

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.SURENDRA MOHAN

FRIDAY, THE 20TH DAY OF MARCH 2015/29TH PHALGUNA, 1936

WP(C).No. 9676 of 2007 (B)

PETITIONER :

C.VIJAYAKUMAR, SANSKRIT TEACHER,
A.U.P.SCHOOL, CHARUKARA, MALAPPURAM DISTRICT.

BY ADVS.SRI.M.V.BOSE
SRI.VINOD MADHAVAN
SMT.NISHA BOSE

RESPONDENTS :

1. THE STATE OF KERALA, REPRESENTED
BY THE SECRETARY TO GOVERNMENT, GENERAL
EDUCATION DEPARTMENT, GOVERNMENT SECRETARIAT
THIRUVANANTHAPURAM.
2. THE DEPUTY DIRECTOR OF EDUCATION,
MALAPPURAM.
3. THE ASSISTANT EDUCATIONAL OFFICER,
PERINTHALMANNA.
4. THE MANAGER,
A.U.P.SCHOOL, CHARUKARA, MALAPPURAM DISTRICT.

R1,2&3 BY SR. GOVERNMENT PLEADER SRI.E.M.ABDUL KHADER

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 20-03-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS :

EXT.P1 : COPY OF THE APPOINTMENT ORDER DATED 11.6.1990 IN FAVOUR OF THE PETITIONER

EXT.P2 : COPY OF APPOINTMENT ORDER DATED 15.7.1974 IN FAVOUR OF THE PETITIONER

EXT.P3 : COPY OF G.O.(RT.)3460/85/G.EDN. DATED 17.9.1985

EXT.P4 : COPY OF ORDER DATED 16.1.1988 OF THE DY.DIRECTOR OF EDUCATION, MALAPPURAM

EXT.P5 : COPY OF ORDER DATED 16.1.1988 OF THE DIRECTOR OF EDUCATION, MALAPPURAM

EXT.P6 : COPY OF ORDER DATED 27.6.1991 OF THE JOINT DIRECTOR OF PUBLIC INSTRUCTION

EXT.P7 : COPY OF REPRESENTATION FROM THE PETITIONER BEFORE THE GOVERNMENT DATED 5.9.1992

EXT.P8 : COPY OF CERTIFICATE DATED 15.6.1995 ISSUED BY THE MANAGER, AUP SCHOOL, CHERUKARA

EXT.P9 : COPY OF REPRESENTATION FROM THE PETITIONER BEFORE 1ST RESPONDENT DT.27.10.2003

EXT.P10 : COPY OF GOVERNMENT LETTER DATED 30.6.2006

EXT.P11 : COPY OF THE COMMUNICATION DATED 2.5.2006 FROM THE D.P.I.THIRUVANANTHAPURAM

EXT.P12 : COPY OF REPRESENTATION FROM THE PETITIONER BEFORE THE PETITIONER BEFORE THE HON'BLE MINISTER FOR EDUCATION, KERALA STATE DATED 27/7/2006

EXT.P13 : COPY OF THE GOVERNMENT LETTER DATED 26.12.2006 TO PETITIONER

EXT.P14 : COPY OF REPRESENTATION FROM THE PETITIONER DATED 15.01.2007 BEFORE THE HON'BLE MINISTER FOR EDUCATION, KERALA STATE

RESPONDENTS' EXHIBITS : NIL

/TRUE COPY/

P A TO JUDGE

K.SURENDRA MOHAN, J.

W.P.(C) No.9676 of 2007

Dated this the 20th day of March, 2015

J U D G M E N T

The petitioner was appointed as a Part Time Sanskrit Teacher in the Aided U.P.School, Cherukara under the 4th respondent on 11.06.1990 as per Ext.P1. According to the petitioner, she was appointed in the vacancy of Smt.A.K.Sreedevi Antharjanam who had expired. Ext.P2 is her appointment order. Ext.P2 shows that, she was appointed as a Full Time Teacher. Therefore, it is contended that, the petitioner ought to have been appointed as a Full Time Teacher. The 4th respondent Manager had challenged the order of the 3rd respondent. However, the 2nd respondent rejected the appeal. Therefore, the Manager preferred a revision to the Director of Public Instruction. By Ext.P6 dated 27.06.1991, the revision was also rejected. Thereafter, the petitioner submitted representations to the Government. By Ext.P13 dated 26.12.2006, his request was rejected. The petitioner has filed this writ petition challenging Ext.P13.

2. According to Adv.Smt.Nisha Bose who appears for the petitioner, the impugned order Ext.P13 is unsustainable and liable to be set aside. In first place, it is contended that, the petitioner's predecessor having been appointed to a Full Time post, the petitioner ought to have been appointed as a Full Time Teacher. However, he was appointed as a Part Time Teacher, without any justification.

According to the learned counsel, even in the absence of 15 periods that are necessary to treat a post as Full Time, the deficiency could be made up by diversion from the Group C subjects. Such a procedure is permissible under the relevant Government orders, it is contended. In the petitioner's school, there were no teachers in Music and Drawing, though there were sufficient periods. Therefore, the deficient periods could have been diverted from the said subjects. Reliance is also placed on Exts.P4 and P5 proceedings to point out that, the 1st respondent had extended the said benefit to others under similar circumstances. In view of the above, there is no justification for denying the said benefit to the petitioner. The learned counsel, therefore, seeks the issue of appropriate directions in the matter.

3. The learned Government Pleader opposes the contentions of the counsel for the petitioner. A counter affidavit has been filed by the 2nd respondent. According to the counter affidavit, late Smt.Sreedevi Antharjanam was retained as a Full Time Teacher for the reason that, she was enjoying the benefits of protection. She had sufficient service to her credit entitling her to the said benefit. However, upon her death, the post was converted to a part time post. It was to the said part time post, that the petitioner was appointed in the first place. With respect to Exts.P4 and P5 what is stated is that, there were two specialist teachers in the school in Craft and Physical Education. Therefore, no diversion of periods could be effected from the said

subjects.

4. Heard. It is true that, the petitioner was appointed as a Part Time Sanskrit Teacher by Ext.P1, though the person in whose place he was appointed was a Full Time Teacher. According to the 2nd respondent, the previous teacher had become protected and was retained in the school only by reason of her service. She had become a protected teacher, for want of sufficient periods in the subject. Therefore, after her death, the post was converted into a Part Time post. However, the contention of the counsel for the petitioner is that, the petitioner's post could have been continued as a Full Time post by extending the benefit of Group C diversion. It is pointed out that, there were no teachers in the Group C subjects of Music and Drawing, though sufficient periods were available. In the absence of teachers in the said subjects, sufficient periods from the said subjects could have been diverted. Admittedly, there were 12 periods available for Sanskrit. It is also pointed out that similar benefits have been extended to others, in Exts.P4 and P5. The said contention of the counsel for the petitioner is justified. In the absence of any teacher for the subjects of Music and Drawing, if there were sufficient periods available, Group C diversion could have been resorted to, to treat the post of the petitioner as Full Time. However, the above aspect has not been adverted to or considered by the authorities. Therefore, Exts.P6 and P13 cannot be sustained. Accordingly, Exts.P6 and P13 are set

aside. The 3rd respondent is directed to issue necessary orders treating the petitioner's post as Full Time post, provided, sufficient number of periods were available in Music and Drawing for being diverted, with no teacher working in the said subjects at the relevant time. Orders as indicated above shall be issued, as expeditiously as possible and at any rate within a period of one month of the date of receipt of a copy of this judgment.

Sd/-
K.SURENDRA MOHAN, JUDGE.

AV