

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.SURENDRA MOHAN

WEDNESDAY, THE 4TH DAY OF MARCH 2015/13TH PHALGUNA, 1936

OP.No. 28905 of 2002 (N)

PETITIONER :

I.SUBHADRA
(EX.TEACHER, V.V.S.H.S.,MANNUTHY), W/O. T.R.MOHANAN, INATH HOUSE
MUKKATTUKARA DESOM, NETTISSERY VILLAGE, THRISSUR DIST.

BY ADV. SRI.P.VCHANDRA MOHAN

RESPONDENTS :

1. THE DISTRICT EDUCATIONAL OFFICER
THRISSUR.
2. THE MANAGER,
V.V.S. HIGH SCHOOL, MANNUTHY, THRISSUR DIST.
3. STATE OF KERALA,
REPRESENTED BY THE SECRETARY TO GOVT.
GENERAL EDUCATION DEPARTMENT, SECRETARIAT
THIRUVANANTHAPURAM.

R2 BY ADVS. SRI.B.GOPAKUMAR
SMT.CHINCY GOPAKUMAR
R BY SR. GOVERNMENT PLEADER SRI.E.M.ABDUL KHADER

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 04-03-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS :

EXT.P1 : COPY OF CERTIFICATE ISSUED BY THE HEADMASTER V.V.S.H.S., MANNUTHY DTD.19.7.82 TO THE PETITIONER

EXT.P2 : COPY OF LETTER DATED 1.7.2002 SENT BY PETITIONER TO R2

EXT.P3 : COPY OF ORDER NO.EM1-95665/00/D.DIS.DTD.1.11.01 ISSUED BY THE DIRECTOR OF PUBLIC INSTRUCTION, TRIVANDRUM

EXT.P4 : COPY OF APPLICATION SUBMITTED BY PETITIONER BEFORE R1 DTD.29.8.2002

EXT.P5 : COPY OF LETTER NO.B4/8568/2002/L.DIS.DTD.11.9.2002 ISSUED BY R1.

EXT.P6 : COPY OF ORDER NO.6/02-03 DATED 30.5.2003 ISSUED BY R2

EXT.P7 : COPY OF JOINING DUTY REPORT ADDRESSED TO TEACHER-IN-CHARGE OF V.S.H.S. MANNUTHY DTD.6.6.2003

EXT.P8 : COPY OF DRAFT FORWARDING LETTER ADDRESSED TO R1 DTD.12.6.2003

EXT.P9 : COPY OF JUDGMENT IN WP(C).NO.19237 OF 2005-M OF THIS HONOURABLE COURT DATED 17.8.2005

EXT.P10 : COPY OF RELEVANT PAGE OF SERVICE BOOK RECORDING THE APPOINTMENT OF THE PETITIONER

EXT.P11 : COPY OF LETTER OF THE 2ND RESPONDENT DATED 9.9.2002

EXT.P12 : COPY OF THE LETTER OF THE MANAGER TO THE TEACHER-IN-CHARGE, VVS HIGH SCHOOL, MANNUTHY

EXT.P13 : COPY OF ORDER OF THIS HON'BLE COURT IN C.M.P.NO.49145/2002 IN OP NO.28905/2002 DATED 27.1.2003

EXT.P14 : COPY OF COMMUNICATION OF THE DEO, THRISSUR DATED 26.2.2003

EXT.P15 : COPY OF LETTER OF THE TEACHER-IN-CHARGE, VVS HIGH SCHOOL, MANNUTHY

EXT.P16 : COPY OF THE LETTER OF THE 1ST RESPONDENT DATED 7.3.2003 TO THE MANAGER

EXT.P17 : COPY OF THE CERTIFICATE ISSUED BY THE HEADMASTER, GOVT.HIGH SCHOOL, CHERUTHURUTHY

RESPONDENTS' EXHIBITS :

EXTR2(a) : COPY OF THE LETTER NO.6/02-03 DATED 4.7.2002 ISSUED BY MANAGER, V.V.S.H.S., MANNUTHY TO TEACHER - IN -CHARGE

EXTR2(b) : COPY OF LETTER DATED 7.3.2003 NO.B4-10085/02 FROM THE 1ST RESPONDENT TO THE PETITIONER

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EXT.R2(c) : COPY OF COMMUNICATION BY D.E.O. TO THE TEACHER-IN-CHARGE,
V.V.S.H.S., MANNUTHY - VIDE NO.B4/10085/02 DT.26.2.2003

EXT.R2(d) : COPY OF LETTER TO D.E.O. THRISSUR BY TEACHER-IN-CHARGE V.V.S.H.S.,
MANNUTHY

EXT.R2(e) : COPY OF BIO-DATA OF SMT.SUBHADRA

/TRUE COPY/

P.A TO JUDGE

AV

K.SURENDRA MOHAN, J.

O.P. No.28905 of 2002

Dated this the 4th day of March, 2015

J U D G M E N T

The petitioner is an Upper Primary School Assistant of the School of the 2nd respondent. The 2nd respondent is the Manager. The petitioner had been appointed for three short spells from 12.01.1981 to 31.03.1981, 14.10.1981 to 17.12.1981 and 11.01.1982 to 15.03.1982. Therefore, she was a claimant under Rule 51 A of Chapter XIV A of the Kerala Educational Rules, 1959. The petitioner was for the said reason entitled to be appointed to the next vacancy of Upper Primary School Assistant in the said school.

2. In the above circumstances, a regular vacancy of Upper Primary School Assistant arose in the school with effect from 01.07.2002. The petitioner claimed appointment to the said post by submitting Ext.P2 representation. However, she was not appointed. Therefore, she complained to the 1st respondent by submitting Ext.P4. The 1st respondent replied by issuing Ext.P5, informing the petitioner that, he had no authority to direct appointment of a teacher but that, he would object to any appointment made, disregarding the claim of the petitioner.

3. Left with no other alternative, the petitioner filed the present writ petition. This petition was admitted and by an order dated 09.10.2002, the petitioner was directed to be appointed. However, the

direction was later on modified by this Court after hearing the respondents. Accordingly, the 1st respondent was directed to enquire and report regarding the genuineness of the claim put forward by the petitioner within one month and to appoint her, if the claim was genuine. Thereafter, the 1st respondent enquired into the matter and has found as per Ext.R2(b) order dated 07.03.2003 that, the petitioner was a genuine claimant under Rule 51 A of Chapter XIV A of the Kerala Educational Rules. Thereafter, she was appointed as per Ext.P6 order dated 30.05.2003. Accordingly, she joined duty on 02.06.2003 and worked till 14.07.2008. On the said date, she was again terminated, for want of vacancy due to fall in the number of students. She was not appointed thereafter. She has attained the age of superannuation on 31.03.2010.

4. According to the learned counsel for the petitioner, Sri.P.V.Chandramohan, though the petitioner had been appointed as per Ext.P6, her appointment was not approved. Therefore, she had worked as an Upper Primary School Assistant from 02.06.2003 to 14.07.2008 without being paid any salary. Her appointment was not approved for the reason that, a dispute regarding the management of the school was pending. Consequently, the Manager of the school had not been approved by the authorities. It is contended by the counsel for the petitioner that, the petitioner has been suffering for no fault of hers. She has not received her salary and, she has not been paid any

pension or other benefits because, she had crossed the age of superannuation. The petitioner seeks the issue of appropriate directions in the matter.

5. The learned Government Pleader appears for respondents 1 and 2.

6. Having heard the counsel appearing for the respective parties, it is held that the petitioner's claim is fully justified in the facts and circumstances referred to above. Pursuant to the interim direction of this Court, the 1st respondent has conducted an enquiry and has found that, the petitioner was a genuine claimant under Rule 51A of Chapter XIV A of the Kerala Educational Rules. Therefore, she was entitled to be appointed to the regular vacancy that arose on 01.07.2002. She was accordingly appointed as per Ext.P6 order. She has actually worked for the period from 02.06.2003 to 14.07.2008. The denial of salary to her for the reason that the 2nd respondent was not an approved Manager of the school is without any justification. She is penalised for no fault of hers. Therefore, she is entitled to be paid her salary for the period from 02.06.2003 to 14.07.2008.

In view of the above, this writ petition is allowed. The service of the petitioner from 02.06.2003 to 14.07.2008 is approved. The petitioner shall be paid her salary for the said period. She shall also be entitled to all consequential benefits including retirement benefits. The respondents shall take necessary action to see that all the

consequential benefits due to the petitioner are paid, as expeditiously as possible and at any rate within a period of two months of the date of receipt of a copy of this judgment.

Sd/-
K.SURENDRA MOHAN, JUDGE.

AV