therefore the approval of the 6<sup>th</sup> respondent's appointment only on a temporary basis, was not valid and proper. Further it is contended that, the 6<sup>th</sup> respondent had failed in producing any Certificate issued by the PSC, in order to prove her test qualification at the time when the vacancy arose. Therefore, the decision taken to the extent of holding

that the 6<sup>th</sup> respondent was eligible to be promoted as Headmistress, cannot be sustained, is the contention. It is further contended that the 6<sup>th</sup> respondent had already relinquished her claim after the acquisition of the test qualification, with respect to two earlier vacancies of Headmistress, which arose in the years 2002 and 2008. Therefore the 6<sup>th</sup> respondent is not entitled to claim promotion as Headmistress with respect to the vacancy which arose on 01/08/2008.

5. In the counter affidavit filed by the 2<sup>nd</sup> respondent it is contended that, on the basis of the Gazette Notification and the duplicate Certificate produced by the 6<sup>th</sup> respondent, the 2<sup>nd</sup> respondent had found that she is eligible to be promoted on a regular basis with effect from 01/08/2008. Based on Ext.P7 the 4<sup>th</sup> respondent had approved the 6<sup>th</sup> respondent as Headmistress on a regular basis with effect from 01/08/2008, as per proceedings issued on 28/01/2010. Therefore the petitioner cannot claim regular promotion to the post of Headmistress with respect to a vacancy which arose on 01/08/2008.

6. While considering the rival contentions, it is evident that the appointment of 6<sup>th</sup> respondent as Headmistress in the school was initially approved only on a temporary basis. But in the appeal filed by the 6<sup>th</sup> respondent her appointment was directed to be approved on a regular basis and accordingly the 4<sup>th</sup> respondent had approved the appointment of the 6<sup>th</sup> respondent on a regular basis, with effect from 01/08/2008. Unless the said decision is negated by any competent authority, the petitioner cannot seek appointment as Headmistress on the basis that she had acquired test qualification subsequent to arising of the vacancy. But it is pertinent to note that the petitioner has not taken any steps to challenge Ext.P7 proceedings in any statutory appeal or revision, which would have been the effective remedy available to her. Having not challenged Ext.P7 in any statutory proceedings, the challenge now raised by the petitioner with respect to Exts.P3 and P5 cannot be sustained. It is not possible for this court to entertain the challenge made against Ext.P7 and to adjudicate upon the

same, in view of the fact that the evaluation may require appreciation of factual aspects and materials. Therefore while declining relief in this Writ Petition, it is made clear that it will be left open to the petitioner to seek appropriate statutory remedy before the Government, in challenging Ext.P4, to the extent permissible under law.

Subject to reserving liberty to the petitioner to invoke statutory remedy against Ext.P7, if any available, this Writ Petition is hereby disposed of.

**Sd/- C.K. ABDUL REHIM  
JUDGE**

MJL