

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.K.ABDUL REHIM

THURSDAY, THE 19TH DAY OF MARCH 2015/28TH PHALGUNA, 1936

WP(C).No. 7776 of 2010 (V)

PETITIONER:

**K. MADHUSOODANAN PILLAI,
CLERK, VISHWABHARATHI MODEL HIGH SCHOOL
KRISHNAPURAM (MALARIMEL HOUSE, PEROORKARANMA
CHARUMMOODU.P.O)**

**BY ADVS.SRI.K.SASIKUMAR
SRI.S.ARAVIND
SRI.P.JINISH PAUL**

RESPONDENT(S):

- 1. STATE OF KERALA, REPRESENTED BY
THE SECRETARY TO GOVERNMENT, GENERAL EDUCATION
DEPARTMENT, GOVERNMENT SECRETARIAT
THIRUVANANTHAPURAM.**
- 2. DISTRICT EDUCATIONAL OFFICER,
MAVELIKKARA.**
- 3. MANAGER, VISHWABHARATHI MODEL HIGH
SCHOOL, KRISHNAPURAM, KAYAMKULAM
ALAPPUZHA DISTRICT.**
- 4. HEADMASTER,
VISHWABHARATHI MODEL HIGH SCHOOL, KRISHNAPURAM
KAYAMKULAM, ALAPPUZHA DISTRICT.**

**R3 BY ADV. SRI.R.RAJASEKHARAN PILLAI
R3 BY ADV. SRI.R.SREEDHARAN NAIR
R3 BY ADV. SMT.SABINA JAYAN
R3 BY ADV. SMT.MINI.V.A.
R1 TO 2 BY GOVERNMENT PLEADER SRI.P.V. ELIAS**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 19-03-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONERS EXHIBITS:

EXHIBIT P1: COPY OF THE ORDER DATED 13.1.1997 ISSUED BY THE 2ND RESPONDENT.

EXHIBIT P2: COPY OF THE ORDER DATED 26.12.2002 ISSUED BY THE ADMINISTRATIVE ASSISTANT IN THE OFFICE OF THE DEPUTY DIRECTOR OF EDUCATION, ALAPPUZHA.

EXHIBIT P3: COPY OF THE ORDER DATED 3.6.2003 ISSUED BY THE ADMINISTRATIVE ASSISTANT IN THE OFFICE OF THE DEPUTY DIRECTOR OF EDUCATION, ALAPPUZHA.

EXHIBIT P4: COPY OF THE ORDER DATED 30.6.2005 ISSUED BY THE DEPUTY DIRECTOR OF EDUCATION, ALAPPUZHA.

EXHIBIT P5: COPY OF THE ORDER DATED 1.6.2007 ISSUED BY THE 3RD RESPONDENT CONTAINING THE ENDORSEMENT OF THE ORDER DATED 13.9.2007 PASSED BY THE 2ND RESPONDENT.

EXHIBIT P6: COPY OF THE ORDER DATED 1.6.2007 ISSUED BY THE 3RD RESPONDENT.

EXHIBIT P7: COPY OF THE ORDER DATED 28.3.2008 ISSUED BY THE 2ND RESPONDENT.

EXHIBIT P8: COPY OF THE REPRESENTATION DATED 12.10.2007 SUBMITTED BY THE PETITIONER BEFORE THE 2ND RESPONDENT.

EXHIBIT P9: COPY OF THE REPRESENTATION DATED 1.1.2008 SUBMITTED BY THE PETITIONER TO THE HON'BLE MINISTER FOR EDUCATION, GOVERNMENT OF KERALA.

EXHIBIT P10: COPY OF THE ORDER DATED 9.2.2009 ISSUED BY THE 1ST RESPONDENT.

EXHIBIT P11: COPY OF THE REPRESENTATION DATED 27.5.2009 FORWARDED BY THE PETITIONER BEFORE THE 1ST RESPONDENT.

RESPONDENTS EXHIBITS: NIL

/TRUE COPY/

P.A. TO JUDGE

SKV

C.K.ABDUL REHIM, J.

=====

W.P.(C). No. 7776 OF 2010

=====

Dated this the 19th day of March, 2015

JUDGMENT

Grievance of the petitioner is regarding rejection of Exts.P8 and P9 request made before the Government, through Ext.P10 letter. Through Exts.P8 and P9 the petitioner claimed that the appointment of the petitioner by the 3rd respondent Manager as Clerk should have been with retrospective effect from 8.7.2005, the date on which the petitioner was reposted to the 3rd respondent's School. But the Government have rejected the claim stating that the petitioner has not worked during the period from the above said date and that the vacancy against which he was posted was established only with effect from 1.6.2007.

2. Brief history of the case is that, the petitioner was appointed as Full Time Menial (FTM) in the 3rd respondent's School with effect from 5.6.1995. The said appointment was approved by the Educational Authorities, as evidenced

from Ext.P1. While continuing as FTM in the 3rd respondents school the petitioner was deployed to VRVMHS, Vayalar as a protected staff, as per Ext.P2 order, dated 26.12.2002 issued by the Deputy Director of Education, Alappuzha. Subsequently he was reposted to another School viz., Panchayath High School, Pathiyoor, as per Ext.P3 order dated 3.6.2003. When a regular vacancy arose in the 3rd respondent's School, the petitioner was called back and absorbed as Full Time Menial through Ext.P4 order issued by the Deputy Director of Education on 30.6.2005. Pursuant to Ext.P4 the petitioner rejoined the School on 7.7.2005 and he continued as such.

3. In the meanwhile, when the petitioner was deployed to other school as a protected staff there arose a vacancy of High School Assistant (H.S.A.) in Hindi with effect from 5.6.2000. One Smt.Anandakumari, who was then working as peon raised a claim for appointment to the post of H.S.A.Hindi. Since she was not qualified to be appointed in the said vacancy the 3rd respondent appointed another person discarding such claim. The matter was ultimately

considered by the Director of Public Instructions and the claim of Smt.Anandakumari was allowed declaring that she is entitled to be appointed as H.S.A. Hindi with effect from 5.6.2000, however by limiting the payment of salary only from the actual date of appointment. Eventhough the Manager challenged the order passed by the Deputy Director of Education up to the Hon'ble Supreme Court the issue was finally settled by decision of the Apex Court dated 22.2.2007, reported as Raghava Kurup v Anandakumari [2007 (1) KLT 1054]. Consequently, the 3rd respondent issued proceedings promoting Smt.Anandakumari as H.S.A. Hindi with effect from 5.6.2000. The said appointment order was issued on 1.6.2007. The Educational Officer had approved the appointment only with effect from 7.12.2000. However, the matter was taken up in appeal and ultimately through Ext.P7 proceedings the 2nd respondent had granted approval of appointment of Smt.Anandakumari with effect from 5.6.2000.

4. As observed above, the petitioner was posted back to the 3rd respondents School as Full Time Menial with

effect from 7.7.2005. At that time the petitioner was appointed against a vacancy which arose consequent to promotion granted to Smt.Anandakumari as clerk. The claim of the petitioner is that since it was later found that Smt.Anandakumari was entitled to be appointed as H.S.A. Hindi with effect from 5.6.2000. The petitioner was entitled for promotion to the post of clerk with retrospective effect from the said date. Since the petitioner was deployed to other schools during that time his claim ought to have been reckoned at least with effect from the date on which he was called back and appointed as non-teaching staff in the 3rd respondents School. In this regard the claim of the petitioner is for a notional retrospective promotion as clerk with effect from the date on which he had rejoined the 3rd respondent school on 8.7.2005.

5. It is evident from Ext.P10 letter that the claim of the petitioner was rejected based on the mere observation that he had not worked in the post of clerk during the period from 8.7.2005. But the Government have omitted to notice the fact that the claim of the petitioner is for a

notional retrospectivity with respect to his date of promotion. Observations contained in Ext.P10 is to the effect that the vacancy was established only with effect from 1.6.2007. But the question whether there existed a notional vacancy pursuant to Ext.P7 order, has omitted consideration by the Government.

6. Under the above mentioned circumstances this court is of the opinion that the matter requires reconsideration at the hands of the Government. Hence this writ petition is allowed and Ext.P10 is hereby quashed. The 1st respondent is directed to reconsider Exts.P8 and P9 representations submitted by the petitioner, afresh, after affording an opportunity of personal hearing to the petitioner and others concerned. A fresh decision taking note of the observations contained herein above shall be taken by the 1st respondent at the earliest possible, at any rate within 3 months from the date of receipt of a copy of this judgment.

7. It is made clear that this court has not expressed any opinion with respect to the claim made by the petitioner

for his entitlement to have retrospective promotion in the post of Clerk with effect from 8.7.2005. It is left open to the 1st respondent to take appropriate decision considering all relevant factors.

Sd/-
C.K.ABDUL REHIM, JUDGE
/TRUE COPY/

P.A. TO JUDGE

SKV