

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE SMT. JUSTICE P.V.ASHA

THURSDAY, THE 30TH DAY OF JULY 2015/8TH SRAVANA, 1937

WP(C).No. 7789 of 2012 (W)

PETITIONER:

S.PAMAMKUMARI
PRINCIPAL, VPS HIGHER SECONDARY SCHOOL FOR BOYS
VENGANOOR, RESIDING AT RAMYAM, T.C. 52/1008(01)
STUDIO ROAD, INDUSTRIAL ESTATE P.O, TRIVANDRUM.

BY ADVS.SRI.THOMAS ABRAHAM
SMT.MERCIAMMA MATHEW
SRI.K.S.HARIDAS
SRI.V.RENJITH KUMAR

RESPONDENTS:

1. STATE OF KERALA
REPRESENTED BY ITS SECRETARY
GENERAL EDUCATION DEPARTMENT, GOVERNMENT OF KERALA
SECRETARIAT, TRIVANDRUM. 695001

2. DIRECTOR OF HIGHER SECONDARY EDUCATION,
HOUSING BOARD BUILDING, SANTHI NAGAR
THIRUVANANTHAPURAM.695001

3. REGIONAL DEPUTY DIRECTOR OF HIGHER SECONDARY EDUCATION,
CORPORATION BUILDING, PALAYAM, THIRUVANANTHAPURAM.695001

4. THE MANAGER,
VPS HIGHER SECONDARY SCHOOL FOR BOYS, VENGANOOR
THIRUVANANTHAPURAM.695523

5. P. VIJAYAKUMARAN NAIR,
HSST (ENGLISH) VPS HIGHER SECONDARY SCHOOL FOR BOYS
VENGANOOR, THIRUVANANTHAPURAM.695523

* Addl.6. SMT.BEENA.S.
HSST COMMERCE, SOWHRIDA GRAMAM LANE
PRAVACHAMBALAM - 695523.

* Addl.7. SMT.PREETHA.K.S.
HSST HINDI, SREE NANDANAM, VENGANOOR.P.O- 695523.

* Addl.8. SMT.BINDU.C.T.
HSST MATHS, SREE DEVI BHAVAN, KALLIYOOR.P.O.
NEMOM - 695523.

* Addl.9. SMT.PRAMEELA. L.R.
HSST CHEMISTRY, BERAKA, VENNIYOOR
NELLIVILA.P.O- 695523.

WP(C).No. 7789 of 2012 (W)

- * Addl.10. SMT.MEERA.C.
HSST ZOOLOGY, SWATHI TC 2/3034, PANACHIMOODU LANE
PATTOM, TRIVANDRUM- 695001.
- * Addl.11. SMT.USHAKUMARI.D.
HSST ECONOMICS, SREE MURUGAVILASAM BUNGLOW
MARUTHOORKONAM, KOTTUKAL.P.O., BALARAMAPURAM, TRIVANDRUM
695523.
- * Addl.12. SMT.PREETHA RANI.P.
BOTANY, UTHRAM, PUNNAKULAM
KOTTUKAL.P.O., TRIVANDRUM - 695523.

ADDL. R6 & R12 ARE IMPEADED AS PER ORDER DATED 04/07/2012 IN IA
8798/2012.

SRI.RAFEEK.V.K., GOVERNMENT PLEADER
RR5 BY ADV. SRI.S.MOHANDAS
R4 BY ADV. SRI.M.R.SUDHEENDRAN
R6 & 8 BY ADV. SRI.G.SUDHEER

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
30-07-2015, ALONG WITH WPC. 12434/2012, WPC. 25044/2012, THE COURT
ON THE SAME DAY DELIVERED THE FOLLOWING:

RKC

APPENDIX

PETITIONER'S EXHIBITS:

- P1 COPY OF THE APPOINTMENT ORDER DATED 1.4.2011
- P2 COPY OF THE LETTER DATED 1.4.2011 SENT BY R4
- P3 COPY OF THE STATEMENT OF HCANGE OF STAFF FORWARDED BY R4
ALONG WITH EXT.P2 AND OTHER DOCUMENTS.
- P4 COPY OF PROCEEDINGS DT.5.4.2011 OF DEO NEYYATTINKARA
- P5 COPY OF HEARING NOTE DT.24.5.2011 SUBMITTED BY THE PETITIONER
- P6 COPY OF THE ORDER DT.31.5.2011 PASSED BY R3.
- P7 COPY OF THE APPEAL DT.7.6.2011 ALONG WITH THE STAY PETITION
BY THE PETITIONER.
- P8 COPY OF THE REPRESENTATION DT.7.6.2011 SUBMITTED BY THE
PETITIONER BEFORE THE MINISTER FOR EDUCATION, GOVERNMENT OF
KERALA
- P9 COPY OF THE STAY ORDER GRANTED BY THE GOVERNMENT
- P10 COPY OF THE COMMUNICATION DATED 16.2.2012 SENT TO THE
PETITIONER BY THE 1ST RESPONDENT.
- P11 COPY OF THE ORDER DATED 5.3.2012
- P12 COPY OF THE ORDER DATED 23.12.2012 ISSUED BY R2.

RESPONDENTS' EXHIBITS: NIL

RKC

TRUE COPY

PA TO JUDGE

P.V.ASHA, J.

=====

W.P.(C). No.7789 OF 2012

W.P.(C).12434 OF 2012,

&

W.P.(C).25044 OF 2012

=====

Dated this the 30th day of July, 2015

JUDGMENT

Appointment to the post of Principal in VPS Higher Secondary School for boys is the issue which has come up for consideration in these 3 writ petitions – one filed by the Principal, whose appointment was not approved, the other filed by a Higher Secondary School Teacher, who claimed appointment as Principal and the 3rd one by the Manager.

2. The facts leading to the case are as follows:-

VPS Higher Secondary School (hereinafter referred to as 'School' for short) is an aided School under an individual educational agency. A vacancy of Principal arose in the School on 1.4.2011, consequent to retirement of one Sri.S.Narayanan Nair. Smt. Padmakumari – the petitioner in W.P.(C) 7789/2012 had been working as Headmistress in the High School wing of

W.P.(C). No.7789 OF 2012, W.P.(C).12434 OF 2012 &
W.P.(C).25044 OF 2012

:2:

the very same Educational Institution.

3. Sri.P.Viayakumaran Nair-the petitioner in W.P.(C) No.12434/2012 commenced service in the School as HSST 'English' on 24.8.1998. His initial appointment was under challenge by Sri.Narayanan Nair and this Court ultimately found that Sri.Narayanan Nair was the eligible claimant for appointment as HSST in his place with effect from 24.8.1998. Accordingly on the basis of the judgments of this Court in W.P. (C). No. 2286/2003 and Writ Appeal No.72 of 2006, a vacancy had arisen only from 15.7.1999 in order to accommodate Sri.Vijayakumaran Nair.

4. Sri.P.Vijayakumaran Nair sought appointment in the post of Principal, claiming that he is having continuous service as HSST with effect from 24.8.1998. But, the Manager appointed Smt. Padmakumari as per Ext.P1 order on 1.4.2011. But the appointment was not approved. The Regional Director of Higher Secondary Education Thiruvananthapuram, in its

W.P.(C). No.7789 OF 2012, W.P.(C).12434 OF 2012 &
W.P.(C).25044 OF 2012

:3:

order stayed the judgment by Ext.P6, after considering the objection raised by Sri. P.Vijayakumaran Nair, in terms of the direction contained in judgment dated 8.4.2011 in W.P.(C) 11474/2011 considering the rival claims of Smt.Padmakumari and P.Vijayakumaran Nair. It was after hearing all the parties including the Manager, that the Regional Deputy Director rejected the proposal for appointment of Smt. Padmakumari on the ground that :

(i) In order to follow 1:1 ratio for appointment of Principal there should be at least 3 schools under the same management.

(ii) In case Smt. Padmakumari is appointed as principal there will be 3 HSST in Mathematics, whereas there are only 2 posts allowed for Mathematics for the school. Apart from that there are Smt. C.T. Bindhu, Sri. Suresh Babu who were working as HSST. Therefore a supernumerary post will have to be created in case she is appointed as Principal which will cause additional financial commitments to the Government.

5. Smt.Padmakumari took up the matter in appeal before the Director of Higher Secondary Education. While the matter

W.P.(C). No.7789 OF 2012, W.P.(C).12434 OF 2012 &
W.P.(C).25044 OF 2012

:4:

was pending before the Director, Sri. P. Vijayakumaran Nair approached the Government and Government issued an order of stay of the proceedings issued by the Regional Deputy Director by order dated 1.7.2012. Government issued an order staying further proceedings based on the order passed by the Deputy Director. Thereafter after hearing all the parties Ext.P11 order was passed. In this order the Government found that there are other Higher Secondary School Teachers in this school apart from Sri.Vijayakumar Nair. Even though it was stated that Smt.Bindhu one of the senior most HSST had relinquished promotion, the Regional Deputy Director found that she had not submitted the relinquishment in accordance with the procedure. It was further found that there are 2 other teachers senior to Sri. Vijayakumaran Nair, who were not seen considered for appointment. Therefore it was found that the appointment of Smt.Padmakumari, without considering the claims of eligible Higher Secondary Teachers was contrary to

W.P.(C). No.7789 OF 2012, W.P.(C).12434 OF 2012 &
W.P.(C).25044 OF 2012

:5:

the Rules. Under the said circumstances they want to declare that the appointment was null and void.

6. The Government further found that the reasons stated in the order passed by the Regional Deputy Director of Education were not in conformity with the Rules governing the method of appointment and qualification of the Higher secondary school Principal. Therefore it was ordered that the manager took immediate action to appoint the senior most eligible Higher Secondary School Teacher as principal of the school.

7. This order was challenged by Padmakumari as well as the Manager. At the same time Writ Appeal No. 12432/2012 is filed seeking implementation of the order passed by the Government.

8. The claim of Sri.P.Vijayakumaran Nair is to be considered with reference to the qualification required for appointment for the post of Principal. Rule 4 of Chapter XXXII

W.P.(C). No.7789 OF 2012, W.P.(C).12434 OF 2012 &
W.P.(C).25044 OF 2012

:6:

provides for qualification for the post of appointment, according to which an HSST to be appointed as principal, he should have 12 years of service or otherwise he should have 6 years service in Higher Secondary Schools with another 6 years in H.S/L.P. U.P. In this case Sri.P.Vijayakumaran Nair is having service only in the Higher Secondary Section and his appointment was directly as HSST by way of direct recruitment. Admittedly his appointment was only in the year 1998. Though he claims that he has 12 years of service in total, it can be seen from the judgments of this Court mentioned earlier that the service rendered by him for the period from his initial appointment cannot be reckoned for the purpose of service required for the appointment. This court has found his initial appointment was illegal and directed to appoint Sri. Narayanan Nair who was working as HSA in the school and in his place he was appointed. He has 12 years service as on 1.4.2011 and cannot be accepted in the above

W.P.(C). No.7789 OF 2012, W.P.(C).12434 OF 2012 &
W.P.(C).25044 OF 2012

:7:

circumstances. It will not be necessary for the Manager to consider Sri. Narayanan Nair as Principal.

9. Ext.R5(a) in W.P.(C) No.25044 of 2012 shows that appointment of Sri.P.Vijayakumaran Nair was with effect from 24.9.1998 initially. On the basis of the judgment in O.P.No.30047 of 2002 the Manager had appointed Sri.S.Narayanan Nair with effect from that date. The judgments in W.P.(C) No.22863 of 2003 and W.A.No.72 of 2006 show that Sri.P.Vijayakumaran Nair, though appointed as per Ext.R5 (a), did not have any claim for appointment with effect from that date. From the pleadings, it is seen that regular vacancy in the post arose subsequently with effect from 15.7.1999, therefore as on 1.04.2011 he does not have the requisite service of 12 years as HSST. Therefore he cannot be considered to have any valid claim for appointment to the post of Principal, against the vacancy which arose on 1.4.2011.

10. Now what remains to be considered is to see whether

W.P.(C). No.7789 OF 2012, W.P.(C).12434 OF 2012 &
W.P.(C).25044 OF 2012

:8:

there was any other HSST in the school for promotion as Principal. The Government have found that there are 3 teachers senior to Sri.P.Vijayakumaran Nair and that the Manager has not considered their case for promotion, though in the case of one Smt.Beena, it was stated that she relinquished her claim for promotion. Only in their absence claim of Smt.S.Padmakumari can be considered, since it comes under the 2nd category. As per rule 4 of Chapter XXXII of KER, the method of appointment to the post of Principal is (1) by promotion of Higher Secondary School Teachers or (2) by transfer of Headmasters under the educational agency. It further stipulates that there shall be a ratio of 2:1 between the methods 1 and 2. In this case there is only one school under the educational agency. Therefore the application of ratio in this case would be practically difficult. Going by the contentions raised by the management so far only one appointment has been made from among HSSTs, ever since

W.P.(C). No.7789 OF 2012, W.P.(C).12434 OF 2012 &
W.P.(C).25044 OF 2012

:9:

the school started functioning as Higher Secondary School and all other appointments were made as Headmasters. In the above circumstances, it can be seen that the Manager has made appointment of Principal without considering all the eligible Higher Secondary School Teachers. Accordingly, I do not find anything wrong in the order passed by the Government, except for the fact that it does not look into the eligibility of Sri. Vijayakumaran Nair. Government have already ordered the Manager to take immediate action to appoint the senior most and eligible HSST as Principal of the school and in their absence the Manager is at liberty to appoint the Headmistress as Principal.

11. Therefore there is no reason for the Manager or Smt.Padmakumari to be aggrieved by the order. The claim of Smt. Padmakumari is on the basis that Sri.Vijayakumaran Nair is the only rival claimant and he does not have 12 years of service and therefore since no HSST came forward claiming

appointment as Principal, she is the only person eligible for appointment as Principal.

12. When the method of appointment provided in Chapter XXXII of KER is by promotion of HSST or by transfer of Headmasters, it is incumbent on the Manager to consider the cases of all the HSSTs for promotion, before resorting to the alternate method –by appointment or by transfer. It is not a case that the teachers have to come forward claiming appointment as Principal, as far as the Manager does not have a case that they have submitted relinquishment.

13. The learned counsel for the petitioner in W.P.(C) No.7789 of 2012 pointed out that none of the Higher Secondary School Teachers, who are the alleged seniors of Sri.Vijayakumaran Nair objected to her appointment or appear either before Government or before this Court. Eventhough they were impleaded as additional respondents, none of them have entered appearance. But their non-appearance will not

W.P.(C). No.7789 OF 2012, W.P.(C).12434 OF 2012 &
W.P.(C).25044 OF 2012

:11:

make the appointment of Smt.Padmakumari valid as long as their case was not considered. Therefore there is no circumstance for interfering with the order passed by the Government.

However it is made clear that in the event the said Higher Secondary School teachers express their unwillingness, in the process of selection to be held by the Manager, as directed by the Government in Ext.P11 order, it will be open for the petitioner in W.P.(C) No.7789 of 2012 Smt.Padmakumari to claim all the service benefits on the basis of her appointment as per Ext.P1, which the educational authorities shall duly consider taking into account of the fact that she was duly qualified and has been working in the post since 1.4.2011. With the above observations the writ petition is disposed of.

Sd/-

P.V.ASHA, JUDGE

SKV/rkc