

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.SURENDRA MOHAN

WEDNESDAY, THE 4TH DAY OF FEBRUARY 2015/15TH MAGHA, 1936

WP(C) .No. 9990 of 2007 (L)

PETITIONER(S) :

1. THE CORPORATE MANAGER,
FRANCISCAN CLARIST CONGREGATION SCHOOLS
ARCHDIOCESS OF THRISSUR, ASSISI PROVINCIAL HOUSE
THRISSUR- 680 005.
2. V.G.SHINY,
D/O. V.A.GEORGE, AGED 35 YEARS
UPPER PRIMARY SCHOOL ASSISTANT, ST.TERESA'S
CONVENT HIGH SCHOOL, BRAHMAKULAM, THRISSUR-
680 104.

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

RESPONDENT(S) :

1. THE STATE OF KERALA REPRESENTED BY THE
SECRETARY TO GOVERNMENT, GENERAL EDUCATION, DEPARTMENT
SECRETARIAT, TRIVANDRUM.
2. THE DIRECTOR OF PUBLIC INSTRUCTION,
JAGATHY, TRIVANDRUM-14.
3. THE DISTRICT EDUCATIONAL OFFICER,
CHAVAKKAD, THRISSUR DISTRICT.
4. THE ASSISTANT EDUCATIONAL OFFICER,
CHAVAKKAD, THRISSUR DISTRICT.

R1 BY GOVERNMENT PLEADER SRI.ABHIJETT LESSLI

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 04-02-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C) .No. 9990 of 2007 (L)

APPENDIX

PETITIONER(S) ' EXHIBITS

EXHIBIT-P1: TRUE COPY OF THE APPOINTMENT ORDER OF THE 2ND PETITIONER

EXHIBIT-P2: TRUE COPY OF THE APPOINTMENT ORDER OF THE 2ND PETITIONER

EXHIBIT-P3: TRUE COPY OF THE APPOINTMENT ORDER OF THE 2ND PETITIONER

EXHIBIT-P4: TRUE COPY OF THE APPOINTMENT ORDER OF THE 2ND PETITIONER

EXHIBIT-P5: TRUE COPY OF THE ORDER NO.D/2229/02/K.DIS OF THE
4TH RESPONDENT

EXHIBIT-P6: TRUE COPY OF THE ORDER NO.F2/8644/05/DPI/K.DIS OF THE 2ND
RESPONDENT

EXHIBIT-P7: TRUE COPY OF THE LETTER NO.26327/J3/2000/G.EDN. OF the
GOVERNMENT

EXHIBIT-P8: TRUE COPY OF THE ORDER NO.41247/J3/2000/G.EDN.OF THE
GOVERNMENT

EXHIBIT-P9: TRUE COPY OF THE ARGUMENT NOTES OF THE 2ND PETITIONER

EXHIBIT-P10: TRUE COPY OF THE ARGUMENT NOTES OF THE MANAGER

EXHIBIT-P11: TRUE COPY OF THE G.O? (Rt.) No.5608/06/G/EDN. OF THE
GOVERNMENT

EXHIBIT-P12: TRUE COPY OF THE G.O (Rt.) No.254/2001/G.EDN. OF THE
GOVERNMENT

RESPONDENT(S) ' EXHIBITS NIL

//TRUE COPY//

P.A TO JUDGE

vdv

K.SURENDRA MOHAN, J.
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W.P.(C) No.9990 OF 2007
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Dated this the 04th day of February, 2015

JUDGMENT

The petitioners, a Corporate Manager and a teacher, have filed this writ petition challenging Exts.P5, P6 and P11 orders, by which appointment of the 2nd petitioner as a Lower Primary School Assistant (LPSA for short), has been rejected.

2. The 2nd petitioner was initially appointed as an Upper Primary School Assistant (UPSA for short) for the period 14.07.1999 to 01.07.2000. The said appointment was approved by Ext.P1. Thereafter, she was again appointed as a UPSA for the period from 06.06.2001 to 01.07.2005. The said appointment was also approved as per Ext.P3. While so, even before her period of appointment as per Ext.P3 had expired, she was appointed as LPSA on 05.06.2002 under the same management. However, the said appointment was rejected by the 4th respondent as per Ext.P5. An appeal filed by the second respondent was also rejected by Ext.P6. The

petitioners had thereafter approached the Government, but, the claim of the 2nd petitioner has been rejected by Ext.P11.

3. The reason for rejection of the 2nd petitioner's appointment is that, the Kerala Education Rules 1959 (KER for short) had been amended in the meantime. As per the amendment to Rules 3(1) and 4(1), Chapter XXXI, KER, only TTC holders are eligible to be appointed as LPSAs and B Ed holders would be considered along with the TTC holders for appointment to the post of UPSA. The appointment of the petitioner has been rejected for the reason that the petitioner did not fulfill the above qualification.

4. According to the learned counsel for the petitioner, the Government had clarified the position by issuing Exts.P7 and P8 proceedings. It has been clarified that the new amendment would not affect claims under Rule 51A, Chapter XIV A KER, secured before 08.06.2000. The 2nd petitioner having worked as a UPSA before the said date, she is entitled to the benefit of the clarification in Exts.P7 and P8, it is contended. Therefore, according to the

petitioners, directions to pay salary for the period from 05.06.2002 to 04.06.2004 is necessary to be issued in this case. It is contended that the 2nd petitioner actually worked during the said period and that the students had benefited from her efforts. The counsel also places reliance on Ext.P12 Government order to contend that, a similar relief of payment of salary had been granted to another teacher, who had worked under identical circumstances.

5. The Government Pleader opposes the contentions of the learned counsel for the petitioner. According to the Government Pleader, the 2nd petitioner was not qualified to be appointed as an LPSA on 05.06.2002. It is for the said reason that, her appointment was not approved. The matter has been considered successively by the Appellate and revisional authorities as evident from Ext.P5, P6 and P11. Absolutely no grounds are made out for interference with any of the said proceedings now, it is contended.

6. Heard. The facts are not in dispute. It is not in dispute that the petitioner had worked for short spells as

UPSA in the same school. Her appointments were also duly approved by the authorities as evident from Exts.P1 and P2. She has no quarrel in respect of the said periods for which she has been paid salary also. The dispute relates to the period from 05.06.2002 to 04.06.2004 during which period, the petitioner had worked as an LPSA. Her appointment as LPSA was not approved for the reason that, she did not possess the qualification of TTC, that was necessary. The contention of the learned counsel for the petitioner is that the 2nd petitioner being a Rule 51A claimant was entitled to the benefits of Exts.P7 and P8.

7. A perusal of Exts.P7 and P8 shows that, the exemption from clarification that has been granted therein is to a claimant under Rule 51A, Chapter XIV A, KER, who has made such claim before 08.06.2000. Since the 2nd petitioner has worked prior to the said date, there cannot be any doubt that the petitioner has a claim under Rule 51A. However, the claim can arise only in respect of a post of UPSA. It has been held by this Court in **Mary George V**

State of Kerala 1999(3) KLT 912 that the post of LPSA and UPSA are different. It has also been held that a Rule 51A claimant as UPSA cannot have a claim in respect of a post of LPSA. In view of the dictum laid down by this Court in the above decision, it has to be held that, the 2nd petitioner had no claim in respect of a post of LPSA, on the basis of Rule 51A of Chapter XIV A, KER. Therefore, the 2nd petitioner cannot claim the benefit of Exts.P7 and P8 clarifications. The resultant position is that, Exts.P5, P6 and P11 rejecting the approval of appointment of the petitioner as an LPSA cannot be found fault with.

8. It is contended by the learned counsel for the petitioner on the basis of Ext.P12 that, in the case of a similarly placed teacher, the Government had directed payment of salary. However, a reading of Ext.P12 shows that, the teacher therein was a person qualified to be appointed to the post in question. She had been working in the said post but had become an excess teacher when a post was abolished for want of sufficient periods. The period

during which she was kept out of service was treated as leave without allowances. But, the Attendance Register showed that she had worked during that period. It was in the said circumstances that, the 1st respondent was directed to pay the salary to the petitioner. The 2nd petitioner in this case was not qualified to be appointed as an LPSA. Her appointment also had not been approved for the said reason. Therefore, the contention raised on the basis of Ext.P12 also fails.

For the above reasons, this writ petition is dismissed.

Sd/-
K.SURENDRA MOHAN, JUDGE

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