

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

TUESDAY, THE 9TH DAY OF JUNE 2015/19TH JYAISHTA, 1937

WP(C).No. 11849 of 2012 (E)

PETITIONER(S):

**MINI MATHEW AGED 39 YEARS
H.S.A.ENGLISH, ST.THOMAS HIGHER SECONDARY SCHOOL
KOZHENCHERRY.**

**BY ADVS.SRI.KURIAN GEORGE KANNANTHANAM (SR.)
SRI.TONY GEORGE KANNANTHANAM**

RESPONDENT(S):

- 1. STATE OF KERALA
REPRESENTED BY SECRETARY TO GOVT.
GENERAL EDUCATION DEPARTMENT, GOVT.SSECRETARIAT
TRIVANDRUM-695 001.**
- 2. THE DIRECTOR OF PUBLIC INSTRUCTION
TRIVANDRUM-695 001.**
- 3. THE DEPUTY DIRECTOR OF EDUCATION
PATHANAMTHITTA-689 641.**
- 4. THE DISTRICT EDUCATIONAL OFFICER
PATHANAMTHITTA-689 641.**
- 5. THE MANAGER
ST.THOMAS.H.S.S., KOZHENCHERRY-689 641.**

R BY ADV. GOVERNMENT PLEADER, SMT. K.SUNITHA VINOD

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
09-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER(S) EXHIBITS:-

- EXHIBIT P1: COPY OF APPOINTMENT ORDER DATED 5/6/2002 ALONG WITH ENDORSEMENT BY THE 4TH RESPONDENT.**
- EXHIBIT P2; COPY OF ORDER DATED 31/8/2004 ISSUED BY THE 4TH RESPONDENT.**
- EXHIBIT P3: COPY OF THE ORDER DATED 12/1/2005 ISSUED BY THE 3RD RESPONDENT.**
- EXHIBIT P4: TRUE COPY OF THE ORDER DATED 14/6/2007 ISSUED BY the JOINT DIRECTOR OF PUBLIC INSTRUCTION, TRIVANDRUM.**
- EXHIBIT P5: TRUE COPOY OF THE REVISION PETITION DATED 20/8/2007 FILED BEFORE THE GOVERNMENT.**
- EXHIBIT P6: TRUE COPY OF THE JUDGMENT DATED 10/1/11 IN WPC.670/11 OF THIS HON.COURT.**
- EXHIBIT P7: TRUE COPY OF THE ORDER DATED 19/11/11 OF THE GENERAL EDUCATION (E) DEPARTMENT.**

RESPONDENT(S)' EXHIBITS

NIL

// True copy //

PA to Judge

das

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C). No. 11849 of 2012

Dated this the 9th day of June, 2015

JUDGMENT

The petitioner is an HSA working in the School under the management of the 5th respondent with effect from 2002. She was appointed as HSA on regular basis with effect from 05.06.2002 against an additional post, that was sanctioned for the academic year 2002-2003. By Ext.P1 order dated 27.04.2005, the said appointment was approved by the educational authority. For the academic year 2003-04, the staff fixation that was conducted showed a division fall and therefore the additional post that was sanctioned to the school during the academic year 2002-03, was reduced. Thereupon the District Educational Officer, by Ext.P2 order dated 31.08.2004, found that the petitioner was an excess staff who could not be accommodated in the School even through an application of the 1:40 ratio, that was prescribed in the Government Order for retaining teachers, who were faced with the prospect of retrenchment pursuant to a division fall. The facts in the writ petition would disclose that, for the academic year 2004-05, pursuant to a staff fixation, and on finding that there were sufficient students to sanction an additional post, the petitioner was once again appointed, and the said appointment was approved. In the writ petition, the petitioner is aggrieved only by the non-

retention of the petitioner for the academic year 2003-04 through an application of the 1:40 ratio, that is prescribed under the Government Order issued under the KER. As a matter of fact, against Ext.P2 order of the DEO, the manager had filed an appeal before the Deputy Director. The said appeal was, however, rejected by Ext.P3 order dated 12.01.2005. A further revision before the Joint DPI was also rejected by Ext.P4 order dated 14.06.2007. The revision petition, that was subsequently filed by the petitioner before the Government was also rejected by Ext.P7 order dated 19.11.2011. In the writ petition, Exts.P2, P3, P4 and P7 are impugned and a direction is sought to the respondents to approve the appointment of the petitioner as has from 05.06.2002 to 15.07.2004.

2. A counter affidavit has been filed on behalf of the 1st respondent wherein, it is stated that the petitioner had approved service only from 05.06.2002 to 14.07.2003. It is thereafter, stated that in the staff fixation for 2003-04, there was a reduction in a post of HSA (English) and the petitioner could not be considered for retention by application of the 1:40 ratio, since her length of service was too meager for grant of protection. It is also pointed out that there was a leave vacancy at St.Mary's Girls High

School, Kozhencherry, another school under the management of the 5th respondent, and the 5th respondent ought to have accommodated the petitioner against the said vacancy instead of making a request for application of 1:40 ratio.

3. I have heard the learned counsel appearing for the petitioner and also the learned Government Pleader for the respondents.

4. On a consideration of the facts and circumstances of the case and the submissions made across the bar, and on a perusal of Exts.P2, P3, P4 and P7 orders that are impugned in the writ petition, I find that, in none of the orders, is there a specific consideration as to why the petitioner could not have been considered for retention by the application of 1:40 ratio, which is prescribed by the Government for the teachers who are specifically affected by the reduction in posts consequent to a division fall noticed in the staff fixation. In Ext.P4 order of the Joint Director of Public Instructions, what is stated is that, instead of applying the ratio 1:40, the petitioner had to be adjusted in the existing vacancy of HSA (English) in St.Mary's Girls High School, Kozhencherry, under the same management. This would suggest

that although there was an option for applying the 1:40 ratio in the case of the petitioner, the respondents decided not to do so solely because, it was their finding that there was a vacancy of HSA (English) in another school under the same management. I note from Ext.P5 revision petition, filed by the manager against Ext.P4 order of the Joint DPI, that it is the specific case of the manager that there was no open vacancy of HSA available in St.Mary's H.S during the relevant time. In my view, while considering the revision filed by the manager and passing Ext.P7 order, it was incumbent upon the 1st respondent to consider the specific contention of the manager that there was no vacancy of HSA in St.Mary's Girls High School, Kozhencherry. A perusal of Ext.P7 would clearly indicate that this contention of the manager has not been considered by the 1st respondent in Ext.P7 order. In fact, in Ext.P7 order, there is a mechanical repetition of the finding of the lower authority that there was a leave vacancy at St.Mary's Girls High School, Kozhencherry and that the petitioner could have been adjusted against the said vacancy.

On the facts of this case, I am of the view that the 1st respondent must be directed to re-examine the issue in the light of the submission of the manager of the school that during the

relevant period, there was no vacancy in the post of HSA (English) at St.Mary's Girls High School, Kozhencherry. If as a matter of fact, the submission of the manager is found to be correct, then the 1st respondent will have to examine as to why the benefit of 1:40 ratio cannot be applied in the case of the petitioner for the purposes of retaining her as HSA (English) during the academic year 2003-04. Accordingly, I dispose the writ petition with a direction to the 1st respondent to reconsider Ext.P5 revision petition preferred by the manager before him, in the light of the observations in this judgment and pass order thereon, after hearing the petitioner and the manager, at the earliest, and at any rate, within a period of three months from the date of receipt of a copy of this judgment. In order to enable the 1st respondent to do so, I quash Ext.P7 order in the writ petition, making it clear that the 1st respondent is to decide the matter afresh, untrammelled by the findings in the said order.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE