

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

THURSDAY, THE 17TH DAY OF DECEMBER 2015/26TH AGRAHAYANA, 1937

WP(C).No. 14852 of 2005 (R)

PETITIONER(S):

MANAGER, V.C.S. HIGHER SECONDARY SCHOOL,
PUTHENVELIKKARA, ERNAKULAM DISTRICT.

BY ADVS.SRI.B.GOPAKUMAR
SMT.CHINCY GOPAKUMAR
SRI.ASWIN GOPAKUMAR
SRI.ANWIN GOPAKUMAR

RESPONDENT(S):

1. STATE OF KERALA, REP. BY ITS
SECRETARY GENERAL EDUCATION (T) DEPARTMENT
GOVERNMENT OF KERALA, SECRETARIAT, THIRUVANANTHAPURAM.

2. DIRECTOR,
OFFICE OF THE DIRECTOR OF HIGHER SECONDARY
EDUCATION, HOUSING BORAD BUILDINGS
THIRUVANANTHAPURAM.

Addl.R3: S. SULEKHA,
HIGHER SECONDARY SCHOOL TEACHER
VCS HIGHER SECONDARY SCHOOL
PUTHENVELIKKARA P.O. 683 594 N.PARUR
(ADDT.RESPONDENT 3 IS IMPEADED A PER ORDER DATED 17.10.2006 IN I.A. NO.124388/06)

R,ADL.R3 BY ADV. SRI.N.D.PREMACHANDRAN
R,R3 BY ADV. SRI.N.D.PREMACHANDRAN
R BY GOVERNMENT PLEADER SMT SUNITHA VINOD

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 17-12-2015,
ALONG WITH WPC NO.15594/2006, WPC 22634/2006, 1925/2007, 17570/2006 THE COURT ON THE
SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

- EXT.P1 : TRUE COPY OF THE CIRCULAR DT 17.7.2003 OF 2ND RESPONDENT
- EXT.P2 : TRUE COPY OF THE LETTER DT 27.9.2003 OF THE 1ST RESPONDENT
- EXT.P3 : TRUE COPY OF THE GOVERNMENT ORDER DT 16.12.2003 ISSUED
BY THE 1ST RESPONDENT
- EXT.P4 : TRUE COPY OF THE CIRCULAR DT 16.6.2004 OF THE 2ND
RESPONDENT
- EXT.P5 : TRUE COPY OF THE CIRCULAR DT 13.4.2005 OF THE 2ND
RESPONDENT

RESPONDENTS EXHIBITS:NIL

TRUE COPY

P.A TO JUDGE

jma

K. VINOD CHANDRAN, J

W.P(C) Nos. 14852 of 2005, 15594 of 2006, 17571 of 2006, 22634 of
2006 & 1925 of 2007

Dated this the 17th day of December, 2015

J U D G M E N T

Five connected writ petitions though dealing with different issues are interconnected and hence disposed of by a common judgment. The issue is with respect to the appointment of Principal in one Viveka Chandrika Sabha (VCS) Higher Secondary School, Puthenvelikkara. The Manager of the school has filed W.P© Nos.14852/2005, 22634/2006 and 1925/2007. An H.S.A (Malayalam) who was promoted as HSST after a prolonged litigation has filed WP© 17571/2006, staking a claim to the post of Principal in the school. W.P© No.15594/2006 is filed by an HSST who was aggrieved with a stranger, i.e. a teacher not working in the educational agency, being appointed as Principal on the basis of a selection made by the Manager. The parties are referred to by their names and the documents are referred to from each of the

writ petitions as they are taken up hereunder.

2. The first in the line of writ petitions was W.P© No.14852/2005 which challenges Ext.P5 notification, by which the Principals of higher secondary schools were to be appointed from the senior most of the teachers in the school, but however, taking the total approved teaching experience both in the higher secondary and high school level. The challenge is no more alive since the rules of 2001, as introduced on 12.11.2001, by Chapter XXXII of Kerala Education Rules 1959, provides for seniority in the higher secondary section itself. In such circumstance, W.P© No.14852/2005 is no more alive for consideration especially since the issue raised in the other writ petitions is also with respect to the appointment of a Principal, after the coming into force of the rules. W.P© 14852/2007 would stand dismissed.

3. W.P© No,17571/2006 is filed by one S.Sulekha who had a claim to the post of HSST in the year 1998, when initially, the higher secondary section was sanctioned to the school. The

Manager appointed one Deepa George by direct recruitment which was challenged by S.Sulekha. By judgment dated 07.08.2003 in 14967/1999 (Ext.P3 in WPC No.17571/2006) S.Sulekha's claim was directed to be considered. By Ext.P5 the Director of Higher Secondary Education upheld the claim of S.Sulekha and granted notional benefit of appointment with retrospective effect on 24.08.1998. Deepa George, who was appointed by the Manager as on that date was directed to be accommodated in the next arising vacancy during 2000-2001 academic year. The same was challenged in a revision and Deepa George and S.Sulekha approached this Court with two separate writ petitions numbered as W.P© No.29427/2004 and 24217/2004, the judgment of which is produced as Ext.P6 in W.P© No.17571/2006. The revisions filed by the petitioners therein were directed to be considered.

4. The consideration so made is evident from Ext.P1 produced in W.P©1925/2007, government order G.O(RT)No 4524/2006/G.Edn. dated 17.10.2006. Considering the challenge

made to the said order (produced as Ext.P2 in WPC 1925/2007), it has to be found that as on 1998 Sulekha was the available H.S.A who was entitled to be promoted to the post of HSST on the basis of 25% seats reserved for the in-service candidates (H.S.As). Deepa George admittedly was an outsider who was appointed on open recruitment. In such circumstance, this Court does not find any reason to interfere with the orders of the Director dated 15.10.2003 as confirmed by the Government by order dated 17.10.2006. WPC 1925/2007 would stand dismissed. It is also to be noticed that the said Deepa George has been accommodated in the next arising vacancy in the higher secondary section.

5. The other three writ petitions deal with the appointment of one P.Indira, as Principal of the respondent school, who was not available in the rolls of the school and who had been appointed allegedly through a selection which was conducted pursuant to a notification. In such circumstance W.P(C) No: 17571/2006 has to be considered first. It is also to be noticed that

the appointment of Indira is no more alive for consideration since the same was set aside by Ext.P1, produced in WPC 22634/2006 which is challenged therein. The said Indira is said to have left the school after the order at Ext.P1. WP(C) N0: 15594/2006 was again a challenge against the appointment of Indira, as Principal, since an inclusion of one other HSST would have reduced the periods of Preethi Jose, the petitioner therein, thus necessitating her to be thrown out or being reduced to the post of HSST(Junior).

6. WPC 22634/2006 is filed by the Management challenging Ext.P1 order which directed that Indira should be terminated. Admittedly, Indira was appointed from the open market which was not permissible since even as on 12.06.2006 Chapter XXXII was introduced in the KER and the Principal's post could be filled up only from HSSTs and on such persons not being available, HSST (junior) or the Headmasters of the high schools. In the circumstance of even such persons being not available, the senior most HSST has to be put in charge of the Principal. Ext.P1

hence has to be upheld. WP(C) No.:22634/2006 would stand dismissed. Indira Devi's termination having been upheld, WP(C) No: 15594/2006 is no more relevant since Preethi Jose was only concerned with the reduction in her periods. Hence WP© 15594/2006 is closed as infructuous.

7. What remains is WP(C) No: 17571/2006 wherein the petitioner had staked a claim for the post of Principal from the date on which IndiraDevi is appointed, ie., 12.06.2006. The petitioner also has a claim that in fact ,the petitioner ought to have been appointed as Principal being the senior most teacher, when such a vacancy arose and Jai Mathew, a junior was appointed as Teacher-in-charge. However, the petitioner cannot take up that contention at this stage since, by Ext.P6 common judgment in the writ petitions filed by Sulekha and Deepa George, this Court had already affirmed the appointment of Jai Mathew as Teacher-in-charge. This Court while disposing of the writ petitions on 20.03.2006 also took note of the notification issued by the Manager

on 16.03.2006 as produced at Ext.P7. The Manager was given liberty to proceed with the selection; with Sulekha reserved the remedy of challenging the same. Sulekha's claim for appointment as Principal having been specifically declined by that judgment, she cannot now raise a claim for appointment as Principal, prior to 20.03.2006 on which date the judgment was passed.

8. Sulekha however, claims that she has to be appointed at least from the date of appointment of Indira Devi. It is to be noticed that Indira Devi's appointment was on 12.06.2006, at which point Chapter XXXII of KER was introduced. Looking at the clarifications at Rule 6 of Chapter XXXII of KER, as it existed in 2006 a person to be appointed as Principal, regularly, has to have 12 years experience as HSST. Sulekha even if considered to be appointed from 1998, which benefit has been given to her notionally, has experience only of 8 years on that date. Sulekha is said to have been retired on superannuation, on 30.06.2008, even on which date Sulekha did not have the experience required for

being appointed as Principal. At best Sulekha could have been accommodated as Teacher-in-charge, being the senior most, which however, does not give any additional monetary benefit. Sulekha having retired, there would be no purpose in giving her that benefit at this point. Hence WPC No.17571/2006 would also stand dismissed.

All the writ petitions are dismissed. Parties left to suffer their respective costs.

Sd/-

(K. VINOD CHANDRAN, JUDGE)

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P.A to Judge