

IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT:
THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR
THURSDAY, THE 30TH DAY OF JULY 2015/8TH SRAVANA, 1937

WP(C).NO. 5380 OF 2015 (V)

PETITIONER(S) :

BHAVANA M.P
*[HSST(JUNIOR) (ZOOLOGY)] MOOTHEATH HIGHER SECONDARY SCHOOL
THALIPARAMBA, KANNUR DISTRICT
PIN-670141 RESIDING AT KODAKKAL HOUSE, VADAKKUMPADU
KUNHIMANGALAM (PO)
KANNUR DISTRICT[THE ADDRESS PORTION OF THE THE PETITIONER IS
CORRECTED AS "HSST (JUNIOR) (ENGLISH)" INSTEAD OF "HSST(JUNIOR)
(ZOOLOGY)" AS PER ORDER DATED 05.03.2015 IN IA 3209/15.]

BY ADVS.SRI.M.V.THAMBAN
SRI.R.REJI
SMT.THARA THAMBAN
SRI.B.BIPIN
SRI.ARUN BOSE

RESPONDENT(S) :

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

2. THE DIRECTOR,
HIGHER SECONDARY EDUCATION, HOUSING BOARD BUILDING
THIRUVANANTHAPURAM PIN-695001

3. THE REGIONAL DEPUTY DIRECTOR,
HIGHER SECONDARY EDUCATION, KOZHIKODE
KOZHIKODE DISTRICT, PIN-673 020

4. THE MANAGER,
MOOTHEATH HIGHER SECONDARY SCHOOL, THALIPARAMBA
KANNUR DISTRICT, PIN-670141

5. A.DEVIKA, AGED 42 YEARS
W/O. RADHAKRISHNAN, HIGH SCHOOL ASSISTANT (ENGLISH)
MOOTHEATH HIGHER SECONDARY SCHOOL, THALIPARAMBA
KANNUR DISTRICT, PIN-670141

R5 BY ADV. SRI.V.A.MUHAMMED
R4 BY ADV. SRI.B.PREMNATH (E)
BY GOVERNMENT PLEADER SMT.M.J.RAJASREE

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
30-07-2015, ALONG WITH WPC. 8963/2015, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

WP(C).NO. 5380 OF 2015 (V)

APPENDIX

PETITIONER(S) ' EXHIBITS

EXHIBIT P1: TRUE COPY OF THE ORDER NO A1/5534/2013 DT. 28.12.2013

EXHIBIT P2: TRUE COPY OF THE APPEAL DT. 07.01.2014

EXHIBIT P3: TRUE COPY OF THE ORDER NO. ACD. A1/2287/HSE/2013 DT.
2.5.20145

EXHIBIT P4: TRUE COPY OF THE DECISION NO. ACD- B3/23136/HSE/2012
DT.30.11.2012

EXHIBIT P5: TRUE COPY OF THE REVISION PETITION BEFORE THE GOVERNMENT

EXHIBIT P6: TRUE COPY OF THE HEARING NOTE DATED 21.11.2014 FILED ON
BEHALF OF THE PETITIONER

EXHIBIT P7: TRUE COPY OF THE REPRESENTATION DT. 9.2.2015 FILED BEFORE
THE HON'BLE MINISTER FOR EDUCATION

EXHIBIT P8: TRUE COPY OF THE G.O. (RT) NO.629/2015/G.EDN. DT.12.2.2015

EXT.P9: TRUE COPY OF THE HEARING NOTICE FILED BY THE 2ND RESPONDENT
BEFORE THE 1ST RESPONDENT

RESPONDENT(S) ' EXHIBITS:NIL

//TRUE COPY//

P.A TO JUDGE

A.K.JAYASANKARAN NAMBIAR, J.

.....

W.P.(C).No.5380 of 2015

and

W.P.(C).No.8963 of 2015

.....

Dated this the 30th 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.5380 of 2015.

2. The petitioner was working as HSST (English) (Junior) in the School under the management of the 4th respondent. He was appointed as HSST Junior with effect from 03.06.2013 in an anticipated vacancy. When the appointment was sent for approval, by Ext.P1 order dated 28.12.2013, the approval was denied, inter alia, on the ground that, 25% of the post of HSST had to be filled up by transfer from qualified H.S.As, that a 12th and 13th post were created by Government order dated 23.02.2013 and when there was more than one post available, and a person had to be appointed through promotion, the seniormost teacher had to be promoted which, according to the 3rd respondent, was the 5th respondent.

Aggrieved by Ext.P1 order, the 4th respondent Manager preferred an appeal before the 2nd respondent. By Ext.P3 order dated 02.05.2014, the said appeal was rejected. The petitioner therefore preferred a revision petition against Ext.P3 order before the 1st respondent. By Ext.P8 order dated 12.02.2015, the 1st respondent rejected the revision petition. In the writ petition, the petitioner seeks to quash Exhibits P1, P3 and P8 orders, inter alia, on the ground that, while passing the said orders, the official respondents had erred in treating the posts of HSST Junior and HSST as forming part of one cadre and clubbing the posts for the purposes of application of the ratio stipulated in Chapter XXXII of the Kerala Education Rules.

3. A counter affidavit has been filed by the 5th respondent wherein it is pointed out that, the application of the ratio had to be in the cadre of HSST Junior, and that, during the relevant year, the said cadre comprised only of 6 posts of HSSST Junior in which one person was appointed through by transfer method. It is his contention, therefore, that the next arising vacancy had to be filled up by a candidate on by transfer which in this case would be the 5th respondent.

4. W.P.(C).No.8963 of 2015 is filed by the 4th respondent in W.P.(C).No.5380 of 2015. The petitioner in the writ petition is the Manager of the School. In the said writ petition, Ext.P8 order in W.P.(C).No.5380 of 2015 is produced as Ext.P12 and impugned therein. In the said writ petition, the order of the Regional Deputy Director as also the Director of Higher Secondary Education, which preceded Ext.P12 order are also impugned.

5. I have heard Sri.M.V.Thamban, the learned counsel for the petitioner in W.P.(C).No.5380 of 2015, Sri.B.Premnath, the learned counsel for the petitioner in W.P.(C).No.8963 of 2015, Sri.V.A.Muhammed, the learned counsel for the 5th respondent in W.P.(C).No.5380 of 2015 and the learned Government Pleader for the official respondents in both the writ petitions.

6. On a consideration of the facts and circumstances of the case and the submissions made across the bar, I find that, the Government order dated 12.02.2015 which is impugned in both these writ petitions cannot be legally sustained. The issue that was to be decided by the

Government in the revision petition that was filed before it, was the manner in which the post of HSST Junior in the School had to be filled. The provisions of Chapter XXXII of the Kerala Education Rules, and in particular, Rule 4 thereof clearly mandate that the posts of HSST and HSST (Junior) are to be treated as separate posts for the purposes of appointment. Rule 4(3) which deals with the manner of appointment to the post of HSST (Junior) clearly indicates that the appointment to a vacancy in the said post is to be made by transfer from qualified High School Assistants in the subject concerned under the educational agency, and in the absence of such qualified hands by transfer from qualified UPSA/LPSA in the subject concerned under the educational agency. It is also made clear that, the posts can also be filled by candidates appointed through direct recruitment. By a note to the said Rule, it is clarified that 25% of the total posts shall be filled up through the by transfer route based on seniority come suitability and 75% of the posts had to be filled up by direct recruitment. It is also clarified that, when qualified persons are not available to fill up the vacancies set apart for appointment by transfer, then such vacancies can also be filled by direct recruitment. A reading of Rule 4 would clearly indicate that there was no scope for a clubbing of the

posts of HSST and HSST (Junior) while applying the ratio of 25%/75% for recruitment to the posts of HSST (Junior). The educational authority has only to look at the cadre strength of HSST (Junior) and apply the prescribed ratio to the said cadre strength of HSST (Junior). Inasmuch as in the Government order dated 12.02.2015, the Government has clubbed the posts of HSST and HSST (Junior) for the purposes of ascertaining the compliance with the ratio requirements, the said order is vitiated by an erroneous application of the Rule. Accordingly, I quash Exts.P1, P3 and P8 orders in W.P.(C).No.5380 of 2015 and Exts.P8, P9 and P12 orders in W.P.(C).No.8963 of 2015 and direct the Government to reconsider the issue after hearing the petitioners in both the writ petitions, and the 5th respondent in W.P.(C).No.5380 of 2015. I make it clear that, it will be open to the petitioners and the 5th respondent to raise all contentions before the Government at the time of hearing. The 1st respondent in W.P.(C).No.5380 of 2015 shall pass fresh orders after considering the submissions on behalf of the petitioners in both these writ petitions and the 5th respondent in W.P.(C).No.5380 of 2015 within a period of two months from the date of receipt of a copy of this judgment. The petitioners shall produce a copy of the writ petition together

with a copy of this judgment to the 1st respondent for further action. I also make it clear that, the status quo prevailing as on today, pursuant to the interim order passed by this Court in both these writ petitions, shall continue till such time as orders are passed by the 1st respondent as directed and communicated to the petitioners and the 5th respondent.

**A.K.JAYASANKARAN NAMBIAR
JUDGE**

mns