

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

FRIDAY, THE 20TH DAY OF NOVEMBER 2015/29TH KARTHIKA, 1937

W.P.(C).No.10249 of 2013 (E)

PETITIONER(S):-

SAID IBRAHIM M.K., AGED 37 YEARS, S/O.M A ABDUL KHADAR,
UPPER PRIMARY SCHOOL ASSISTANT,
MUSLIM HIGH SCHOOL PUDUNAGARAM,
PUDUNAGARAM, PALAKKAD.

BY ADV. SRI.U.BALAGANGADHARAN.

RESPONDENT(S):-

1. STATE OF KERALA,
REPRESENTED BY THE SECRETARY,
GENERAL EDUCATION, THIRUVANANTHAPURAM-695001.
2. THE DIRECTOR OF PUBLIC INSTRUCTIONS,
THIRUVANANTHAPURAM-695001,
3. DISTRICT EDUCATIONAL OFFICER, PALAKKAD-678001.
4. MANAGER,
MUSLIM HIGH SCHOOL, PUDUNAGARAM, PALAKKAD-678503.
5. HEAD MISTRESS,
MUSLIM HIGH SCHOOL, PUDUNAGARAM, PALAKKAD-678503.

R1 TO R3 BY GOVERNMENT PLEADER SMT.A.LOWSY.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
20-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER(S)' EXHIBITS:-

- EXT.P1:- A TRUE COPY OF APPOINTMENT ORDER DTD 7/7/2008 ALONG
WITH THE ENDORSEMENT OF 3RD RESPONDENT DTD 9/2/2012.
- EXT.P2:- A TRUE COPY OF PROCEEDINGS OF THE 3RD RESPONDENT
ORDER NO KDIS/B2/4671/08 DTD 30/3/2009.
- EXT.P3:- A TRUE COPY OF APPOINTMENT ORDER DTD 1/6/2009.
- EXT.P4:- A TRUE COPY OF THE GOVERNMENT ORDER G.O(RT)
NO 4519/2009/G.EDN DTD 30/10/2009.
- EXT.P5:- A TRUE COPY OF THE APPOINTMENT ORDER (3RD ONE)
DTD 2/1/2010 CARRYING AN ENDORSEMENT OF
3RD RESPONDENT.
- EXT.P6:- A TRUE COPY OF THE LETTER NO 44771/B3/2011/G.EDN
DTD 11/4/2012 ISSUED BY THE 1ST RESPONDENT.

RESPONDENT(S)' EXHIBITS:-

NIL.

Vku/-

[true copy]

K. Vinod Chandran, J

W.P.(C).No.10249 of 2013-E

Dated this the 20th day of November, 2015

JUDGMENT

The petitioner is aggrieved with the fact that the two spells of appointment at Exhibits P1 and P5 have been approved only on daily wage basis and not on regular scale of pay. The petitioner's contention is that, the petitioner was appointed as Upper Primary School Assistant [for brevity "UPSA"] on 07.07.2008 in the vacancy of a promotion granted to one Sajitha and the same was cancelled by Exhibit P2; only on account of the promotion under Rule 43 having not been approved. The same has now been approved, as is evident from Exhibit P4. In such circumstance, the petitioner contends that the petitioner's appointment from 07.07.2008 has to be on a regular scale of pay. The petitioner also contends that Exhibit P5 appointment from 02.01.2010 to 31.03.2010 also, made on daily wage basis, ought to have been approved on regular scale of pay.

2. However, looking at Exhibit P1 it is seen that the petitioner was appointed in a post when the incumbent UPSA was promoted in a leave vacancy. It is very clear from Exhibits P1 and P5 that the appointment of the petitioner, by both Exhibits P1 and P5, were when promotions were made to the leave vacancy. Hence, the petitioner could claim only daily wages, since he has been appointed effectively in a vacancy which subsists only till the leave expires. In any event, from 01.06.2010 onwards the petitioner has been accommodated in a regular vacancy. The vacancy arose when a regular promotion was granted, and then his salary has been paid on the regular scale of pay.

3. Even looking at Exhibit P4 order, it is clear that the promotion of Sajitha, UPSA to the post of HSA [English] was against a leave vacancy of one M.S.Beena, HSA [English]; between 07.07.2008 and 31.08.2013. Hence, the petitioner cannot have any claim for regular scales of pay, especially, as the learned Government Pleader points out, the petitioner had been appointed on daily wages even by the

Manager, being quite aware of the fact that the said vacancy subsists only till the expiry of the leave.

In the light of the above, the writ petition would stand dismissed. No costs.

Sd/-
K.Vinod Chandran
Judge.

vku/-

[true copy]