

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

MONDAY, THE 27TH DAY OF JULY 2015/5TH SRAVANA, 1937

WP(C).No. 7998 of 2009 (T)

PETITIONER(S):

**P.N.SADANANDAN
V.K.N.M.V. H.S.S., VAYYATTUPUZHA
PATHANAMTHITTA DISTRICT.**

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

RESPONDENT(S):

- 1. THE STATE OF KERALA
BY THE SECRETARY TO GOVERNMENT
GENERAL EDUCATION DEPARTMENT, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM.**
- 2. THE DIRECTOR OF PUBLIC INSTRUCTION,
THIRUVANANTHAPURAM.**
- 3. THE DEPUTY DIRECTOR OF EDUCATION,
PATHANAMTHITTA AT THIRUVALLA.**
- 4. THE DISTRICT EDUCATIONAL OFFICER,
PATHANAMTHITTA.**
- 5. THE MANAGER, V.K.N.M.V.H.S.S.,
VAYYATTUPUZHA P.O., PATHANAMTHITTA DISTRICT.**

**R, BY GOVERNMENT PLEADER SRI.RINNY STEPHEN CHAMAPARAMPIL
R5 BY ADV.SRI.P.SANTHALINGAM (SR.)
R5 BY ADV.SRI.S.SHARAN**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
27-07-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: COPY OF THE ORDER DATED 2.9.2002 OF THE MANAGER, V.K.NM., V.H.S.S., VAYYATTUPUZHA.

EXT.P2: COPY OF APPOINTMENT ORDER DATED 11.8.2003 IN FAVOUR OF PETITIONER.

EXT.P3: COPY OF ORDER DATED 13.2.2004 OF THE 3RD RESPONDENT.

EXT.P4: COPY OF ORDER DATED 22.3.2004 OF THE 4TH RESPONDENT.

EXT.P5: COPY OF PETITION BEFORE 3RD RESPONDENT FOR CONDONATION OF DELAY, DATED 18.5.2004.

EXT.P6: COPY OF ORDER DATED 17.7.2004 OF THE 3RD RESPONDENT.

EXT.P7: COPY OF REVISION PETITION BEFORE THE 3RD RESPONDENT DATED 30.8.2004.

EXT.P8: COPY OF PETITION DATED 2.9.2004 BEFORE 3RD RESPONDENT.

EXT.P9: COPY OF ORDER DATED 22.4.2005 OF THE 2ND RESPONDENT.

EXT.P10: COPY OF CERTIFICATE DATED 25.5.2005.

EXT.P11: COPY OF GOVERNMENT ORDER DATED 28.10.2005.

EXT.P12: COPY OF PETITION BEFORE THE GOVERNMENT FROM THE MANAGER, DATED 6.2.2006.

EXT.P13: COPY OF PETITION DATED 15.2.2006 BEFORE THE GOVERNMENT FROM THE PETITIONER.

EXT.P14: COPY OF GOVERNMENT ORDER DATED 8.1.2009.

RESPONDENTS EXHIBITS: NIL.

//TRUE COPY//

P.S. TO JUDGE

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C).NO.7998 OF 2009 (T)

Dated this the 27th day of July, 2015

J U D G M E N T

The petitioner was put in full additional charge of Headmaster of the 5th respondent School with effect from 3.9.2002 consequent to the suspension of the then Headmistress Smt.T.C.Thulasibai. He continued to hold full additional charge of Headmaster for the period from 3.9.2002 to 10.8.2003. Thereafter, the 5th respondent promoted the petitioner as Headmaster, in the vacancy that resulted consequent to the suspension of Smt.T.C.Thulasibai, for the period from 11.8.2003 to 31.3.2004, when the petitioner retired on superannuation. It is relevant to note that by Ext.P3 order dated 13.2.2004, the Deputy Director of Education had directed the reversion of Smt.T.C.Thulasibai as High School Assistant and the 5th respondent Manger was directed to give effect to the said order forthwith. When the appointment of the petitioner as Headmaster, for the period from 11.8.2003 to 31.3.2004, was sent for approval to the District Educational Officer [DEO], the latter, by Ext.P4 order dated 22.3.2004, denied approval to the appointment of the petitioner as

Headmaster primarily for three reasons, namely, (i) that the appointment order was received in his office belatedly, (ii) that the disciplinary proceedings against the former Headmistress had not been concluded and (iii) that the approved seniority list of teachers had not been produced by the Manager of the School. Aggrieved by Ext.P4 order of the DEO, the petitioner filed an application before the Deputy Director, for condonation of delay. The said application was rejected by Ext.P6 order dated 17.7.2004. A further revision preferred by the petitioner before the Director of Public Instruction [DPI] also did not meet with any success, and by Ext.P9 order dated 22.4.2005, the said revision petition was dismissed after noting that the disciplinary action against Smt.T.C.Thulasibai was finalised, by reverting her as HSA and she had joined duty as HSA only on 15.7.2004. It was also found that inasmuch as the period of suspension of Smt.T.C.Thulasibai had not been regularised, it could not be said that there was a vacancy that existed in the post of Headmaster, to which the petitioner could be appointed. Aggrieved by Ext.P9 order of the DPI, the petitioner and the Manager of the School preferred a further revision petition before the Government. By Ext.P14 order dated 8.1.2009, the Government also rejected the

revision petition by finding that the vacancy of Headmaster was established only on 15.7.2004 when Smt.T.C.Thulasibai, who was reverted as HSA, joined in the said post. It was also found that the appointment of the petitioner with effect from 11.8.2003 was not in order and that the Manger could have only made temporary arrangements between 3.9.2002 and 15.7.2004. In the writ petition, the petitioner impugns Exts.P4, P6, P9 and P14 orders inter alia on the ground that the said orders do not take into account the fact that there was a vacancy in the post of Headmaster with effect from 13.2.2004, when Smt.T.C.Thulasibai was reverted as HSA during the period of suspension. That apart, it is also pointed out with reference to Ext.P11 order passed by the Government in favour of the successor to the petitioner in the post of Headmaster of the School, that the vacancy that arose in the School to the post of Headmaster was with effect from 1.4.2004 consequent to the retirement of the petitioner with effect from 31.3.2004. It is the case of the petitioner that if the Government recognised a vacancy in the post of Headmaster consequent to the retirement of the petitioner with effect from 31.3.2004, then it followed, as a matter of course, that the appointment of the petitioner to the post from which he retired, was

against an established vacancy that existed in the post of Headmaster.

2. A counter affidavit has been filed on behalf of the 1st respondent, wherein, Exts.P4, P6, P9 and P14 orders are sought to be justified on the basis of the reasons contained therein. It is, in particular, pointed out that the disciplinary action against Smt.T.C.Thulasibai was settled only on 15.7.2004, when she rejoined duty as HSA. There is no reference in the counter affidavit to the averments in the writ petition regarding the approval to the appointment of Sri.V.K.Radhamma as Headmistress from 1.4.2004.

3. I have heard the learned counsel for the petitioner as also the learned Government Pleader for the respondents.

On a consideration of the facts and circumstances of the case as also the submissions made across the bar, I find that the stand taken by the respondents in Exts.P4, P6, P9 and P14 orders, to the extent it denies approval to the appointment of the petitioner, for the period from 11.8.2003 to 13.2.2004, is valid and cannot be interfered with. I do, however, find force in the contention of counsel for the petitioner

that the appointment of the petitioner as Headmaster for the period from 13.2.2004 to 31.3.2004, when he retired on superannuation, has to be approved, since, by virtue of Ext.P3 order dated 13.2.2004 of the Deputy Director of Education, Smt.T.C.Thulasibai stood reverted to the post of HSA, although she joined the post of HSA only subsequent on 15.7.2004. When the order of reversion of Smt.T.C.Thulasibai took effect with effect from 13.2.2004, it automatically resulted in a vacancy arising to the post of Headmaster in the School with effect from that date. The petitioner, being the seniormost HSA in the School, could aspire for promotion to the post of Headmaster of the School with effect from 13.2.2004. Therefore, I am of the view that the impugned orders, namely, Exts.P4, P6, P9 and P14, to the extent they deny approval to the appointment of the petitioner as Headmaster for the period from 13.2.2004 to 31.3.2004, is not in order. I therefore quash the said orders to the above extent. Resultantly, the writ petition, in its challenge against Exts.P4, P6, P9 and P14, is partly allowed, and the respondents are directed to approve the appointment of the petitioner as Headmaster in the School for the period from 13.2.2004 to 31.3.2004. As regards the period from 3.9.2002 to 12.2.2004, the petitioner shall be treated as a

teacher in charge of the School. The respondents are directed to compute the differential salary and allowances, as also the retirement benefits due to the petitioner, on the basis of the aforesaid directions, and the differential salary and other allowances shall be disbursed to the petitioner, within a period of two months from the date of receipt of a copy of this judgment.

A.K.JAYASANKARAN NAMBIAR
JUDGE

prp