

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:-

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

WEDNESDAY, THE 7TH DAY OF OCTOBER 2015/15TH ASWINA, 1937

W.P.(C).No.3619 of 2009 (E)

PETITIONER(S):-

SMT. V.REJANI,
EZHARETH THURUTHIKKARA, KUNNATHOOR, KOLLAM DIST.,
(UPSA, INDIRA GANDHI MEMORIAL HIGH SCHOOL,
MANJAKALA P.O., KOLLAM DIST.).

BY ADVS.SMT.S.K.DEVI
SRI.SANTHOSH P.ABRAHAM.

RESPONDENT(S):-

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1. DISTRICT EDUCATIONAL OFFICER,
KOTTARAKKARA, KOLLAM DIST.
 2. STATE OF KERALA,
REP. BY SECRETARY TO GOVERNMENT,
GENERAL EDUCATION DEPARTMENT, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM.
 3. SMT. V.V. JALAJAKUMARI,
HSA, PHYSICAL SCIENCE,
INDIA GANDHI MEMORIAL HIGH SCHOOL,
MANJAKALA P.O., KOLLAM DIST.

R1 & R2 BY GOVERNMENT PLEADER SMT.A.LOWSY.
R3 BY ADV. SRI.M.V.THAMBAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
07-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:-

W.P.(C) NO.3619 OF 2009-E

APPENDIX

PETITIONER'S EXHIBITS:-

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|---------|--|
| EXT.P1 | TRUE COPY OF PROCEEDINGS ORDER NO.B4/4696/05 DDS
DATED 31.7.2005. |
| EXT.P2 | TRUE COPY OF ORDER NO.B4/30/125/06/K/DIS. DATED 6.5.2006. |
| EXT.P3 | TRUE COPY OF ORDER NO.DD IS2 39812/06/RA(A) DPI
DATED 18.8.06. |
| EXT.P4 | TRUE COPY OF JUDGMENT DTD.4.4.08 IN W.P.(C).9374/08. |
| EXT.P5 | TRUE COPY OF ORDER DTD.4.7.08. |
| EXT.P6 | TRUE COPY OF ORDER GO(MS) NO.109/98/G.EDN.
DATED 6.4.98. |
| EXT.P6a | TRUE COPY OF ORDER GO(MS) NO.240/2000/G.EDN.
DATED 24.7.2000. |
| EXT.P6b | TRUE COPY OF ORDER NO.338/2000/G.EDN.
DATED 10.10.2000. |
| EXT.P6c | TRUE COPY OF ORDER NO.G.O.(MS) NO.352/2000/G.EDN.
DATED 25.10.2000. |

RESPONDENT'S EXHIBITS:-

----- NIL.

Vku/-

[true copy]

K. Vinod Chandran, J

W.P.(C).No.3619 of 2009-E

Dated this the 07th day of October, 2015

JUDGMENT

The petitioner is aggrieved with the fact that the petitioner, an Upper Primary School Assistant [for brevity “UPSA”], was retrenched from service by virtue of the staff fixation order at Exhibit P1. The exact reason for retrenchment was that the 3rd respondent, by reason of a division fall in the High School section, had to be thrown out from the post of High School Assistant [for brevity “HSA”] and she was reverted and appointed as UPSA. As a consequence, the petitioner, being the junior-most UPSA, was retrenched from service.

2. The petitioner's contention against Exhibit P1 was that, the 3rd respondent was not entitled to be reverted as per Exhibit P6 Government Order, since she had been in service continuously for seven years. Exhibit P2 considered the challenge and found that the 3rd respondent was appointed as an UPSA from 20.07.1993 and had continuous service till she was

promoted as HSA on 06.06.2001. The petitioner argued that, in such circumstances the petitioner ought to have been retained; with the 3rd respondent protected in the High School section itself as per Exhibit P6 Government Order. Exhibit P2 though noticing the Government Order granting such protection for persons who have seven years of service, declined the relief only on the ground that the petitioner did not have the claim for protection.

3. True, Exhibit P2 did not answer the issue in the correct perspective. The petitioner's contention before the authority itself was not that the petitioner had protection; but, by virtue of the protection of the 3rd respondent, the 3rd respondent ought to have been continued in the High School section and that would have avoided the consequent retrenchment of the petitioner, which was only as a result of the reversion of the 3rd respondent.

4. However, as alertly pointed out by the learned Government Pleader, Exhibit P6 is a clarification issued to the order read therein. G.O.(MS).No.60/96/G.Edn. dated 15.02.1996 was issued protecting those aided school teachers who were retrenched due to division fall after completing seven years of

service on or before 15.07.1995. Exhibit P6 Government Order specified that for reckoning such service, the Primary and High School services put in by the aided school teachers would be counted. However, the clinching factor is that, such service ought to have been before 15.07.1995. The 3rd respondent admittedly was appointed only on 20.07.1993 and could not have had the protection of Exhibit P6. Exhibits P6a, P6b and P6c are other orders, which, however, do not relate to the seven year period and deals with other protections which the petitioner never pleaded before the authorities. In such circumstances, this Court does not find any reason to interfere with the impugned order.

The writ petition would stand dismissed. No costs.

Sd/-

K.Vinod Chandran
Judge.

vkul/-

[true copy]