

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE SMT. JUSTICE P.V.ASHA

THURSDAY, THE 15TH DAY OF OCTOBER 2015/23RD ASWINA, 1937

WP(C).No. 9826 of 2013 (C)

PETITIONER:

SHERLY MATHEW AGED 38 YEARS
UPSA, U.P SCHOOL, EREZHA
CHETTIKULNGAR P.O, MAVELIKKARA
RESIDING AT JOY VILLAGE, PERINGALA P.O
KAYAMKULAM 690 559, ALAPPUZHA.

BY ADVS.SRI.R.RAJASEKHARAN PILLAI
SMT.SABINA JAYAN

RESPONDENTS:

1. THE STATE OF KERALA
REPRESENTED BY THE SECRETARY
GENERAL EDUCATION DEPARTMENT, GOVT. SECRETARIAT
THIRUVANANTHAPURAM PIN 695 001.

2. THE DIRECTOR OF PUBLIC INSTRUCTION
THIRUVANANTHAPURAM 695 001.

3. THE DISTRICT EDUCATIONAL OFFICER
MAVELIKAKRA PIN 690 101.

4. THE ASSISTANT EDUCATIONAL OFFICER,
MAVELIKKARA PIN 690 101.

5. THE MANAGER
U.P SCHOOL, EREZHA, CHETTIKULANGARA P.O
MAVELIKKARA, PIN 690 101.

R1-R4 BY SRI.P.P.PADMALAYAN, ADV. GOVERNMENT PLEADER
RR5 BY ADV. SRI.K.SASIKUMAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
15-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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APPENDIX

PETITIONER'S EXHIBITS

EXHIBIT P1. TRUE COPY OF THE APPOINTMENT ORDER OF THE PETITIONER DATED 14.7.06.

EXHIBIT P2. TRUE COPY OF THE STAFF FIXATION ORDER FOR THE YEAR 2006-07.

EXHIBIT P3. TRUE COPY OF THE ORDER NO.B1/1052/2007/K.DIS DATED 25.6.2007 OF THE 3RD RESPONDENT.

EXHIBIT P4. TRUE COPY OF THE REVISION PETITION DATED 3.7.2007 SUBMITTED BY THE 5TH RESPONDENT BEFORE THE 2ND RESPONDENT.

EXHIBIT P5. TRUE COPY OF THE COMMUNICATION DATED 23.6.2009 OF THE 1ST RESPONDENT TO THE 5TH RESPONDENT.

EXHIBIT P6. TRUE COPY OF THE STAFF FIXATION ORDER FOR THE YEAR 2010-2011.

EXHIBIT P7. TRUE COPY OF THE COMMUNICATION DATED 14.11.2011 FROM THE 4TH RESPONDENT TO THE 5TH RESPONDENT.

EXHIBIT P7A. TRUE COPY OF THE G.O(P)NO.10/2010 DATED 12.1.2010 OF THE 1ST RESPONDENT.

EXHIBIT P8. TRUE COPY OF THE REVISION PETITION DATED 21.3.2012 SUBMITTED BY THE PETITIONER BEFORE THE 1ST RESPONDENT.

EXHIBIT P9. TRUE COPY OF THE ORDER NO.GO(P)NO.199/2011/G.EDN DATED 1.10.2011 OF THE GOVERNMENT.

EXHIBIT P10.TRUE COPY OF THE RELEVANT EXTRACT OF THE TEACHERS BANK ON ALL KERALA BASIS.

EXHIBIT P11.TRUE COPY OF THE ORDER DATED 28.11.2012 OF THE 1ST RESPONDENT.

RESPONDENTS' EXHIBITS: NIL

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TRUE COPY

PA TO JUDGE

P.V.ASHA, J.

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Dated this the 15th day of October, 2015

JUDGMENT

The petitioner was appointed under the 5th respondent's aided school as per Ext.P1 order with effect from 14.7.2006 as UPSA. The appointment was as against an additional division vacancy. Her appointment was not approved on account of the ban existed then, though the Manager filed appeal and revision before the Government. While continuing in the school without approval and without salary, Government issued orders as per Ext.P7 on 12.1.2010 lifting the ban on condition that the Managers shall execute a bond to appoint protected teachers equal to the number of teachers appointed against the future vacancies etc., as stipulated therein. But the 5th respondent did not execute the bond. While so Ext.P9 Government order - G.O. (P) No.199/2011G.Edn. dated 1.10.2011 was issued, popularly known as the scheme of teachers bank, introducing a novel system of protection of the teachers whose appointments were not approved, who were rendered excess and who were

retrenched/deployed on protection.

2. On the basis of Ext.P9 order a list of teachers was published and the petitioner's name was included in Ext.P10 list as one eligible for the benefit of the Government order. As per the Government order all teachers who were continuing in the additional division vacancies without salary were to be approved with effect from 1.6.2011. Even though the petitioner was initially included as serial No.719 in Ext.P10 list, subsequently her name was deleted. Aggrieved by this, the petitioner approached the Government and the Government by Ext.P11 rejected her request for inclusion in the list and teachers bank stating that there was a division fall in the school with effect from 15.7.2010 and since the Manager had not submitted an undertaking as prescribed in the Government order dated 1.10.2010, even though there was a vacancy in the additional division her request could not be granted and it was not possible to include her in the teachers package among the categories of retrenched teachers working without salary or to accommodate her in the school in 1:40 ratio.

3. The Government has filed a counter affidavit explaining the circumstances under which her name was deleted. According to the Government the petitioner's name cannot be included in the list on account of the fact that there was no sanctioned post as on 15.7.2010, ie. in the staff fixation for the year 2010-11 there was a division fall. It is admitted that there was a post which could be sanctioned against an additional division vacancy during the period from 2006-07 up to 2010-11.

4. The case of the petitioner appears to be unfortunate. The petitioner's opportunity to get included in the list/teachers' bank was lost on account of the division fall occurred on 15.7.2010, whereas the petitioner got appointment in the year 2006-07 against an additional division vacancy, which was justifiable as per the student strength. That vacancy continued in the years 2006-07, 2007-08, 2008-09 and 2009-10. In case the Manager had submitted an undertaking her appointment should have been approved in the year 2010 itself. The teachers who were appointed even in 2009-10 against additional division vacancies are able to continue, even where the Managers have not

executed the bonds and in all such cases the appointments were approved with effect from 1.6.2011, on the basis of the Government order issued on 1.10.2011.

5. The learned counsel for the petitioner, referring to paragraph 6 of the Government order dated 1.10.2011 asserted that the Government does not exclude the teachers who were working in additional division vacancies without salary from the benefit of the Government order and there is no condition that their appointments should have been approved as on 1.10.2011, for enjoying the benefit of that order. It is also stated that there is no condition fixed in clause A of paragraph 6 of Ext.P9 order, which reads as follows:

The appointment of 3389 teachers (Appendix I) working without salary in Aided Schools will be approved from the current academic year without waiting for decision in appeals or revision petitions, if any, pending before the appellate authorities on condition that Assistant Educational Officer / District. Educational Officer /Deputy Director of Education concerned shall ensure that the above teachers deluded in the list are appointed against regular vacancies and are otherwise qualified. This process shall be completed within 15 days.

6. However while warning that the proposal in the package for setting up of teachers bank was being approved as contained in paragraph C of clause 6, the Government ordered as follows:

C. Teachers Bank:-

Government approve the proposal in the package for setting up of Teachers Bank' for managing the transition and introducing a scientific method of recruitment for teachers in Aided sector. The objective and functions of the Teachers Bank are given below.

i)The Teachers bank is a temporary arrangement for retaining excess teachers for suitable deployment to schools and to ensure payment of their salary without any hindrance. It consists of 3389 excess teachers now working in the schools without salary, 2987 protected teachers (Appendix-11), working in the school, majority of them in Government schools and 1700 teachers retrenched from schools for the period from 1997 to 2010 for want of posts. The main objective of the Bank is to ensure job and salary to the teachers included in the Bank. 3389 teachers working without salary will be deemed to be included in the bank. The appointment of these teachers will be approved with effect from the current academic year and they will be deployed to their respective schools. 2987 protected teachers working in various schools will be treated as transferred to the Bank and they

will be deployed to the parent schools in the vacancies arising consequent on the promotion of Head teachers, deployment to B.R.C trainers and reduction of teacher pupil ratio as specified in para 6 B (vi) above. They will be permitted to receive salary from the schools they are working as if now till they are deployed to the respective schools. The list of 1700 retrenched teachers will be published by the Director of Public Instruction for complaints if any in this regard and the Director of Public Instruction will furnish final list of retrenched teachers to Government within one month for inclusion in the Bank. The procedure for finalizing school wise seniority list mentioned in para 6 B (vii) above shall be followed in the case of retrenched teachers list as well. The retrenched teachers included in the Bank will be deputed for training specified in para 15 of this order before deploying them to the schools.

ii) In addition to permanent deployment of teachers, the Bank will provide the services of teachers to schools for filling-up of leave vacancies. The Managers of Aided Schools shall appoint teachers in leave vacancies only from the list of district level teachers made available to them on request. They are permitted to make appointments even to leave vacancies if the Bank cannot provide list of teachers in the required subject within 48 hours after getting their request for teachers. The formation of Teachers Bank will be mainly on the basis of

revenue districts.

(iii) The Specialist Teachers now working in schools will be shifted to the Bank permanently in accordance with the judgment of the Hon'ble High Court dated. 19-1-2011 in WA No.2679/2009. The service of trained Specialist Teachers will be made available to all schools in the state irrespective of the number of students in each school, by pooling the Specialist Teachers in the Teachers Bank with the part time Specialist Teachers to be positioned by Sarva Siksha Abhiyan (SSA) as per Government of India guidelines for implementing RTE Act. In future the appointment of Specialist Teachers will be made through Kerala Public Service Commission and they will be retained in 'Teachers Bank' for suitable deployment.

(iv) The Director of Public Instruction will ensure that the teachers included in the Teachers Bank are receiving pay and allowance in time without any hindrance.

7. Thus the Government have made it clear that the teachers bank is a temporary arrangement for retaining excess teachers for suitable deployment to schools to ensure payment of their salary without any hindrance. Further it is stated : " 3389 excess teachers now working in the school without salary". In the case of petitioner, it so happened because she was unable to

work on the date of the Government order due to division fall.

8. It is pointed out by the learned counsel for the petitioner that the Managers had already approached the Supreme Court.

9. In the peculiar circumstances of the case, I am of the view that this is a fit case which the Government should reconsider, taking into account the continuance of the petitioner against a post which was admissible and the service she rendered right from 14.7.2006 and the fact that the petitioner would have been able to continue in the post, but for the division fall in the year 2010-11 on account of which she is denied the benefit of the Government order. It is a case where she was originally included in the list of eligible teachers. In fact, she comes under the category of teachers who were working without salary as she had been continuing all these years from 2006-07 onwards. She has been kept out of the list while even teachers who worked for one year were appointed even in the year 2010-11 could enjoy the benefit of the Government order. Therefore, the case of the petitioner requires a sympathetic consideration. Moreover the petitioner's name was deleted from the list without

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giving her an opportunity of hearing.

In the above circumstances, I quash Ext.P11 and direct the Government to pass fresh orders after affording an opportunity of hearing to the petitioner, in the light of the above observations, within a period of three months from the date of receipt of a copy of this judgment.

Sd/-
P.V.ASHA,
JUDGE.

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