

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE SMT. JUSTICE P.V.ASHA

FRIDAY, THE 18TH DAY OF SEPTEMBER 2015/27TH BHADRA, 1937

WP(C) .No. 8196 of 2009 (T)

PETITIONER:

K.S.SHEELA,
H.S.A. ST.AUGUSTINE'S SCHOOL, MURUKKUMPUZHA P.O.
THIRUVANANTHAPURAM.

BY ADVS.SRI.M.BALAGOVINDAN
SRI.VINOD J.DEV

RESPONDENTS:

1. SECRETARY TO GOVERNMENT,
GENERAL EDUCATION DEPARTMENT, SECRETARIAT
THIRUVANANTHAPURAM.

2. THE MANAGER,
ST.AUGUSTINE'S HIGH SCHOOL, O, MURUKKUMPUZHA.

3. G.ANILKUMAR,
H.S.A. ST.AUGUSTINE'S SCHOOL, MURUKKUMPUZHA P.O.
THIRUVANANTHAPURAM.

4. CHRISTIAN CHRISTOPHER,
H.S.A. ST.AUGUSTINE'S SCHOOL, MURUKKUMPUZHA P.O.
THIRUVANANTHAPURAM.

5. MURALI, H.S.A.MATHEMATICS,
ST.AUGUSTINE'S SCHOOL, MURUKKUMPUZHA P.O.
THIRUVANANTHAPURAM.

SRI.NOUSHAD THOTTATHIL, GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
18-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

RKC

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APPENDIX

PETITIONER'S EXHIBITS

P1: TRUE COPY OF THE ORDER OF APPOINTMENT DT.6.3.96 ISSUED BY R2.

P2: TRUE COPY OF THE ORDER PASSED BY THE DEPUTY DIRECTOR OF EDUCATION
THIRUVANANTHAPURAM ON 8.3.94

PW3: TRUE COPY OF THE ORDER DT.26.2.96

P4: TRUE COPY OF THE JUDGMENT IN O.P.NO.5070/94 DT.14.1.04

P5: TRUE COPY OF THE SENIORITY LIST PREPARED BY THE MANAGER.

P6: TRUE COPY OF THE STATUTORY REVISION DT.15.3.07

P7: TRUE COPY OF THE NOTICE ISSUED BY THE COUNSEL TO R1 WITH THE
POSTAL RECEIPT DT.2.6.08

P8: TRUE COPY OF THE JUDGEMENT IN W.P.NO.19223/08 DT.3.7.08

P9: TRUE COPY OF THE ORDER IN G.O.(RT) NO.5276/08/G.EDN. DT.26.11.08

RKC

TRUE COPY

PA TO JUDGE.

P.V.ASHA, J.

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W.P.(C) No.8196 of 2009
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Dated this the 18th day of September, 2015

JUDGMENT

The petitioner, who is an HSA (Social Studies) in St.Augustine's High School, Murukkumpuzha which is an aided school, has filed this writ petition praying for a declaration that the petitioner is entitled to all consequential benefits along with seniority, which is granted as per Ext.P9. By Ext.P9 order the Government while considering a revision petition filed by the petitioner found that she is entitled to get seniority in the post of HSA (Social Science) with effect from 24.6.1993. At the same time monetary benefits attached to the post was denied saying that she did not actually work in that post from 24.6.1993. Similarly the period during which she was ousted from service was also directed not to be reckoned towards pension.

2. The petitioner was initially appointed as HSA (Social Science) in St.Augustine's School under the second respondent with effect from 24.6.1993, consequent to the retirement of Smt. Santhakumari Amma on 31.3.1993. But her appointment was

not approved by the District Educational Officer saying that the said vacancy should have been filled up by a graduate in English, in terms of the provisions contained in G.O.(MS) No.177/88/G.Edn. dated 7.12.1988. Thereupon the Manager appointed one Sri.John Samuel in her place. Aggrieved by this, the petitioner approached this Court in O.P.No.676 of 1994 after filing an appeal before the Deputy Director of Education. On the basis of the directions in the original petition, the Deputy Director of Education heard all parties and found that the Government Order referred to by the District Educational Officer was not relevant in the case of appointment in the school, since the vacancy had arisen on account of retirement. The Deputy Director of Education accordingly allowed the petition and as per Ext.P2 order dated 8.3.1994, revised the order passed by the District Educational Officer. But the Manager did not appoint the petitioner even thereafter, in terms of the order passed by the Deputy Director of Education. The Manager had filed an appeal against Ext.P2 order before the Director of Public Instruction. That was dismissed. Even thereafter the Manager did not appoint the petitioner. Aggrieved by the denial of appointment the

petitioner approached this Court again in O.P.No.5070 of 1994. By Ext.P3 interim order passed therein on 26.2.1996, this Court directed the Deputy Director of Education to take appropriate action against the Manager as contemplated under Chapter III of Rule 7 of KER for willful disobedience of the direction of the Deputy Director of Education. Thereafter the original petition was disposed of by Ext.P4 judgment dated 14.1.2004 in terms of the interim order already passed on 26.2.1996. It was also clarified that in case the petitioner was not paid salary, the same shall be disbursed within a period of two months.

3. In the meantime the Manager had appointed the petitioner on 6.3.1996. On account of the delay in appointment despite the order passed by the Deputy Director of Education as early as on 6.3.1994, the petitioner lost her seniority as well as the monetary benefits attached to the post. In the meanwhile a seniority list of teachers under the management was also prepared, in which M/s. G.Anil Kumar, Christian Christopher and Murali - respondents 3 to 5 were shown seniors to the petitioner. Aggrieved by the position of the petitioner in the seniority list, the petitioner submitted Ext.P6 revision petition before

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Government and thereafter she approached this Court in W.P.(C) No.19223 of 2008. The writ petition was disposed of by judgment dated 3.7.2008 directing Government to pass orders in the revision petition after hearing all the affected parties.

4. Thereafter Government issued Ext.P9 order, in which Government found that the Director of Public Instruction had already issued orders directing to approve her appointment with effect from 24.6.1993. But on account of the hostile attitude of the Manager, her appointment as well as approval was delayed. Government found that the petitioner is entitled to seniority in the cadre of HSA with effect from 24.6.1993 without any monetary benefit. The petitioner has filed this writ petition praying for a declaration that she is entitled to all consequential benefits along with seniority.

5. It is seen that the petitioner was deprived of the monetary benefits attached to the post of HSA (Social Science) only because of the adamant attitude of the Manager. The Manager who chose to appoint her initially with effect from 24.6.1993, did not take any action when the Deputy Director of Education revised the order passed by the District Educational

Officer declining the approval for appointment of the petitioner. He was consistently disobeying the directions of the Department by delaying reappointment of the petitioner, even after the Director of Public Instruction dismissed his appeal. He chose to make appointment thereafter only on the basis of the directions issued by this Court in Ext.P3 interim order on 26.2.1996 for disqualification. Initially it was on account of the order passed by the District Educational Officer declining to approve the appointment of the petitioner that she was denied salary for the period from 24.6.1993, up to the date of passing orders on her appeal by the Deputy Director of Education, that is up to 8.3.1994, that she lost the monetary benefits up to that period. For the period from 8.3.1994 onwards, the petitioner was deprived of the benefits only because of the inaction on the part of the Manager.

6. Even though notice has been served on the Manager there is no appearance for the Manager or the teachers who are impleaded.

7. In view of the fact that the Manager was deliberately disobeying the direction of the departmental authorities and

delaying the appointment causing monetary loss to the petitioner, it is a fit case where the monetary loss caused by the teacher is directed to be recovered from the Manager, in the manner provided in clause 4 of Rule 7 of Chapter III of KER for payment to the petitioner.

8. In the present case the petitioner was entitled to be reappointed immediately after the orders were passed by the Deputy Director of Education. He chose to make reappointment only when orders were issued by this Court in Ext.P3. Therefore this is a fit case, where the Manager should be directed to compensate the petitioner by payment of monetary benefits which the petitioner lost on account of the delay on his part. I am fortified in taking this view in the light of the judgment of this Court in ***Manager M.M.H.S Vs. Deputy Director*** : 1994 (2) *KLT 641*.

Therefore the first respondent is directed to see that the monetary loss sustained by the petitioner for the period from 6.3.1994 to 6.3.1996 ie. up to the actual date of appointment is recovered from the Manager resorting to Revenue Recovery proceedings and payment of the same is effected to the

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petitioner. The first respondent shall complete these proceedings, in terms of the direction within a period of three months from the date of receipt of a copy of this judgment.

The writ petition is accordingly disposed of as above.

Sd/-

**P.V.ASHA,
JUDGE.**

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