

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

TUESDAY, THE 22ND DAY OF JULY 2015/31ST ASHADHA, 1937

WP(C).NO. 2071 OF 2014 (H)

PETITIONER(S) :

T.SHAHIDA
UPPER PRIMARY SCHOOL ASSISTANT
PKHMO UPPER PRIMARY SCHOOL, EDATHANATTUKARA
PALAKKAD DISTRICT.

BY ADVS.SRI.V.A.MUHAMMED
SRI.M.SAJJAD

RESPONDENT(S) :

1. THE STATE OF KERALA
REPRESENTED BY ITS SECRETARY TO GOVERNMENT
GENERAL EDUCATION DEPARTMENT, GOVERNMENT SECRETARIAT
THIRUVANANTHAPURAM-695 001.

2. THE DIRECTOR OF PUBLIC INSTRUCTIONS
JAGATHY, THIRUVANANTHAPURAM-695 014.

3. THE ASSISTANT EDUCATIONAL OFFICER
MANNARKAD, PALAKKAD DISTRICT-678 582.

4. THE MANAGER
PKHMO UPPER PRIMARY SCHOOL, EDATHANATTUKARA
(SECRETARY AND CORRESPONDENT
EDATHANATTUKARA ORPHANAGE, MANNARKKAD
PALAKKAD DISTRICT-678 582).

5. THE HEADMASTER
PKHMO UPPER PRIMARY SCHOOL, EDATHANATTUKARA
PALAKKAD DISTRICT-678 582.

R1-R3 BY ADV. GOVERNMENT PLEADER SRI.T.R RAJESH

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
22-07-2014, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).NO. 2071 OF 2014 (H)

APPENDIX

PETITIONER(S) ' EXHIBITS

EXHIBIT P1.TRUE COPY OF THE APPOINTMENT ORDER DATED 7/1/2008 ALONG WITH APPROVAL THEREOF.

EXHIBIT P2.TRUE COPY OF THE ORDER OF APPOINTMENT DATED 4/6/2012 AND ITS APPROVAL.

EXHIBIT P3.TRUE COPY OF THE PROCEEDINGS ORDER OF THE MANAGER DATED 1/8/2013.

EXHIBIT P4.TRUE COPY OF THE LETTER NO.5638/B3/2013/G.EDN DATED 8/11/2013.

EXHIBIT P5.TRUE COPY OF THE ORDER NO.C/13/2013 OF THE ASSISTANT EDUCATIONAL OFFICER DATED 26/12/2013.

EXT.P6: TRUE COPY OF THE JUDGMENT IN W.P.(C).NO.23333 OF 2013 DATED 26.06.2013

EXT.P7:TRUE COPY OF THE G.O.(P)NO.275/99/G.EDN.DATED 9.11.1999 OF THE GOVERNMENT

RESPONDENT(S) ' EXHIBITS:

EXT.R3(A):TRUE COPY OF THE ORDER DATED 27.12.2013

EXT.R3(B):TRUE COPY OF THE ORDER DATED 09.07.2014

EXT.R3(C):TRUE COPY OF THE RORDER ISSUED BY THE 3RD RESPONDENT ASSISTANT EDUCATION OFFICER

//TRUE COPY//

P.A TO JUDGE

A.K.JAYASANKARAN NAMBIAR, J.

.....
W.P.(C).No.2071 of 2014

.....
Dated this the 22nd day of July, 2015

J U D G M E N T

The petitioner was appointed in the School under the management of the 4th respondent as UPSA, in a leave vacancy between 07.01.2008 and 23.06.2012. the said appointment was approved by the educational authority as evidenced by Ext.P1 order. Thereafter, the petitioner was appointed in AMUPS Edathanattukara, and another School under the management of the 4th respondent in a leave vacancy between 04.06.2012 and 18.12.2016. The said appointment was approved in the cadre of UPSA leave substitute for the period from 13.07.2012 to 18.12.2016. This was on account of the fact that the petitioner had availed maternity leave and the educational authorities were of the view that a leave substitute was not entitled to maternity leave. Still further, the petitioner was shifted to a regular vacancy with effect from 01.08.2013 by Ext.P3 order. There is no dispute in the writ petition with regard to the service rendered in the regular vacancy. By Ext.P4 order dated 08.11.2013, the Government revoked the approval granted in Ext.P2 order, on the ground that the leave vacancies could be filled only by

protected teachers, and therefore, the appointment of the petitioner for the period that was subsequently approved was also not in order. It is relevant to note that the petitioner was not heard prior to the passing of the said order. Based on Ext.P4, the 3rd respondent issued Ext.P5 consequential order dated 26.12.2013, cancelling Ext.P2 order and contemplating recovery from the petitioner for the period for which he had worked without approval. In the writ petition, the petitioner challenges Exts.P4 and P5 orders.

2. A counter affidavit has been filed by the 3rd respondent wherein it is stated that, although the petitioner was appointed with effect from 04.06.2012 to 18.12.2016, the petitioner joined service only on 13.07.2012 after availing the maternity leave, and therefore, there was a break in service between 04.06.2012 and 12.07.2012. It is also contended that, the leave vacancies beyond 01.10.2011 could be filled up only by protected teachers, and insofar as the petitioner was not a protected teacher, the appointment to the leave vacancy itself was irregular. It is pointed out that the petitioner has since been accommodated in a regular post of UPSA with effect from 04.06.2012, but on account of the break in service, referred to above, the petitioner was entitled for regular approval only with effect from

13.07.2012. A reply affidavit has been filed by the petitioner wherein he produces Ext.P6 judgment of this Court wherein at paragraph 15 it is found that leave substitutes are also entitled to maternity leave.

3. I have heard the learned counsel for the petitioner and the learned Government Pleader for the official respondents.

4. On a consideration of the facts and circumstances of the case and the submissions made across the bar, I find that, the service of the petitioner as UPSA with effect from 04.06.2012 has been approved save for the period between 04.06.2012 and 12.07.2012 when the petitioner was not in service on account of maternity leave. Ext.P6 judgment clearly indicates that leave substitutes are also entitled to maternity leave and hence, in the light of Ext.P6 judgment, the basis for the confinement of the approval with effect from 13.07.2012 has been taken away. Accordingly, Exts.P4 and P5 orders which deny approval to the appointment of the petitioner for the period from 04.06.2012 to 12.07.2012 cannot be legally sustained and are accordingly quashed. The respondents are directed to grant approval to the appointment of the petitioner on the basis of this judgment, and disburse the consequential monetary benefits flowing

from the said approval to the petitioner, within a period of three months from the date of receipt of a copy of this judgment.

The writ petition is allowed as above.

A.K.JAYASANKARAN NAMBIAR
JUDGE

mns