

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

THURSDAY, THE 18TH DAY OF JUNE 2015/28TH JYAISHTA, 1937

WP(C).NO. 2585 OF 2011 (W)

PETITIONER(S) :

TIJO THOMAS
S/O.THOMAS, KIZHAKKEKARAYIL HOUSE, KOKKOTHAMANGALAM
CHERTHALA, ALAPPUZHA DISTRICT.

BY ADVS.SRI.BENNY GERVACIS
SMT.K.MAJEEDA HAMEED

RESPONDENT(S) :

1. THE STATE OF KERALA
REPRESENTED BY ITS SECRETARY TO GOVERNMENT
GENERAL EDUCATION DEPARTMENT, GOVERNMENT SECRETARIAT
THIRUVANANTHAPURAM-695001.

2. THE DEPUTY DIRECTOR OF EDUCATION,
KOTTAYAM-695001.

3. THE ASSISTANT EDUCATIONAL OFFICER,
VAILKOM, KOTTAYAM DISTRICT-686144.

4. THE MANAGER,
ST.MARY'S L.P.SCHOOL, EDAYAZHAM, P.O.VENCHOOR-686144.

5. SMT.K.E.SINDHU,
LOWER PRIMARY SCHOOL ASSISTANT
ST.MARY'S L.P. SCHOOL, EDAYAZHAM, P.O.VENCHOOR-686144.

* ADDL.R6:THE CORPORATE MANAGER,
ERNAKULAM-ANGAMALY DIOCESE RENEWAL CENTRE,
KALOOR, ERNAKULAM.

(ADDL.R6 IS IMPEADED AS PER ORDER IN I.A.NO.13377 OF 2011 DATED
18.06.2015)

R4 &ADDL.R6 BY ADV. SRI.V.M.KURIAN
R4 &ADDL.R6 BY ADV. SRI.MATHEW B. KURIAN
R4 &ADDL.R6 BY ADV. SRI.K.T.THOMAS
R1-R3 BY GOVERNMENT PLEADER SRI.RINNY STEPHEN CHAMAPARAMBIL
R5 BY ADV. SRI.K.JAJU BABU (SR.)
R5 BY ADV. SMT.M.U.VIJAYALAKSHMI

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
18-06-2015 ALONG WITH W.P(C).NO.16981/2011, W.P.(C).NO.13016/2014 &
W.P.(C).NO.13645 OF 2014, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

WP(C).NO. 2585 OF 2011 (E)

APPENDIX

PETITIONER(S) ' EXHIBITS

EXT.P1.TRUE COPY OF THE PETITION DATED 12.5.2003 FILED BY THE
PETITIONER BEFORE THE 4TH RESPONDENT

EXT.P2.TRUE COPY OF THE APPLICATION SUBMITTED BY THE PETITIONER ON
9.11.2009

EXT.P3.TRUE COPY OF APPLICATION FOR EMPLOYMENT UNDER THE DYING IN
HARNESS SCHEME SUBMITTED TO THE MANAGER ON 30.12.2009

EXT.P3(A).TRUE COPY OF PETITIONER'S T.T.C CERTIFICATE

EXT.P3(B).TRUE COPY OF LEGAL HEIRSHIP CERTIFICATE

EXT.P4.TRUE COPY OF COMMUNICATION DATED 27.1.2010 ISSUED ASSISTANT
EDUCATIONAL OFFICER

EXT.P5.TRUE COPY OF LETTER OF THE MANAGER DATED 8.1.2010

EXT.P6.TRUE COPY OF THE COMMUNICATION ISSUED BY THE DEPUTY DIRECTOR
OF EDUCATION, KOTTAYAM DATED 23.03.2010

EXT.P7.TRUE COPY OF THE REVISION FILED BY THE PETITIONER BEFORE THE
GOVERNMENT

EXT.P8.TRUE COPY OF JUDGMENT DATED 26.5.2010 IN W.P.(C) NO.16119 OF
2010

EXT.P9.TRUE COPY OF GOVERNMENT ORDER, G.O.(RT) 150/2011/G.EDN.DATED
11.1.2011

RESPONDENT(S) ' EXHIBITS:NIL

//TRUE COPY//

P.A TO JUDGE

A.K.JAYASANKARAN NAMBIAR, J.
.....
W.P.(C).No.2585 of 2011, W.P.(C).No.16981 of 2011,
W.P.(C).No.13016 of 2014
&
W.P.(C).No.13645 of 2014
.....
Dated this the 18th day of June, 2015

J U D G M E N T

As these writ petitions involve an issue of filling up of vacancies of LPSAs in the same School, they are taken up for consideration together and disposed by this common judgment. For the sake of convenience, the reference to the facts and exhibits is from W.P.(C).No.2585 of 2011, where the petitioner is also the petitioner in W.P.(C).No.13016 of 2014. The 5th respondent in W.P.(C).No.2585 of 2011 is the petitioner in W.P.(C).No.16981 of 2011. The 6th respondent in W.P.(C).No.13016 of 2014 is the petitioner in W.P.(C).No.13645 of 2014. The said reference, to the petitioners and the respondents in the aforesaid writ petitions, is made only for the purposes of clarifying that the reference to them in the judgment will be as indicated above.

2. The mother of the petitioner in W.P.(C).No.2585 of 2011, while working as LPSA of the 4th respondent's School died on 15.11.1995. The petitioner was a minor at that point of time. On

attaining the age of majority, by Ext.P1 dated 12.05.2003, the petitioner submitted an application for appointment under the Dying in Harness Scheme. This was an application preferred in terms of Rule 51 B of Chapter XIV KER. It would appear that, thereafter, the petitioner completed the T.T.C course, and in order to bring to the notice of the 4th respondent, the fact of acquisition of the subsequent qualification, he preferred a second application, Ext.P2 dated 9.11.2009, claiming the benefit of appointment under Rule 51 B. By Ext.P3 dated 30.12.2009, a 3rd application for the same purpose was preferred by the petitioner, within time and in the proper format, and accompanied by the T.T.C certificate as also the Legal Heirship Certificate. During the aforesaid period, while the petitioner was preferring applications for consideration under the Dying-in-harness Scheme, the 4th respondent had appointed the 5th respondent to a leave vacancy which arose for the period from 05.06.2007 to 31.03.2008. Although, there was a doubt as to whether the period for which the 5th respondent was appointed would qualify for the benefit of a claim under Rule 51 A of Chapter XIV A KER, since the period of appointment was less than one year, the appointment of the 5th respondent was approved by the education authority. Thereafter, the 4th respondent appointed the 5th respondent as LPSA again for the period from 23.06.2009 to

30.09.09, and thereafter, from 19.10.2009 to 08.10.2010. These spells of appointments were not approved by the education authority. Thereafter, a vacancy arose to the post of LPSA with effect from 01.06.2010. To the said vacancy, the 4th respondent appointed the 5th respondent by treating her as a Rule 51A claimant. This was by taking into account the approved service that the 5th respondent had during the period from 05.06.2007 to 31.03.2008. In that process, however, the 4th respondent had effectively ignored the claim of the petitioner under Rule 51 B. This led the petitioner to prefer a revision petition before the Government, agitating his claim under Rule 51 B for the vacancy that arose with effect from 01.06.2010. By Ext.P9 order dated 11.01.2011, the Government found that the petitioner's application under Rule 51 B could not be considered since the application itself was belated. The Government, however, also found that the 5th respondent's appointment was bad and she could not be treated as a Rule 51 A claimant. In W.P.(C).No.2585 of 2011, the petitioner challenges Ext.P9 to the extent it rejects his claim under Rule 51B as belated. There is a further prayer in the writ petition for a declaration that the 5th respondent has no right to get appointment as LPSA in the vacancy that arose with effect from 01.06.2010. As regards the contention with regard to the belated filing of an

application, it is the case of the petitioner that, inasmuch as it was the duty of the Manager to appoint dependants under Rule 51 B of Chapter XIV A KER, no application was required for consideration of the petitioner's claim under Rule 51 B. In W.P.(C).No.16981 of 2011, that is preferred by the 5th respondent, Ext.P9 order dated 11.01.2011 (Ext.P4 in W.P.(C).No.16981 of 2011) is impugned to the extent it finds that she was not entitled to claim Rule 51 A status, and further, that her approval to the appointment between 05.06.2007 and 31.03.2008 was not on regular basis but on daily wage basis.

3. In the counter affidavit filed by the 1st respondent in W.P. (C).No.2585 of 2011 after narrating the sequence of events relating to the appointment of the 5th respondent as also rejection of the claim of the petitioner, there is a reference to an assurance that was given by the 4th respondent Manager, through his letter dated 08.01.2010 that the petitioner would be given the next appointment after the appointment of the 5th respondent, who had already been appointed by the Manager to the vacancy that arose with effect from 01.06.2010 in the post of LPSA. It is pointed out that, on the basis of the said assurance given by the 4th respondent Manager, the 1st respondent while passing Ext.P9 order had deemed it

unnecessary to consider the request of the petitioner to consider him for the post of LPSA in the vacancy that arose with effect from 01.06.2010. The assurance by the 4th respondent Manager, with regard to the consideration of the candidature of the petitioner to the next arising vacancy of LPSA in the School, forms the basis of the decision of the 1st respondent in Ext.P9, to direct the Assistant Educational Officer to approve the appointment of the 5th respondent on daily wage basis for the period from 05.06.2007 to 31.03.2008 and the non-interference with the appointment of the 5th respondent to the vacancy that arose with effect from 01.06.2010.

4. The facts in W.P.(C).No.13016 of 2014 would reveal that subsequent to Ext.P9 order referred to above, the 4th respondent Manager appointed the petitioner as UPSA in a vacancy that arose on 30.11.2011. Ext.P2 dated 13.01.2012, in that writ petition is the appointment order that was issued to the petitioner by the Manager and specifically states that the appointment was to the vacancy that arose with effect from 30.11.2011. By an order dated 24.04.2012, the District Educational Officer, denied approval to the said appointment on the ground that, the said appointment was made overlooking other Rule 51 A and Rule 51 B claimants.

Although the petitioner carried the said order in further appeals and revisions before the educational authorities, the said appeals and revisions were all rejected by the education authorities. It is challenging those orders, denying an approval to the appointment of the petitioner as UPSA to the vacancy that arose with effect from 30.11.2011, that W.P.(C).No.13016 of 2014 is preferred. It is seen from the pleadings in the said writ petition that the reference made by the education authority to other Rule 51A/Rule 51 B claimants would include a reference to the 6th respondent therein, who is the petitioner in W.P.(C).No.13645 of 2014, and who was also one among many Rule 51A claimants to the vacancies that arose in the School. In the counter affidavit filed by the 6th respondent, it is her definite case that, on account of her prior approved service in the School, initially in a leave vacancy where she had been appointed consequent to a Rule 51 B claim, and thereafter, to subsequent spells where she had worked in the same School, she was the seniormost R.51A claimant for consideration for appointment to the vacancy which arose with effect from 30.11.2011 consequent to the resignation of Sri.Anoop Gervacis. It must be noted here, that in W.P.(C).No.13645 of 2014 that is preferred by the 6th respondent in W.P.(C).No.13016 of 2014, the relief sought for is to direct the Government to pass orders on Ext.P13 revision preferred by her,

aggrieved by the inaction on the part of the Manager in not considering her for appointment to the vacancy that arose with effect from 30.11.2011, and appointing the petitioner in W.P.(C). No.13016 of 2014 to the said vacancy.

5. I have heard Sri.Benny Gervacis, the learned counsel for the petitioner in W.P.(C).Nos.2585 of 2011 and 13016 of 2014, Sri.Brijesh Mohan, the learned counsel for the 5th respondent in W.P.(C).No.2585 of 2011 and the petitioner in W.P.(C).No.16981 of 2011, Smt.Sreelatha, the learned counsel appearing for the 6th respondent in W.P.(C).No.13016 of 2014 and the petitioner in W.P.(C).No.13645 of 2014, Sri.V.M.Kurian, the learned counsel appearing for the Manager in all the writ petitions and the learned Government Pleader appearing for the official respondents in all the writ petitions.

6. On a consideration of the facts and circumstances in all the writ petitions, and taking note of the submission of counsel for the petitioners and respondents, I find that as regards the inter se claim between the petitioner in W.P.(C).No.2585 of 2011 and the 5th respondent therein (the petitioner in W.P.(C).No.16981 of 2011), for consideration to the vacancy of LPSA that arose in the School

with effect from 01.06.2010, Ext.P9 order of the Government clearly finds that the petitioner's claim under Rule 51B could not be considered as the same was belated. Thereafter, the Government also considered the fact that, the 4th respondent Manager had given an assurance that the petitioner would be appointed to a vacancy arising immediately after the appointment of the 5th respondent to the vacancy that arose with effect from 01.06.2010. Taking note of the said assurance of the Manager, and in my opinion tacitly consenting to the same, the Government did not choose to interfere with the appointment of the 5th respondent, to the vacancy that arose with effect from 01.06.2010. Under the said circumstances, I do not see any reason as to why the 5th respondent should not be seen as validly appointed as LPSA to the vacancy which arose with effect from 01.06.2010. The said appointment has necessarily to be approved by the respondent educational authority and I direct them to do so within a period of one month from the date of receipt of a copy of this judgment. In view of the said direction, the prayer in W.P.(C).No.2585 of 2011 cannot be granted, and accordingly, the said writ petition, to the extent it impugns the appointment of the 5th respondent as LPSA to the vacancy that arose with effect from 01.06.2010, is dismissed. As a corollary, W.P.(C).No.16981 of 2011 to the extent it impugns the orders passed against the 5th

respondent (the petitioner in W.P.(C).No.16981 of 2011) directing a recovery of the salary drawn by her pursuant to her appointment as LPSA from 05.06.2007 to 31.03.2008, and thereafter, with effect from 01.06.2010 has necessarily to be allowed. That apart, the finding in Ext.P9 order dated 11.01.2011 of the Government (Ext.P4 in W.P.(C).No.16981 of 2011) to the effect that the 5th respondent was not entitled to claim Rule 51A status, also pales into irrelevance since it is not in dispute that, other than the petitioner in W.P.(C).No.2585 of 2011, there was no rival candidate as far as the 5th respondent was concerned for appointment to the vacancy that arose with effect from 01.06.2010. The 5th respondent (the petitioner in W.P.(C).No.16981 of 2011) is therefore entitled to the reliefs prayed for in the said writ petition, and accordingly, Ext.P4 order that is impugned in the said writ petition is quashed to the extent it cancels the approval of the appointment of the petitioner as LPSA for the period from 05.06.2007 to 31.03.2008 on scale of pay basis, and it is declared that the petitioner's appointment as LPSA, in the School managed by the 4th respondent, with effect from 01.06.2010 is valid. It follows as a necessary corollary that Ext.P5 order, that is impugned in the said writ petition, should also be quashed and I do so. Thus W.P.(C). No.16981 of 2011 stands allowed. The respondents shall do the

needful in ensuring that the petitioner is paid all consequential benefits including salary and other allowances within a period of three months from the date of receipt of a copy of this judgment.

7. As regards the claim of the petitioner in W.P.(C).No.13016 of 2014 (the petitioner in W.P.(C).No.2585 of 2011), for approval of his appointment as UPSA to the vacancy that arose with effect from 30.11.2011, I find that the rival claimant to the said vacancy is the 6th respondent therein, who is also the petitioner in W.P.(C).No.13645 of 2014. In view of the fact that the petitioner was appointed to the vacancy in question pursuant to an assurance that was given by the 4th respondent Manager before the Government, in the proceedings that are referred to above, I find that the 4th respondent Manager could not have appointed any other person to the said vacancy which arose with effect from 30.11.2011. Inasmuch as the assurance given by the Manager had been recognised and consented to by the Government, It was not open to the Government to deny approval to the appointment of the petitioner as UPSA in the vacancy that arose with effect from 30.11.2011. Accordingly, I quash the impugned orders in the said writ petition that deny approval to the appointment of the petitioner as UPSA in the vacancy that arose with effect from

30.11.2011 and direct the education authority to grant approval to the said appointment of the petitioner, and disburse the salary and other allowances that are due to the petitioner consequent to the said appointment, within a period of three months from the date of receipt of a copy of this judgment. What remains to be considered is the case of the petitioner in W.P.(C).No.13645 of 2014. I find from the pleadings in W.P.(C).No.13016 of 2014 and W.P.(C).No.13645 of 2014 that the petitioner herein is admittedly a Rule 51 A claimant as far as vacancies arising to the posts of LPSA/UPSA in the School are concerned. In a report prepared as early as on 14.05.2012 (produced as Ext.P4 in W.P.(C).No.13645 of 2014), the District Educational Officer had informed the Deputy Director of Education, Alappuzha, while considering the case of appointment of the petitioner to a vacancy for the period from 02.06.2009 to 31.3.2010 and later from 01.06.2010 to 01.06.2014, that the petitioner was the senior most claimant under Rule 51A to be considered for appointment to the said vacancy. In Ext.P5 order dated 09.08.2012, that was passed by the Additional Director of Public Instructions, thereafter, a reference is made to Ext.P4 communication dated 14.05.2012 and, based on the said letter, the Additional Director of Public Instruction directed the District Educational Officer to approve the appointment of the petitioner if

it was otherwise in order. It is not in dispute that the said approval was subsequently granted to the appointment of the petitioner. What is significant, however, is that, as early as in 2012, the fact that the petitioner was the senior most Rule 51 A claimant entitled for consideration for appointment to future vacancies arising after 2009, was recognised by the education authorities. It cannot therefore be said that there are other claimants who have a seniority over the petitioner for consideration for appointment as LPSA/UPSA in the School in question. I note that, Ext.P13 representation is currently pending consideration before the 1st respondent Government, wherein the petitioner seeks a direction to the Manager of the School to appoint her against the regular vacancy with effect from 30.11.2011. Inasmuch as I have found that the petitioner in W.P.(C).No.13016 of 2014 is entitled to be appointed to the said vacancy, I am of the view that, while directing the 1st respondent Government to consider and pass orders on Ext.P13 representation preferred by the petitioner, the 1st respondent should consider the claim of the petitioner to the next arising vacancy, after 30.11.2011, to the posts of LPSA/UPSA in the School. Accordingly, I dispose W.P.(C).No.13645 of 2014 by directing the 1st respondent therein to consider and pass orders on Ext.P13 representation preferred by the petitioner by considering

her claim as against the vacancy arising immediately after the vacancy that arose with effect from 30.11.2011, to the post of LPSA/UPSA in the School. The 1st respondent shall pass orders after hearing the petitioner and the Manager within a period of three months from the date of receipt of a copy of this judgment.

All the writ petitions are disposed as above.

A.K.JAYASANKARAN NAMBIAR
JUDGE

mns