

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

FRIDAY, THE 22ND DAY OF MAY 2015/1ST JYAISHTA, 1937

WP(C).No. 2891 of 2011 (J)

PETITIONER(S):

P.C.MOHAMED YOONUS,
AGED 37 YEARS, S/O.MOIDUTTY,
HINDI TEACHER, A.U.P.SCHOOL,
ERİYAD, WANDOOD, MALAPPURAM DISTRICT.

BY ADVS.SRI.V.A.MUHAMMED
SRI.K.E.HAMZA.

RESPONDENT(S):

1. THE STATE OF KERALA,
REPRESENTED BY ITS SECRETARY TO GOVERNMENT,
GENERAL EDUCATION DEPARTMENT,
SECRETARIAT, THIRUVANANTHAPURAM, PIN - 695 001.
2. THE DIRECTOR OF PUBLIC INSTRUCTION,
JAGATHY, TRIVANDRUM-14.
3. THE DISTRICT EDUCATIOAL OFFICER,
WANDOOD, MALAPPURAM-679 328.
4. THE ASSISTANT EDUCATIONAL OFFICER,
WANDOOD, MALAPPURAM DISTRICT-679 328.
5. THE MANAGER, A.U.P.SCHOOL,
ERİYAD, WANDOOD, MALAPPURAM DISTRICT-679 328.
6. SRI.K.ABDUL KAREEM,
PEON, A.U.P.SCHOOL, ERIYAD, WANDOOD,
MALAPPURAM DISTRICT-679 328.

R6 BY ADV. SRI.SAJU.S.A
R-5 BY ADV. SRI.K.A.MANZOOD ALI
R4 BY ADV. GOVERNMENT PLEADER
BY GOVERNMENT PLEADER SMT.SUNITHA VINOD.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 22-05-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

rvs.

APPENDIX

PETITIONER(S) ' EXHIBITS :

- EXT. P1: COPY OF THE ORDER OF APPOINTMENT OF THE PETITIONER.
- EXT. P2: COPY OF THE GO(P)NO.275/99/G.EDN. OF THE GOVERNMENT.
- EXT. P3: COPY OF THE ORDER NO.K.DIS.E.3014/2008 OF THE ASSISTANT EDUCATIOAL OFFICER.
- EXT. P4: COPY OF THE ORDER NO.K.DIS.AS/7543/08 OF THE DISTRICT EDUCATIOAL OFFICER.
- EXT. P5: COPY OF THE ORDER NO.G2/60911/09/DPI/K.DIS. OF THE 2ND RESPONDENT.
- EXT. P6: COPY OF THE REVISION PETITION FILED BEFORE THE GOVERNMENT.
- EXT. P7: COPY OF THE ORDER NO.39559/E1/2010/G.EDN. OF THE GOVERNMENT.

RESPONDENT(S) ' EXHIBITS :

- EXT. R5(A) : COPY OF THE APPOINTMENT ORDER DATED 01/12/2011.
- EXT. R5(B) : COPY OF THE AGREEMENT DATED 02/12/2012.
- EXT. R5(C) : COPY OF THE APPROVAL OF APPOINTMENTS OF THE 6TH RESPONDENT DATED 02/02/2012.
- EXT. R5(D) : COPY OF THE APPROVAL OF APPOINTMENTS OF THE PETITIONER DATED 06/02/2012.

/TRUE COPY/

P.A.TO JUDGE

RVS.

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C). No. 2891 of 2011

Dated this the 22nd day of May, 2015

JUDGMENT

The petitioner was appointed as a Hindi Teacher at A.U.P.School, Eriyad in Malappuram District from 12.06.2007 to 11.06.2012 against the leave vacancy of Sri.K.M.Basheer, a Hindi Teacher, who was on leave. By Ext.P1 order dated 11.02.2008, the said appointment was approved by the 4th respondent, AEO. The petitioner was later regularised to a vacancy that arose on 30.04.2008, in terms of Ext.P2 Government Order. He assumes charge with effect from 17.06.2008. The facts in the writ petition would disclose that Sri.K.M.Basheer, in whose leave vacancy the petitioner was initially appointed, rejoined duty on 16.06.2008 after cancelling the unavailed portion of his leave. Consequently, when the appointment of the petitioner to the vacancy that arose on 30.04.2008 came up for approval, by Ext.P3 order, the 4th respondent AEO denied the approval to the appointment of the petitioner with effect from 17.06.2008. In Ext.P3 order, it is clear that the denial of the approval to the appointment of the petitioner with effect from 17.06.2008 was on account of the fact that the leave vacancy in which the petitioner had initially worked was only from 12.06.2007 to 16.06.2008, and therefore, the petitioner did not have one whole academic year service for claiming the benefit

under Rule 51(A) of Chapter XIV (A) KER. Although the petitioner filed an appeal against Ext.P3 order of the AEO, the same was rejected by the DEO by Ext.P4 order. A further appeal before the Director of Public Instruction, was also rejected by Ext.P5 order. A further revision before the State Government also did not meet with any success and the same was rejected by Ext.P7 order. Thereafter, there appears to have been an understanding arrived at between the 5th respondent Manager and the 6th respondent, who was a Peon in the School, and a rival claimant to the vacancy of Hindi Teacher that arose in the School with effect from 30.04.2008. As already noted above, it was the petitioner, who was appointed to the said vacancy by the Manager. The terms of agreement entered into between the 5th respondent Manager and the 6th respondent rival claimant to the petitioner is borne out in Ext.R5(b) agreement, which is produced along with the counter affidavit filed by the 5th respondent. In the said agreement, it is agreed between the 5th and 6th respondents that, the 6th respondent is acceptable to treat his appointment as Hindi Teacher in the School from 01.12.2011 onwards. The 6th respondent has also agreed that he would not stake any claim to the vacancy in the post of Hindi Teacher in the School, that existed between

17.06.2008 and 30.11.2011, the period during which the petitioner had discharged duties as a Hindi Teacher, pursuant to his appointment to the said post by the 5th respondent Manager.

2. The learned counsel for the petitioner would submit that the 6th respondent was appointed as Hindi Teacher with effect from 01.12.2011 and he has been appointed as Peon in the School with effect from 01.12.2011 and that he is not aggrieved by the said factual position. The limited prayer of the petitioner at this stage is only for a direction to the respondents to approve the appointment of the petitioner for the period from 17.06.2008 to 30.11.2011, when he had discharged his duties as a Hindi Teacher in the School after having been appointed by the 5th respondent Manager, to the said post.

3. I have heard the learned counsel for the petitioner, Adv.Manzoor Ali, the learned counsel appearing for the 5th respondent Manager, and also the learned Government Pleader appearing for the respondents.

4. On a consideration of the facts and circumstances of

the case and the submissions made across the bar and in particular taking note of the agreement entered into between the 5th respondent Manager and the 6th respondent, the terms of which have been spelt out in Ext.R5(b), agreement produced by the 5th respondent along with the counter affidavit, I find that the dispute between the petitioner and the 6th respondent has been effectively settled through the intervention of the 5th respondent Manager and the terms of the settlement have been reduced into writing in Ext.R5(b) agreement. The necessary fallout of the said settlement is that the petitioner has to be seen as having been appointed as a Peon in the School with effect from 01.12.2011 and the 6th respondent as the Hindi Teacher in the same School with effect from 01.12.2011. The only issue, that is left for resolution is the payment to be made to the petitioner for the period between 17.06.2008 and 30.11.2011 when he discharged his duties as Hindi Teacher, pursuant to his appointment by the 5th respondent Manager, to the vacancy that arose with effect from 30.04.2008. It is not in dispute that the petitioner was duly qualified for appointment as Hindi Teacher to the vacancy in question. The denial of approval to the appointment of the petitioner was only on the ground that there was a rival claimant and further, that the

petitioner's claim under Rule 51(A) could not be accepted, since, he did not have a whole academic year service for claiming the said benefit. Counsel for the petitioner is however, correct in his submission, that even in the absence of a R.51(A) claim, the right of the petitioner to be appointed to the vacancy, that arose on 30.04.2008 could be independently considered on account of his being duly qualified for the post. In that consideration, the 5th respondent Manager was strictly obliged to consider the case of the rival claimant namely the 6th respondent. Inasmuch as the 6th respondent has indicated in Ext.R5(b) agreement entered that he has no claim with regard to the post of Hindi Teacher for the period between 17.06.2008 and 30.11.2011, which is the period during which the petitioner discharged his duty as a Hindi Teacher in the School in question, I am of the view that there will be no loss caused to the Government, if approval is accorded to the appointment of the petitioner as Hindi Teacher in the School during the period from 17.06.2008 to 30.11.2011.

Accordingly, I dispose the writ petition with a direction to the 4th respondent to approve the appointment of the petitioner as Hindi Teacher in the School for the period from 17.06.2008 to

30.11.2011 in the vacancy that arose from 30.04.2008, and disburse to the petitioner the salary and other emoluments, that are due to him for the said period. I make it clear that for the said period, the 6th respondent shall have no claim, vis-a-vis, the official respondents for salary and other emoluments in the post of Hindi Teacher in the said School. The 3rd respondent is directed to do the needful in the matter, within a period of two months from the date of receipt of a copy of this judgment and to ensure that all monetary benefits due to the petitioner, consequent to the directions in this judgment, are paid to him within an outer limit of three months from the date of receipt of a copy of this judgment.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE