

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE A.M.SHAFIQUE

THURSDAY, THE 15TH DAY OF JANUARY 2015/25TH POUSHA, 1936

WP(C).No. 10560 of 2010 (T)

PETITIONER :

**G.SOBHA, MUSIC TEACHER,
S.N.V. GIRLS HIGH SCHOOL, PARAVUR, KOLLAM DISTRICT.**

**BY ADVS.SRI.KRB.KAIMAL (SR.)
SRI.B.UNNIKRISHNA KAIMAL
SRI.V.MADHUSUDHANAN
SRI.T.ISSAC**

RESPONDENTS :

- 1. STATE OF KERALA, REPRESENTED BY
THE SECRETARY TO GOVERNMENT, GENERAL EDUCATION,
DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM.**
- 2. THE DIRECTOR OF PUBLIC INSTRUCTIONS,
THIRUVANANTHAPURAM.**
- 3. THE DEPUTY DIRECTOR OF EDUCATION,
KOLLAM.**
- 4. THE DISTRICT EDUCATIONAL OFFICER,
KOLLAM.**
- 5. THE MANAGER, S.N.V.GIRLS HIGH SCHOOL,
PARAVUR, KOLLAM DISTRICT.**
- 6. SMT.R.ALAKA, H.S.A. (ENGLISH), S.N.V.GIRLS HIGH SCHOOL,
PARAVUR, KOLLAM DISTRICT.**

**R1 TO R4 BY GOVERNMENT PLEADER MR. THOMAS JOHN AMBOOKAN
R5 BY ADVS. SRI.M.V.THAMBAN**

SRI.R.REJI

SRI.B.BIPIN

**R6 BY SRI.KURIAN GEORGE KANNANTHANAM SENIOR ADVOCATE
BY ADV. SRI.TONY GEORGE KANNANTHANAM**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 15-01-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

bp

APPENDIX

PETITIONER'S EXHIBITS :

- P1: COPY OF THE MARK LIST DT 29/9/2004 ISSUED BY ANNAMALAI UNIVERSITY TO THE PETITIONER.
- P2: COPY OF THE REPRESENTATION DT 29/3/2005 SUBMITTED BY THE PETITIONER TO THE R5.
- P3: COPY OF THE MARK LIST DT 30/9/2005 ISSUED BY ANNAMALAI UNIVERSITY TO THE PETITIONER.
- P4: COPY OF THE PROVISIONAL CERTIFICATE DT 30/9/2005 ISSUED BY ANNAMALAI UNIVERSITY TO THE PETITIONER.
- P5: COPY OF THE REPRESENTATION NDT 14/10/2005 SUBMITTED BY THE PETITIONER TO THE HEADMISTRESS OF THE SCHOOL.
- P5(A): COPY OF THE REPRESENTATION DT 18/10/2005 SUBMITTED BY THE PETITIONER TO R5.
- P6: COPY OF THE DEGREE (M.A) CERTIFICATE DT 25/10/2005 ISSUED BY ANNAMALA UNIVERSITY TO THE PETITIONER.
- P7: COPY OF THE FIRST AND 2ND PAGE OF THE PETITIONER'S SERVICE BOOK.
- P8: COPY OF THE REPRESENTATION DT 31/10/2005 SUBMITTED BY THE PETITIONER TO THE R4.
- P9: COPY OF THE ORDER NO. B5/11718/05 DT 31/7/2006 ISSUED BY THE R4.
- P10: COPY OF THE APPEAL DT 22/8/2006 FILED BY THE PETITIONER BEFORE THE R3.
- P11: COPY OF THE ORDER NO. B6/20026/06 DT 27/10/2007 ISSUED BY THE R3.
- P12: COPY OF THE REVISION PETITION DT 28/11/2007 FILED BY THE PETITIONER BEFORE THE R2.
- P13: COPY OF THE ORDER NO.ET(1)59778/06/DPI/K.DIS DT 12/5/2008 ISSUED BY THE R2.
- P14: COPY OF THE REVISION PETITION DT 30/5/2008 SUBMITTED BY THE PETITIONER BEFORE THE R1.
- P15: COPY OF THE ORDER G.O(RT) NO. 650/2010/G.EDN DT 10/2/2010 ISSUED BY THE R1.

RESPONDENT'S EXHIBITS : NIL.

//TRUE COPY//

P.S. TO JUDGE

bp

A.M.SHAFFIQUE, J

*** * * * ***

W.P.C.No.10560 of 2010

Dated this the 15th day of January 2015

J U D G M E N T

Petitioner, who was appointed as a Music teacher in the school managed by the 5th respondent, has filed this *writ petition* challenging Exts.P9, P11, P13 and P15 by which the educational authorities had approved the appointment of the 6th respondent as H.S.A (English) with effect from 17/10/2005.

2. The facts involved in the *writ petition* would disclose that the petitioner acquired B.Ed Degree during March 2003 and thereafter she obtained Degree in M.A.English as on 30/09/2005. While the petitioner was undertaking the M.A course, a vacancy had arisen in the School to the post of H.S.A (English) as on 01/04/2004. Apparently, the petitioner was not qualified for the said post during the relevant time. In the meantime, management appointed the 6th respondent as H.S.A (English) by way of

direct recruitment with effect from 17/10/2005. Petitioner staked a claim with reference to the aforesaid appointment of the 6th respondent inter alia contending that the petitioner had acquired the necessary qualification as on 30/09/2005.

3. The educational authorities took the view that as on the date of occurrence of the vacancy, petitioner was not qualified and therefore a claim under Rule 43 does not arise. This view was consistently upheld by the higher authorities which is now challenged by the petitioner.

4. It is inter alia contended by the 5th respondent that the petitioner cannot stake a claim based on Rule 43. That apart, the fact that she had acquired qualification, was brought to the notice of the management only on 18/10/2005. 6th respondent contends that she was appointed in the school with effect from 17/10/2005 and by virtue of Rule 43 Note 2 thereof, petitioner, admittedly, was not qualified at the time of occurrence of vacancy and cannot stake a claim at all.

5. Heard Learned counsel for the petitioner, learned counsel appearing for respondents 5 and 6 and the learned Government Pleader.

Rule 43 along with Note 2 reads as under:

“43. Subject to rules 44, 45 and 51A and considerations of efficiency and any general order that may be issued by the Government, vacancies in any higher grade of pay shall be filled up by promotion of qualified hands in the lower grade according to seniority, if such hands are available:

Provided that in the case of promotion to the post of High School Assistant (Subject), the minimum subject requirements alone need be satisfied, to safeguard the interests of trained graduates who are awaiting promotions as High School Assistants.

Provided further that where a Headmaster or a teacher who has been promoted under this rule faces retrenchment for want of vacancy, he shall be reverted to the category of post from which he has been promoted provided he is not eligible for protection in the retrenched post as per the orders issued by the Government from time to

time.

Note:- (1) xxxx

Note:- (2) Promotion under this rule shall be made from persons possessing the prescribed qualifications at the time of occurrence of vacancy."

6. It is not in dispute that the petitioner was not qualified as on 01/04/2004, the date on which the vacancy had arisen. Petitioner in the *writ petition* submits that the vacancy had arisen on 01/06/2004, and even on that date admittedly she was not qualified.

7. The 6th respondent was appointed by a selection process which was initiated much before the petitioner acquired the qualification of H.S.A (English). According to the Management, they waited till 17/10/2005 after completing the selection procedure since they were waiting for the staff fixation order to be issued by the educational authorities. It is apparent from the facts involved in the matter that the selection process was conducted much prior to the petitioner acquiring the qualification. Therefore,

going by Note 2 of Rule 43 as well as other factual circumstances, petitioner was not a person who was qualified to be appointed either at the time when the vacancy had arisen or at the time when the selection process has been done. Under such circumstances, petitioner cannot challenge the order impugned.

There being no merit in the *writ petition*, the same is dismissed.

(sd/-)

(A.M.SHAFIQUE, JUDGE)

jsr

