

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

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

WP(C).No. 3572 of 2012 (V)

PETITIONER :

**SMT. ANU BABY,
H.S.A.(MATHEMATICS), ST. STEPHEN'S GIRLS HIGH SCHOOL,
KEERAMPARA, KOTHAMANGALAM, ERNAKULAM DISTRICT.**

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

RESPONDENT(S):

- 1. STATE OF KERALA,
REPRESENTED BY THE SECRETARY TO GOVERNMENT,
GENERAL EDUCATION DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM, PIN-695 001.**
- 2. THE DEPUTY DIRECTOR OF EDUCATION,
ERNAKULAM, PIN-682 030.**
- 3. THE DISTRICT EDUCATIONAL OFFICER,
KOTHAMANGALAM, PIN-686 691**
- 4. THE MANAGER,
ST.STEPEN'S EDUCATIONAL AGENCY, CHELAD,
KEERAMPARA,KOTHAMANGALAM, PIN-686 691.**

R1 TO R3 BY SR GOVERNMENT PLEADER SRI.S.JAMAL

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

sts

APPENDIX

PETITIONER(S) EXHIBITS

EXT-P1 TRUE COPY OF THE APPOINTMENT ORDER DATED 1.7.2008 ISSUED BY THE 4TH RESPONDENT PROMOTING SMT. SUNU GEORGE.

EXT-P2 TRUE COPY OF DATED 7.7.2008 ISSUED BY THE 4TH RESPONDENT TO THE PETITIONER.

EXT-P3 TRUE COPY OF STAFF FIXATION ORDER DATED 19.1.2009 ISSUED BY THE 3RD RESPONDENT.

EXT-P4 TRUE COPY OF THE STAFF FIXATION ORDER DATED 7.11.2009 ISSUED BY THE 3RD RESPONDENT.

EXT-P5 TRUE COPY OF G.O.DATED 26.2.2011 ISSUED BY THE 1ST RESPONDENT.

EXT-P6 TRUE COPY OF THE APPEAL DATED 2.8.2011 FILED BY THE 4TH RESPONDENT BEFORE THE 2ND RESPONDENT.

EXT-P7 TRUE COPY OF THE ORDER DATED 23.1.2012 ISSUED BY THE 2ND RESPONDENT.

EXT-P8 TRUE COPY OF THE DATED 20.08.2011 ISSUED BY THE 1ST RESPONDENT.

RESPONDENTS' EXHIBITS : NIL

/TRUE COPY/

P.A.TO.JUDGE

sts

A.MUHAMED MUSTAQUE, J.

W.P.(C)No.3572 of 2012

Dated this the 4th day of February, 2015

JUDGMENT

The petitioner was appointed as UPSA in an aided school during the academic year 2008-2009. The vacancy arose on account of the promotion of one Smt.Sunu George as HSA. It is stated in Ext.P5 Government Order dated 26.2.2011 that if the duration of the vacancy is less than eight months, the appointment can be made on daily wages and any vacancy having duration of more than eight months, it can be on regular scale of pay. The petitioner submits that though her appointment was in the year 2008, in fact, Ext.P5 order is to give effect to the right of any existing teacher in the school prior to Ext.P5.

2. The approving authority rejected the petitioner's claim for approval on regular scale of pay and granted approval on daily wages from 7.7.2008 to 31.3.2009 and from 1.6.2009 till the vacancy exists in the light of G.O.(P) No.10/10/G.Edn. dated 12.1.2010.

2. According to the learned counsel, this restriction is unsustainable. It is to be noted that Ext.P5 order passed by the Government is in the clarificatory nature. The Government has reviewed the earlier orders and clarified that an appointment in the duration excess to the eight months can be on regular pay of scale. Therefore, it cannot be said that this order is having only a prospective operation.

In the light of Ext.P5, as the same being a clarificatory order, I am of the view that the writ petition is liable to be allowed. Therefore, there shall be a direction to the respondents to approve the appointment of the petitioner as UPSA with effect from 7.7.2008 to 31.3.2009 in the regular scale of pay and grant her all consequential benefits including arrears of salary. Needful shall be done within a period of two months from the date of receipt of a copy of this judgment.

The writ petition is disposed of as above.

Sd/-

A.MUHAMED MUSTAQUE, JUDGE

ln