

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

THURSDAY, THE 12TH DAY OF MARCH 2015/21ST PHALGUNA, 1936

WP(C).No. 3391 of 2015 (Y)

PETITIONER(S) :

B.SREEKALA,
W/O.RAMESH BABU R., "PARVANENDU", PERINGARA P.O.
THIRUVALLA, PATHANAMTHITTA - 689 108 (HEAD MISTRESS
DEVASWOM BOARD HIGHER SECONDARY SCHOOL, THIRUVALLA).

BY ADV. SRI.S.SUBHASH CHAND

RESPONDENT(S) /RESPONDENTS:-:

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

2. THE DIRECTOR OF PUBLIC INSTRUCTION,,
OFFICE OF THE DIRECTOR OF PUBLIC INSTRUCTION
THIRUVANANTHAPURAM - 695 001.

3. THE DEPUTY DIRECTOR (EDUCATION),
OFFICE OF THE DEPUTY DIRECTOR (EDUCATION)
PATHANAMTHITTA AT THIRUVALLA.

4. THE DISTRICT EDUCATIONAL OFFICER,
OFFICE OF THE DISTRICT EDUCATIONAL OFFICER
THIRUVALLA.

5. THE CORPORATE MANAGER/SECRETARY,
TRAVANCORE DEVASWOM BOARD SCHOOLS
DEVASWOM BUILDINGS, NANDHANCODE
THIRUVANANTHAPURAM - 695 001.

R5 BY ADV. SRI.M.V.S.NAMBOOTHIRI, SC, TRAVANCORE DEVASWOM
BOARD

R1-R4 BY ADV. GOVERNMENT PLEADER SRI.M.A.FAYAZ

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
12-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER(S) ' EXHIBITS

EXHIBIT P1. TRUE COPY OF THE ORDER BEARING NO.ROC.1913/14/EDN.DATED 20.06.2014 ISSUED BY RESPONDENT NO.5.

EXHIBIT P2. TRUE COPY OF THE APPOINTMENT ORDER DATED 23.06.2014 ISSUED BY RESPONDENT NO.5 TO THE PETITIONER APPOINTING HER AS HEAD MISTRESS.

EXHIBIT P3. TRUE COPY OF THE STATEMENT OF CHANGE OF STAFF SUBMITTED BEFORE RESPONDENT NO.4 BY RESPONDENT NO.5.

EXHIBIT P4. TRUE COPY OF DECLARATION DATED 15.12.1990 SUBMITTED BEFORE RESPONDENT NO.4 BY RESPONDENT NO.5.

EXHIBIT P5. TRUE COPY OF DECLARATION DATED 23.06.2014 SUBMITTED BEFORE RESPONDENT NO.4 BY RESPONDENT NO.5.

EXHIBIT P6. TRUE COPY OF THE ORDER DATED 18.09.2014 PASSED BY RESPONDENT NO.2.

EXHIBIT P7. TRUE COPY OF THE COVERING LETTER DATED 11.11.2014 ISSUED BY RESPONDENT NO.5 TO RESPONDENT NO.4.

EXHIBIT P8. TRUE COPY OF THE REPRESENTATION DATED 18.12.2014 SUBMITTED BY THE PETITIONER BEFORE RESPONDENT NO.4.

EXHIBIT P9. TRUE COPY OF THE APPROVED APPOINTMENT ORDER OF SMT.I.SUBHADRAMMA DATED 23.06.2014.

EXHIBIT P9(A). TRUE COPY OF THE APPROVED APPOINTMENT ORDER OF SRI.A.JAYAKUMAR DATED 23.06.2014.

EXHIBIT P9(B). TRUE COPY OF THE APPROVED APPOINTMENT ORDER OF SMT.K.P.SREEKUMARI DATED 23.06.2014.

EXHIBIT P10. TRUE COPY OF THE REPRESENTATION DATED 22.12.2014 SUBMITTED BY RESPONDENT NO.5 BEFORE RESPONDENT NO.4.

EXHIBIT P11. TRUE COPY OF THE ORDER BEARING NO.B5/4256/14/K.DIS. DATED 27.12.2014 ISSUED BY RESPONDENT NO.4.

EXHIBIT P12. TRUE COPY OF THE GOVERNMENT ORDER DATED 11.08.2014 THUS ISSUED BY RESPONDENT NO.1.

EXHIBIT P13. TRUE COPY OF THE ORDER DATED 10.11.2014 PASSED BY THIS HON'BLE COURT IN W.P.(C)NO.24797 OF 2014.

EXHIBIT P14. TRUE COPY OF THE CIRCULAR DATED 04.06.2012 ISSUED BY RESPONDENT NO.2.

RESPONDENT(S) ' EXHIBITS

ANNEXURE R4(A): COPY OF THE LETTER DATED 20/7/2014.

ANNEXURE R4(B):" COPY OF THE LETTER DATED 25/9/2014.

ANNEXURER4(C): COPY OF THE LETTER DATED 28/11/2014.

ANNEXURE R4 (D): COPY OF THE RELEVANT EXTRACTS OF THE APPROVED SENIORITY LIST AS ON 1/1/2011.

/TRUE COPY/

P.S. TO JUDGE.

/TRUE COPY/

P.S. TO JUDGE

A.MUHAMED MUSTAQUE, J.

W.P.(C) No. 3391 OF 2015

Dated this the 12th day of March, 2015

JUDGMENT

The petitioner has been promoted as Headmistress vide Ext.P2 order of the 5th respondent-Corporate agency. Along with the appointment order, the Manager of the Corporate Agency also sworn a declaration stating that the petitioner is a senior most claimant. Approval for the petitioner's promotion as Headmistress has been declined by the 4th respondent-District Educational Officer by Ext.P11. The substantial reason for non approval is that the approved seniority list as on 1/1/2014 is not produced. It is challenging Ext.P11 order, the petitioner has approached this Court.

2. In this matter a statement has been filed by the 4th respondent. Therein the 4th respondent refers to Rules 35 and 36 of Chapter XIV A of KER, which mandates that the Corporate Agency shall prepare a common seniority list in respect of the schools situated as one unit. This seniority list shall be prepared as on the first day of January of every year.

The list should be made up to date and renewed every year. The supplementary list during a school year showing the names of teachers appointed and got approved by the Controlling Officers shall be sent by the Educational Agency to the authority competent to approve the list. In the absence of approved seniority list, it is not possible to approve the appointment of the petitioner, is the case of the 4th respondent. According to the 4th respondent, the petitioner has an alternative remedy and, therefore, the writ petition is not maintainable.

3. The only issue now before this Court is whether the approval to the petitioner's appointment as Headmistress can be denied for want of seniority list. This is a question of Law. The question is whether denial is erroneous warranting invocation of the power of judicial review.

4. Rule 44 (1) of Chapter XIVA of KER provides that, appointment of Headmasters shall ordinarily be according to seniority from the seniority list prepared and maintained under clauses (a) and (b) as the case may be of rule 34. It is incumbent upon the manager to prepare a seniority list as on 1st January of every year as contemplated under Rule 35. It is

essential to avoid any other dispute in the claim for the post of Headmaster in terms of Rule 44. The District Educational Officer, no doubt, has a duty to ensure that approval is in accordance with the statutory provision. The Corporate Agencies are different from the individual managements. They have certain practical difficulties in preparing the seniority list, which they have highlighted before the Government. The Government considered their grievance and issued the order dated 15/2/1990 directing the Corporate Agency to furnish a declaration in the formate prescribed therein in order to enable the District Educational Officer to take speedy action. This is in fact not repugnant to statutory mandates. The declaration given as above only postpone the statutory compliance and it does not absolve the Manager from statutory compliance. The only duty cast upon the District Educational Officer, in such circumstances, is to act upon the declaration made by the Manager to approve the appointment of the Headmaster subject to the approval of the seniority list. By such declaration, the manager shoulder the responsibility based on the Government Order that he is liable for any consequences to be followed on account of any wrong

approval granted by the District Educational Officer. If, in any circumstances, any other claimant raises a claim for the post of Headmaster, necessarily this declaration given by the Manager would indemnify the District Educational Officer from any action against him in Law. Therefore, the District Educational Officer should not have overlooked the purport of the Government Order to work out the mandate of Rule 35.

5. It is the duty of the District Educational Officer or any other Educational Officer to ensure that the Manager of the School prepares the seniority list every year in accordance with law and on failure, to take appropriate action. Any inaction on the part of the Manager cannot deprive a legitimate right of senior claimant to be appointed as a Headmaster/Headmistress. This right is conferred on the senior claimant in terms of Rule 34. Non compliance of the provisions results in denial of right to the senior claimant. The paramount considerations, in such situation is to look upon the right of appointee and administrative exigencies of the school. The District Educational Officer while declining the approval overlooked the paramount consideration of this matter and denied the approval.

In that view of the matter, I am of the view that Ext.P11 has to be set aside. Accordingly, there shall be a direction to grant approval to the appointment of the petitioner, as Headmistress subject to the approval of any seniority list prepared by the Manager, by the authorities concerned within a period of three weeks from the date of receipt of a copy of this judgment. The entire arrears of salary shall be disbursed to the petitioner within a period of three months from the date of receipt of a copy of this judgment.

The writ petition is disposed of as above.

Sd/-

**A.MUHAMED MUSTAQUE,
Judge.**

dpk

/True copy/ PS to Judge.

