

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

WEDNESDAY, THE 17TH DAY OF JUNE 2015/27TH JYAISHTA, 1937

WP(C).No. 4095 of 2011 (J)

PETITIONER(S):

- 1. SREEREJ NATH G.
S/O.P.GOPINATHAN, AGED 28 YEARS,
HIGH SCHOOL ASSISTANT (MATHS)
THACHINGANADAM HIGH SCHOOL, P.O.THACHINGANADAM
(VIA) PATTIKKAD-679 325, MALAPPURAM DISTRICT.**
- 2. AMEEN ALTHAF K.,
HIGH SCHOOL ASSISTANT (MATHS), THACHINGANADAM
HIGH SCHOOL, P.O.THACHINGANADAM
(VIA) PATTIKKAD-679 325, MALAPPURAM DISTRICT.**
- 3. RAJASREE S.VARRIER,
HIGH SCHOOL ASSISTANT (MATHS), THACHINGANADAM
HIGH SCHOOL, P.O.THACHINGANADAM
(VIA) PATTIKKAD-679 325, 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 ANNEX
THIRUVANANTHAPURAM-695 001.**
- 2. THE DIRECTOR OF PUBLIC INSTRUCTION,
JAGATHY, THIRUVANANTHAPURAM-14.**
- 3. THE DEPUTY DIRECTOR OF EDUCATION,
DOWN HILL, POST MALAPPURAM-676 519.**
- 4. THE DISTRICT EDUCATIONAL OFFICER,
WANDOOR, MALAPPURAM DISTRICT-679 328.**
- 5. THE MANAGER,
THACHINGANADAM HIGH SCHOOL P.O., THACHINGANADAM
(VIA) PATTIKKAD-679 325, MALAPPURAM DISTRICT.**

W.P.(C).NO.4095/2011

**6. SMT. HEMA V.NAIR, D/O. LATE V.VNAIR,
CHERUKARA HOUSE, P.O.KALLOOPARA, THIRUVALLA-689 583.**

**R,R6 BY ADV. SRI.R.SANTHOSH BABU
R1 TO R4, BY GOVERNMENT PLEADER SRI.RINNY STEPHEN
CHAMAPARAMPIL
RR-R5 BY ADV. SRI.GEORGE POONTHOTTAM**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
17-06-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: COPY OF THE LETTER OF THE 6TH RESPONDENT.

EXT.P2: COPY OF THE LETTER OF THE 6TH RESPONDENT ALONG WITH (3RD PAGE OF THE SSLC BOOK DT. NIL, B.SC CERTIFICATE DT. 9.12.1996, B.ED CERTIFICATE).

EXT.P3: COPY OF THE DECISION REPORTED IN 2003 (1) KLT SN 33 (C.NO.45)

EXT.P4: COPY OF THE DECISION REPORTED IN 2007 (3) KLJ 61.

EXT.P5: COPY OF THE LETTER NO.25282/L1/07/G.EDN. OF THE GOVERNMENT.

EXT.P6: COPY OF THE LETTER NO.60070/L3/07/G.EDN. OF THE GOVERNMENT.

EXT.P7: COPY OF THE LETTER NO.2806/R3/2001/P&ARD OF THE GOVT.

EXT.P8: COPY OF THE LETTER NO.7973/B3/2008/P&ARD OF THE GOVERNMENT.

EXT.P9: COPY OF THE G.O.(RT) NO.5035/2008/G.EDN. OF THE GOVERNMENT.

EXT.P10: COPY OF THE ORDER OF THE HON'BLE SUPREME COURT.

EXT.P11: COPY OF THE JUDGMENT OF THIS HON'BLE COURT IN W.A.NO.2178/2005.

EXT.P12: COPY OF THE ORDER NO.K.DIS./A4/5683/07 OF THE DEO.

EXT.P13: COPY OF THE HEARING NOTE OF THE PETITIONERS BEFORE THE GOVT.

EXT.P13(A): COPY OF THE ADDL. HEARING NOTE OF THE PETITIONERS BEFORE THE GOVERNMENT.

EXT.P14: COPY OF THE G.O.(RT) NO.430/2011/G.EDN. OF THE GOVT.

EXT.P15: COPY OF THE PROCEEDINGS ORDER NO.K.DIS.A4/4405/07 OF THE DEO (1ST PETITIONER)

EXT.P16: COPY OF THE PROCEEDINGS ORDER NO.K.DIS.A4/4408/07 OF THE DEO (2ND PETITIONER)

EXT.P17: COPY OF THE PROCEEDINGS ORDER NO.K.DIS.A4/4401/07 OF THE DEO (3RD PETITIONER)

EXT.P18: COPY OF THE INTERIM ORDER IN W.P.(C).NO.18657/2010-F OF THIS HON'BLE COURT.

W.P.(C).NO.4095/2011

EXT.P19: COPY OF THE BOND EXECUTED BY THE MANAGER.

EXT.P20: COPY OF THE INTERIM ORDER IN W.P.(C).NO.16435/2009-Y OF THIS HON'BLE COURT.

EXT.P21: COPY OF THE ORDER NO.D.DIS/R.G. (3)/3487/11/DPI DATED 12.7.2011.

EXT.P22: COPY OF THE APPOINTMENT ORDER OF THE SREERAJ NATH G. DATED 16.7.2007.

EXT.P22(A): COPY OF THE APPOINTMENT ORDER OF THE NISHA KUMAR C DATED 19.7.2007.

EXT.P22(B): COPY OF THE APPOINTMENT ORDER OF K.AMEEN ALTHAF DATED 17.7.2007.

EXT.P22(C): COPY OF THE ORDER NO.K.DIS/A3/6045/2011 DATED 18.05.2012 OF THE DISTRICT EDUCATIONAL OFFICER.

EXT.P23: COPY OF THE RELEVANT PAGES OF THE SERVICE BOOK OF SMT.SINDU C

EXT.P24: COPY OF THE INFORMATION UNDER RIGHT TO INFORMATION ACT DATED 27.9.2012.

EXT.P24(A): COPY OF THE INFORMATION UNDER RIGHT TO INFORMATION ACT DATED 17.12.2012.

EXT.P25: COPY OF THE STAFF FIXATION ORDER FOR THE YEAR 2014-15.

RESPONDENTS EXHIBITS:

EXT.R5(A): COPY OF THE COMMUNICATION NO.44958/A2/2010/G.EDN. DATED 15.9.10.

EXT.R6(A): COPY OF POSTAL ACKNOWLEDGMENT DATED 12.11.98.

EXT.R6(B): COPY OF PROVISIONAL CERTIFICATE DATED 17.9.98 OF M.SC (MATHS)

//TRUE COPY//

P.S. TO JUDGE

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C).NO.4095 OF 2011 (J)

Dated this the 17th day of June, 2015

J U D G M E N T

The petitioners, who were appointed as High School Assistants [HSA] (Maths) with effect from 16.7.2007 and 17.7.2007 respectively, are aggrieved by the denial of approval to their appointments by the educational authorities. Exts.P15, P16 and P17, all dated 3.3.2008, are the orders of the District Educational Officer rejecting the approval to the appointment of the petitioners. In the said orders, the approval has been rejected inter alia on the ground that there were no additional post of HSA (Maths) sanctioned to the School in the academic year 2007-08, and further that one protected post of HSA (Maths) was sanctioned to accommodate Sri.P.J.Sebastian, and hence, the excess hand had to be accommodated in the arising vacancy. It is pointed out by counsel for the petitioners that the appointment of petitioners 1 and 2 has since been approved with effect from 30.7.2007 and 2.2.2008 respectively. As regards the 3rd petitioner, by Ext.P22(c), the request for approval was rejected inter alia on the ground that that additional post sanctioned during the academic year 2007-08 was set apart to accommodate a Rule 51B claimant and, therefore, the said petitioner could not be accommodated to the said

post. The issue raised in the writ petition is essentially with regard to the rights, if any, of the 6th respondent, to claim an appointment to the post of HSA (Maths) in terms of Rule 51B of Chapter XIVA of the Kerala Education Rules [hereinafter referred to as the 'KER'].

2. The facts in the writ petition would disclose that the 4th respondent DEO had considered a claim made by the 6th respondent, for appointment in terms of Rule 51B of Chapter XIVA KER, and had rejected the claim of the 6th respondent on the ground that the application preferred by her seeking compassionate appointment in terms of the said Rule was belated. Ext.P12 dated 11.8.2009 is the order of the 4th respondent. It would appear that the 6th respondent preferred a revision against Ext.P12 order before the 1st respondent and thereafter approached this Court through W.P.(C).No.1629/2010 seeking a direction to the 1st respondent to consider and pass orders on the revision preferred by her. Pursuant to the judgment dated 19.5.2010 in the said writ petition, Ext.P14 order came to be passed by the 1st respondent. In Ext.P14 order, the 1st respondent takes note of the fact that the 6th respondent, who was a minor at the time of the death of her father Sri.V.Viswanathan Nair, who was an HSA (Maths) in the School, had submitted an application dated 9.11.1998 to the

Manager of the School seeking appointment under the compassionate appointment scheme. It was noted that the application dated 9.11.1998 had been preferred almost six years after the 6th respondent had become a major (on 21.12.1992) and that it was for the said reasons that the 4th respondent DEO had rejected the application of the 6th respondent for consideration under the dying in harness scheme. Thereafter, the 1st respondent took note of the fact that the operation of GO(P) No.55/90/G.Edn. Dated 30.3.1990, that introduced Rule 51B in Chapter XIVA of the KER, had been stayed until 15.1.1997, when the stay was eventually lifted by the Government through G.O.(MS)No.15/97/G.Edn. dated 16.1.1997. The 1st respondent, therefore, took the view that, on account of the stay operating in respect of Rule 51B, the 6th respondent could not have expected a consideration of her application up to 16.1.1997, and therefore, the time limit stipulated in G.O.(P) No.12/99/P & ARD dated 24.5.1999, of three years subsequent to attaining majority, for preferring an application under the compassionate appointment scheme, could operate only with effect from 16.1.1997. Accordingly, the 1st respondent took the view that the application of the 6th respondent, having been made on 9.11.1998, the 6th respondent could be considered for appointment under the compassionate appointment

scheme. It is Ext.P14 order dated 31.1.2011 that is impugned in the present writ petition by the petitioners, who found that their appointments were not approved by the respondent educational authorities taking note of the claim of the 6th respondent. The challenge against Ext.P14 in the writ petition is premised on the contention that the application dated 9.11.1998 of the 6th respondent was severely belated, since it was preferred more than six years after the 6th respondent attained the age of majority. It is the contention of the petitioners that, inasmuch as the Government orders that govern the scheme of compassionate appointment mandate that the applications had to be preferred within three years from the date of attaining majority, the 1st respondent could not have extended the period contemplated under the Government orders for preferring the applications.

3. A counter affidavit has been filed on behalf of the 4th respondent, wherein, the decision in Ext.P14 order is sought to be justified on the basis of the reasoning contained therein. In the counter affidavit filed on behalf of the 6th respondent, the 6th respondent would state that, in view of the stay that operated with regard to Rule 51B of Chapter XIVA of KER, she was effectively

prevented from making an application for compassionate appointment till 16.1.1997, and, therefore, the time limit for making an application could begin to run only from 16.1.1997 when the stay was subsequently lifted by the Government. In the counter affidavit filed by the 5th respondent Manager, it is pointed out that the findings of the 4th respondent in Ext.P12 order, that the 6th respondent had filed an application only on 15.10.2007, was wrongly upset by the 1st respondent in the revision proceedings before him. The 5th respondent Manager would state that there was no application dated 9.11.1998 that was submitted by the 6th respondent before the then Manager of the School. It is also pointed out that, during the relevant time, the deponent in the counter affidavit filed on behalf of the 5th respondent was not the Manager of the School and that the management of the School was subsequently transferred to him pursuant to the resolution of a management dispute that was pending in respect of the School.

4. I have heard Sri.V.A.Mohammed, the learned counsel appearing for the petitioners, Sri.Rinny Stephen Chamaparampil, the learned Government Pleader appearing for respondents 1 to 4, Sri.George Poonthottam appearing for the 5th respondent Manager as

also Sri.Santhosh Babu, the learned counsel appearing for the 6th respondent.

5. On a consideration of the facts and circumstances of the case as also the submissions made across the bar, I find that the provisions of Rules 51B of Chapter XIVA KER were introduced into the KER by GO(P)No.55/90/G.Edn. dated 30.3.1990. Almost immediately thereafter, the Government itself had stayed the operation of the said Government order and the stay was lifted only through G.O.(MS) No.15/97/G.Edn. dated 16.1.1997. The 6th respondent, who purported to be a claimant under Rule 51B of Chapter XIVA KER is stated to have preferred an application on 9.11.1998. The legal basis on which her application dated 9.11.1998 for compassionate appointment in terms of Rule 51B of Chapter XIVA KER was considered, is not discernible either from Ext.P12 order of the 4th respondent or Ext.P14 order of the 1st respondent. In my view, a consideration of the application preferred by the 6th respondent ought to have been in the backdrop of the law that prevailed on the date of consideration of the application. This, in turn, would depend upon the date of the application actually preferred by the 6th respondent, which itself is a matter of dispute between the petitioners, the Manager and

the 6th respondent. This is, therefore, a matter that will have to be verified by the 1st respondent to whom I propose to relegate the matter. I am of the view that the entitlement of the 6th respondent, to a consideration of her application in terms of Rule 51B, would depend on the following factors:

(i) The date on which she preferred her application before the Manager of the School.

(ii) The provisions of Rule 51B of Chapter XIVA KER, read with the Government orders that were in force as on the date of consideration of her application, and what the said provisions specified as the time limit within which an application for consideration under the compassionate appointment scheme could be entertained.

(iii) Whether the 6th respondent had the necessary qualification for the post to which she was applied on the date of consideration of her application.

6. On a perusal of Ext.P14 order, I find that the 1st respondent was swayed by the time limits prescribed in the Government Order GO(P)No.12/99/P&ARD dated 24.5.1999 which introduces a time limit for preferring applications. There is no clarity as to whether the earlier Government orders that were in force as on 9.11.1998, or on

any subsequent date on which the application of the 6th respondent for compassionate appointment was received by the Manager of the School, contemplated any time limit within which applications had to be preferred, for consideration under the compassionate appointment scheme. In my view, this is an aspect of crucial importance since the existence of any time limit as prescribed by Rule 51B read with the Government order that held the field during the relevant time, would determine the eligibility of the 6th respondent to a claim for compassionate appointment. In other words, if there was no time limit prescribed under any of the Government orders that held the field during the relevant time, then the 1st respondent would have to apply the statutory provision, namely, Rule 51B of Chapter XIVA of KER, by deeming that there was no time limit prescribed under the statutory provisions for entertaining an application for compassionate appointment. If, on the other hand, the Government orders that held the field during the relevant time contemplated that the applications should be filed within a particular period, then the application of the petitioner would have to be considered in the light of the said provisions by interpreting the period specified in the Government order as forming an integral part of Rule 51B of Chapter XIVA KER. I feel that, in view of the substantial time that has elapsed since the

passing of Ext.P14 order by the 1st respondent, and the period spent in pursuing this writ petition, the 1st respondent should be directed to pass orders in the matter after hearing the petitioners, the 5th respondent Manager and the 6th respondent, within a period of one month from the date of receipt of a copy of this judgment. The 1st respondent shall determine the entitlement of the 6th respondent for the benefit of compassionate appointment in terms of Rule 51B of Chapter XIVA KER, in the light of the observations made above and with reference to the factors indicated in this judgment, after ascertaining the date of such application and the receipt of such application. To enable the 1st respondent to do so, I quash Ext.P14 order of the 1st respondent. I also make it clear that nothing in this judgment shall stand in the way of the 3rd petitioner being considered to any vacancy in the post of HSA (Maths) that may be available in the School during the academic year 2014-15 or subsequent years.

The writ petition is disposed as above.

A.K.JAYASANKARAN NAMBIAR
JUDGE

prp