

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

MONDAY, THE 19TH DAY OF OCTOBER 2015/27TH ASWINA, 1937

W.P.(C).No.14660 of 2005 (T)

PETITIONER(S):-

M.S. LATHA,
MUSIC TEACHER, KUTHANNUR HIGH SCHOOL, KUTHANNUR P.O.
PALAKKAD DISTRICT.

BY ADV. SRI.V.A.MOHAMMED.

RESPONDENT(S):-

1. THE STATE OF KERALA,
REPRESENTED BY THE SECRETARY TO GOVERNMENT,
GENERAL EDUCATION DEPARTMENT, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM.
2. THE DIRECTOR OF PUBLIC INSTRUCTION, THIRUVANANTHAPURAM.
3. THE DEPUTY DIRECTOR OF EDUCATION, PALAKKAD.
4. THE DISTRICT EDUCATIONAL OFFICER, PALAKKAD.
5. THE MANAGER, KUTHANNUR HIGH SCHOOL,
P.O. KUTHANNUR, PALAKKAD DISTRICT.
6. B. SYAMALAM,
MUSIC TEACHER (U.P. SECTION), KUTHANNUR HIGH SCHOOL,
P.O. KUTHANNUR, PALAKKAD DISTRICT.

R1 TO R4 BY GOVERNMENT PLEADER SRI.T.R.RAJESH.

R5 BY ADV.SRI.T.C.SURESH MENON.

R6 BY ADV. SRI.B.UNNIKRISHNA KAIMAL.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
19-10-2015, ALONG WITH WP(C). 15715/2006-U, THE COURT ON THE SAME
DAY DELIVERED THE FOLLOWING:-

APPENDIX

PETITIONER'S EXHIBITS:-

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| EXT.P1 | TRUE COPY OF CIRCULAR NO.78932/J1/88/G.EDN.
DATED 17.12.1988 ISSUED BY THE 1ST RESPONDENT. |
| EXT.P2 | TRUE COPY OF JUDGMENT DATED 9.12.1988, IN O.P.9714/1988. |
| EXT.P3 | TRUE COPY OF ORDER NO.D.DIS.104729/88/RA(2)/DPI,
DATED 20.12.1988 OF THE JOINT DIRECTOR OF PUBLIC
INSTRUCTION, TRIVANDRUM. |
| EXT.P4 | TRUE COPY OF ORDER NO.A3/19609/88/DATED 12.6.89, OF
THE DEPUTY DIRECTOR (EDN.), IDUKKI. |
| EXT.P5 | TRUE COPY OF ORDER, K.DIS.132470/RA 2/DPI/88,
DATED 2.2.1989, OF THE DIRECTOR OF PUBLIC INSTRUCTION. |
| EXT.P6 | TRUE COPY OF CIRCULAR NO.119952/89/DPI, DATED 15.5.1990,
OF THE DIRECTOR OF PUBLIC INSTRUCTION. |
| EXT.P7 | TRUE COPY OF JUDGMENT DATED 28.3.1995, IN O.P.11921/94. |
| EXT.P8 | TRUE COPY OF ORDER G.O.(Rt.) NO.271/6/GE, DATED 23.1.1996. |
| EXT.P9 | TRUE COPY OF JUDGMENT, DATED 18.8.2000, IN W.A.608/1995. |
| EXT.P10 | TRUE COPY OF THE REPRESENTATION, DATED 25.09.2000,
SUBMITTED BY THE PETITIONER BEFORE THE
1ST RESPONDENT. |
| EXT.P11 | TRUE COPY OF LETTER NO.B2/4821/98 DATED 20.1.2001,
ADDRESSED BY THE 4TH RESPONDENT TO THE
2ND RESPONDENT. |
| EXT.P12 | TRUE COPY OF LETTER NO.EM1/100648/2000/DPI,
DATED 2.4.2001, ADDRESSED BY THE 2ND RESPONDENT
TO THE 1ST RESPONDENT. |
| EXT.P13 | TRUE COPY OF ORDER G.O.(RT) NO.3563/2001/G.EDN.
DATED 25.9.2001. |
| EXT.P14 | TRUE COPY OF REVIEW PETITION DATED 16.11.2001,
SUBMITTED BY THE PETITIONER BEFORE THE
1ST RESPONDENT. |

- EXT.P15 TRUE COPY OF LETTER DATED 245.12.2001 OF THE 4TH RESPONDENT.
- EXT.P16 TRUE COPY OF LETTER DATED 24.01.2002, OF THE 2ND RESPONDENT.
- EXT.P17 TRUE COPY OF ORDER G.O.(Rt).NO.4809/2001/G.EDN. DATED 31.12.2001.
- EXT.P18 TRUE COPY OF JUDGMENT DATED 19.6.2002 IN O.P.16515/2002.
- EXT.P19 TRUE COPY OF ORDER G.O.(RT).NO.3614/02/G.EDN. DATED 19.10.2002.
- EXT.P20 TRUE COPY OF ORDER G.O.(RT).NO.1463/99/G.EDN. DATED 24.03.1999.
- EXT.P21 TRUE COPY OF JUDGMENT DATED 4.1.2005, IN O.P.38694 OF 2002.
- EXT.P21(A) TRUE COPY OF LETTER DATED 13.1.2005, ADDRESSED BY THE PETITIONER BEFORE THE 1ST RESPONDENT.
- EXT.P22 TRUE COPY OF LETTER NO.2999/K1/05/G.EDN. DATED 28.01.2005, OF THE 1ST RESPONDENT.
- EXT.P23 TRUE COPY OF ORDER G.O.(RT) NO.1481/05/G.EDN. DATED 8.4.2005.
- EXT.P24 TRUE COPY OF REPRESENTATION DATED 25.08.2009, SUBMITTED BY THE PETITIONER BEFORE CHIEF MINISTER'S PUBLIC GRIEVANCE REDRESSAL CELL.
- EXT.P25 TRUE COPY OF ORDER G.O.(RT).NO.3220/2010/G.EDN. DATED 23.07.2010.

RESPONDENT'S EXHIBITS:-

----- NIL.

vk/-

[true copy]

K. Vinod Chandran, J

W.P.(C).Nos.14660 of 2005-T & 15715 of 2006-U

Dated this the 19th day of October, 2015

JUDGMENT

The petitioner in W.P.(C).No.14660 of 2005 is one another unfortunate victim of the haphazard appointments made by the aided school management under the Kerala Education Rules, 1959 [for brevity “KER”]. The records reveal that there are a number of litigations with respect to the subject matter of the writ petition. The entire controversy was agitated before the authorities under the KER and this Court, by the petitioner on the strength of Exhibit P8 order, which, according to the petitioner, sanctioned a post of Music Teacher in the Upper Primary Section [for brevity “UP Section”] for the academic year 1994-95.

2. The background facts to be noticed are that the 6th respondent is a Music Teacher in the UP Section of the school, having been appointed so with effect from 27.07.1984. In the academic year 1988-89, the post of Music Teacher in UP Section was abolished by the Government under Rule 6B of Chapter XXIII of KER. The 6th respondent, hence, was deployed in a Government

school. The 6th respondent challenged the same before this Court, which Original Petition was disposed of by Exhibit P2. The 6th respondent, who was the petitioner therein, by Exhibit P2, was directed to submit a petition before the Director of Public Instruction [for brevity “[DPI]”] challenging the abolition of the post of Music Teacher as also her deployment to Government school without granting her protection in the same school. This was necessitated since on abolition of Music Teacher’s post, in UP Section, the Government had also by Exhibit P1 Circular indicated that those teachers continuing in the UP Section will be continued as protected teachers, till their retirement, upon which alone the post would stand abolished. Hence, the 6th respondent was entitled to be protected and she was brought back to the school as is indicated from Exhibits P3 and P4. The 6th respondent, hence, was continuing as Music Teacher, on protection, in the UP Section.

3. While the above proceedings were going on, on 07.12.1988 a post of Music Teacher arose in the High School Section [for brevity “HS Section”] by virtue of a resignation. The Manager appointed the petitioner herein on 16.07.1991, i.e., after Exhibit P4 order; when the 6th respondent was continuing as a

Music Teacher in the UP Section under protection. The petitioner's approval was rejected, against which the petitioner was before this Court by O.P.No.11921 of 1994. O.P.No.11921 of 1994 considered the rival contentions of the petitioner, the Manager and the 6th respondent and categorically found that the orders of the Educational Authorities are not liable to be interfered with. This Court found that when the petitioner was appointed to the post of Music Teacher in the HS Section, the 6th respondent was continued as a protected teacher in the UP Section. The Government was paying salary to the 6th respondent, despite the fact that the Government had brought in sufficient amendments to the KER abolishing the post of Music Teacher in the UP Section. Hence, to reduce the liability of the Government, the 6th respondent ought to have been accommodated in the Music Teacher's post which arose in the HS Section, was the categoric finding.

4. It is also to be specifically noticed that Exhibit P7 judgment clearly found that when the vacancy arose on 07.12.1988 in the HS Section, the Manager was directed by the Educational Authorities to adjust the 6th respondent in that vacancy. Despite repeated directions issued, the Manager failed to comply with such

directions and eventually long after, on 16.07.1991 appointed the petitioner in that post while the 6th respondent was continuing as a protected hand in the UP Section.

5. An appeal was filed from Exhibit P7 judgment, pending which Exhibit P8 order was passed by the Government, allegedly sanctioning a post in the UP Section for the academic year 1994-95. This was projected as a fresh sanction and was produced in the appeal as Annexure-I [Exhibit P8 in W.P.(C). No.14660 of 2005]. Though the Division Bench upheld the judgment of the learned Single Judge in Exhibit P7, the petitioner was permitted to approach the Government on the basis of Exhibit P8 order. The subsequent litigations were also on the strength of Exhibit P8 order, which, according to the petitioner, created a post in the UP Section of the school, of a Music Teacher, in which the 6th respondent could be continued and the petitioner granted approval in the HS Section.

6. This Court would not refer any of the subsequent judgments of this Court, since neither in Exhibit P7 nor in any other judgments the sustainability of the claim raised based on Exhibit P8 was considered. This Court merely directed consideration by

the Educational Authorities. The Government has rejected the claim of the petitioner eventually by Exhibit P13 as confirmed in Exhibit P25, which are impugned herein.

7. At the outset, it is to be noticed that Exhibit P8 is an order in a challenge against the staff fixation for the year 1994-95. A reading of the order would indicate that despite the 6th respondent being granted protection, there was no sanctioned post of Music Teacher in the said staff fixation order for the said academic year. It was in such circumstance that the Manager approached the authorities under the KER and eventually the Government, who decided the issue by Exhibit P8. The post was sanctioned not as a post in which a Music Teacher could be appointed or continued; but as a protection granted to the teacher who had been continuing in the UP Section from 27.07.1984 and threatened with termination by virtue only of the abolition of post of Music Teachers in the UP Section. In fact, Rule 6B, which abolished the post itself, granted such protection to existing teachers and as long as the 6th respondent was in service, it was incumbent upon the Educational Authorities to sanction a post in the UP Section, which would stand abolished, as per the provisions

of Rule 6B, only on her retirement. Hence, no valid contention could be raised on Exhibit P8, since what the Government sanctioned is the continuation of the 6th respondent as a protected hand, in the UP Section of the respondent-School. In such circumstances, though the Division Bench had directed consideration of the claim on the basis of Annexure-I [Exhibit P8], it has to be sated that there can be no such valid consideration made for reason of the claim raised on the basis of Exhibit P8 being unsustainable.

8. This Court having found that the claim raised on the basis of Exhibit P8 is unsustainable, the petitioner cannot have a valid claim to the post of Music Teacher in the HS Section, which arose on 07.12.1988 when the 6th respondent was continued in the UP Section on protection, despite the post being abolished. The full rigour of the observations in Exhibit P7 would have to be applied in the case of the petitioner. The petitioner's claim is found to be devoid of merit and the same is rejected. The Government Orders are upheld. The 6th respondent shall be paid her salary for the period in which she was continued in the HS Section from the date of her re-joining duty.

9. However, the learned counsel for the petitioner brings to the notice of this Court that, by order No.B3/16084/11 dated 01.10.2012 of the Deputy Director of Education, Palakkad, the petitioner has been included in the package as a teacher who was appointed; but not approved. The rejection of the claim of the petitioner by this judgment shall not stand in the way of she being included in the package as per the afore-cited order, since, as stated by this Court in the initial paragraph of this judgment, she is a victim of the haphazard appointments made by Managers of aided schools. But, that cannot be a reason for the liability of salary being mulcted on the Government and despite her alleged continuance from 1998, the petitioner would have no claim for salary.

10. W.P.(C) No.15715 of 2006 is filed by the Manager against Exhibit P4, which held that the petitioner in W.P.(C). No.14660 of 2005 would be entitled to draw salary for the period, which would be paid by the Government and recovered from the Manager under Rule 7(4) of Chapter III of KER. It is to be noticed that there is no provision by which the Government is obliged to pay the salary of a person appointed irregularly by the

management. If such irregular appointee has continued for a long period, then the appointee could take appropriate civil remedies against the Manager. But, as the provisions of the KER does not mandate payment of such salary, there can be no recovery effected under Rule 7 of Chapter III KER. In any event, the recovery as enumerated in sub-rule (4) of Section 7 does not take in the monetary benefits entitled to an irregular appointee and takes in only the monetary benefits entitled to an eligible Rule 51A or Rule 43 claimant. In such circumstance, Exhibit P4, insofar as it directs recovery, shall be set aside. Needless to say, the Government does not have any liability to pay salary to the irregular appointee, as has been directed in Exhibit P3.

In the result, W.P.(C) No.14660 of 2005 would stand dismissed with the observations contained in paragraph 9. W.P.(C). No.15715 of 2006 would stand allowed. Parties are directed to suffer their respective costs.

Sd/-
K.Vinod Chandran
Judge.

vkul/-

[true copy]