

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.SURENDRA MOHAN

WEDNESDAY, THE 25TH DAY OF FEBRUARY 2015/6TH PHALGUNA, 1936

WP(C).No. 6401 of 2008 (K)

PETITIONER :

C.RAMACHANDRAN, AGED 59,
S/O.NARAYANAN EZHUTHACHAN, RESIDING AT: CHEMATH HOUSE
POOVATHIKKAL POST, AREACODE
MALAPPURAM DISTRICT-673 639.

BY ADV. SMT.LATHA PRABHAKARAN

RESPONDENTS :

1. STATE OF KERALA REPRESENTED BY THE
SECRETARY TO GOVERNMENT, GENERAL EDUCATION, DEPARTMENT
SECRETARIAT, THIRUVANANTHAPURAM.
2. THE DIRECTOR OF PUBLIC INSTRUCTION,
THIRUVANANTHAPURAM.
3. THE DEPUTY DIRECTOR OF EDUCATION,
MALAPPURAM.
4. THE ASSISTANT EDUCATIONAL OFFICER,
ARECODE.

R BY GOVERNMENT PLEADER SRI.K.K.SAIDALAVI

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 25-02-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS :

EXT.P1 : COPY OF THE REPRESENTATION DATED 4-10-2006 SUBMITTED BY PETITIONER TO 2ND RESPONDENT

EXT.P2 : COPY OF ORDER DATED 6.3.2007 ISSUED BY THE 2ND RESPONDENT

EXT.P3 : COPY OF PETITION SUBMITTED BY PETITIONER BEFORE THE 1ST RESPONDENT DATED 16.3.2007

EXT.P4 : COPY OF ARGUMENT NOTES SUBMITTED BY PETITIONER BEFORE THE 1ST RESPONDENT

EXT.P5 : COPY OF ORDER DATED 20.11.2007 ISSUED BY THE 1ST RESPONDENT

EXT.P6 : COPY OF REVIEW PETITION SUBMITTED BY PETITIONER BEFORE THE 1ST RESPONDENT DATED 24.12.2007

EXT.P7 : COPY OF THE ORDER NO.R3/16027/06 DPI DATED 1.6.2006

EXT.P8 : COPY OF THE ORDER 19675/B1/06/G.EDN DATED 12.5.2006

RESPONDENTS' EXHIBITS : NIL

/TRUE COPY/

P.A TO JUDGE

AV

K.SURENDRA MOHAN, J.

W.P.(C) No.6401 of 2008

Dated this the 25th day of February, 2015

J U D G M E N T

The petitioner was appointed as a Lower Primary School Assistant ('LPSA' for short) in 1970. On 01.07.1985, he was promoted as the Headmaster of the school. He was working in the ALP School, Urangattiri of Arecode Sub District of Wandoor Educational District. His appointment as Headmaster was approved by the 4th respondent and his pay was also fixed. Later on, he was reverted to the post of teacher-in-charge with effect from 08.05.1987. Aggrieved by the reversion, the petitioner preferred Ext.P1 to the 2nd respondent challenging the same. However, by Ext.P2 proceedings dated 06.03.2007, his challenge was rejected. The petitioner thereafter preferred Ext.P3 appeal to the Government. He also submitted Ext.P4 argument notes. However, by Ext.P5 order dated 20.11.2007, the petitioner's appeal was rejected. Though the petitioner submitted Ext.P6 review petition, the same was not considered for the reason that it was not maintainable. In the meanwhile, the petitioner was again promoted as Headmaster with effect from 08.01.1990. The petitioner has therefore filed this writ petition claiming regularisation of the period from 08.05.1987 to 08.01.1990 during which period he was working as the teacher-in-charge at the school discharging duties of the Headmaster.

2. According to Adv.Sri.K.M.Jamaludheen, who appears for the petitioner, there were no other qualified hands available at the school of the petitioner, during the relevant period. The petitioner was the senior most teacher. It was in the said circumstances that, the petitioner had been appointed as the Headmaster. According to the learned counsel, the relevant Government Order only stipulates appointment of a test qualified person as Headmaster, where such a person was available. Since no such qualified person was available, the appointment of the petitioner as Headmaster was fully justified. The counsel also places reliance on Exts.P7 and P8 proceedings of the Government to point out that, in the case of other similarly situated persons the Government had granted approval of the entire period, setting aside the reversion that had taken place. It is contended that the petitioner is also entitled to the same benefit.

3. The claim of the petitioner is opposed by the learned Government Pleader who appears for the respondents. A counter affidavit has been filed. It is the contention of the learned Government Pleader that, while appointing the petitioner as Headmaster on 01.07.1985, he had been granted time to acquire the test qualification up to 31.03.1986. However the petitioner did not acquire test qualification within the said period. The time was granted in view of G.O.(MS.)No.54/86 G.Edn. Dated 24.03.1986 exempting all the Headmasters from acquiring test qualification for two years from

01.04.1986 to 31.03.1988. According to the counter affidavit, the petitioner acquired test qualification only on 09.01.1990. It was for the said reason that, the petitioner was later on promoted as the Headmaster. According to the learned Government Pleader, Exts.P2, P3 and P5 are in order and are not liable to be set aside.

4. Heard. Paragraphs 3, 4 and 5 of the counter affidavit of the 1st respondent dated 04.07.2011 reads as follows :

"3. As per G.O(MS) 54/86/G.Edn dated 24.3.1996, Government had exempted the Headmasters from acquiring test qualification for two years from 1.4.86 i.e up to 31.3.1986. The petitioner passed the Account Test only on 9.1.1990.

4. As per G.O (MS) 99/87/G.Edn dated 8.5.1987 Government had directed to revert all the un qualified Headmasters to teachers in charge with effect from 8.5.1987. The petitioner was also reverted as teacher with effect from 8.5.1987 for want of test qualification. It is a fact that, there was no other qualified junior teacher to be promoted as Headmaster.

5. Nobody was qualified to the post of Headmaster in the school. The petitioner was the teacher in charge. So he ought to have performed the duties of Headmaster."

It is clear from the above that, the petitioner had been promoted as Headmaster in the absence of qualified hands to hold the said post. It is stated that he had been granted time up to 31.05.1986 to acquire the test qualification and that, he had not acquired the said qualification. It is also stated in the counter affidavit that, the

petitioner had been discharging the duties of the Headmaster as the teacher-in-charge of the School. It is true that the petitioner was not test qualified, at the relevant time. However, Exts.P7 and P8 Government Orders show that the 1st respondent had in similar circumstances set aside the reversion of two Headmasters and directed their services to be counted. A perusal of Ext.P5 shows that, the 1st respondent has omitted to consider the effect of the above proceedings. Therefore, it is only appropriate that the said proceedings are also considered and the entitlement of the petitioner considered afresh. It is not in dispute that, the petitioner had subsequently become qualified to be promoted as Headmaster and had, in fact been promoted as such.

In view of the above, Ext.P5 is set aside. The 1st respondent is directed to consider Ext.P3 appeal of the petitioner afresh, in the light of Exts.P7 and P8 proceedings, after affording an opportunity of being heard to the petitioner also and to pass appropriate orders in the matter as expeditiously as possible and at any rate within a period of two months of the date of receipt of a copy of this judgment.

Sd/-
K.SURENDRA MOHAN, JUDGE.