

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.SURENDRA MOHAN

WEDNESDAY, THE 4TH DAY OF FEBRUARY 2015/15TH MAGHA, 1936

WP(C).No. 6840 of 2007 (L)

PETITIONER :

N.BALAKRISHNA SHENOI, WORKING AS
SPECIALIST TEACHER, T.D.H.S. THURAVOOR, RESIDING AT
ARACKAL HOUSE, THIRUMALA BHAGOM P.O., THURAVOOR
ALAPPUZHA.

BY ADVS.SRI.JAGADEESH LAKSHMAN
SRI.K.R.RAJKUMAR

RESPONDENTS :

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1. STATE OF KERALA REPRESENTED BY THE
SECRETARY TO GOVERNMENT, GENERAL EDUCATION(K)
DEPARTMENT, THIRUVANANTHAPURAM.
 2. THE DIRECTOR OF PUBLIC INSTRUCTIONS,
THIRUVANANTHAPURAM.
 3. THE DEPUTY DIRECTOR OF EDUCATION,
ALAPPUZHA.
 4. THE DISTRICT EDUCATIONAL OFFICER,
ALAPPUZHA.
 5. THE DISTRICT EDUCATIONAL OFFICER,
CHERTHALA.
 6. THE CORPORATE MANAGER,
TD SCHOOLS, ALAPPUZHA DISTRICT.
 7. SMT.A.S.ANANDAVALLI AMMA, RETIRED TEACHER
TDHS RESIDING AT ANANDA BHAVAN, THURAVOOR SOUTH
THURAVOOR P.O., ALAPPUZHA.

R BY GOVERNMENT PLEADER SRI.ABHIJETT LESSLI

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 04-02-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS :

EXT.P1 : COPY OF THE ORDER OF THE THIRD RESPONDENT DATED 02-12-91

EXT.P2 : COPY OF THE ORDER PASSED BY THE SIXTH RESPONDENT DATED 09.08.93

EXT.P3 : COPY OF THE ORDER OF FIXATION OF STAFF BY THE FOURTH RESPONDENT
DATED 19.8.96

EXT.P4 : COPY OF THE ORDER OF THE THIRD RESPONDENT DATED 04.01.97

EXT.P5 : COPY OF THE ORDER ISSUED BY THE SECOND RESPONDENT DATED 27.9.97

EXT.P6 : COPY OF THE ORDER OF THE FIRST RESPONDENT DATED 23.2.98

EXT.P7 : COPY OF THE JUDGMENT DTD.06.09.05 OF THIS HON'LE COURT IN OP NO.15238
OF 1998

EXT.P8 : COPY OF THE ORDER OF THE FIRST RESPONDENT DATED 18.11.06

RESPONDENTS' EXHIBITS : NIL

/TRUE COPY/

P.A TO JUDGE

AV

K.SURENDRA MOHAN, J.

W.P.(C) No.6840 of 2007

Dated this the 4th day of February, 2015

J U D G M E N T

The petitioner is a Specialist Drawing Teacher. He was initially appointed for a short period from 06.09.1982 to 03.12.1982 and was sent out of service thereafter. Later on, he worked in the same school under the 6th respondent from 05.06.1986 to 04.08.1986 and from 01.06.1987 to 26.08.1987. Thereafter, on 01.06.1989 he was appointed under the 6th respondent at the T.D.H.S. Thuravoor in the vacancy of one Smt.B.Prasannakumari, a Drawing Teacher. She had been transferred to the T.D.H.S., Alappuzha in a retirement vacancy by the 6th respondent. While so, as per Ext.P1 order dated 02.12.1991, the 3rd respondent abolished the post of Drawing Teacher in the T.D.H.S., Alappuzha. Pursuant to Ext.P1, Smt.B.Prasannakumari was transferred back to T.D.H.S., Thuravoor and the petitioner was thrown out from service. However, since the petitioner was a claimant under Rule 51 A of Chapter XIV A of the Kerala Educational Rules, 1959 (hereinafter referred to as 'KER' for short), he had a preferential right of appointment in the next available vacancy.

2. While so, in the year 1996-97 one post of Specialised Teacher was sanctioned in the T.D.H.S, Alappuzha. However, instead of accommodating the petitioner in the said post, being the senior most claimant under Rule 51A, the 7th respondent, a Music Teacher was

appointed. The 7th respondent was a protected teacher. The contention of the counsel for the petitioner is that, the petitioner being a claimant under the Rule 51A, Chapter XIV A of KER was entitled to appointment in preference to the protected teacher who was actually appointed. Though the petitioner submitted various representations to the authorities, his case was not considered by the them.

3. In the above circumstances, a Music Teacher in the T.D.H.S., Thuravoor expired. Thereupon, the 6th respondent transferred the 7th respondent Music Teacher working at T.D.H.S, Alappuzha to T.D.H.S, Thuravoor. Thereafter, the 6th respondent appointed a fresh hand in the resultant vacancy in T.D.H.S., Alappuzha. The said action was challenged by the petitioner before this Court in O.P.No.12450 of 1996. Subsequently, the educational authorities did not approve the appointment of the fresh hand. Though the petitioner had submitted a representation for the sanction of a Drawing Teacher to T.D.H.S., Alappuzha, while finalising the staff strength of the School, the request was not granted. Ext.P3 is the copy of the staff fixation order. The petitioner challenged the same in appeal before the 3rd respondent. However, the same was rejected by Ext.P4.

4. The petitioner thereupon approached the 2nd respondent for appropriate reliefs. However, by Ext.P5 order, his request was rejected. The petitioner challenged Ext.P5 in revision before the 1st respondent. The revision was also rejected by Ext.P6. Thereupon the

petitioner approached this Court by filing O.P.No.15328 of 1998. By Ext.P7 judgment dated 06.09.2005, the writ petition filed by the petitioner was disposed of, quashing Ext.P6 and directing the 1st respondent to reconsider the matter. Accordingly, the matter was reconsidered and the petitioner's request was again rejected by Ext.P8. The petitioner has filed this writ petition challenging Ext.P8.

5. The petitioner as well as the 7th respondent have retired during the pendency of this writ petition. However, according to the counsel for the petitioner, the petitioner stands to gain a substantial length of service, if his claim is allowed. The contention of Sri.Jagadeesh Lakshman who appears for the petitioner is that, under Rule 3 of Chapter XXIII, there is only a Specialist Teacher, which expression includes *inter alia*, a Drawing Teacher, Music Teacher as well as Physical Education Teacher. Therefore, the post of a Music Teacher and Drawing Teacher are interchangeable, with preference being given to the Drawing Teacher, being the first category mentioned in the Rule. It is therefore contended that, when the post of Music Teacher arose in T.D.H.S., Alappuzha during 1996-97, instead of appointing the 7th respondent, the petitioner ought to have been appointed. The petitioner being a claimant under Rule 51 A of Chapter XIV A, KER is entitled to be preferred over a protected teacher who was already enjoying the benefits of protection. At the same time, the petitioner had been retrenched and was out of service. The counsel

has a further contention that, the 7th respondent was a protected teacher in the U.P.Section and therefore, the action of the authorities in appointing her in the High School Section, is without any justification. Therefore, it is contended that, the petitioner is entitled to be given the benefit of an appointment from the date of appointment of the 7th respondent and that such service also should be counted for the purpose of pension.

6. The contentions of the counsel for the petitioner are opposed by the learned Government Pleader who represents respondents 1 to 5. A counter affidavit has also been filed. According to the learned Government Pleader, the action of respondents 1 to 5 was perfectly in accordance with law and does not call for any interference. The petitioner had been appointed in the vacancy of Smt.B.Prasannakumari who had been transferred to the T.D.H.S., Alappuzha in the year 1989. However, with the abolition of the post of Drawing Teacher by Ext.P1, she had to be sent back to the T.D.H.S., Thuravoor, resulting the petitioner becoming thrown out. Thereafter, when the Music Teacher at T.D.H.S., Alappuzha retired and a vacancy arose on 15.07.1993, the 7th respondent was appointed to the said post, since she was already a protected teacher. The petitioner could not be appointed to the said post as there were other protected teachers in the School. Later on, when the Music Teacher who was working at T.D.H.S., Thuravoor expired, a fresh hand had been appointed by the 6th respondent. The

said appointment was not approved. My attention is drawn to Exts.P5 and P8 proceedings to point out that all the relevant aspects of the case have been considered by the authorities while issuing the orders. Therefore, the learned Government Pleader seeks the dismissal of the writ petition.

7. Heard. The petitioner had been initially appointed on 01.06.1989 as a Drawing Teacher in the vacancy of Smt.B.Prasannakumari who was transferred to T.D.H.S., Alappuzha in a retirement vacancy that was in existence there. However, by Ext.P1 proceedings, the 3rd respondent abolished the said post and Smt.B.Prasannakumari had to be transferred back to the T.D.H.S., Thuravoor. Consequently, the petitioner was retrenched. It was in the above circumstances that, by Ext.P2, the 7th respondent was appointed to the vacancy that arose at T.D.H.S., Alappuzha in 1993. The contention of the counsel for the petitioner is that, instead of appointing the 7th respondent, the petitioner ought to have been appointed.

8. It is not in dispute that, the 7th respondent was much senior to the petitioner as well as Smt.B.Prasannakumari in whose place the petitioner was appointed in the first place. The 7th respondent was already a protected teacher who was being retained in the School under protection. Therefore, I do not find any infirmity in Ext.P2 order appointing her to the vacancy that arose in the year 1993. The

protected teacher certainly enjoys priority in such matters over the claimant under Rule 51 A of Chapter XIV A. In the first place, the 7th respondent was admittedly senior to the petitioner. Secondly, she was retained in the said school as a protected teacher and was being paid salary by the State without extracting any work from her. The petitioner had already become a thrown out hand, who could claim preference only over fresh hands.

9. The other contention of the petitioner is that, the 7th respondent was a protected teacher of the Upper Primary Section and therefore, there was no justification for having appointed her to the High School Section. The said contention also lacks substance for the reason that, the 6th respondent was qualified to be appointed to the said post and was being retained in the school under protection. A perusal of Exts.P5 and P8 proceedings show that the above aspects have been considered. It is also worth noticing that, even in Ext.P7 judgment allowing the writ petition filed by the petitioner, this Court has observed as follows :

“No doubt between a protected teacher and a 51A claimant preference is given to the protected teacher.”

In view of the above, I do not find any grounds to interfere with the impugned orders or to grant any of the reliefs sought for. This writ petition is therefore dismissed.

Sd/-
K.SURENDRA MOHAN, JUDGE.