

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:-

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

MONDAY, THE 7TH DAY OF SEPTEMBER 2015/16TH BHADRA, 1937

W.P.(C).No.8562 of 2012 (U)

PETITIONER(S):-

T.P. ANIL JOSE, AGED 40 YEARS, S/O.THEOPHILUS,
HEADMASTER (ON REVERSION AS LPSA),
CONCORDIA LUTHERAN U.P.SCHOOL, PEROORKADA,
THIRUVANANTHAPURAM.

BY ADVS.SRI.K.T.SHYAMKUMAR
SRI.HARISH R. MENON.

RESPONDENT(S):-

1. STATE OF KERALA,
REPRESENTED BY ITS SECRETARY TO GOVERNMENT,
GENERAL EDUCATION DEPARTMENT, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM - 695 001.
2. THE DIRECTOR OF PUBLIC INSTRUCTIONS,
THIRUVANANTHAPURAM-695 014.
3. THE ASSISTANT EDUCATIONAL OFFICER,
THIRUVANANTHAPURAM NORTH, KATTAKADA.P.O.,
THIRUVANANTHAPURAM-695572.
4. THE MANAGER,
CORPORATE MANAGEMENT OF LUTHERAN SCHOOLS,
INDIAN EVANGELICAL LUTHERAN CHURCH, TRIVANDRUM SYNOD,
PEROORKADA, THIRUVANANTHAPURAM-695 005.
5. M.MINIMOL,
HEADMISTRESS, LUTHERAN MISSION LOWER PRIMARY SCHOOL,
CHULLIMANNOOR, THIRUVANANTHAPURAM-695541.

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6. N.S.BEENA,
HEADMISTRESS, LUTHERAN MISSION LOWER PRIMARY SCHOOL,
PONVILA, THIRUVANANTHAPURAM DISTRICT - 695 001.

7. C.H.LATHAKUMARI,
HEADMISTRESS, LUTHERAN MISSION LOWER PRIMARY SCHOOL,
ANTHIYOOOR, THIRUVANANTHAPURAM DISTRICT - 695 001.

R1 TO R3 BY GOVERNMENT PLEADER SRI.S.JAMAL.

R4 BY ADV. SRI.D.KISHORE

R5 BY ADVS. SRI.N.SUGATHAN

SMT.VARSHA BHASKAR

SRI.PRASANTH

R6 BY ADV. SRI.M.R.SASITH.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
07-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:-

APPENDIX

PETITIONER(S) EXHIBITS:-

- EXHIBIT P1- TRUE COPY OF THE ORDER DATED 11.3.2009 ISSUED BY THE 4TH RESPONDENT.
- EXHIBIT P2- TRUE COPY OF THE ORDER DATED 5.8.2008 ISSUED BY THE 2ND RESPONDENT ALONG WITH THE APPENDED APPROVED SENIORITY LIST.
- EXHIBIT P3- TRUE COPY OF THE JUDGMENT IN W.P.(C)NO.8909/2009 AND CONNECTED CASES.
- EXHIBIT P4- TRUE COPY OF THE ORDER DATED 5.8.2011 ISSUED BY THE 4TH RESPONDENT.
- EXHIBIT P5- TRUE COPY OF THE REPRESENTATION DATED 5.8.2011 SUBMITTED BY THE PETITIONER BEFORE THE 4TH RESPONDENT.
- EXHIBIT P6- TRUE COPY OF THE NOTICE DATED 10.8.2011 ISSUED BY THE 4TH RESPONDENT TO THE 5TH RESPONDENT.
- EXHIBIT P7- TRUE COPY OF THE REPRESENTATION DATED 20.9.2011 SUBMITTED BY THE PETITIONER BEFORE THE DPI.
- EXHIBIT P8- TRUE COPY OF THE ORDER DATED 29.12.2011 ISSUED BY THE DPI.
- EXHIBIT P9- TRUE COPY OF THE OBJECTION TO THE SENIORITY LIST DATED 13.1.2012 SUBMITTED BY THE PETITIONER.
- EXHIBIT P10- TRUE COPY OF THE ORDER DATED 17.12.2012 ISSUED BY DPI.
- EXHIBIT P11- TRUE COPY OF THE NOTICE DATED 27.05.2013 ISSUED BY THE DPI.
- EXHIBIT P12- TRUE COPY OF THE HEARING NOTE SUBMITTED BY THE PETITIONER BEFORE THE DPI.
- EXHIBIT P13- TRUE COPY OF THE SENIORITY LIST FINALLY APPROVED BY THE 2ND RESPONDENT.

RESPONDENTS' EXHIBITS:-

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|---------------|--|
| EXHIBIT R5(a) | TRUE COPY OF JUDGMENT IN WP(C).NO.25682 OF 2012 DATED 25.10.2011. |
| EXHIBIT R5(b) | TRUE COPY OF PAGES 1 TO 5 OF SENIORITY LIST OF TEACHERS UNDER THE MANAGEMENT OF LUTHERAN SCHOOLS CORPORATE MANAGEMENT AS ON 1.1.2011. |
| EXHIBIT R5(c) | TRUE COPY OF THE ORDER NO.F1/84226/11/DPI/KDS DATED 31.07.2013 OF THE 2ND RESPONDENT. |
| EXHIBIT R5(d) | TRUE COPY OF THE RELEVANT PORTION OF SENIORITY LIST OF TEACHERS UNDER THE MANAGEMENT OF LUTHERAN SCHOOLS CORPORATE MANAGEMENT AS ON 1.1.2011 FINALLY APPROVED BY THE 2ND RESPONDENT. |

Vku/-

[true copy]

K. Vinod Chandran, J

W.P.(C).No.8562 of 2012-U

Dated this the 07th day of September, 2015

JUDGMENT

The petitioner is aggrieved with Exhibit P12 seniority list, which, according to the petitioner, tinkers with the seniority of the petitioner, an admitted senior of respondents 5 to 7. The petitioner is shown as junior in the list of Headmaster/Headmistress and there is no prescription for a seniority list to be drawn up in the post of Headmaster/Headmistress, since Rule 34(b) of Chapter XIV of the Kerala Education Rules, 1959 [for brevity “KER”] speaks only of a combined seniority list of Upper Primary School Assistants, Lower Primary School Assistants, Junior Language Teachers and Specialist Teachers. The petitioner also contends that no consent as per the Note to Rule 44(1) has been obtained from the petitioner when promoting the 5th respondent. As of now, the contention of the petitioner is only against the promotion of the 5th respondent.

2. The relevant background facts of the above case is that, the petitioner, a Lower Primary School Assistant [for brevity “LPSA”] and an undergraduate, had been promoted as Headmaster on 11.03.2009 in an Upper Primary School under the Corporate Management, the 4th respondent. The petitioner's appointment was challenged by a graduate teacher based on the prescription in Rule 45 as it existed then, which provided for preference to a graduate teacher who had more than half the service of an undergraduate teacher. The dispute between the petitioner and the graduate teacher was finally resolved as per Exhibit P3 judgment dated 27.07.2011 in W.P.(C).No.8909 of 2009. The claim of the graduate teacher under Rule 45 as it stood then, was upheld by this Court. The graduate teacher, hence, was entitled to the post of Headmaster/Headmistress which was given to the petitioner. While upholding such claim, it was observed that if the petitioner has any complaint that any juniors of him other than Smt.Sreelatha Kumari have been accommodated as Headmaster in any other vacancy as against his claim which has arisen after 30.01.2008, viz., the date of amendment of Rule 45, it

is upto to the petitioner to raise the grievance before the authorities concerned. The above reservation was with respect to any appointments made of graduate teachers after 30.01.2008. The observation, in fact, confines the claim only to any appointment of junior graduate teachers having been made after 30.01.2008. The date being relevant, since Rule 45 stood amended as on that date taking away the preference to graduate teachers as noticed herein above.

3. The petitioner, based on the above observation, filed Exhibit P5 complaint. The petitioner noticed in the above complaint that the 6th respondent, 7th respondent and the 5th respondent, in that order, were persons appointed respectively on 20.08.1990, 23.08.1990 and 19.09.1990 in leave vacancies. The petitioner and the said respondents were taken in the regular service on the very same day, i.e., on 01.06.1992. In such circumstance, based on Rule 37 of Chapter XIV-A, the petitioner and the party-respondents having the very same date of entry into regular service, seniority had to be reckoned on the basis of the first appointment.

4. The petitioner having been appointed on 16.08.1990, is admittedly senior to respondents 5 to 7. However, it is to be noticed that the 5th respondent was appointed as Headmistress on 31.05.2007. The petitioner's claim, in fact, was specifically against the 5th respondent, who, according to the petitioner, was the juniormost among the three noticed in Exhibit P5 and also junior to the petitioner.

5. However, the 5th respondent was promoted as early as on 31.05.2007 and the petitioner had not challenged the same. In fact, it has to be noticed that Exhibit P2 seniority list as on 01.06.2007 specifically found the petitioner to be senior to the 5th respondent. Hence, the 5th respondent having been appointed prior to the petitioner, the petitioner ought to have challenged the said appointment. The petitioner having not been diligent enough to ascertain his turn for appointment to the post of Headmaster/Headmistress, waited for his chance when he was promoted on 11.03.2009, which stood set aside by the challenge made by a graduate teacher.

6. Exhibit P5 representation against the respondents 5 to 7 is delayed insofar as the petitioner having not taken up the issue at the proper time, being aware of the seniority position as per Exhibit P2. Exhibit P5 is also on the basis of the reservation made in Exhibit P3, which, unfortunately, does not permit the petitioner to rake up settled issues and only speaks of a complaint with respect to any appointment made of a junior graduate teacher subsequent to the amendment of Rule 45.

7. The further facts to be noticed is that, on Exhibit P5 complaint the Manager passed Exhibit P6 dated 10.08.2011, holding the petitioner to be senior to the 5th respondent and also finding that the petitioner has to be accommodated in the post of Headmaster/Headmistress in the vacancy to which the 5th respondent has been appointed. However, the same was not implemented and the 5th respondent challenged the same in a revision filed before the Director of Public Instruction [for short "DPI"]. The 5th respondent also approached this Court by a writ petition, which was disposed of by judgment dated 25.10.2011, produced as Exhibit R5(a). The DPI considered the revision of the

5th respondent and after hearing the petitioner herein also, ordered that the appointments would be as per the final seniority list. The final seniority list has now been drawn at Exhibit P12, which has a seniority in the post of Headmaster/Headmistress in which the petitioner is shown as junior to the 5th respondent. True, the seniority list drawn up is not in accordance with the KER; but, however, at this stage there can be no direction issued to revamp the the seniority between the petitioner and respondents 5 to 7, since the petitioner has slept over his rights [vide ***Pavithran v. State of Kerala* - 2009 (4) KLT 20 (FB)**]. In such circumstance, the petitioner's challenge against the 5th respondent's appointment is found to be delayed and out of time.

Resultantly, the writ petition would stand dismissed. Parties are left to suffer their respective costs.

Sd/-
K.Vinod Chandran
Judge.

vkul/-

[true copy]