

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

THURSDAY, THE 22ND DAY OF JANUARY 2015/2ND MAGHA, 1936

WP(C).No. 10521 of 2011 (M)

PETITIONER(S):

**SEEMA SANKAR, AGED 44 YEARS,
W/O.A.R.AJAYAN, CHITHARALAYAM, KUDAKADA BUILDINGS,
KAIKULANGARA, KOLLAM, NOW WORKING AS HSST (PSYCHOLOGY),
DEVASWOM BOARD HIGHER SECONDARY SCHOOL,
CHERIYANAD, CHENGANNUR, ALAPPUZHA.**

BY ADV. SRI.PAULSON THOMAS

RESPONDENT(S):

- 1. STATE OF KERALA, REPRESENTED BY
SECRETARY GENERAL EDUCATION, SECRETARIAT,
THIRUVANANTHAPURAM - 695 001.**
- 2. DIRECTOR, HIGHER SECONDARY EDUCATION,
HOUSING BOARD BUILDING, THIRUVANANTHAPURAM - 695 001.**
- 3. THE SECRETARY, TRAVANCORE DEVASWOM BOARD,
OFFICE OF TRAVANCORE DEVASWOM BOARD, NANDANCODE,
THIRUVANANTHAPURAM - 695 001.**

**R1 & R2 BY GOVERNMENT PLEADER SMT.LOWSY A.
R3 BY ADV. SRI.M.V.S.NAMBOOTHIRI, SC**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
22-01-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

msv/

APPENDIX

PETITIONER(S)' EXHIBITS:

EXT.P1: TRUE COPY OF PHD DEGREE CERTIFICATE.

EXT.P1(a): TRUE COPY OF THE M.A.DEGREE CERTIFICATE OF THE PETITIONER.

**EXT.P2: TRUE COPY OF THE NOTIFICATION DATED 23.9.2000 PUBLISHED IN
MATHRUBHUMI DAILY DATED 23.9.2000.**

EXT.P3: TRUE COPY OF THE G.O.M.S.NO.273/2008/GEN. EDN. DATED 15.7.1998.

EXT.P4: TRUE COPY OF THE G.O.M.S.NO.298/2000/GEN.EDN. DATED 25.8.2000.

EXT.P5: TRUE COPY OF THE G.O.M.S.NO.353/2000/GEN.EDN. DATED 28.10.2000.

EXT.P6: TRUE COPY OF THE G.O.(RT) NO.102/2004/GEN.EDN. DATED 7.1.2004.

EXT.P6(a): TRUE COPY OF THE G.O.(RT) NO.4994/2005/GEN.EDN. DATED 21.10.2005.

**EXT.P7: TRUE COPY OF THE MEMO ASKING THE PETITIONER TO APPEAR BEFORE
SELECTION COMMITTEE ON 3.11.2000.**

EXT.P8: TRUE COPY OF THE JUDGMENT IN OP.NO.2034 OF 2001 DATED 19.9.2002.

EXT.P8(a): TRUE COPY OF JUDGMENT IN WA.NO.264 OF 2003 DTD.7.3.2003.

**EXT.P9: TRUE COPY OF THE INTERVIEW MEMO IN RESPECT OF THE 2ND INTERVIEW
DATED 29.9.2003.**

EXT.P10: TRUE COPY OF THE APPOINTMENT ORDER DTD.10.11.2003.

EXT.P11: TRUE COPY OF THE APPROVAL ORDER DATED 12.8.2004.

EXT.P11 (a): TRUE COPY OF THE NOTIFICATION DATED 11.10.2000.

**EXT.P12: TRUE COPY OF THE PROVISIONAL CERTIFICATE OF B.ED AWARDED TO
THE PETITIONER BY THE INDIRA GANDHI NATIONAL OPEN UNIVERSITY
ESTABLISHED BY ACT OF PARLIAMENT.**

**EXT.P12(a): TRUE COPY OF THE GRADE CARD OF B.ED AWARDED TO THE
PETITIONER BY THE IGNOU.**

EXT.P13: TRUE COPY OF THE G.O.M.S.71/2010/GEN.EDN. DTD.14.5.2010.

**EXT.P14: TRUE COPY OF THE REPRESENTATION BEFORE THE GOVERNMENT
DATED 18.8.2008.**

**EXT.P15: TRUE COPY OF THE JUDGMENT DATED 14.10.2009 IN WP(C) NO.31825 OF
2008.**

msv/

WP(C).No. 10521 of 2011 (M)

EXT.P16: TRUE COPY OF THE JUDGMENT IN WRIT APPEAL NO.1817 OF 2010.

RESPONDENT(S)' EXHIBITS:

NIL

//TRUE COPY//

P.S.TO JUDGE

Msv/

A.MUHAMED MUSTAQUE, J.

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**W.P.(C).No.10521 of 2011**  
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Dated this the 22nd day of January, 2015

J U D G M E N T

Petitioner has been appointed as a Higher Secondary School Teacher (for short, "HSST") in an aided school with effect from 17/11/2003. The vacancy to the above post was notified on 23/09/2000. The last date for receipt of the application was 30/09/2000. As on the last date for receipt of the application, the petitioner is fully competent to be appointed as HSST. The petitioner is having Ph.D. The candidates, who were having Ph.D were eligible for appointment as HSST without B.Ed Degree. The Government Order, viz. G.O.(MS).No.273/98/G.Edn., dated 15/07/1998 however, directed Ph.D holders to aquire B.Ed

degree within a period of three years from the date of appointment. This order was modified vide G.O.(MS)298/2000/G.Edn., dated 25/08/2000 which stipulates that the candidates who have acquired Ph.D shall be treated on par with SET qualified hands for appointments as HSSTs in Government and aided schools. Thus, as on the last date of submission of the application, the petitioner is fully qualified to be appointed as HSST.

2. The Special Rules came into force with effect from 12/11/2001. There were several litigations relating to the appointment of teachers before the commencement of the Special Rules. Pursuant to the direction of the Hon'ble Supreme Court in C.A.Nos.7154-7155 of 1999, the Government issued order dated 07/01/2004 (Ext.P6). It was ordered in Ext.P6 that the HSSTs holding Ph.D., who were appointed purely on the strength of the

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Government Order dated 15/07/1998 and who were continuing in the service as on 14/11/2000, will stand regularised with effect from their date of entry in service without insisting the condition of acquiring B.Ed. Thereafter, the Government exempted acquisition of B.Ed in respect of certain HSSTs by Ext.P13 order. Petitioner submits that in view of the fact that the teachers who were appointed before 14/11/2000 were exempted from acquiring B.Ed., petitioner is also entitled for the same benefit for the reason that he was fully qualified as on the last date for submission of the application. The stand of the Government is that the petitioner was appointed as HSST only on 17/11/2003, that is, after the implementation of the Special Rules and, therefore, the petitioner cannot avail the benefit of the Government Order referred as above. The Government order referred as above are only in respect of the candidates who are in service as on 14/11/2000. Therefore, it is submitted by the learned Government Pleader that the

petitioner's service can be regularised only with effect from the date of acquisition of B.Ed. which was on 07/07/2009.

3. The appointees acquire a vested right for consideration, in terms of the notification, for selection in accordance with the rule applicable at the time of inviting applications. The Hon'ble Supreme Court in **N.T.Devin Katti and others vs. Karnataka Public Service Commission and others [(1990) 3 SCC 157]** held as follows:

“A candidate on making application for a post pursuant to an advertisement does not acquire any vested right of selection, but if he is eligible and is otherwise qualified in accordance with the relevant rules and the terms contained in the advertisement, he does acquire a vested right of being considered for selection in accordance with the rules as they existed on the date of advertisement. He cannot be deprived of that limited right on the amendment of rules during the pendency of selection unless the amended rules are retrospective in nature.”

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The above case arose from a recruitment to the post of Tahsildars in Karnataka Administrative Services. The notification was issued in the year 1975, inviting applications from in-service candidates for recruitment. This was in the month of May, 1975. Thereafter, the Karnataka Government directed the Karnataka Public Service Commission to prepare a fresh list of successful candidates by making reservations in accordance with the procedure contained in the Government Order dated 09/07/1975. The Commission prepared the select list afresh, after making reservations in accordance with the procedure contained in the Government Order issued in the month of July 1975. The Hon'ble Supreme Court in that context held that the candidates acquire a vested right to be considered for selection if they are qualified in accordance with the existing rules or order and in terms of advertisement inviting application.

4. In **B.L.Gupta and another vs. M.C.D. [(1998) 9 SCC 223]** the Hon'ble Supreme Court held that vacancies

which arose before the amendment of the Recruitment Rules of 1978 shall be filled in accordance with the unamended rules and the vacancy that arose after the amended rules can only be filled in accordance with the amended rules.

5. The Full Bench of this Court in **Mohanan v. Director of Homoeopathy [2006 (3) KLT 641 (F.B.)]** also held that the vacancies which arose subsequent to the amendment of the Special Rules alone can be filled in accordance with the amended recruitment rules.

6. Thus, the petitioner's appointment was based on the rules prevailing at the time of notification. There is no dispute to the above fact. If the petitioner is entitled for consideration in accordance with the rules then prevailing, she cannot be denied approval of appointment which happened to be after the implementation of the Special Rules. The date of appointment of the petitioner is inconsequential in the matter of considering her qualification for selection. The governing rules at the time of a notification is

W.P.(C).No.10521/2011

-:7:-

applicable in selection and appointment of a candidate to a post. The Government Order though is referable to a class of persons to have the benefit of regularisation, that does not take away the right declared by the Hon'ble Supreme Court in **N.T.Devin Katti's** case and other cases referred as above for consideration of selection and appointment. Therefore, it is made clear that the rules existing as on the date of appointment of a candidate are not the criteria but the rules that were prevailing at the time of notification is the criteria. In view of the above, the writ petition is allowed. There shall be a direction to approve the appointment of the petitioner in the post of HSST (Pshycology) with effect from 17/11/2003, the date on which she was appointed, and grant her all consequential benefits. The entire arrears of salary shall be disbursed to her within a period of three months. No costs.

Sd/-

A.MUHAMED MUSTAQUE, JUDGE

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