

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

WEDNESDAY, THE 22ND DAY OF JULY 2015/31ST ASHADHA, 1937

WP(C).NO. 4572 OF 2015 (V)

PETITIONER(S) :

NIYAS K
V.T.HOUSE, KOKKOTTUKONAM P.O.
THIRUVANANTHAPURAM. (UPSA
T.E.M.V. HIGHER SECONDARY SCHOOL, MYLODE P.O
KOTTARAKKARA) .
NOW RESIDING AT NIYAS MANZIL
POREDAM P.O., CHADAYAMANGALAM.

BY ADVS.SRI.S.P.ARAVINDAKSHAN PILLAY
SMT.N.SANTHA
SRI.K.A.BALAN
SRI.PETER JOSE CHRISTO
SRI.S.A.ANAND
SMT.L.ANNAPOORNA

RESPONDENT(S) :

1. STATE OF KERALA
REPRESENTED BY SECRETARY TO GOVERNMENT IN THE DEPARTMENT OF
GENERAL EDUCATION
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM-695001.

2. DIRECTOR OF PUBLIC INSTRUCTION
THIRUVANANTHAPURAM-695001.

3. DISTRICT EDUCATIONAL OFFICER
OFFICE OF DEO, KOTTARAKARA-691506.

4. MANAGER
T.E.M.V. HIGHER SECONDARY SCHOOL, MYLODE P.O.
KOTTARAKARA-691506.

5. MANOJ
UPSA, T.E.M.V. HIGHER SECONDARY SCHOOL, MYLODE P.O.
KOTTARAKARA-691506.

R5 BY ADV. SRI.KALEESWARAM RAJ
BY GOVERNMENT PLEADER SMT.M.J.RAJASREE

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
22-07-2015, ALONG WITH WP(C).NO. 15087 OF 2015 THE COURT ON THE SAME
DAY DELIVERED THE FOLLOWING:

WP(C).NO. 4572 OF 2015 (V)

APPENDIX

PETITIONER(S) ' EXHIBITS

EXHIBIT-P1: A TRUE COPY OF COMMUNICATION NO.B5/223/05/L.DIS DATED
16.08.2005 OF THE 3RD RESPONDENT TO THE 4TH RESPONDENT.

EXHIBIT-P2: A TRUE COPY OF APPOINTMENT ORDER DATED 01.06.2009 ISSUED BY
THE 4TH RESPONDENT TO THE PETITIONER.

EXHIBIT-P3: A TRUE COPY OF APPOINTMENT ORDER DATED 01.06.2011 ISSUED BY
THE 4TH RESPONDENT TO THE PETITIONER.

EXHIBIT-P4: A TRUE COPY OF COMMUNICATION NO.B5-3142/2012 DATED
24.05.2012 OF THE 3RD RESPONDENT TO THE 2ND RESPONDENT.

EXHIBIT-P5: A TRUE COPY OF REPRESENTATION DATED 05.06.2012 MADE BY THE
PETITIONER TO THE 2ND RESPONDENT.

EXHIBIT-P6: A TRUE COPY OF COMMUNICATION NO.B5/3142/2013 DATED
17.12.2013.

EXHIBIT-P7: A TRUE COPY OF ORDER NO.ET1/39762/2012/DPI/K.DIS DATED
22.04.2014.

EXHIBIT-P8: A TRUE COPY OF REPRESENTATION DATED 23.06.2014 MADE BY THE
PETITIONER BEFORE THE 1ST RESPONDENT.

EXHIBIT-P9: A TRUE COPY OF ORDER DATED 11.12.2014 OF THE 1ST RESPONDENT.

RESPONDENT(S) ' EXHIBITS:NIL

//TRUE COPY//

P.A TO JUDGE

(CR)

A.K.JAYASANKARAN NAMBIAR, J.

.....
W.P.(C).No. 4572 of 2015

and

W.P.(C).No.15087 of 2015
.....

Dated this the 22nd day of July, 2015

J U D G M E N T

Since the issue involved in both these writ petitions is the same they are taken up for consideration together and disposed by this common judgment. For the sake of convenience, the reference to the facts and the exhibits is from W.P.(C).No.4572 of 2012.

2. The petitioner was appointed as UPSA in the School under the management of the 4th respondent. It would appear that the mother of the petitioner was an Arabic teacher in the same School and she died while in service on 03.06.1997. The petitioner, therefore, became entitled to claim appointment under the School by virtue of Rule 51B of Chapter XIV A of KER. Accordingly, the petitioner applied for an appointment before the 3rd respondent District Educational Officer. The 3rd respondent, in turn, directed the 4th respondent Manager to consider the claim of the petitioner. This was by Ext.P1 order dated 16.08.2005. Consequent to the said direction, the 4th respondent Manager by Ext.P2 order dated 01.06.2009 appointed the petitioner as UPSA in the leave in a vacancy that arose for the period from

01.06.2009 to 31.03.2010. Apparently, the 5th respondent was also appointed as UPSA in another leave vacancy which arose during the same period namely 01.06.2009 to 31.03.2010. Thereafter, by Ext.P3 order dated 01.06.2011, the petitioner was again appointed as UPSA in a promotion vacancy that arose in the said post in the School with effect from 01.06.2011. To another promotion vacancy that arose on the same date, the 5th respondent was also appointed as UPSA in the School. The educational authorities, however, noticed that pursuant to a staff fixation of 2010-2011, there were only four posts sanctioned in the cadre of H.S.A, and against these four posts there were five persons working as H.S.As. This resulted in a situation where one of the teachers in the School was found to be in excess and liable to be retrenched. The issue then boiled down to which among the two UPSA's namely, the petitioner or the 5th respondent, would have to be retrenched as the junior most teacher in the School. Based on the principles of seniority mentioned in Rule 37 of Chapter XIV A KER, the 3rd respondent recommended the cancellation of the petitioner's appointment by Ext.P4 order dated 24.05.2012. In Ext.P4 order, the reason given by the 3rd respondent is that, both the petitioner and the 5th respondent had the same length of continuous service which commenced from the same date, and therefore, when the inter se

seniority was determined as per age, the 5th respondent was Senior to the petitioner. It was, therefore, that the 3rd respondent found that, when it came to deciding which teacher had to be retrenched, the petitioner had to be retrenched as the Junior most teacher in the School. The said findings of the 3rd respondent were confirmed by the 2nd respondent by Ext.P7 order dated 22.04.2014. In a further revision petition preferred by the petitioner before the 1st respondent, however, the 1st respondent by Ext.P9 order dated 11.12.2014 found that, although the petitioner and the 5th respondent were appointed on the same date, and both of them had the same length of continuous service commencing from 01.06.2009, the petitioner was a person who obtained initial appointment by virtue of his claim under Rule 51 B of Chapter XIV A of KER, and therefore, his right under Rule 51 A accrued earlier in point of time than that of the 5th respondent while considering their service with effect from 01.06.2011. On that reasoning, it was found that the appointment given to the 5th respondent had to be cancelled. In W.P.(C).No.4572 of 2015, the petitioner seeks an implementation of Ext.P9 order that was issued in his favour by the 1st respondent. In W.P.(C).No.15087 of 2015, that is filed by the 5th respondent in W.P.(C).No.4572 of 2015, Ext.P9 order

(which is produced as Ext.P8 in that writ petition) is impugned, inter alia, on the ground that, the said order ignores the principles for determining seniority as laid down in Rule 37 of Chapter XIVA of KER. The 5th respondent also assails Ext.P9 order dated 25.03.2015 and Ext.P10 order dated 16.04.2015 in that writ petition which are consequential orders passed by the 3rd respondent based on Ext.P9 order dated 11.12.2014 of the 1st respondent in W.P.(C).No.4572 of 2015. In W.P.(C).No.15087 of 2015, a counter affidavit has been filed on behalf of the 5th respondent on similar lines as the averments in the W.P.(C).No.4572 of 2015. A reply affidavit has also been filed by the petitioner in the said writ petition.

3. I have heard Sri.S.P.Aravindakshan Pillai, the learned counsel for the petitioner in W.P.(C).No.4572 of 2015 and the 5th respondent in W.P.(C).No.15087 of 2015 as also Sri.Kaleeswaram Raj, the learned counsel for the petitioner in W.P.(C).No.15087 of 2015 and the 5th respondent in W.P.(C).No.4572 of 2015 and also the learned Government Pleader for the official respondents in both these writ petitions.

4. On a consideration of the facts and circumstances of the case

and the submissions made across the bar, I am of the view that, W.P. (C).No.4572 of 2015, to the extent it seeks an implementation of Ext.P9 order dated 11.12.2014 of the 1st respondent must necessarily succeed, and accordingly, W.P.(C).No.15087 of 2015 to the extent it impugns the said order dated 11.12.2014 of the 1st respondent and the consequential orders Exts.P9 and P10 impugned in the said writ petition, must necessarily fail. The facts in both the writ petitions would indicate that, the petitioner and the 5th respondent were both initially appointed to leave vacancies that arose in the School between 01.06.2009 to 31.03.2010. The petitioner, however, is a person who had a right in terms of Rule 51 B of Chapter XIV A KER, and therefore, when it came to an appointment to leave vacancies arising on the same date, by virtue of the rule 51 B claim that the petitioner had, he is to be considered as having been appointed prior to the 5th respondent as a UPSA in the School. The said appointment also conferred the petitioner with the status of being a prior Rule 51A claimant, over the 5th respondent, in the matter of appointment to the subsequent regular vacancy that arose in the school from 01.06.2011 onwards. As already noted, with effect from 01.06.2011, there were two vacancies that arose against which the petitioner and the 5th respondent were initially appointed. Thereafter, pursuant to a staff

fixation order for the academic year 2010-2011, the educational authorities found that one of the teachers would have to be retrenched consequent to the reduction of a post. It was then that the issue arose as to whether it was the petitioner or the 5th respondent that would have to give way to the other, and be retrenched from the school. In view of the right obtained by the petitioner in terms of Rule 51 B of Chapter XIVA of KER in the matter of the 1st appointment for the period from 01.06.2009 to 31.03.2010, I am of the view that, the petitioner has to be deemed to be Senior to the 5th respondent while deciding the issue as to which of them would have to give way to the other, consequent to a direction to retrench one of them. I therefore find that, Ext.P9 order of the 1st respondent, to the extent it recognises the seniority of the petitioner over the 5th respondent in the cadre of UPSA, has to upheld and I do so.

Resultantly, WP(C).No. 4572 of 2015 is allowed and WP(C).No. 15087 of 2015 is dismissed. The official respondents in both the writ petitions are directed to implement Ext.P9 order dated 11.12.2015 in WP(C).No. 4572 of 2015 immediately and at any rate, within a period of three weeks from the date of receipt of a copy of this judgment. I

make it clear that, the petitioner in the said writ petition shall also be entitled to all the monetary benefits that flow from the approval directed in Ext.P9 order.

A.K.JAYASANKARAN NAMBIAR
JUDGE

mns