

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

FRIDAY, THE 6TH DAY OF NOVEMBER 2015/15TH KARTHIKA, 1937

WP(C).No. 10203 of 2007 (M)

PETITIONER(S):

**E.K.GEETHA, D/O K.N.KANDAN,
HIGH SCHOOL ASSISTANT, CA HIGH SCHOOL, COYALMANNAM
PALAKKAD DISTRICT, NOW RESIDING AT EDAYODE, MUDAPPALLUR
ALATHUR TALUK, PALAKKAD DISTRICT.**

**BY ADVS.SRI.SAJAN VARGHEESE K.
SRI.LIJU. M.P
SRI.M.N.SAJEER**

RESPONDENT(S):

- 1. STATE OF KERALA,
GENERAL EDUCATION)A) DEPARTMENT, TRIVANDRUM
REP.BY THE SECRETARY TO GOVERNMENT.**
- 2. THE DIRECTOR OF PUBLIC INSTRUCTIONS,
TRIVANDRUM.**
- 3. THE DEPUTY DIRECTOR OF EDUCATION,
PALAKKAD.**
- 4. THE DISTRICT EDUCATIONAL OFFICER,
PALAKKAD.**
- 5. THE MANAGER,
CA HIGH SCHOOL, COYALMANNAM, PALAKKAD.**

R1-4 BY GOVERNMENT PLEADER SRI.T.R.RAJESH

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 06-11-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

VS

WP(C).No. 10203 of 2007 (M)

APPENDIX

PETITIONER(S)' EXHIBITS :

EXT.P1	TRUE COPY OF THE APPOINTMENT ORDER DATED 3.6.1996 OF THE PETITIONER's
EXT.P2	TRUE COPY OF THE APPOINTMENT ORDER OF THE PETITIONER DATED 1.9.1990 AS HIGH SCHOOL ASSISTANT.
EXT.P3	TRUE COPY OF GO(P) NO.175/1999/G.EDN DATED 26.7.2000
EXT.P4	TRUE COPY OF GO(MS) NO.240/2000/G.EDN DATED 24.7.2000
EXT.P5	TRUE COPY OF THE PROCEEDINGS OF THE RESPONDENT NO.2 DATED 10.4.2001
EXT.P6	TRUE COPY OF THE PROCEEDINGS DATED 7.11.2001 OF THE RESPONDENT NO.3
EXT.P7	TRUE COPY OF THE PROCEEDINGS OF THE RESPONDENT NO.4 DATED 1.12.2001
EXT.P8	TRUE COPY OF THE COMMUNICATION DATED 17.9.2003 MADE BY THE RESPONDENT NO.3 TO THE RESPONDENT NO.4
EXT.P9	TRUE COPY OF THE PROCEEDINGS DATED 28.6.2006 OF THE RESPONDENT NO.2
EXT.P10	TRUE COPY OF THE LETTER DATED 29.12.2006 ISSUED TO THE PETITIONER BY THE RESPONDENT NO.1
EXT.P11	TRUE COPY OF THE GO(MS) NO.148/98/G.EDN DATED 8.5.1998
EXT.P12	TRUE COPY OF THE GO(P)NO.4/005/G.EDN DATED 4.01.2005

RESPONDENT(S)' EXHIBITS :

NIL

/TRUE COPY/

PA TO JUDGE

VS

K.VINOD CHANDRAN, J.

W.P.(C).No.10203 of 2007

Dated this the 6th day of November, 2015

JUDGMENT

The petitioner is concerned with an audit objection, which rejected her continuance as a High School Assistant from 15.07.2000, in the academic year 2000-01. The petitioner's appointment was thus cancelled and refund directed.

2. The petitioner was appointed as Upper Primary School Assistant in the 5th respondent School on 03.06.1996, which was approved, as indicated in Ext.P1 order. Subsequently, one HSA retired on voluntary retirement and the petitioner was promoted as HSA by Ext.P2 order, which also was approved. The promotion so made was in the academic year 1999-2000. In the year 2000-01 there was a division fall and the sanctioned posts of HSA's were reduced to 30, when the teacher student ratio was taken at 1:45 ratio. Hence in Ext.P2, the appointment by promotion was approved only for the

period 01.09.1999 to 14.07.2000.

3. The petitioner who was the junior most HSA was to be retrenched. However, the Government had granted protection to those teachers, who were in service as on 14.07.1996 from being retrenched only on the implementation of 1:45 ratio. The protection hence enabled the petitioner to seek continuance by adoption of 1:40 ratio.

4. The Government orders at Exts.P3 and P4, granted protection to such teachers, in service as on 14.07.1996, in the case of retrenchment only be reason of determination of divisions at the ratio 1:45. The petitioner's prayer for continuance on the basis of the protection was allowed by Ext.P6 and the petitioner was also continued.

5. In the year 2003 long afterwards, Ext.P8 was issued, noticing an audit objection and directing refund of the excess salary paid. According to the audit party, the petitioner ought to have been reverted to the post of UPSA and not granted protection from retrenchment. The

learned Government Pleader also points to G.O.(MS) No.148/98/G.Edn. dated 08.05.1998, which was brought in following a Division Bench decision of this Court. The above Government Order clarifies that, when there is a fall in division, a person promoted from the post of UPSA to HSA would be liable to be reverted to the post from which he or she was promoted, on the basis of first come last go.

6. It is to be noticed that without Exts.P3 and P4 order, definitely the petitioner would have been liable for reversion. However, by Exts.P3 and P4, the aided school teachers who were in service as on 14.07.1996 are given protection by retaining them in the respective posts, subject to the conditions enumerated therein. One of which, is that no protection will be available to those teachers appointed during 1997-98. It is to be noticed that the protection is granted to the aided school teachers and such protection is from being retrenched by reckoning the divisions on 1:45 ratio.

7. G.O.(MS)No.148/98/G.Edn was with respect

to a reversion to be effected in the case of division fall in the post of HSA. There the claim of the junior most UPSA was that on a division fall occurring on the high school section, no reversion of the UPSA was permissible. The Government Order clarified that when the HSA to be retrenched, was one promoted under Rule 43 of Chapter XIV A of Kerala Educational Rules, then, the HSA should only be reverted and consequently the junior most UPSA be retrenched. This has no application when protection is granted, the protection granted was only to avoid retrenchment on the ratio being increased from 1:40 to 1:45.

8. Reversion having not been taken note of in the said Government Order, it cannot be said that the protection would not be available to a promotee. It was not specifically directed in either Ext.P3 or P4 that those promoted hands could be so reverted to the lower post and not protected from retrenchment. There is also no categorisation as to UPSA/HSA and any aided school teacher, who was in service on 14.07.1996 was directed to

be granted protection, by reckoning the vacancies taking 1:40 ratio.

In such circumstances, this court does not find any reason why the petitioner's approval should be withdrawn or any recovery made. Therefore, Exts.P8 to P10 stands set aside. Writ petition would stands allowed.

Sd/-
K.VINOD CHANDRAN
JUDGE

VS